

June 9, 2008

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ELEVENTH MEETING

The Board of Commissioners of the County of Fremont, State of Colorado, met in Regular Session on June 9, 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	Present

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

Pastor Sales of the Seventh Day Adventist Church gave the Morning Prayer.

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

APPROVAL OF AGENDA

Deputy Clerk, Tina Taylor stated the Minutes of May 27th have not been completed.

Commissioner Norden moved to approve the Agenda striking the Minutes of May 27th from the Consent Agenda. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

CONSENT AGENDA

Commissioner Stiehl moved to approve the Consent Agenda with aforementioned change. Commissioner Norden seconded the motion.

1. Approval of Minutes May 13, 2008
2. Approval of Bills June 9, 2008 / \$1,132,431.78
3. SCHEDULING A PUBLIC HEARING: None

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

ADMINISTRATIVE/INFORMATIONAL

1. Staff/Elected Officials

Norma Hatfield, Fremont County Clerk & Recorder, submitted the Clerk's Report for the month of May. She stated that the total revenue earned was \$690,415.69 which was \$93,127.23 less than a year ago. Fremont County Sales tax collected was \$70,876.57 which was \$15,191.14 lower than what was collected a year ago. Revenues going to the County for distribution to the various entities was \$396,621.34 which is \$38,758.98 less than what was collected a year ago. **Commissioner Stiehl** moved to approve the County Clerk's Report. Commissioner Lasha seconded the motion. Upon vote: Commissioner Stiehl, aye; Commissioner Lasha, aye; Commissioner Norden, aye. The motion carried.

Commissioner Stiehl stated that they had recently received from the State Health Department a caution about Hantavirus which is caused by deer mice. If anyone has questions and especially questions about clean up call our Health Department. He stated to be also cautious with small containers with water because they could be a potential for West Nile bearing mosquitoes.

Commissioner Stiehl stated there will be recycling sponsored by the County Commissioners and the City of Cañon City, Saturday, June 14th from 9 A.M. to Noon at the 9th and Elm shops. This will be for all plastics that have numbers.

Commissioner Lasha stated the Arkansas River is still running high but fortunately we are having some cold weather in the mountains so we still haven't reached the maximum water flow potential. There have been some changes to the way the river and the banks

look. There are several acres lost near the Park and Recreation District and also the River Park in the City of Florence.

2. Citizens Not Scheduled – None

OLD BUSINESS

REQUEST: CUP 08-001 TAYLOR RANCH EXPLORATION / BLACK RANGE MINERALS COLORADO, LLC Request approval of a Conditional Use Permit, Department file # CUP 08-001 Taylor Ranch Exploration/Black Range Minerals Colorado LLC, to allow for mineral exploration by Black Range Minerals Colorado, LLC, for property which is leased from various property owners. The property is *located south of Fremont County Road #2 (aka Tallahassee Road) approximately 3 miles west of the intersection of County Roads #2 and #21 in the Tallahassee Area.* The proposed operation will consist of approximately 800 drilling sites, which is anticipated to be completed within a ten (10) year time frame. There will be no more than 5 to 10 active drill sites at any given time. The property contains approximately 8,169 acres and is zoned Agricultural Forestry. **The Public Hearing held on May 27, 2008 was closed and this request was tabled to the next meeting.**

Commissioner Lasha stated the Public Hearing was on May 27th. The hearing was closed and tabled for discussion for this particular meeting on CUP 08-001 Taylor Ranch Exploration/Black Range Minerals Colorado, LLC.

Commissioner Norden stated he wanted to offer some observations. The decision that we have before us today is complicated by the fact that so many people made impassioned arguments for and against the application two weeks ago. He stated that he found himself waking in the middle of the night arguing these issues. As the Chairman noted two weeks ago, he too changed his position several times on this matter during the meeting. There are two things that he has tried to keep paramount in mind. The application before us is limited to exploration and not mining. That is our legal obligation. The second question is whether there is any possible way to fashion a solution that would try to protect everyone's individual property rights. It would require recognition by everyone on both sides of this issue, that what is required is a certain amount of respect between neighbors for both surface property rights and minerals rights. The Commissioner's job in considering a Conditional Use Permit is what types of conditions can be imposed to allow further exploration to take place. Commissioner Norden stated he would like to reserve an opportunity to add more commenting in a moment.

Commissioner Norden stated at this time he would offer a motion to approve the CUP for Taylor Ranch Exploration by Black Range Minerals. In doing so in resolution form, he would adopt a set of ten (10) findings that would support the motion for approval. These findings would address the six (6) criteria items for a CUP. He suggested that while the Board works on a draft document of Conditions, which has been ongoing for the Board since the decision two weeks ago that we table final adoption of Conditions until the July 8th Board Meeting, to allow time for additional review by the applicant as well as additional written comment from the public, limited to the proposed draft of Conditions. Commissioner Stiehl seconded the motion.

