

APRIL 22, 2009

1

SPECIAL MEETING

The Board of Commissioners of the County of Fremont, State of Colorado, met in Regular Session on, 615 Macon Avenue, Room LL3, Fremont County Administration Building, Cañon City, Colorado. Commissioner Chairman Michael J. Stiehl called the meeting to order at 1:02 p.m.

Michael J. Stiehl	Commissioner	Present
Edward H. Norden	Commissioner	Present
Larry Lasha	Commissioner	Present
Brenda Jackson	County Attorney	Absent
John D. Havens	Special Counsel	Present

Also present Bill Giordano, Planning and Zoning Director and Carol Papen, Deputy Clerk.

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

PUBLIC HEARING

Item #1 – Reconsideration of ZC 08-006 RE & AM Zone Change

Reconsideration of the December 9, 2008 approval of a Zone Change from the Agricultural Suburban and Agricultural Rural Zone Districts to the Agricultural Forestry Zone District by the Walker Development Company, a Colorado Corporation and Ronald E. Walker and Alidra M. Walker, owners of the property at time of application. Holcim (US) Inc. currently owns the property which is *located easterly of the intersection of R Street and US Highway 50, in the Beaver Park Area*. The property contains 3 barns (*a 40' X 51', a 62' X 90' and a 43' X 59' barn which lies over the southerly property line by approximately 24'*), a round grain silo, a rectangular building which contains three grain silos and a 16' X 20' shed. The property that was rezoned consisted of 13 full tracts and portions of 3 tracts located in the Beaver Land & Irrigation Company's Plat No. 3. The property contains 143.21 acres. In a separate but related proceeding, the applicant also vacated platted rights-of-way and adjusted the tract lines to create parcels of 35 acres or larger.

REPRESENTATIVE: East Fremont County Alliance, Paul A. Maye, Co-Chairman

Commissioner Stiehl opened the public hearing with a brief statement to inform all parties present as to how the hearing should be conducted. Commissioner Stiehl stated that this would be a hearing to reconsider Zone Change 08-006 from the Agricultural Suburban and Agricultural Rural Zone Districts to the Agricultural Forestry Zone District by the Walker Development Company, a Colorado Corporation and Ronald E. Walker and Alidra M. Walker (owners of the property at the time of application). The specific questions for this particular meeting would be to address the following:

- Were misrepresentation made by the applicant on the application or during testimony?
- If so, would the decision of the Commissioners have been different?
- If so, what is the appropriate remedy?

Following Commissioner Stiehl's statement, attorney for the East Fremont Alliance, Mr. Steven Mulliken took the podium and urged the commissioners to rescind the zone change regarding the Walker Ranch. Mr. Mulliken stated that there was misrepresentation in the application as well as in the prior hearings (before this Board and the Fremont County Planning Commission) for the original zone change. His written "opinion letter" was filed in advance of the hearing, is part of the record and was largely repeated in Mr. Mulliken's opening remarks.

Mr. Paul Maye gave the presentation for the East Fremont Alliance. He raised several issues which included topics such as: Demand for Honesty and Integrity, The East Fremont Setting, Walker Ranch Contested Zone Change, Mining Operations to the South, Penrose Approved Development, Zone Change Application, Specific Objectives & Safeguards, Quote from Zoning Application, Timeline of Deception, Justifications and Findings, Walker's Proposed Land Use, Promote Property Values, Agriculture, Economic & Cultural Resources, Impacts of Zone Change as well as Economic Impact of Zone Change.

In addition to Mr. Maye, numerous people spoke in favor of rescinding the zone change for the Walker Ranch, including:

* Jim Niehans	* Michael Till
* Rob Mangone	* Major Chris Wooldridge
* Hans Miesler	* Jim Mallette
* Kathleen Gamble-Hughes	* Vanessa Warner
* Steve Smith	* Gill T. Humphrey
* Michael Welch	* Vern Roberts
* Rod Page	* Cathryn Judy
* Tom Doxey	* Jane Browning
* Chris Jenkins	

The comments made by the people opposing the original zone change were many. Their concerns included the following:

