

## **ELEVENTH MEETING**

The Board of Commissioners of the County of Fremont, State of Colorado, met in Regular Session on June 12, 2007, 615 Macon Avenue, Room LL3, Fremont County Administration Building, Cañon City, Colorado. Commissioner Chairman Edward H. Norden called the meeting to order at 9:30 A.M.

Edward H. Norden	Commissioner	Present
Larry Lasha	Commissioner	Absent
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 Kris Lang, Deputy Clerk.

Chaplain Hal Simmons of the Hospital Chaplains Ministry of America gave the Morning Prayer.

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

### **APPROVAL OF AGENDA**

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

### **CONSENT AGENDA**

**Commissioner Norden** announced the total amount of the approved bills was not listed on the prepared Consent Agenda. Kris Lang, Deputy Clerk announced that amount was \$749,830.15. **Commissioner Stiehl** made a motion to approve the Consent Agenda as revised.

1. Approval of Minutes May 22, 2007
2. Approval of Bills, June 12, 2007 /\$749,830.15
3. LIQUOR LICENSES
4. Adoption of Resolution #30, Series of 2007, Revocation of Conditional Use Permit – File Number CUP 90-13 Fremont County District #1 Van Loo Pit.
5. SCHEDULING OF PUBLIC HEARING FOR JULY 10, 2007:

#### **REQUEST: SDP 07-001 LINCOLN CENTER SALOON**

Request approval of a **Site Development Plan, Department file #SDP 07-0001 Lincoln Center Saloon, to allow a saloon, bar and lounge**, by Thomas & Sandra Lincoln, for their property which is *located at the southeast corner of the intersection of 9<sup>th</sup> Street and South Broadway Avenue, in the Penrose area.* The property will

contain a bar and lounge, a covered patio, and outdoor recreation area, which will be fenced with a six (6) foot cedar fence and a closed storage area.

The motion was seconded by Commissioner Norden. Upon vote: Commissioner Stiehl, aye; Commissioner Norden, 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 and stated that the revenues earned were \$783,542.92 which was up by \$72,045.96 from a year ago. The sales tax collected was \$86,067.71 which was up from over a year ago by \$13,483.99. Money collected for distribution among the entities was \$435,380.32 and that was an increase of \$24,658.17 from a year ago. **Commissioner Stiehl** moved to approve the Clerk's Report for May. The motion was seconded by Commissioner Norden. Upon vote: Commissioner Stiehl, aye; Commissioner Norden, aye. The motion carried.

**Commissioner Norden** reported that **Commissioner Lasha** was attending the Colorado County Incorporated Summer Conference in Summit County. He commented on the recent mailings of the property tax valuations. He advised that many units of the government are still under the tabor restrictions. He commented that mill levies applied will affect the actual property tax notices processed in January of 2008. He said that a 25% increase in property valuation will not automatically result in a 25% increase in property taxes.

**Commissioner Norden** announced that **County Attorney Brenda Jackson** is one of three nominees for a judgeship in the 11<sup>th</sup> Colorado Judicial District and was interviewed by Governor Bill Ritter last Friday. He commented that the Board of Commissioners were proud of Ms. Jackson's accomplishments and wished her success in the process.

#### 2. Citizens not already scheduled / None

### **OLD BUSINESS:**

#### **RECONSIDERATION OF PART OF THE 24<sup>TH</sup> AMENDMENT TO FREMONT COUNTY ZONING RESOLUTION** – (Continued from May 8, 2007 BOCC Meeting).