Commissioner Lasha called for discussion.

Commissioner Norden stated among the proposed conditions that are being worked on and seeking comment from both the applicant and the citizens are: A limit on the hours and days of operation; compliance with documenting a water source for drilling and locations where water will be drawn; limitations on accessing the property of the CUP; review by an independent hydrologist on the proposed surface and ground water monitoring plan; required attendance of geologist or hydrologist on each bore when it is sealed and capped; possible road improvements if traffic exceeds the levels anticipated in the application; plus several other conditions that are proposed. The conditions being worked on are in much more detail.

Commissioner Stiehl said at a work session last week and the direction Commissioner Norden is indicating has a strict level of conditions that will be put on the applicant. He stated that if he could support this in any way it would have to be with a lot of conditions. What the intent is if the CUP is approved is to have draft recommendations available to

the public this Wednesday for a two (2) week period of comment to help for the public's input as to what the conditions should look like. We would then finalize the conditions. There maybe some discussion with the applicant on some of the conditions. He stated that there has been a lot of talk by the applicant and various groups about wild claims of economic benefits made by mining and milling. This is not mining and milling this is explorations and he does not see economic benefit in exploration. He is not convinced that nuclear power will help save the world or that it is really a clean energy as claimed. Action taken today does not imply future action on a mining application. Mining application receives a huge amount of scrutiny from a lot of Federal and State agencies. There is a belief that the State BRMS and the EPA have a lot of oversight in exploration but that is not true. It is up to the County to impose what oversight might be appropriate on the applicant. The EPA has no jurisdiction unless there are releases. BRMS does not really do any monitoring of the wells bores until such time as the project is closed and that could be ten (10) years from now. It leaves these issues in our court to do the best we can. This is where we come back for the need of the third party. It is up to the applicant to demonstrate that whatever they do will not harm the aquifers or cause cross contamination. At the County level we need to be able ascertain through a third party expert that this is done. Commissioner Stiehl stated that he does not agree about the stigma of property values being affected. It is difficult right now what the source of declining property values is because we are right in the middle of down trend in the market so it is difficult to point out what the cause of that might be. He was not convinced that real estate has gone up over the last twenty year. He stated that uncertainty affects property values and this fact leads him to lean toward approval for the applicant because if this CUP was to be turned down the stigma would be there. It is not the operation that is causing the stigma but the presence of the ore body located there. Exploration would be good find out what is there and it may assist people's property values. The more populated the area becomes there will just be more noise. The conditions will be making the operation compatible.

Commissioner Lasha stated that this has been a struggle for the Commissions. They received the draft report Wednesday on the conditions that they do have. They have listened to everyone's concerns. He stated this was a decision that had to be made.

Commissioner Norden said the most difficult issue for the Planning Commission and the Board is the risk of cross contamination of aquifers. He understands the concerns of neighbors over possible contamination of their water wells. The water well monitoring program offered by Black Range would at least help establish some baseline data. We need more conversations on these conditions about how that baseline data might be use and interpreted. He said it would be difficult to know if uranium levels in water are naturally occurring, or from exploration in the 1970's, or from new exploration or from the drilling of other domestic wells. Most exploration will take place on three thousand acres near the center of the eight thousand acre Taylor ranch, and offers a buffer zone in this application and should help some of the concerns about lights, noise and water. We hear emotional pleas on the property rights issue. Residents who have newly constructed homes on 35 acre parcels are concerned about their investments. Others on both surface and mineral right argued that the two can co-exist. Dale Boyer and Diane Taylor presented some very compelling arguments about having lived on their property for generations. Mr. Boyer says that using mineral rights will allow him to maintain the ranch and wildlife. He asked us not to destroy his property rights because he paid more money for his land to secure the mineral rights. The Commissioners did not create the problem of split estates or the Federal Mining Law of 1872 but we are left here today acting as judge and jury as to whose rights are more important. Facts became apparent to him early on. Based on the previous exploration in the 1970's, the Tallahassee area is a home to a large ore body of uranium. As long as there are favorable uranium market prices somebody will be going after it. Now a word to the people of Black Range. He stated they have already paid a double application fee for starting exploration without a permit but they could have made this process at lot easier on themselves, the neighbors, and Fremont County had they begun some of the community relations work in advance of exploration. He said that Black Range said that they never received complaints about noise, lights and traffic but the neighbors were correct in noting that they were complaining they did not know who complain to. In your ground water monitoring proposal, Wetstone Associates offers some great advice on Page two regarding reporting in which I quote "communication in

