

APRIL 22, 2008

1

EIGHTH MEETING

The Board of Commissioners of the County of Fremont, State of Colorado, met in Regular Session on April 22, 2008, 615 Macon Avenue, Room LL3, Fremont County Administration Building, Cañon City, Colorado. Commissioner Chairman Larry Lasha called the meeting to order at 9:30 A.M.

Larry Lasha	Commissioner	Present
Edward H. Norden	Commissioner	Present
Michael J. Stiehl	Commissioner	Present
Brenda Jackson	County Attorney	Present
Norma Hatfield	Clerk and Recorder	Absent

Also present Finance Director, Dana Angel; Bill Giordano, Planning and Zoning Director and Tina Taylor, Deputy Clerk.

Jeff Bennett with Riverwalk Church gave the Morning Prayer.

Those present recited the Pledge of Allegiance to the Flag of the United States of America.

APPROVAL OF AGENDA

Commissioner Norden moved to approve the Agenda as submitted. The motion was seconded by Commissioner Stiehl. Upon Vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

CONSENT AGENDA

1. Approval of Minutes
2. Approval of Bills April 22, 2008 / \$475,366.47
3. LIQUOR LICENSES
MERLINOS INC.
MERLINO BELEVEDERE
1330 ELM
CANON CITY, CO 81212-4477
Hotel and Restaurant Liquor License renewal – Malt, Vinous and Spirituous
4. SCHEDULING OF PUBLIC HEARING FOR MAY 13, 2008 AT 10:00 A.M.
REQUEST: ZC 08-001 WISH ZONE CHANGE
Request approval of a Zone Change from the Business Zone District to the Agricultural Estates Zone District, Department file # ZC 08-001
Wish Zone Change, by Anthony & Laima Wish, for their property which is located on the north side of US Highway 50, approximately 0.66 miles west of Fremont County Road #6, aka Hayden Creek Road, in the Coaldale Area.

Commissioner Stiehl moved to approve the Consent Agenda as presented. The motion was seconded by Commissioner Norden. Upon vote: Commissioner Stiehl, aye; Commissioner Norden, aye; Commissioner Lasha, aye. The motion carried.

ADMINISTRATIVE/INFORMATIONAL

1. Staff/Elected Officials

Commissioner Stiehl stated there will be a conservation easement workshop with Gold Belt Byway Association on May 7th from 4:30 P.M. to 6:30 P.M. at the Holiday Inn Express in Canon City. Commissioner Stiehl read a summary of what the program would cover. Attending will be two to three land trusts which are the entities that take your easement and manage it for you. An appraiser who is a strong expert on land valuation and tax credits that are available to the land owners that commit their land to a conservation easement will also be present.

Commissioner Norden congratulated Sheriff Beiker, Chief Probation Officer Lisa Lane, Court Administrator Walter Blair and the security committee at the Judicial Center. They secured a \$10,995.00 grant for courtroom security. This will fund a public address system that will be wired into the entire judicial center to be used in case of an emergency to make sure that everyone is notified to evacuate the building.

Commissioner Norden stated in the next couple of weeks, 1-1/4 miles of paving will start on Garden Park Road at the end of the current pavement to the start of Shelf Road north of Cañon City. Funding for the project came from the \$250,000.00 2008 Canon Impact Grant that was secured last fall.

Commissioner Lasha stated that April 18th was the last day of the clean up campaign for the municipalities and county. A record number of vouchers were given out for loads of trash to the landfills. Holcim had a very successful tire collection Saturday April 19th. Commissioner Lasha thanked everyone that participated in the campaign.

2. Citizens Not Scheduled – none.

NEW BUSINESS

APPOINTMENT OF THE AIRPORT / INDUSTRIAL PARK ADVISORY BOARD MEMBERS

Commissioner Lasha stated that interview process has been completed. Randy White and Jay Seavy were selected to serve a two-year term. They replaced John Ary and Dave Nash. Dave Nash will continue to participate on as an Honorary Board Member.

Commissioner Norden moved to approve the appointments of Randy White and Jay Seavy for two-year terms on the Fremont County Airport / Industrial Park Advisory Committee. Commissioner Stiehl seconded the motion and stated this Board of Commissioners has a policy to have all vacancies on all board positions advertised. This way the Board is able to reach out further to people who are interested in serving and to insure that the best candidate is chosen for the position. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

CAÑON CITY MUSIC AND BLOSSOM FESTIVAL INC. – REQUEST APPROVAL OF A SPECIAL USE PERMIT FOR THE CARNIVAL OPERATIONS APRIL 30TH THRU MAY 4, 2008

Cañon City Music and Blossom Festival Representative Gina Grisenti requested approval of a special use permit for the Blossom Festival Carnival to operate on the city's ground west of the Public Works Building along Elm. Ms. Grisenti stated the retail food establishment licenses have been submitted for the food vendors.