**Commissioner Norden** stated at the May 8, 2007 Public Hearing of the 24<sup>th</sup> Amendment the Board of Commissioners tabled a portion of the amendment clarifying the definition of *Group Homes* and adding definitions for *Assisted Living Residences*. He advised that *Assisted Living Facilities* are a permitted use in some zone districts and through special review use permits in other zones. **Commissioner Norden** reported that the State of Colorado defines *Group Homes* as a residence for up to eight (8) people, age 60 or older who do not need nursing facilities and who elect to live in a normal residential surrounding. The State of Colorado defines *Assisted Living Facilities* as a facility for

three (3) or more residents requiring twenty-four hour monitoring and care. The State licenses three types of Assisted Living Facilities: 1) Private Paid. 2) Medicaid Certified Alternative Care. 3) Residential Treatment Facilities for persons with severe and persistent mental illness. The State Statute requires that Assisted Living Residences provide a range of services beyond just the room and board of a Group Home such as protective oversight, social care, twenty-four hour supervision, medication administration, bathing, dressing, eating, laundry, recreation and arrangements for transportation. He advised that Assisted Living Facilities impact a neighborhood with more employees, vendors and professional people to serve the medical needs of the residents and requiring a special review use permit preserves the rights of the neighbors to be heard at a public hearing. Commissioner Norden stated the Board was not deterring the formation or development of small Assisted Living Facilities in Fremont County; however in certain zone districts the residents and neighbors have a right to review the type of facility being built in their neighborhood.

**Commissioner Norden** made a motion to adopt the language defining Group Homes and Assisted Living Residences as presented in coordination with the State Statutes and approve **Resolution #31; 25<sup>th</sup> Amendment to the Zoning Resolution**. The motion was seconded by Commissioner Stiehl who commented that the aging population within Fremont County is of concern and importance. The Board of Commissioners encourage the formation of assisted living and elder care facilities within the appropriate neighborhoods. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried with the Adoption of **Resolution #31**.

#### NEW BUSINESS:

#### COLORADO DEPARTMENT HEALTH & ENVIRONMENT

**Commissioner Norden** adjourned as the *Fremont County Board of Commissioners* and resumed as the *Fremont County Board of Health*.

**Ron Walker, Top Rail Ranch** stated he was requesting a waiver for the septic system at his elk hunting camp 40 miles northwest of Cañon City. He reported the existing septic system was in place when he purchased the property. He stated he had tied onto an existing septic tank and leech field when he added three cabin structures and it has been working well and effective for the past six to seven years. He feels since it's a small operation in an area of 2300 acres there are no public health concerns. **Commissioner Norden** asked what the existing septic system on the property served. Mr. Walker responded he was told there was a mobile home on the premise at one time but it was not there when he purchased the property. Mr. Walker stated **Building Inspector, Dan Brixey** classified the *Top Rail Ranch* operation as commercial and he disagreed with the

classification since it was only open two months per year and accommodates approximately thirty to forty people during that time.

**Dan Brixey, Fremont County Building Inspector and Environmental Health Department** reported the department received a complaint on March 1, 2007 from a previous hunting client of *Top Rail Ranch* regarding code compliance structures and code compliance septic system to accommodate the structures. He advised a permitted approved septic system record could not be found and it was determined the system was either installed pre-permit or illegally by the original owner. He stated he contacted Mr. Walker by telephone and through a violation notice notifying him that there was no record or evidence of a permitted approved septic system at that location. Mr. Brixey stated *Top Rail Ranch* is operating under a **Special Review Use Permit** which requires that permits for any septic system or structures on-site be obtained. A permit was not obtained for the three additional structures on site and subsequently Code Enforcement issued Mr. Walker a violation of the **Special Review Use Permit**. Mr. Brixey stated that Mr. Walker had inquired regarding the installation of a vault privy and was advised the installation could affect the **Special Review Use Permit** and would not be adequate to accommodate the shower facilities in the cabin structures. He remarked that the Cease and Desist Hearing was postponed enabling Mr. Walker the opportunity to submit a written variance request to the Board of Health for a vault privy which to date has not been received and today's request is for a waiver of the existing septic system. Mr. Brixey confirmed the operation in fact is a commercial operation offering hunting expeditions as advertised on the internet from August 26<sup>th</sup> to December 31<sup>st</sup>. Mr. Brixey stated that a permit needs to be obtained for a septic system and a legal code compliance septic system installed. He mentioned it would be up to Code Enforcement and the Board of Health to address the issue of the non-permitted structures at the location in violation of the **Special Review Use Permit**.