transparency are critical to the project". He suggested that they make that standard as they move forward, not just with County and State regulatory agencies but particularly with the neighbors. He gave one final foot note going back to the remark of the application being limited to exploration. Exploration offers limited economic benefit and he ignored any economic arguments for or against mining. He worked hard to separate exploration issues from mining issues and he wanted to make it clear to the residents of the area and particularly to the applicant. He has struggled considerable with this decision. In no way should approval of this application an endorsement for mining. Concerns are far reaching beyond what was seen in this application and be addressed in any consideration for mining.

Commissioner Stiehl asked if it was still their intent to fund the County's third party hydro geologist.

Michael Haynes, Managing Director of Black Range Minerals, stated yes and they already compiled a list of potential candidates that could act as an alternate.

Commissioner Lasha stated that will be part of the application process and a part of the Condition Use Permit.

Commissioner Norden stated the reason they proposed the July 8th date was to allow them time to have the neighbors and others look at the conditions and react to them.

Commissioner Lasha stated there is draft of Conditions that will be available this Wednesday at the Planning and Zoning office and they will be on the website. There is a two (2) week public comment period in writing. July 8th will be the final decision with conditions.

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

Commissioner Norden stated just for clarification on the two (2) week comment period on the Conditions, the deadline will be the end of the business day on June 25th. Comments must be in writing. After the comments are received they will be working with applicant specifically to finalize the Conditions.

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

CONSIDERATION OF ADOPTION OF THE BUILDING CODE OF FREMONT COUNTY (INTERNATIONAL BUILDING CODE, INTERNATIONAL RESIDENTIAL CODE AND INTERNATIONAL ENERGY CONSERVATION CODE, 2006 EDITIONS)

Mike Cox, Building Department Director stated a year ago this month Governor Bill Ritter mandated that every jurisdiction in the State of Colorado that had a building code in place would need to adopt the an energy code that is equivalent as a minimum 2003 International Energy Conservation Code. Since we were not left an option on adoption of the energy code the City of Cañon City, the City of Florence, and Fremont County all decided that it would be a good time to update to the 2006 Editions of the International Building and Residential Codes. There is a list of amendments that have been made to the text of the codes as they are published and they affect the Building and Residential Codes. Since the mandate said that the Energy Codes as published would serve as a minimum they are no amendments to the Energy Codes because the only amendments that we could do would be to make it more restrictive and as a group they didn't feel that more restrictions would be appropriate at this time. He proposed to adopt the Building Code and Residential Code with the amendments and to adopt the Energy Conservation Code as published.

Commissioner Lasha asked if there have been a lot of changes between the 2003 IBC and the 2006 in his research. **Director Cox** stated there are some changes. Most of them affect what we do typically in the administrative portion of the code. It looks like the 2006 Edition became a little more restrictive on what they exempt from the requirement for a building permit. What has been done in the amendments is more or less left the exempted projects as we always had them. These reflect what we have basically had since the 1994 UBC. An example is the code has always exempted a deck that was less than thirty inches from grade. The 2006 Code does not have the thirty inch language in it. Every deck requires a building permit. We left in the thirty inch rule. Most of the amendments that have been made are less restrictive than what is in the code with the

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exception of LPG fired appliances. They have been prohibited in enclosed underground areas. This has disappeared in the International Codes and we have put it back in. LPG appliances can be underground if they are sealed combustion units.

Commissioner Stiehl asked how the building fees might change. **Director Cox** stated the fee schedule is not part of this document. The schedule will be in a separate resolution. The International Code has a built in mechanism in their fee schedule that compensates a jurisdiction for high and low times in the building industry. The way the calculation works is when building permit values start to drop, permit fees increase drastically. Commissioner Stiehl asked regarding building permit values, if this was the total dollar amount over the course of a year. Director Cox stated yes. Commissioner Stiehl stated then according to the schedule then if building drop one half this year then essentially the permit fees would basically double next year. We have expressed a concern that we don't want to have that happen here. Director Cox stated that he will have the fee schedule proposal at the next meeting. We are still under the 1994 UBC fee schedule. New construction value is constantly increasing because of the cost building materials, labor, fuel and wages etc. There are two different issues. One is valuations and one is fee schedules. The valuations are what the cost trends are to operate. The fee schedule needs to be kept reasonably compatible with the industry. The way the International Fee Schedule is structured we would actually be punishing people who try to build in a slow economy by charging them inflated permit fees.