- Deception in the application process as well as during the original zone change hearing. Many citizens complained that Mr. Walker's deception left them unaware of his true intentions and ignorant about the possibility that Holcim might wish to acquire the property as a possible mining site.
- Value of homes declining in the area due to Holcim expressing their presence in the area with signage stating that the property is a future quarry site.
- Strip mining in a residential area should not be permitted.
- Quarry operations would strip the land of any value.
- Undesirable traffic in the area will increase greatly if mining operations are allowed, contrary to Mr. Walker's representations in the zone change application.
- Mr. Walker did not disclose the fact that he had entered into an agreement with Holcim, hiding from public view his true intention to sell to Holcim.
- Housing division has ceased to grow since zone change was approved and Holcim's signage was posted.
- What are the commissioners going to do to uphold the interest of the community and "right" this "wrong".
- Noise and blasting due to mining production next to residential area will be devastating to the quality of life in those residential areas.
- Homebuilders will suffer economically due to zone change.
- Exploratory drilling for evidence of mineral deposits on the Walker property was done without a County Conditional Use Permit in order to keep owners of neighboring residential property unaware of Walker's plan to sell the property to Holcim and of Holcim's interest in the property for possible mining purposes.

Mr. Jenkins testified that he questioned Mr. Walker as to his intentions with respect to the property during the summer of 2008. According to Mr. Jenkins, Mr. Walker advised that his objective was to prepare the property for transfer into a conservation easement. Jenkins suggested that, had he not been misled by Mr. Walker's response, he and many others would have participated in the hearings before Planning Commission and the Board respecting the zone change application.

Mr. Jenkins also testified that he and others would have become aware of Mr. Walker's true intentions had Mr. Walker obtained the required Conditional Use Permit before core drilling was done on the Walker Ranch. Mr. Jenkins suggested that Walker's failure to request a county permit was intended to hide the fact that Holcim was interested in purchasing the property. Mr. Jenkins said that Mr. Walker was aware of the need to obtain a CUP before drilling by virtue of his participation and testimony at another Fremont County Public Hearing (the Taylor Ranch/Black Rock Minerals hearing) only weeks before the state permit for drilling on the Walker Ranch was obtained by Mr. Walker. Finally, Mr. Jenkins testified that all construction activity in the residential subdivision that he and a partner are developing had "stopped cold" once the Holcim signage went up. Mr. Jenkins maintains that the sign's message—"No Trespassing Holcim (US) Inc. Future Quarry Site"—best identifies the true intent of Mr. Walker and Holcim.

Mr. Till testified that both he and Mr. Walker attended a meeting of the East Fremont Alliance that took place following the sale of the Walker Ranch and the posting of Holcim's sign. He testified that Mr. Walker told that group that his reason for not disclosing his dealings with Holcim to the Board of Commissioners before the zone change application was granted was "because they didn't ask".

Mr. Mulliken, attorney for the East Fremont Alliance, elaborated on a few key points which were outlined in Mr. Maye's presentation and the comments by several citizens. These points included: Legal and Case Precedent, Specific Requested Remedial Actions, County Officials Acted in Good Faith, Walker's Deception and Misrepresentation, Corrupted Application/Review Process and the Commissioners Have Authority to Correct.

Mr. Ron Walker gave his interpretation of the events regarding the zone change following Mr. Mulliken's summation. Mr. Walker first offered to answer any questions that the Board of Commissioners wanted to ask.

Commissioner Lasha asked if the sale of the property was conditioned upon Mr. Walker's obtaining the zone change.

Mr. Walker replied that it was not a condition because there was not a "contract" at that point. He said no contract was done until the day before the closing. He preferred to use the terminology "agreement" and "option agreement" to describe his relationship with Holcim because Holcim had no legal obligation to purchase the property and could have backed out of the arrangement at any time.

Commissioner Norden asked Mr. Walker how he replied to Mr. Sandoval's question at the Planning Commission Meeting when Mr. Sandoval asked if Mr. Walker had any plans to pursue an allowed use under the Agricultural Forestry zone that isn't allowed under the Agricultural Rural zoning.

This question was not directly answered by Mr. Walker in the record at the Planning Commission Meeting. He only stated that the intended use was to put the property into one parcel. He said at the time Holcim had not purchased that property and their intended use may or may not have been for mining and that would have been its decision and not his.

Commissioner Norden asked if Mr. Walker thinks he adequately answered Mr. Sandoval's question about plans to pursue the allowed use under Agricultural Forestry that wasn't allowed under Agricultural Rural zoning.

Mr. Walker replied, "Do I think I correctly answered it? Yes."

Commissioner Norden asked if Mr. Walker would be willing to offer any contractual agreements or options with Holcim and reference any contingencies upon rezoning to the board.

