

## **TWELFTH MEETING**

The Board of Commissioners of the County of Fremont, State of Colorado, met in Regular Session on May 24, 2005, 615 Macon Avenue, Room LL3, Fremont County Administration Building, Canon City, Colorado. The meeting was called to order at 9:30 A.M. by Commissioner Chairman, Larry Lasha.

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 Sharon Kendall, Deputy Clerk.

There was a moment of silence for the men and women in the military.

The Pledge of Allegiance to the Flag of the United States of America was recited by those present.

### **APPROVAL OF AGENDA**

**Commissioner Stiehl** made the motion to approve the Agenda. The motion was seconded by Commissioner Norden. Upon vote: Commissioner Stiehl, aye; Commissioner Norden, aye; Commissioner Lasha, aye. The motion carried.

### **CONSENT AGENDA**

**Commissioner Norden** made the motion to approve the Consent Agenda:

1. Approval of Minutes May 10, 2005
2. Approval of Bills, May 24, 2005/\$470,003.17
3. Liquor License Transfer of Ownership Application  
Broken Spoke Events Center/Glenn T. Miller Owner  
From Hinton Holdings LLC to Oro Oso LLC  
13760 Hwy. 115, Penrose CO 81240  
Hotel & Restaurant w/Optional Premises
4. Adoption of Resolution #20, Series of 2005, Amendment to Street Cut Regulations.
5. Adoption of Resolution #21, Series of 2005, 1<sup>st</sup> Amendment to the Fremont County Subdivision Regulation.
6. Adoption of Resolution #22, Series of 2005, file #SRU 05-001 Portland Plant (Holcim) Tower

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

### **ADMINISTRATIVE/INFORMATIONAL**

1. Staff/Elected Officials

**Commissioner Stiehl** stated that on May 4<sup>th</sup> they experienced a toxic spill at Fremont Paving. The EPA brought in crews and there has been an on-going cleanup. It affected several of the ditches downstream. The cleanup of the liquid they collected from streams and rivers amounted to about 58,000 gallons. He stated he received a report from Twin Landfill that they had received lab reports back on the oil that was contained in that 58,000 gallons, most of which was water. They found it to contain hazardous waste, therefore, it could not be disposed of at Twin Enviro. They created a pond out there that was segregated from the rest of the landfill, pending lab notification. They skimmed the

oil from the surface of the water and retested the water. They were able to skim 810 gallons of fuel from that water, and shipped to a processing company. The water that was left has been resampled and expect a lab report within a couple of days. They will decide if it can be safely disposed of at the landfill.

**Commissioner Norden** stated that in regard to the spill, the status of the EPA portion of the investigation, their e-mail stated to the issues of investigation and enforcement “The EPA will force the responsible party to become compliant with all spill prevention, counter measures and control regulations into the Clean Water Act. Inspections of the facility will be made to ensure compliance with all pertinent regulations. The EPA is conducting an on-going investigation, the details of which will surface in due course”. He stated that from the Commissioners’ standpoint, they will await the results of that report before they consider what would be next.

**Commissioner Stiehl** stated that he and Commissioner Norden attended a State liquor licensing class on May 18<sup>th</sup>.

**Commissioner Norden** stated that the Board would be hosting a town hall meeting this evening at 6:30 P.M. at the Deer Mountain Fire Hall. He stated he had the opportunity on May 12<sup>th</sup> to speak at the recognition banquet for the Seniors, Inc. 2005 Foster Grandparent Recognition. He stated that there are many who donate a lot of hours, and all the names will be on the website. Some of the top volunteers are Ruth Masgai who donated 894 hours and Robert Masgai 729 hours at McKinley School. At Head Start, Shirley Weise donated 862 hours and Nora Aragon 853 hours. Since 1999, 29,786 hours were donated to the Foster Grandparent program at a value of over \$525,000. He congratulated the many volunteers who work in this program.

## 2. Citizens Not Scheduled

**Wes Fletcher** stated they still needed to figure what they needed to do to finalize the zone change. He stated he had talked with Terry Acton, and he gave him what he recommended, but did not have it in writing.