Commissioner Lasha closed the Public Hearing and returned to regular session.

Commissioner Norden moved to adopt **Resolution #40 of 2008** adopting the updated Building Code for Fremont County effect July 1, 2008. Commissioner Stiehl seconded the motion and thanked Mike Cox for his work to coordinate the code between the different cities. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye, Commissioner Lasha, aye. The motion carried.

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

REQUEST: SDP 08-001 PENROSE COMMUNITY LIBRARY SITE DEVELOPMENT PLAN

Request approval of a **Site Development Plan, Department file #SDP 08-001 Penrose Community Library Site Development Plan, to allow a community library and a future 2,000 square foot expansion along with a similar use designation**, by Penrose Community Library District, for its property which is *located at the northwest corner of Dawson Street and Seventh Avenue, in the Downtown Penrose Area*. The applicant is requesting a similar use designation to a Community Building (*a permitted use in the Business Zone District*) as allowed by Section 2.2.2.2 of the Zoning Resolution. The property will contain a 6,949 square foot library with a possible 2,000 square foot addition in the future. The property currently is vacant, zoned Business and contains 0.86 acres. (*Site Development Plan review is required since the property is currently vacant.*)

REPRESENTATIVE: Bruce Barr, Art Klein Construction, Inc.

Bruce Barr of Art Klein Construction in Colorado Springs, stated the project was started in August, 2005. The library board has raising funds. The struggle that has occurred is that the inflation has exceeded the amount of money that they are able to get. The decision was made to start building. In the May 8th letter, they have gone thru Items 1 through 11. They have completed final engineering and they concur with all the staff recommendations with Item #1A which is paving of public streets and Item #10 which is Landscaping. During the Planning Commission meeting they expressed their concern of paving Dawson Street and an alternate solution of chip and seal was proposed. Mr. Barr stated they have received quote of \$45,000 for base, fill and chip per the specifications from Don Moore. LSC Traffic Consultants from Colorado Springs recommended widening of the road and put down a good base gravel that can be maintained. Drainage problems are being caused from the dirt surface and lack of crowning. This would be a substantial difference in cost and it is a waiver that is being requested paving both Dawson and 7th Street. Let them follow the recommendations and guidelines from LSC traffic engineering. Mr. Barr stated they would like to provide the landscaping as per the plan

that is in the application. In essence they concur with staff regarding Item #10; it is the improvements to Dawson and 7th Street they are asking for a waiver.

Planning and Zoning Director, Bill Giordano stated the applicant was required to post the property which has been done and notification to property owners with additional notifications that all have been taken care of as required. The publication was done. The Planning Commission Meeting on May 6th, they did approve the request in regards to Item #1, for the road construction requirements, and there are other things that are related to the drainage that did not have a problem with. He stated that improvements the applicant has requested be deferred until the time of permit of occupancy so they will be given a little more time. As far as Item #10, under Section 5.2.6 we do specifically list the type of evergreens and the type of things they require in buffering. According to Mr. Barr they are asking us to accept it as their proposal. The parking area will be in the future so we are not asking for a waiver of hard surfacing of the parking area. This will require a resolution if approved and I will bring it back with the final conditions at the next meeting.

Commissioner Stiehl inquired if it was because of the landscaping that a regular Certificate of Occupancy could not be issued. **Director Giordano** stated a Temporary Certificate of Occupancy is only good for six months and they want it done within the first six months. **Mr. Barr** stated they had originally requested a two year deferral, but there was not a mechanism in place to enforce that, so the six month TCO gave the Planning Department a mechanism to come back after six month to enforce it at that time and so the two year defaulted back to the six months. Commissioner Stiehl stated then the issue was for enforcement and the TCO is the only method they saw to enforce it. **Director Giordano** stated that the landscaping is the least important because basically all to the north and west it is all business so he is not so concerned that there had to be some kind buffering to hide or screen something. To the east and south there is a street that is buffering although those are residential type uses. If we are going to require specific buffering we would be talking about the east and south. The other issue that there is a problem with is keeping it to grow. There is nothing to guarantee that they live. Mr. Barr stated that water was a big issue with the justification and the concerns of landscaping. Obviously Penrose does not have unlimited water resources.

Karen Almen, Trustee Penrose Community Library District stated in January, 1999 Christy Lindsey was hired as the Directory of the Penrose Community Library District at which expansion was in our ten year long range plan. In 2002 the Building Committee went to work for the creation of a larger facility. Surveys were done for the needs of the community and staff. Consultation was done with the Colorado State Library standards for size, specifications regarding the usage and population base. A site was purchased close to the elementary school and is zoned business. The only negative is the roads that are in need of repair and maintenance. Through fund raising they are almost at their goal of \$878,000. The Planning Commission recommended to either paving or chip and seal parts of Dawson and 7th Street. They can not afford to do the road requirement. Postponing the construction start will only result in additional costs due to material inflation and time delays. She asked the Commissioners to work with them in a cost effective manner to improve the road conditions and not stop the start of construction for the new library.