Mr. Walker said no and that the agreement stated that it would not be public information. He said that the option agreement did not guarantee a sale and if Holcim had not purchased the property he would be using it for ranching and grazing, as he is now, pursuant to a grazing lease he received from Holcim when he sold the property to Holcim. He argued that Agricultural Forestry zoning is important to his use of the property he now leases from Holcim. He stated he had plans to do the zone change many years ago and the only thing that has changed is the ownership. Mr. Walker also said that if Holcim had not purchased the land his next step would have been to get a conservation easement for tax benefits, while continuing to ranch on the property.

Jason Morin, Plant Manager for Holcim stated that the integrity of the process was followed and correct and there have been no changes other than ownership. His three page letter submitted days prior to the hearing is a part of the record and many of its provisions were repeated in Mr. Morin's testimony and comments. He stated that the only reason people want the zone change rescinded is due to change of ownership. He explained that most of the comments made by citizens at this hearing would be appropriate in a hearing where a Conditional Use Permit for mining was being requested, but that none of the comments in this hearing were relevant to the zone change issue under consideration. He stated that the property was under an option agreement between Walker and Holcim under which Holcim had a right, but not an obligation, to purchase the property. He stated that Holcim could have walked away from the option at any time and almost did, but ultimately chose to exercise its option to purchase. He said that the option agreement contained a confidentiality clause that prevented both parties from disclosing its terms and provisions. He did present to the Board a copy of the letter through which Holcim exercised its option to purchase on December 16, 2008. That letter indicated that the option agreement had been executed in August, 2008.

Mr. Morin said that the zoning process was done correctly and in full accordance with all Fremont County procedural requirements and that there had been ample time and opportunity for members of the public to participate. He emphasized that, instead, no one showed up. He also said that the long term use of the property is agricultural and that the property was subject to a long term (3 years) grazing lease between Holcim and Walker.

Mr. Morin stated that Mr. Jenkins had long been aware of Holcim's holdings and mining operations in the area, but that he and other developers and realtors, who were building and selling homes in the area, had not disclosed that information to potential purchasers. According to Mr. Morin, the signage that upset so many of those who testified in favor of rescission, was posted because Mr. Jenkins had told him on December 30, 2008, only days before the signage went up, that he did not have to disclose information regarding Holcim's holdings and operations in the vicinity to potential buyers and that he was not doing so. Therefore, according to Mr. Morin, Holcim posted signage stating that it was in the area to alert the public of that fact. Mr. Morin testified that Holcim has had a presence in the area for 90 years.

Commissioner Norden asked if the option agreement discussed anything regarding the zone change. Mr. Morin indicated that it did. In response to a different question, Mr. Morin advised that Holcim paid for exploratory drilling on the Walker Ranch as part of Holcim's "Due Diligence" respecting the option agreement and possible purchase. He indicated that he was unaware that a county permit was required before the exploratory drilling was undertaken.

Mr. Morin said that Holcim had no part in the preparation of the application filed by Mr. Walker and that Holcim did not review the application before it was filed. He added that he did not believe any part of the application was untrue given the circumstances surrounding the matter and Mr. Walker's "long term" grazing lease. In his rebuttal statement, Mr. Morin again emphasized his belief that Mr. Walker had not misled the Board, noting that there was no certainty that Holcim would exercise its option to purchase when the application was filed and the zone change hearings were held. He stated that the Board was charged with knowledge of conditional uses available under each zoning classification, including Ag-Forestry. He stated that the use to which the

APRIL 22, 2009

5

property is being put, both before and after the zone change, is agricultural and that Mr. Walker had followed the County's process to obtain the zone change he had requested. Mr. Morin urged the Board to refrain from giving those who failed to participate in that process a "second bite of the apple" and maintained that the Board's decision to grant Mr. Walker's zone change application was the right decision and should not be rescinded.

Mr. Walker waived his opportunity to make a rebuttal statement, but offered to answer any new questions the Board might wish to ask. None were asked.

In his rebuttal statement, Mr. Mulliken, again summarized the position of the East Fremont Alliance by saying that, among other things, the issue was really about honesty and integrity. He said that there were numerous misrepresentations in the application, citing several questions and responses as examples, as well as misrepresentation at the hearing. Mr. Mulliken asked that the commissioners render their prior zone change decision null and void and to deny the zone change application.

PUBLIC HEARING CLOSED

Commissioner Norden moved that the commissioners deny the original application and rescind the action of December 9th reverting the zoning back to Agricultural Rural and Agricultural Suburban as it was before. The commissioners will also meet with their attorney and make their final findings fact at the Board Meeting on May 12th although it will not be a public hearing but it will be a public meeting. Commissioner Lasha seconded. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commission Stiehl, aye. The motion carried.

Commissioner Stiehl adjourned the meeting at 4:17 p.m.

Clerk and Recorder