**Commissioner Lasha** stated that the final information from Terry needed to go to Bill.

**Bill Giordano, Planning & Zoning Director**, stated it would be a change to one of the contingencies of approval of the application, and he would have to come in with a proposal to the Board on how he proposed to solve the problem based on discussion with Terry.

**Gary Minor, Canyon Current**, stated he had sent a letter to the Board and asked if they had time to read it and respond? He stated they had bid on the Royal Gorge Magazine, and they came in at a lower price with substantial benefits for the community. The vote came down to a 4-3 vote for a publication out of Vail. He stated the Tourism Board has acted in a consistent manner with a bias to this other publisher, and he believed it was damaging to their business. He stated that the county has given an out-of-county publisher approximately \$150,000 over three years, and going to give them another \$150,000 for a publication that could be done within the community. He stated they were seeking to see if the commissioners would step in and review the process and reverse the decision of the Tourism Board.

**Brenda Jackson, Fremont County Attorney**, stated that it would be her suggestion since they have a written demand, they would respond in writing once the Board reached consensus on what they want to do.

## NEW BUSINESS

**RECOGNITION OF HENRY MCWILLIAMS RETIRING FROM THE ROAD & BRIDGE DEPARTMENT**

**Commissioner Lasha** stated that Henry had worked for the County for 32 years, and had been an outstanding employee. **Terry Acton, Foreman, Road & Bridge Department**, stated that Henry would be hard to replace, and he would be missed. The Commissioners presented Henry with a Fremont County globe.

**PROCLAMATION HOMEOWNERSHIP MONTH -- LAURA (UAACOG) UPPER ARKANSAS AREA COUNCIL OF GOVERNMENTS**

**Autumn Dever**, stated that June was Homeownership Month, and on June 3<sup>rd</sup>, they would have volunteer day at their job site for the Mutual Self-Help Housing Program. They are asking for help to help their families with the sweat-equity program. **Commissioner Lasha** read the proclamation in its entirety.

**RESOLUTION #25 – REQUEST: ASSIGNMENT OF A RESOLUTION NUMBER OF THE AMENDMENT TO DRIVEWAY ACCESS PERMIT REGULATION**

**Bill Giordano** stated that at the last meeting he failed to ask for two resolution numbers, one on the driveway and one on the street cut. They were approved together, and only one resolution number was assigned. They are separate documents, so they need to assign a number. **Commissioner Norden** moved to assign **Resolution #25** to the Fremont County Driveway Access Permit Regulation, that they reviewed last time and moved to approve that resolution. The motion was seconded by Commissioner Stiehl. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried, and carried with it the adoption of **Resolution #25**.

**REQUEST: MS 05-001 MILAM ACRES SUBDIVISION**

**Matt Koch, Cornerstone Land Surveying**, stated they were requesting a three-lot subdivision for property located on Grandview Avenue. During the survey, they found that the house and the garage were actually on two separate lots. This precipitated the subdivision in the first place. They decided to get one more lot out of it so his client could sell it. He stated that they revised the drainage plan, and had approval from the County Engineer. Mr. Koch stated that his client would like a little more description on Contingency Item #13 as to the legality of requiring an easement along Mud Gulch.

**Bill Giordano** stated that at the Planning Commission meeting on May 3<sup>rd</sup>, the Planning Commission did recommend approval. He stated he had a letter from Mr. Effinger, and it stated that an easement for drainage could be provided along the east line and adjacent to the sewer easement and that's for Mud Gulch. He also stated that he had reviewed and revised the drainage report for the subdivision. It could proceed to Planning Commission review correcting the name of the subdivision on the drawing and an assigned stamped drainage plan by registered engineer shall be placed in the files for finalization. Mr. Giordano stated that Item #3 did reflect those two concerns. Normally, under their regulations, they do require that for any new detention or any new ditches, they make them a drainage easement, and they ask that there is maintenance on it. When there is any kind of detention facilities on the property, somebody has got to accept responsibility.