Gary Weirton, Road Foreman District 2 stated that he has a concern about the roads. Putting four inches of gravel on the road will be lost in a year. In order to maintain the road it has to be brought up to some kind of standard. The chip and seal may be down the road but drainage in the area also needs to be addressed especially if a building is constructed there. He stated they are wasting their time and money with applying four inches of gravel. He stated maybe the Board would be willing to help out. If the Penrose Library would supply the materials then they could help them build the road.

Judy Van Acker, SE Library Consultant for Colorado Library Consortium stated she has a vested interest in the project and it is her hope that the County will work with the Board of Trustee to get the facility started.

Commissioner Lasha closed the Public Hearing and returned to regular session.

Commissioner Lasha stated he appreciated Gary Weirton for speaking up for Road and Bridge District 2. We certainly have watched the Penrose community come together on fund raising and all the activity in trying to put this library together. Mr. Weirton is asking

the Commissioners to make a commitment to help and as District 2 Commissioner it can be done up to a point. He stated there are some contractors around that would probably step up help with the gravel on that road. He would like to see the waiver of the hard surface to be gravel and help from District 2 Road Foreman and our crews. Commissioner Lasha requested that Christy contact some of local gravel contractor to see what can be done about material. The road does need to eventually chip and seal.

Commissioner Norden asked Gary Weirton if there were drainage problems now. Mr. Weirton stated yes. Commissioner Lasha stated that he had contacted Everett Breckenridge about his concerns with drainage in the area and there will be a culvert replaced.

Commissioner Lasha gave appreciation to the Penrose Community and Board for the work that they have done to get the library going. Regarding landscaping, water is an issue and there are some zeroscape alternatives that could be very positive after the library is built.

Commissioner Stiehl agreed with Gary Weirton that four inches of gravel would not do but it probably be best to go with the engineered road base required by the County. As a County, with the equipment that they have, we should be able to assist as far as the installation and preparation including drainage. This will be something that can be maintained. He recommended waiving all landscaping except the grass to be planted on the property permanently on the east and south portion and let them use their own taste and budget to add shrubs and trees as they see fit without control of the County.

Commissioner Stiehl moved to approve **Resolution #41**, SDP 08-001 Penrose Community Library Site Development Plan as recommended by the Planning Commission on May 6, 2008 with the following exceptions: not require any hard surfacing of 7th Street along their property boundary and Broadway to 7th. These roads are to be brought up to County standard, for road base and gravel, but not hard surface and the County will assist where possible in mechanical work and that we waive all requirements for landscaping except for the grasses to be planted. The motion was seconded by Commissioner Norden. Upon vote: Commissioner Stiehl, aye; Commissioner Norden, aye; Commissioner Lasha, aye. The motion carried.

RECOMMENDED CONTINGENCIES:

If approval of this application is considered by the Planning Commission the Department would suggest that the approval recommendation be made contingent upon, at a minimum, the following items being provided to the Department, by the applicant, within six (6) months (*no extensions except through regulatory process*) after approval of the application by the Board of County Commissioners:

Note: **Applicant is requesting that all improvements be deferred to completion prior to the issuance of the certificate of occupancy.**

1. Documentation from County Reviewing Engineer as to compliance with the following requirements outlined in a letter dated April 9, 2008:
 - a. Construction of Dawson and Seventh Street to a paved, County Road standard (approximately 600 feet) (*prior to issuance of certificate of occupancy for the building*).

Planning Commission recommended changing #1a to read as follows: Construction of Dawson and Seventh Street to a hardened surface, County Road standard (approximately 600 feet) (prior to issuance of certificate of occupancy for the building).

AMENDED TO:

Not require any hard surfacing of 7th Street along their property boundary and Broadway to 7th. These roads are to be brought up to County standard for road base and gravel but not hard a surface and the County will assist where possible in mechanical work.

- b. Either resize the detention pond or site grading changes are needed to divert off-site flows safely around site.
- c. Details of the pond overflow are needed.
- d. Drainage improvements are required to conduct flow from the site's low point, eastward along Seventh Street to at least Elm Street.