Planning and Zoning Director Bill Giordano stated the applications has been submitted and is complete. The action required is the approval of the temporary use permit. The applicant is requesting a waiver of the application fee and clean up fee. The other action the Board needs to take is the acceptance of the general liability insurance.

Commissioner Norden asked why the application was submitted late. Ms. Grisenti apologized and stated they were a crew of few and time had gotten away from them.

Commissioner Norden moved to approve the special use permit for the Blossom Festival Carnival for April 30th through May 4, 2008, especially the site being the property west of the Cañon City Public Work and waiver of fees and assurance of liability insurance. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

Planning and Zoning Director Bill Giordano clarified that the permit is a Temporary Use Permit and not a Special Use Permit.

RE-SCHEDULE BOARD OF COUNTY COMMISSIONERS MEETING FROM TUESDAY JUNE 10TH TO MONDAY JUNE 9, 2008 AT 9:30 A.M. TO ALLOW COMMISSIONERS TO ATTEND THE COLORADO COUNTIES INC., SUMMER CONFERENCE

Commissioner Stiehl moved to reschedule the Board Meeting from Tuesday, June 10 to Monday, June 9, 2008 at 9:30 A.M. The motion was seconded by Commissioner Norden. Upon vote: Commissioner Stiehl, aye; Commissioner Norden, aye; Commissioner Lasha, aye. The motion carried.

Commissioner Lasha closed the regular session and opened the Public Hearing.

PUBLIC HEARING

REQUEST: CUP 08-002 CHEROKEE CLAY MINE

Request approval of a Conditional Use Permit, Department file #CUP 08- 002 **Cherokee Clay Mine, to allow open pit mining of clay**, by Summit Brick & Tile Company/JAT Investments, LLC, for their property which is located *approximately 0.7 miles southerly of the intersection of Fremont County Road #84 and Locke Mountain Road (not a County Road), on the easterly side of County Road #84 in the Locke Mountain Area*. The application will be a renewal as the property is currently operating under permit number CUP 98-1 which will expire on April 14, 2008. The property is vacant, contains 35.20 acres, and is located in the Agricultural Forestry Zone District.

L. J. Development Representative Joe Gagliano requested the renewal of the conditional use permit that Summit has had for the last ten years. Summit acquired the mine site in 1998. The mine has been in operation since 1977. The mine is a low impact mine that is used for the extraction of brick clay. No gravel is taken off the site. The mine is operated 6 weeks out of 52 weeks. There are fourteen truck loads of clay hauled out of the pit per day during the operation. The last time the operation had trucks on the road was in September, 2007. The area is 9.9 acres, bonded by the MLRB State of Colorado. There have been no deficiencies at the pit. Items for considerations of the CUP the owner is requesting are: 1. The CUP be for the life of the mine instead of just 10 years. The mine is estimated to be in operation for another 25 years. 2. The boundary of the CUP is changed. The prior CUP was for the entire quarter section. Summit has a mineral lease from Peabody Coal on the quarter section. The CUP request now is only for Lot 6 which Summit owns and it is not the entire quarter section. The 9.9 acre of the mine site is in Lot 6. **Commissioner Lasha** inquired if the 9.9 acres was on top of the hill. Mr. Gagliano said yes, the mining is going around the cap rock because the clay is layered under the cap rock. Mr. Gagliano stated that no permits would be allowed to expire and that his client has submitted the paperwork required to Fremont County on time. Mr. Gagliano stated that the loads leaving the mine would be covered with tarp, obey speed limits and will not be overloaded. Per the permit requirements the mining activity may be in temporary secession for at least six months but shall not exceed two years. The weed control plan Mr. Phillips has been reviewed. The Air Pollution Emissions Notice (APEN) is coming due this summer and will be renewed. Mr. Gagliano stated they were in agreement with all other conditions. Mr. Gagliano stated they were talking with County Road Department regarding storm water drainage and road erosion especially erosion on the road at the driveway. They are looking at the best management plan to get the drainage corrected. A local commercial supplier will be employed for disposal of sanitation with facilities onsite. Mr. Gagliano requested waiver of surfacing, lighting and landscaping. Additional notifications have been completed as requested.

Planning and Zoning Director Bill Giordano stated that the property was posted, publication in the newspaper, notification of property owners and as Mr. Gagliano stated all additional notifications and considerations have been completed in accordance with regulation. Mr. Giordano noted changes from the original permit. In 1977 there was a SRU issued which was the way mining was addressed at that time, since then CUP has been issued. There are no Planning Commission Minutes under the renewal process. Application was made and submitted prior to the expiration date. Mr. Giordano stated that the Driveway Access Permit was incorporated because of the problem with the regrading of the gravel on the road and a new driveway access might have to be created because of the drainage situation. Mr. Giordano stated he wanted documentation with the road foreman to provide gravel for the surface of CR #84 with an amount of gravel needed and expected time frame. Upon approval of the CUP, a resolution will be prepared for the next board meeting with the conditions and approvals that are made in this meeting.