**James Milam** stated that he felt he was the one who was being damaged. He stated you could not do work in that ditch when it is full of water. He stated it was a lack of management, a lack of honor in admitting who's responsible. He stated he thought the problem lies with Oil Creek Ditch, and if they could prove otherwise, that's fine and he would go along with it.

**Commissioner Lasha** stated that in Number 13, he reads that basically one of the contingencies is that area of ditch on the property would be maintained by Mr. Milam. He asked if that was the concern?

**James Milam** stated that he could take action to show that he had been damaged. He stated he made arrangements with the Corrections Department, and they were willing to

come every year and clean it. They have to close that ditch down so they can get equipment in there.

**Commissioner Norden** asked that if any ditch company drains it's runoff into any path of return to the river, what obligation do they have to maintain that path of return?

**Brenda Jackson** stated that as it stands now, there is no easement in favor of someone else from Mud Gulch. The liability for that ditch stays with the owner whose land contains it no matter whether they put a plat statement on there or not, it is not going to change that circumstance. A plat statement in this circumstance makes no difference. Mr. Milam's property does not drain into Mud Gulch directly, drains away from Mud Gulch and then comes back around, but Mud Gulch is still there. With or without the plat statement, the circumstance is exactly the same. They can take it off, which is a request of the City that it be on there to begin with, it doesn't change anything from Mr. Milam's ownership standpoint or his quarrel with the Oil Creek Ditch. Everything remains the same with or without it. She stated that if it's objectionable, she did not see any legal harm in taking it off. He is not using it as a drainage detention facility or anything else where maintenance responsibility would attach any more than what he has had for the years past.

**Bill Giordano** stated that in this particular instance, they are not creating any kind of ditch to drain the property, he did not think they were setting any kind of precedent, that they are violating any of their past policies. If there was a ditch that was draining the property specifically, maybe from a detention pond or just draining the property and then dumping into it, it may make a difference in the way they handle it. Their regulations say that any facility that you create will be given as drainage easements, and maintenance will be given to them.

**Commissioner Norden** moved to approve request for three-lot minor subdivision by MS 05-001 Milam Acres Subdivision with the required contingencies, excluding #13, making a total of 14 contingencies with no additional considerations:

#### **REQUIRED CONTINGENCIES**

The following items shall be provided to the Department of Planning and Zoning, within six (6) months after final approval by the Board of County Commissioners:

1. Final plat and copies (*copies to be provided after recordation of the plat*) as required by the Fremont County Subdivision Regulations.
2. An updated title commitment issued within 30 days of recording of the final plat. An updated title commitment may result in additional requirements.
3. Drainage Plan and Report:
  - a. Copy signed and sealed by design engineer
  - b. Correct the spelling of the owner's name on drainage plan drawing
4. A Quit Claim deed to the County for a thirty-five (35) foot right-of-way, from the centerline of Grandview Avenue, along the entire property frontage.
5. The centerline along Grandview shall be shown on the plat noting the thirty-five (35) foot right-of-way from the centerline of the street.
6. The soils map is inadequate as the location of the soil types cannot be determined. The soils boundaries shall be placed on the reduced map.
7. Documentation evidencing annexation of the subject property into the Fremont Sanitation District.
8. Sewer plans and profiles approved by the Fremont Sanitation District will be required as a main line extension is required.
9. A copy, approved by the appropriate authority, of the plan and profile for the installation of the two fire hydrants.
10. Cost estimate by a registered professional for sewer line extension and installation of two fire hydrants if not installed prior to recording of the final plat. Approval of the estimate by County Engineer will be required.

11. If improvements are not completed, accepted and approved by appropriate authority prior to the recording of the final plat, an executed improvement and escrow agreement will be required.
12. Documentation that all improvements have been accepted and approved by appropriate authority prior to release of escrow and improvement agreement or prior to recording of the final plat.
13. Information adequate to enable the Department to compute addresses for proposed lots as per the Fremont County Subdivision Regulations (FCSR) Section XII.,I.,1.
14. Closure sheets for each lot and the subdivision boundary.