- e. The septic system location may need to be adjusted to avoid short circuit effluent flow into the drainage detention pond.
 - f. An alternate (duplicate) individual sewage disposal system area is needed.
 2. All improvements as noted on the site development plan (ie.) lighting poles, driveways, service road, parking spaces, drainage facilities and sidewalks shall be completed prior to operation of the business (*prior to issuance of certificate of occupancy for the building*).
 3. Documentation from the Colorado Registered Engineer, who designed the improvements that the required drainage improvements were constructed to the approved design standards.
 4. An executed quitclaim deed with a deed restriction addressing the maintenance of any drainage facilities, drainage easements, rights-of-way, etc.
 5. Documentation as to proof of water (tap).
Planning Commission recommended deleting #5 since it has already been obtained.
 6. Documentation from the Fremont County Environmental Health Office as to an adequate sewage disposal system (*prior to issuance of certificate of occupancy for the building*).
 7. Site plan drawing shall relocate individual sewage disposal system as parking is not permitted over the top of the septic system or the area shall not be used for future parking.
 8. Dimension so as to locate the east driveway from a known point.
 9. Copy of a Fremont County Driveway Access Permit.
 10. Landscaping as per application (*prior to issuance of certificate of occupancy for the building*).
Planning Commission recommended #10 to read: Landscaping is per application via one (1) six month TCO (Temporary Certificate of Occupancy)
- ADDED: All requirements for landscaping waived except for the grasses to be planted.**
11. Copy of utility plan signed and approved by appropriate representatives (*prior to issuance of certificate of occupancy for the building*).

Commission Lasha closed regular session and opened the Public Hearing.

REQUEST: SRU 07-002 ALLTEL COMMUNICATIONS INC. WIRELESS TOWER (Colon-Emerson Trust Property)

Request approval of a **Special Review Use Permit, Department file #SRU 07-002 Alltel Communications Inc. Wireless Tower, to allow for the installation of a one-hundred (100) foot tall galvanized steel monopole tower with antennas and lightning rod, a prefabricated concrete equipment shelter and a six (6) foot tall security fence, by Alltel Communications Inc.**, for property owned by the Jean Colon - Ann M. Emerson Trust. The property is *located approximately 600 feet south of US Highway 50 and approximately 1/2 miles east of McKenzie Avenue in the Fourmile Area*. The property is currently vacant, located in the Agricultural Living Zone District and contains 62.16 acres.

REPRESENTATIVE: Ralph Wyngarden, Faulk and Foster

Ralph Wyngarden from Faulk and Foster stated Alltel's objective for the site is to improve service in east Cañon City and along Highway 50. It will strengthen the signal in this area and off load some of the call traffic from Alltel's existing Cañon City and Florence sites. In looking at the particular location Alltel's engineers had to look at the proximity to their existing sites in Canon City and Florence and find a location that is not too close to create an interference and not too far away so there is a gap. This particular search area accomplishes this. There is a line of hills running from the southeast to northwest through Sections 36 and 25 of this area. The location utilizes the top of a mesa just south of Highway 50. This enables Alltel to keep the tower down to one hundred feet and achieve the service they need. This is the ideal location for them not only from a service stand point but a distance from adjacent uses. The landowner owns a number of parcels that surround the subject parcel of the SRU. There are no nearby residences. We are asking for waivers of: Landscaping, Buffering, Screening, Hard Surface and Lighting requirements of your ordinance. The site is accessed from

Grandview Avenue and a drive of one quarter mile to the location. Mr. Wyngarden stated they are in agreement with the Planning Commission comments noting a number of Conditions and Contingencies and ask for approval.

Planning and Zoning Director, Bill Giordano stated they have completed the required posting of the property and sending notification out to all property owners within five hundred feet of the property boundary. Publication has been completed also as required. At the May 6th meeting the Planning Commission recommended approval of the SRU. All the Conditions are standard conditions for towers. We did ask that the applicant/owner of the tower shall allow the tower to be used for co-location purposes, if appropriate and if antenna collocation is proposed appropriate process through the Department will be required. They are required to notify us and go through a process if they do allow collocation but we do want collocation so we don't have any more towers necessary.

Director Giordano stated the important contingency is Contingency #2 regarding erosion and it is mainly for water that would run down their access because they come from Grandview to get to the site. He noted that the Commission did not receive anything from Hydraulic Ditch Company which was one the contingencies that needed approval by our engineer. He stated they found out at the Planning Commission meeting that the Hydraulic Ditch changes to the Grandview Ditch so the Commission added them to the notifications, but we have received no response.

Director Giordano stated that as far as the waiver request the buffering landscaping is not a requirement. The surfacing, lighting, landscaping is for parking and there will be only one space used once a month for maintenance of the tower so there is no reason for a hard surface.