Joan Crosley who lives on Locke Mountain, was concerned if the applicant received a life of the mine permit, and would there be mining on the side that faces their property. The property is located just past the Lock Mountain gate. The operation is mining on the

other side of the mountain currently. She also expressed concern of heavy truck traffic with the current condition of the road.

Joe Welte, President of Summit Brick and Tile, asked for approval of the CUP. Mr. Welte stated that they were asking for the life of the mine which could be 25 years depending on the amount of clay that is taken out and also depends upon the demand from customers for different colors of brick. Mr. Welte stated that there was no intention to come in and mine off of lower Lock Mountain Road. The clay is on the top of the hill. **Commissioner Stiehl** stated the mining plan limits them to the 9.9 acres which is what they are applying for at this time.

Commissioner Norden asked what color of brick is produced out of this mine. Mr. Welte stated the clay is buff color burning clay mixed with red to get all different shades of pink to maroon type red.

Mr. Welte stated that they are willing to work with the county road crew, to mitigate any damages to the road while operating. They will come to an agreement as to costs depending on their usage of the road.

Commissioner Stiehl inquired as to why they were asking for 6 days week instead of the 5 day work week in the previous CUP. Mr. Welte thought they had asked for the same but obviously the haulers like to work as much as they can.

Commissioner Stiehl noted there is a stockpile area. He stated it was unclear from the definition of operation whether there would be mining six weeks and then hauling in addition to the six weeks or mining and hauling would be limited to six weeks. Mr. Welte stated they only mine once a year, six week was put in the CUP.

Commissioner Lasha closed the Public Hearing and opened the Regular Session.

Planning and Zoning Director Bill Giordano clarified the use of the road. The applications states that they are going to use CR #84. One of the conditions of the permit says that they will conform to all plans, drawing and representations at this meeting. Mr. Giordano stated that in the past they have limited access specifically to CR #84. If the board feels that access is not covered directly, they can add it as another condition that they only use CR #84.

County Road Foreman Gary Weirton stated he agrees that work needs to be done with the existing road next to the gravel pit as well as some maintenance. It would require about 800 tons of gravel to bring the road up to county standards. There should be about 100 tons a year to just to maintain the road. Mr. Weirton would also like to see the drainage improved. Mr. Weirton felt the driveway should not have been approved in the conditions that it is in. **Commissioner Stiehl** asked if a concrete pan may be more appropriate. Mr. Weirton felt that would be a better application and would control some of the erosion coming out of the staging area and the road would be easier to maintain.

Commissioner Stiehl asked if it would be helpful for the board to require a new access permit. Mr. Weirton stated that would give them a starting point by having a permit and then decide what kind of requirements there should be for that access.

Commissioner Stiehl stated regarding the contingencies, if we approved this, is that those contingencies number 1a thru 1c should actually become a condition of continuing operations. It is important that we quantify enough gravel to take care of the road surface. Commissioner Stiehl stated defining the life the mine is difficult. He would like to see the CUP for 35 years. This would allow for land use changes in the future.

Commissioner Norden moved to approve CUP 08-002 Cherokee Clay Mine for Summit Brick and Tile, adding to the Conditions, "Q" to contain language of the Contingencies 1a,b, and c and amend language 1a to say "supply and make available 100 tons of gravel annually for the surface of CR #84. Commission Norden added Condition R, that access from the pit be restricted only to CR #84. The other Conditions as printed in the recommendations from staff and the other Contingencies as listed with language for the life of the mine. Waiving Surfacing, lighting and landscaping requirements. **Planning and Zoning Director Giordano** asked if 1a is added, application of the gravel is to be completed by the county so that there is no question at a later date as to who has to apply it. Commissioner Norden stated yes, 1a would have language that gravel would be applied by county road crews. **Commissioner Lasha** asked about Condition A, the life of the mine. **Commissioner Norden** stated it would be for the life of the mine as written.

Commissioner Lasha seconded the motion. **Commissioner Stiehl** moved to amend the motion changing Condition A to instead of life of the mine to 35 years and K 2 change to new driveway access permit be obtained.

RECOMMENDED CONDITIONS

A. The term of the Conditional Use Permit shall be for the life of the mine. (Estimated as 25+ years)

AMMENDED TO:

The term of the Conditional Use Permit shall be for thirty five (35) years.