**Mr. Walker** responded that because there was an existing septic system on the property when he purchased the land he had no reason to believe a septic system permit would be required. He remarked that it was not financially feasible to bring the system up to a commercial operation and does not feel it is a commercial operation since it is used only a couple months during the year with minimal occupancy.

**Commissioner Norden** expressed concern that the **Special Review Use Permit** contained specific language requiring septic system compliance and yet the existing system was never reviewed or assessed for compliance. **Commissioner Stiehl** expressed concern over contamination of ground water.

**Commissioner Norden** made a motion to deny the waiver of the existing septic system at *Top Rail Ranch* requested by Ron Walker. The motion was seconded by Commissioner Stiehl. Upon vote: Commissioner Norden, nay; Commissioner Stiehl, nay. Motion carried for denial.

**Commissioner Norden** adjourned as the *Fremont County Board of Health* and resumed as the *Fremont County Board of Commissioners*..

**PUBLIC HEARING**  
**REQUEST: SRU 07-001 CAPTAIN ZIPLINE ADVENTURE TOURS**  
**JUNE 12, 2007 10:00 A.M.**

**Gene (Monty) Holmes, Owner** stated they were requesting approval of a **Special Review Use Permit, Department file #SRU 07-001** Captain Zipline Adventure Tours, for the operation of a (*Recreational Facility, rural – similar to a ski area*) zip line tour, which will consist of cable rides and an informational presentation and observance of previous mining activity, (*with two (2) additional cable lines proposed for 2008*). There will be four (4) tours per day seven (7) days per week at full capacity, basically during the months of March through November. He reported the customers will be picked up in Salida and will be transported in a six (6) wheel-drive pinzgaver troop carrier (*12 person passenger capacity*) to the site. The property is approximately 1.3 miles from the intersection of US Highway 50 and County Road #7 (*Wellsville Road*) easterly to County Road #54 (*a non-maintained County Roadway*) then northwesterly along County Road #54, then westerly along a BLM right-of-way into the property in the Wellsville area. The property is located in the Agricultural Forestry Zone District and contains approximately 23.68 acres. Mr. Holmes remarked that the thirty (30) foot easement granted by the BLM was assigned to the previous owner and when it was sold, the easement was transferred over. He said the venture is a safe, controlled environment that has piqued interest nationally and internationally and is a wonderful way to showcase the history, geology and beauty of the area making it a great tourist venue. He said he ran the business for a full year before realizing the permit was required. He remarked that he is a member of the Fremont County Chamber of Commerce and believes in tourist partnership and plans to package the activity with rafting companies and other tourist attractions. He said the Air Force Academy has expressed an interest with a potential of nine hundred (900) cadets participating. Customers will be given an extensive two (2) hour orientation; explaining how the zipline works and then are properly outfitted with a harness. He reported that two (2) guides were provided on each trip. The guides are trained by the lead guide who is an eleven (11) year Navy Seal and has completed the EMG certification. The guides have CPR training. Mr. Holmes presented a slide show of Zipline Adventure Tour Activity for those present.

**Planning and Zoning Director, Bill Giordano** stated the posting, publication and property owner notification requirements have been met. He advised at the May 1, 2007 meeting the Planning Commission reached a 3 – 3 vote; therefore no specific recommendations have been forwarded to the Board. Mr. Giordano stated under the

present planning regulations zipline and mine tours are not specifically listed for permit use; therefore any decision made today, would be similar to what is considered under the rural and recreational facility. He advised the definition has been added for the Board's review. He remarked on the department's original review there were twelve conditions listed with three additional items for consideration; surfacing, lighting and landscaping. Twelve additional notifications were requested and the applicant completed those as part of the notification process. The department made three recommended contingencies: 1) approval of water resources well-permit for the proposed use; 2) documentation of the right of BLM access across the property and that has been completed; 3) documentation of compliance with the requirements of the Arkansas Fire Protection District, at this time the only concern was the placement of a lock box at the gate for access, although the fire district did reserve the right to require a suppression cistern if additional buildings were constructed. Mr. Giordano advised following additional review the department had requested a weed control plan and that has been completed by the applicant. The department is also requiring proof of liability insurance. He remarked since the department of labor is not regulating the safety at this time, the applicant has provided a copy of engineering and inspection reports noting the safety of the zipline. The department is requesting a yearly update. Mr. Giordano suggested the Board of Commissioners consider adding language regarding the County right of way, the BLM access and trespassing.