Director Giordano inquired if they had been bought out by Horizon. **Ralph Wyngarden** stated they have talked and have come to an agreement but this has to go through the regulatory process and it may or may not be approved. Director Giordano stated they will need a transfer permit if the merger is completed.

Commissioner Norden inquired if the top of the lighting rod represent the full one hundred feet. **Mr. Wyngarden** stated the hundred feet is the pole height and the rod is ten feet. When they filed for FAA approval they stated the total tip height of one hundred ten feet.

Commissioner Stiehl inquired if they have submitted a form to the FAA for the tower. Mr. Wyngarden stated yes and they have actually issued a study determining that there is no hazard to air navigation and it included as an exhibit.

Commissioner Lasha closed the Public Hearing and returned to regular session.

Commissioner Norden moved to approve SRU 07-002 Alltel Communications Wireless Tower on the Colon Trust property with Conditions A thru K and Contingencies 1 thru 4 with the recommendation of waiving Surfacing, Lighting and Landscaping to be Resolution #42. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

RECOMMENDED CONDITIONS:

- A. Special Review Use Permit shall be issued for life of use.
- B. The Department of Planning and Zoning (Department) shall review the permit annually to determine compliance with the conditions of the permit and forward it to the Board of County Commissioners (Board) for their review as required by regulations.
- C. The Applicant 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. The Applicant 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 States of America, its agencies or departments, as now in force and effect or as the same may be hereafter amended.
- E. Applicants shall obtain, prior to operation, and keep in effect, throughout operation, all other permits, licenses or the like, including renewals, required by any other governmental agency and as otherwise may be required by Fremont County and shall provide copies of such to the Department. Revocation, suspension or expiration of any

such other permits shall revoke, suspend or terminate the permit authorized hereunder, as the case may be.

- F. If a Special Review 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. Provided, 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 use, the holder shall file a notice thereof with the Department of Planning and Zoning 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 of County Commissioners.
- G. If a Special Review Use Permit is to be transferred it shall comply with all applicable Federal, State and County regulations regarding such transfer.
- H. Days and hours of operation shall not be limited.
- I. The applicant /owner of the tower shall allow the tower to be used for co-locating purposes, if appropriate. If antenna collocation is proposed appropriate process through the Department will be required.
- J. The 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.
- K. Only the named party on the permit shall be allowed to operate this Special Review 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 Special Review Use Permit must agree to abide by all terms and conditions of this Special Review Use Permit and shall be required to be named on this Special Review Use Permit as additional parties who are bound by the terms and conditions of this Special Review Use Permit.

RECOMMENDED CONTINGENCIES:

If approval of this application is considered by the Planning Commission the Department would suggest that the approval recommendation be made contingent upon, at a minimum, the following items being provided to the Department, by the applicant, within six (6) months (*no extensions except through regulatory process*) after approval of the application by the Board of County Commissioners:

1. A report prepared by a Colorado Registered Engineer demonstrating compliance with applicable structural standards and the general capacity of the proposed facility.
2. Documentation as to compliance with the following comments by the County Reviewing Engineer in a letter dated April 9, 2008:
 - a. Additional erosion control is needed along the proposed roadway ditch.
 - b. Design details are needed on the plans for the detention pond discharge and for the overflow spillway.
 - c. Details of the pond overflow channel are needed.
 - d. Approval from the Hydraulic Ditch Company is needed for this point of discharge.
 - e. The easement must be extended to cover the detention pond and its discharge channel.
3. The property shall be issued an address based on the location of the access to the County roadway system.
4. Documentation that a Fremont County Driveway Access Permit has been issued or that no such permit has been required.

NEW BUSINESS

Combined Polling Places for Primary Election August 12, 2008 and General Election November 4, 2008

Norma Hatfield, Fremont County Clerk & Recorder stated the polling places have been increased for the Primary and General elections this year because we expect a record turnout for the elections. She stated that the precincts are usually reduced for the Primary and then go back to the regular precincts for the General but that does cause confusion. People tend to go back to the same place they voted for the Primary.

Clerk Hatfield gave appreciation to the Board of Commissioners for help in defeating a ballot question that was coming before us as recommendation from the Secretary of State. The Secretary of State wanted a notice sent to every registered voter. Every year we have three to four thousand people who have moved, died, not changed address or failed to vote in the last major election and the mailing would be an extravagant expense. The Commissioner State Association worked with us to have the bill defeated. We have a very good legislative body who work very hard for the County Clerks to keep things in perspective as to costs. It would have cost us several thousand dollars and close to a million dollars in the larger counties to send mail ballots to everyone who is registered.