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

**REQUEST: MS-05-002 C5 SUBDIVISION**

**Coy Myers, PLS**, stated he was representing Cindy and Randy Babb. This is a 10-acre tract that they wish to subdivide into two 5-acre parcels. There is a new structure that has recently been completed on Lot 1. Contingency #2 has been met, and they have improved the driveway on Lot 1. There are no current plans to develop Lot 2, and they are asking not to make the contingency to develop a driveway on Lot 2 at this time.

**Bill Giordano** stated that on Lot 1, they would ask he get something from the Fire Department. On Lot 2, he doesn't know where the driveway is going to be at this time. Mr. Giordano suggested that he might request that maybe they put a statement on the plat that prior to the issuance of a building permit, they will have the driveway. At that point in time, he will know where the building is going to be and know where the driveway is going to be. It puts something onto the Building Department that all of a sudden they have the responsibility to make sure it gets built to the standard. It would only be a letter from the Fire Department accepting it, but it would be holding up the building permit, which could be controversial. He stated it is something the Fire Department is asking for, it is a safety issue and he thought it was important and he thought they could not just ignore it. The only way is either he builds it now and puts up money to guarantee before the plat is recorded or they defer to the Building Department.

**Mr. Myers** stated that his client prefers that it be noted on the plat that it be contingent on building permit.

**Bill Giordano** stated that as far as #3, Mr. Effinger did give a clean bill of health, so they could eliminate #3 completely. On #4, he stated he would ask that it be changed to read that he provides documentation from the fire department that Lot #1 is the driveway and turnaround is adequate and on Lot #2, he puts a plat statement that these improvements would take place prior to the issuance of the building permit. At the Planning Commission meeting on May 3<sup>rd</sup>, they recommended approval.

**Mr. Myers** stated that notes #3 and #4 refer to the driveway for fire equipment with turnaround and #4 addresses the address for 6-inch letters. He stated that maybe 4 should be dropped but 3 should be modified to specify Lot 2. He stated 6 was put on for the benefit of Beaver Park Water, so that would be dropped and that is all under Contingency #9.

**Bill Giordano** summarized by stating that Contingencies 1 and 2 would stay the same, Contingency 3 would be eliminated. Contingency 4 would read: a statement on the plat that Lot #2 will meet the requirements of the fire department prior to issuance of the building permit. Lot #1 will have documentation from the fire department that the driveway access and turnaround is adequate. Contingencies 5, 6, 7 and 8 remain the same. Contingency #9 will read: Remove notes #4 and #6.

**Commissioner Lasha** stated that with that, he would make the motion to approve MS 05-002 C5 Subdivision with the contingencies that Bill just read:

**REQUIRED CONTINGENCIES**

The following items shall be provided to the Department of Planning and Zoning, within six (6) months (*with no extensions*) after final approval by the Board of County Commissioners:

1. Final plat and copies (*copies to be provided after recordation of the plat*) as required by the Fremont County Subdivision Regulations. (All improvements and address information shall be removed from the mylar).
2. An updated title commitment issued within 30 days of recording of the final plat. An updated title commitment may result in additional requirements.
  - a. A certificate of satisfaction of the judgment found at Reception No. 761592 shall be recorded or a ratification, consent and release form shall be provided prior to recording of the final plat. If a ratification, consent and release form is requested you will need to provide the Department with name and title of the person(s) that would be required to sign and any other requirements from the Colorado Department of Revenue.
3. There will be a statement on the plat that Lot #2 will meet the requirements of the fire department prior to issuance of the building permit. Lot #1 will have documentation from the fire department that the driveway access and turnaround is adequate.
4. A Quit Claim deed to the County for a twenty-five (25) foot right-of-way, from the centerline of 5<sup>th</sup> and C Streets, along the entire property frontage.
5. Information adequate to enable the Department to compute addresses for proposed lots as per the Fremont County Subdivision Regulations (FCSR) Section XII.,I.,1.
6. Closure sheets for each lot and the subdivision boundary.
7. Note #5 shall clarify that is the FEMA Firm maps.
8. Remove notes #4 and #6 from the final plat.