**Commissioner Norden** asked for anyone wishing to speak for or against to come forward.

**Ralph Miller, Illinois Avenue Resident** stated he was against the operation. He owns the property adjacent to the county road leading to the adventure site and was concerned over the liability should the participants venture on their ranch property. He stated the irrigation ditch that feeds the ranch from the Arkansas River is in the same accessible area and expressed concern over the possible disturbance of the free flow of water.

**Ellen Miller, Illinois Avenue Resident** stated she agreed with her husband's concerns regarding liability and presented a copy of the release from liability she obtained from the web site of Zipline Adventure Tours. She expressed concern about trespassing onto their property and public safety. She stated that she is not oppose to the zipline activity but felt there were more feasible areas for the operation. The area being reviewed is zoned agricultural/industrial and does not feel a recreational operation should be allowed.

**Mike Bandera, General Manager of the Royal Gorge Bridge Park and Chairman of the Fremont County Tourism Council** stated he was in support of the operation and that ziplining is a hot commodity and a good concept. He said his research has shown ziplining is the number one most requested attraction by those who visit the Royal Gorge Bridge. He remarked that the bridge was considering a similar attraction across the gorge and from top to bottom.

**Will Colon, Business Owner of Raftmasters and Member of the Fremont County Chamber and Tourism Council** stated he was welcoming and in favor of the operation. He remarked the activity would increase tourism, and improve the economy of Fremont County.

**Tom Doxey, Fremont County Planning Commission** said he voted against recommending the Special Review Use Permit to the Commissioners. He was concerned with safety-explicitly the possibility of lightning strikes to participants, proper regulations, certification, inspection and liability insurance.

**Scott Johnson, President of the Cañon City Area Recreation and Park District** announced that Fremont County has a zipline at the district's ropes course near Sells Lake for eight (8) years. He commented that it is very successful and safe. He supports the operation and feels the applicant has provided more than adequate evidence of its safety.

**Gloria Stultz, President of the Cañon City Chamber of Commerce** stated they supported the operation. She said the chamber fields several phone calls every week from tourists who are looking for a zipline adventure.

**Bob Holloway, Monarch Mountain Marble Company** stated he was against the operation. His company mines in the adjacent industrial park and they are an active mining company operating under the federal agency MSHAW. He said anyone coming across the operating mine property is required to be MSHAW trained and expressed a trespassing and safety concern. He expressed concern that a recreational zipline adventure could negatively affect the industrial area expansion and future mining.

**Bill Tezak, Colorado Quarries** stated he was against the operation and the proposed future mine expansion would result in more haul trucks in the area and he felt that would create a serious safety concern. He said he does not feel a recreational operation alongside an active growing major industrial site is appropriate.

**Dennis Wied, Business Owner Raftmasters and City Councilman** stated he was in favor of the operation and felt it was a good fit that ties into other adventure sports offered in the western portion of Fremont County. He remarked that there are insurance companies that specialize in coverage for adventure outfitter type activities.

**Tim Canterbury, CR4 Resident** stated he opposed the operation. He addressed trespassing and the questioned right of way access and stated the applicant's picnic table and picnic area are presently on the railroad right of way. He shared liability concern in the ditch area.

**Gene (Monty) Holmes** responded, that once the location and usage of CR 55 came into question, operation was suspended. He remarked that the official status of what was once CR55 is uncertain and requested time to work the issue out. He advised that he intends to restrict access to the irrigation ditch and railroad trestles to prohibit trespassing. He addressed **Fremont County Attorney, Brenda Jackson** and stated they were self-insured at this time but have been diligently pursuing insurance and requested a six month extension to secure. She responded that if the applicant did not have commercial insurance, the Board of Commissioners could decide on the adequacy of the self-insurance subject to her recommendation.