- B. The Department shall review the permit annually to determine compliance with the conditions of the permit and forward it to the Board for their review as required by regulations.
- C. Applicants shall conform to all plans, drawings and representations submitted with or contained within the application except as may be inconsistent with the other provisions of the permit.
- D. Applicants shall comply with all laws and regulations of the County of Fremont, its agencies or departments, the State of Colorado, its agencies or departments, and the United State of America, its agencies or departments, as now in force and effect or as the same may be hereafter amended.
- E. Applicant shall obtain and keep in effect all other permits, licenses or the like required by any other governmental agency and as otherwise may be required by Fremont County. Revocation, suspension or expiration of any such other permits, licenses or the like shall revoke, suspend or terminate the permit authorized hereunder, as the case may be.
- F. All loads of material transported from the site shall comply with applicable Colorado Revised Statutes.
- G. Days of operation will be limited to Monday through Saturday from 8 A.M. to 5 P.M. for six (6) weeds of each year.
- H. The number of haul truck trips shall not exceed 28 per day. (*A trip is considered as a single or one direction vehicle movement with either the original or the destination [exiting or entering] inside the subject property.*)
- I. If a conditional use is abandoned, discontinued or terminated for a period of six (6) months, the approval thereof shall be deemed withdrawn, and the use may not be resumed without approval of a new application. Provide, however, if the holder of the permit intends to, or does temporarily cease the conditional use for six (6) months or more without intending to abandon, discontinue or terminate the sue, the holder shall file a notice thereof with the Department prior to the expiration of the six-month period stating the reasons thereof and the plan for the resumption of the use. The requirement of a notice of temporary cessation shall not apply to applicants who have included in their permit applications a statement that the use would continue for less than six (6) months in each year and such fact is noted on the permit. In no case, however, shall temporary cessation of use be continued for more than two (2) years without approval by the Board. The applicant has noted that the mining activity may be in temporary cessation for at least six (6) months, but shall not exceed two (2) years.
- J. Compliance on an annual basis with any requirements of the Fremont County Weed Control Officer, if applicable.
- K. Provide a copy of the following permits, licenses or the like, prior to mining: (*If not required, provide documentation from the listed entity that the following is not required, prior to mining.*)
 - 1. Documentation that the APEN permit is still valid. Permit notes that it is valid for five (5) years unless a significant change has been made. Please provide updated copy.
 - 2. Copy of a Fremont County Driveway Access permit for access into the site from CR #84.

AMMENDED TO:

Copy of a new Fremont County Driveway Access permit for access into the site from CR #84.

3. United States Department of Labor, Mine Safety and Health Administration.
- L. If a conditional use permit is to be transferred, it shall comply with all applicable Federal, State and Local regulations regarding such transfer.
- M. Dust suppressant may be required in the future if needed.
- N. Buffering and landscaping of the mining site property may be required, in the future if needed.
- O. Fremont County shall retain the right to modify any condition of the permit if the actual use demonstrates that a condition of the permit is inadequate to serve the intended purpose of the condition. Such modification shall not be imposed without notice and a public hearing being provided to the Applicant, at which time applicant and members of the public may appear and provide input concerning the proposed modifications to the conditions of the permit.
- P. Only the named party on the permit shall be allowed to operate this Conditional Use Permit. Board approval shall be required prior to allowing any other person or entity to operate at the site under the conditions of this permit. All persons, entities or others requesting Board approval to operate under this Conditional Use permit must agree to abide by all terms and conditions of this Conditional Use Permit and shall be required to be named on this Conditional Use Permit as additional parties who are bound by the terms and conditions of this Conditional Use Permit.

AMMEND CONDITIONS TO ADD:

- Q. Documentation as to compliance with the following requirements and recommendations of the County Reviewing Engineer, per his letter dated March 25, 2008:
 1. Documentation from County road Foreman as to an agreement to provide gravel for the surface of County Road #84.

AMENDED:

- Documentation from County Road Foreman as to an agreement by the applicant to provide one hundred (100) tons of gravel annually for the surface of County Road #84. The application of the gravel will be completed by the County.**
2. The storm water management plan shall be modified to insure adequate protection of the County road from uncontrolled silt and storm water flows, prior to approval.
- R. Access for all haul truck trips shall be restricted to County Road #84.

CONTINGENCIES:

The following contingencies shall be provided within six (6) months after final approval by the Board of County Commissioners:

1. Documentation as to insurance for an acceptable sewage disposal source for employees from the Fremont County Environmental Health Department, **prior to operations.**
2. The executed Fire Protection Plan and District Comment Form shall be completed and a copy provided.
3. Documentation as to compliance with any requirements of the fire protection district, if applicable.
4. Correct application to reflect owner of the property being JAT Investments, LL.

Commissioner Norden agreed to amend the language as the motion. Commissioner Lasha seconded the motion asking for a 35 year term and adding the new access permit.

Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye. The motion carried.

Commissioner Lasha adjourned the meeting at 11:00 A.M.