Commissioner Norden inquired if the thirteen combined polling places were the same as they had for the last election. **Clerk Hatfield** said because of the increase in registration in some precincts they had to find additional polling places. This information will be posted in the Clerk's office, the website and is advertised in the newspaper before the election. **Commissioner Stiehl** requested to change the Precinct column name to be Polling Locations.

Commissioner Norden moved to adopt the List of Combined Polling Places for the information presented by the County Clerk for the Primary Election August 12th and November 4th General Election and change the left Precinct column to be Polling Locations. The motion was seconded by Commissioner Stiehl. Upon Vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

Re-Appointment of Robert Henderson to the Fremont County Airport Advisory Board

Commissioner Lasha stated that Robert Henderson has been a Board member for quite some time and at the last board meeting the recommendation of the Board was to re-appoint him. **Commissioner Stiehl** moved to re-appoint Robert Henderson to the Fremont County Airport Advisory Board. Commissioner Norden seconded the motion.

Commissioner Lasha commented that the Advisory Board has been very active in a lot of improvements at the airport and made some good decisions. He stated that of all he has worked with, they are certainly ones that perform. Upon vote: Commissioner Stiehl, aye; Commissioner Norden, aye; Commissioner Lasha, aye. The motion carried.

Application for Special Events Permit, Fremont Fairs & Shows Association, 1436 South 9th St. (Rodeo Grounds), Canon City, CO for Malt, Vinous and Spirituous Liquor.

Paul Telck, Chairman Fremont Fairs & Shows Assoc. stated the Association will provide a Ranch Rodeo on the evening of the opening day of the County Fair, Saturday, July 26th. The Ranch Rodeo is scheduled at the Jack Marris Arena at the rodeo grounds. This year with the permission of the Fremont County Fair Board and the Royal Gorge Rodeo Assoc. Fremont Fairs and Shows Assoc. has applied for a Special Events Permit for the sale of beer only at the Ranch Rodeo. Unlike the Rodeo Association which has permitted alcohol that encompasses their entire grounds the use of alcohol for this event will be restricted. Additional security will be provided by the Colorado Rangers. Royal Gorge Lions Club will serve the beer. We have had a lot of requests for the beer but also we felt that it should be restricted to protect the youth that attend the rodeo and keep it a family affair. Concessions will be provided by one of the 4-H Clubs.

Commissioner Norden moved to approve the application for the Special Events Permit for the Fremont Fairs & Shows Association for July 26, 2008. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

REQUEST: RESCISSION OF SRU 02-11 CITY OF CAÑON CITY COMMUNICATIONS FACILITY

June 9, 2008

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Request approval to rescind the Special Review Use Permit for file # **SRU 02-11 CAÑON CITY COMMUNICATIONS FACILITY**. The existing Special Review Use Permit was issued to allow for the replacement of two (2) twenty foot (20') existing telecommunication towers, with a fifty foot (50') freestanding monopole tower with antennas, by the City of Cañon City, on their property. In the five years since the approval of the permit, no construction has taken place, and the lease with Cañon City has not been renewed. *The property is located approximately 1 ½ miles south of the intersection of Skyline Drive and US Highway 50, on the west side of Skyline Drive in Fremont County.*

REPRESENTATIVE: Fremont County Department of Planning & Zoning

Planning and Zoning Director Bill Giordano stated the permit was issued in 2003. There has been no construction or action taken. They have contacted the City of Cañon who had a two year agreement and it has not been renewed. It has been inactive for the five (5) year term. One complication that has arisen from the change of this meeting date is when the original notice was sent to the property owners through certified mail we stated that the date of the BOCC meeting would be June 10, 2008 and actually it is today, June 9th, so they still have until tomorrow to actually reply although he noted that the two (2) letters that were sent to T-Mobile and there has been no response. The date on the resolution will be changed to the June 9, 2008.

Commissioner Stiehl moved to approve **Resolution #43** for the request for Rescission of SRU 02-11 City of Cañon City Communications Facility effective June 10, 2008. Commissioner Norden seconded the motion. Upon vote: Commissioner Stiehl, aye; Commissioner Norden, aye; Commissioner Lasha, aye. The motion carried.

County Attorney Brenda Jackson stated **Resolution #39** has July 9th instead of July 8th in the last paragraph and a motion needs to be made to correct this. She will make the change.

Commission Stiehl moved to correct the date to July 8, 2008 on **Resolution #39**. Commissioner Lasha seconded the motion. Upon vote: Commissioner Stiehl, aye; Commissioner Lasha, aye; Commissioner Norden, aye. The motion carried.

Commissioner Lasha adjourned the meeting at 11:10 A.M.

County Clerk