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

**REQUEST: LLA 05-006 VEATCH LOT LINE ADJUSTMENT**

**Matt Koch, Cornerstone Land Surveying**, stated they were requesting waivers. There is an existing easement that services the back lot. Penrose Water District is requesting that they provide a flag lot rather than crossing through an easement over a private piece of property. If they hold to the County regulations of 25 feet for the stem, it actually creates the existing lot to not meet the minimum width. They are asking for waivers of the minimum stem width as well as including it in the acreage for the back lot. Planning & Zoning asked them to notify the fire department to get their acknowledgement that this was acceptable. They notified by certified mail, and have not heard back.

**Bill Giordano** stated that their regulations allow them to do the Lot Line Adjustment, however, they cannot create any non-conformances or increase the degree of non-conformity. To try to keep the lot as conforming as possible, Matt is asking for the 20-foot access easement instead of the 25. When you cannot take the acreage of the stem, the lot becomes smaller. The Water District will not issue a water tap unless you have frontage along a street or public right-of-way. The lot sizes do not conform with the present zone district of 4.5 acres. They obviously subdivided it prior to the Agricultural-Rural Zone District out there. If this is approved, the only contingency is that they do have approval from the fire department.

**Commissioner Stiehl** moved to approve the request LLA 05-006 Veatch Lot Line Adjustment with the required contingency:

**REQUIRED CONTINGENCY**

The following item shall be provided to the Department of Planning and Zoning, within six (6) months (*with no extensions*) after final approval by the Board of County Commissioners:

1. Written statements from the Fire Protection District indicating their acceptance of a twenty (20) foot flag stem width.

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

**REQUEST: EXTENSION OF VILL 04-004 JAVERNICK**

**Matt Koch** stating they were requesting an extension. They were submitting everything to CDOT for a duplex. Since those cannot be done anymore, they have to adjust all their planning and thinking.

**Bill Giordano** stated they were recommending a six-month extension.

**Commissioner Lasha** made the motion to approve the extension of VILL 04-004 Javernick for six months. The motion was seconded by Commissioner Stiehl. Upon vote: Commissioner Lasha, aye; Commissioner Stiehl, aye; Commissioner Norden, aye. The motion carried.

**REQUEST: WAIVER OF EASEMENT WIDTH FOR MS 03-005 RODENBECK SUBDIVISION**

**Ed Rodenbeck** stated this was for his son, David. He stated he bought the property in 1975, and sold it to his son in 2001 with the stipulation to pull off the back lot which is one acre. All these years, they have a deeded ingress and egress of 20 feet. He got the paperwork in 2003 and saw it was changed to 25 feet, and he stated he didn't know when it got changed. Somebody said the fire hydrant had to be on their property, and it doesn't. The Harris' signed an easement release for the additional five feet. That didn't fly because it had to go back through the mortgage company. The mortgage company said it would cost \$900-\$1200 and would not guarantee they would give the other five feet. The fire department granted a waiver of 20 feet, and that wasn't good enough because there had to be a ditch on the side. The fire department agreed and wrote a letter and approved it at 18 feet. He stated he had Gary Cornella lined up to start building a house on the first of June.

**Bill Giordano** stated their regulations require 25 feet, and they thought that was going to happen. He is asking for 20 feet, and in this case, they do have all of the approvals from the fire department and utility companies. This is the last thing they need to do to get this plat recorded. He stated they were working on the escrow and improvement agreement. Mr. Rupp did design a ditch that goes along side the 18-foot road. Part of the improvements is to meet the fire department requirements of the hydrant and building the access easement to the property.

**Commissioner Lasha** made the motion to approve the waiver of the 25-foot easement to a 20-foot easement for Lot 2 on Rodenbeck Subdivision, MS 03-005. The motion was seconded by Commissioner Stiehl. Upon vote: Commissioner Lasha, aye; Commissioner Stiehl, aye; Commissioner Norden, aye. The motion carried.

**Commissioner Lasha** adjourned the meeting at 11:02 A.M.