**Commissioner Stiehl** asked if the customer harness gear and training sessions were regulated and inspected. Mr. Holmes responded Zipline Adventure Tours followed the guidelines of the ACCTA and PRCA and the equipment would be inspected annually.

**Commissioner Norden** closed the Public Hearing and returned to regular Session.

**Commissioner Norden** stated his visit to the site and operation satisfied his safety concerns. He said **Commissioner Lasha** had visited the site and operation with **J.R. Philips** and Commissioner Lasha had commented that he was impressed with the safety features of the operation.

**Commissioner Stiehl** commented that he was not concerned with the safety of the operation itself. He addressed the issue of public safety on the property and the liability issue for the County and stated a liability insurance policy should be in effect. He said specific road access would be determined and directed the Planning and Zoning Department to correct the addresses on the existing roads. Commissioner Stiehl shared serious concern that Captain Zipline Adventure Tours operated for over a year without a County permit. He explained the County does not have a method in place to impose or penalize people who ignore or violate and operate without the required County permits. He remarked that the BOCC will meet with the Planning and Zoning Department to develop a penalty structure for future businesses operating without the proper permits.

**Commissioner Norden** commented that the Board of Commissioners formal conditions will have tight restrictions on the operation. He addressed trespassing and liability. He advised the conditions will specifically map out the legal transportation route.

**Commissioner Norden** moved to approve SRU 07-001 Captain Zipline Adventure Tours pending conditions to be considered in Resolution form at the next Board of County Commissioners Meeting on June 26, 2007. The motion was seconded by Commissioner Stiehl. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

**FREMONT COUNTY HEADSTART EARLY CHILDHOOD PROCLAMATION DAY**

**JoBeth Palmer** presented the Proclamation whereas; the Fremont County Early Childhood Network action team, of Project ECHO, and other local organizations will promote and celebrate August 16, 2007 as “Day of the Early Childhood Educators”. **Commissioner Norden** read the Proclamation in its entirety and made a motion to approve the Proclamation. The motion was seconded by Commissioner Stiehl. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

**APPLICATION – SPECIAL EVENTS PERMIT – FREMONT CENTER FOR THE ARTS**

**Jerri Wright, Administrative Assistant**, stated they were requesting a Special Events Permit for malt, vinous, spirituous beverages and food service being served as part of the Fremont Center for the Arts. The event is scheduled on June 30, 2007 from 5:00 P.M. to 12:00 A.M. at the Cañon City Metropolitan Recreation District, 575 Ash Street in Cañon City. Ms. Wright submitted a poster as proof of posting. **Commissioner Stiehl** made a motion to approve the Special Events Permit for Fremont Center for the Arts. Commissioner Norden seconded the motion. Upon vote: Commissioner Stiehl, aye; Commissioner Norden, aye. The motion carried.

**TRACTOR BID AWARD**

**Finance Director, Dana Angel** presented three bids for the specified tractor and mower to be used at Pathfinder Regional Park: Moreland Implement Co. in Pueblo for \$28,615.00; Penrose MFG in Penrose for \$22,458.99 and Schall Iron Works in Monte Vista for \$30,950.00. The bids have been reviewed by Terry Action and Tony Adamic of the Road and Bridge Department.

**Commissioner Stiehl** made a motion to award the bid to Penrose MFG Inc. in the amount of \$22,458.99 with a scheduled delivery after the return of Tommy Covington in the 4-H Extension Department to accept personal delivery. The motion was seconded by Commissioner Norden. Upon vote: Commissioner Stiehl, aye; Commissioner Norden, aye. The motion carried.

**FIRST READING OF ORDINANCE NUMBER 2007-1, AMENDING ORDINANCE NUMBER 2006-1, RESTRICTING OPEN FIRES AND OPEN BURNING IN THE UNINCORPORATED AREAS OF FREMONT**

**Fremont County Attorney, Brenda Jackson** requested this item be moved to the last item on the agenda since the entire Ordinance will have to be read.

**RESOLUTION #32 SERIES OF 2007 ADOPTING A POLICY ON USE OF THE FREMONT COUNTY ADMINISTRATION BUILDING MEETING ROOMS**

**Commissioner Stiehl** stated he has been in communication and review with other elected officials and department heads for over a year regarding the ever-increasing concerns about the after hour security usage of Fremont County Administration Building. He reported the wide-open County Administration Building is such that it is difficult to secure without dedicated security personnel and due to the county's fiscal issues after-hours personnel are no longer available. **Commissioner Stiehl** said the Board recognizes that there is a need in the community for meeting rooms for non-county business and therefore have adopted a policy for use of the Fremont County Administration Building by groups and entities. The policy eliminates all non-county use of the building outside the normal business hours of 8:00 AM to 4:30 PM, Monday through Friday, excluding official county holidays. He advised the Fremont County Administration Building Meeting Room Application and Agreement requirements have been revised and are less restrictive for local groups utilizing the building. These applications can be accessed on line at [fremontco.com](http://fremontco.com).

**Commissioner Stiehl** made a motion to approve **Resolution #32**, Adopting a Policy On Use Of The Fremont County Administration Building Meeting Rooms. The motion was seconded by Commissioner Norden. Upon vote: Commissioner Stiehl, aye; Commissioner Norden, aye. The motion carried with the Adoption of **Resolution #32**.

**PATHFINDER REGIONAL PARK FACILITY USAGE POLICIES AND AGREEMENT**

**Commissioner Norden** advised the policy is specifically addressing the new outdoor arena built at Pathfinder Regional Park along Highway 115 between Canon City and Florence. He thanked Tommy Covington at the Extension Office and the 4-H Horse Council for their input and efforts in creating the policy. Commissioner Norden outlined the scheduling guidelines, facility fees, insurance, cancellation, losses and/or damage, cleanup, safety & security, parking, county management of the facilities, alcohol/weapons/fireworks/camping/open fire and general tenant requirements. He advised copies of the policy and agreements are available in the County Extension Office.

**Commissioner Norden** made a motion to adopt the Pathfinder Regional Park Facility Usage Policies and Agreement. The motion was seconded by Commissioner Stiehl. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

**FIRST READING OF ORDINANCE NUMBER 2007-1, AMENDING ORDINANCE NUMBER 2006-1, RESTRICTING OPEN FIRES AND OPEN BURNING IN THE UNINCORPORATED AREAS OF FREMONT COUNTY**

**Brenda Jackson, County Attorney** stated the Fremont County Sheriff has been working in cooperation with the Cañon City Fire Protection District to revise the stages of the fire ban. Ordinance No. 2006-01 imposes a county-wide fire ban at all times subject to suspension by the Board of Commissioners. Ordinance No. 2007-01 revises the stages of the fire ban and includes solid rocket fuel as part of the ban along with some minor changes on charcoal, propane and other contained fuel for grill use. She remarked that open fires or open burning restrictions shall be defined by stages 1, 2 and 3 as determined by the Fremont County Sheriff. The Ordinance has been published in the Cañon City Daily Record and is scheduled for final adoption at the Board of Commissioner Meeting on June 26, 2007. Ms. Jackson read Ordinance No. 2007-1 in its entirety.

**Commissioner Stiehl** made a motion to approve the First Reading of Ordinance No. 2007-01 amending Ordinance No. 2006-01 Restricting Open Fires and Open Burning in the Unincorporated Areas of Fremont County. The motion was seconded by Commissioner Norden who noted the motion changes the language of the ordinance and does not enact a burning ban at this time. Upon vote: Commissioner Stiehl, aye; Commissioner Norden, aye. The motion carried.

**Commissioner Norden** adjourned the Meeting at 12:30 P.M.

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County Clerk