

JUNE 24, 2008

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TWELEFTH MEETING

The Board of Commissioners of the County of Fremont, State of Colorado, met in Regular Session on June 24, 2008, 615 Macon Avenue, Room LL3, Fremont County Administration Building, Cañon City, Colorado. Commissioner Chairman Larry Lasha called the meeting to order at 9:30 A.M.

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

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

Pastor Jeff Bennett with River Walk Church gave the Morning Prayer.

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

APPROVAL OF AGENDA

Commissioner Norden moved for approval of the Agenda as presented. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

CONSENT AGENDA

Commissioner Stiehl stated he has not completed the review for the Minutes of May 24th. **Commissioner Stiehl** moved to approve the Consent Agenda removing Item #1: Approval of May 24th and June 9th Minutes. The minutes are to be posted on the website and to be clearly marked "DRAFT" for future approval.

1. Approval of Minutes May 27 and June 9, 2008 (**Removed**)
2. Approval of Bills, June 24, 2008 / \$719,171.60
3. SCHEDULE A PUBLIC HEARINGS / None
4. Adoption of Resolution #41, Series of 2008, Site Development Plan File Number SDP 08-001 Penrose Community Library District.
5. Adoption of Resolution #42, Series of 2008, Special Review Use Permit File Number SRU 07-002 Alltel Communications Inc. Wireless Tower (Colon-Emerson Trust Property)

Commissioner Norden seconded the motion. Upon vote: Commissioner Stiehl, aye; Commissioner Norden, aye; Commissioner Lasha, aye.

ADMINISTRATIVE / INFORMATIONAL

1. Staff and Elected Officials

Commissioner Lasha stated that the snow pack that is melting in the mountains is flowing down the river in a controlled manner so we don't have to worry about flooding. There is a real potential in our area for forest fires as identified by the State Forestry and BLM. We had another air tanker assigned to our airport and a helicopter with a 10 person smoke jumping team.

Commissioner Norden stated the Open Fire Ban is still in effective with Stage 1 Fire Restrictions which are posted on the main page of the website. He said that Florence Fire Protection District has also adopted a ban on open burning.

2. Citizens not scheduled.

Vincent Capozzella of Canon City stated he sent a letter last week to the Commissioners regarding a gravel pit in the Tallahassee area on the Taylor Ranch. The gravel pit is fifty yards from Cottonwood Creek being used for industrial development. He said that he has

been given the “old smoke screen that it is on private property”. **Commissioner Lasha** stated if the material is used on the private property that it is being produced on then it is a different issue. **Planning and Zoning Director Bill Giordano** stated that the use of the gravel at the Taylor Ranch is being used for a base in an arena on their property and it is not considered mining. Mr. Capozzella stated it is being used to build roads. **Commissioner Norden** stated that his letter was forwarded to the Planning Department to Bill who gave it to his code enforcement officer to investigate. **Director Giordano** stated they did investigate and the gravel is actually being used for the arena. If gravel is being produced on property where there is a development of a subdivision a permit for mining is required.

NEW BUSINESS

RESOLUTION TO ADOPT BUILDING DEPARTMENT FEE SCHEDULE

Building Director Mike Cox stated this is a resolution to adopt fees associated with the Building Department and Environmental Health Services. They tried to retain the fee schedule that has been in place since 1996 which comes out of the 1994 Building Code. The fees have been in place since 1994 and there is a slight increase in some of the fees due to increase in operational costs. The increases are based on time and material for the time it takes the department to process the permits, do inspections and travel to and from the site. The fees that have been increased are manufactured homes, renewal fee, moved in structures, and septic system installation. **Commissioner Lasha** stated that we have a county of fifteen hundred square miles and the price of fuel has significantly increased. Director Cox stated they tried to base the fuel consumption mileage on an average miles traveled so as not to penalize residents who lives farther away from the county seat. **Commissioner Norden** stated that the fuel surcharge rates based on current federal guidelines is fifty and one half cents per mile. The IRS has announced for the second half of 2008 a rate of fifty eight and one half cents will be used. **Commissioner Stiehl** commented that Fremont County bases the fees on what the actual cost is for the County to provide the services. The goal is for the people that are using the services pay for them and not for the general tax payer.

Commissioner Stiehl moved to approved **Resolution 44, Series 2008** establishing fees associated with the Building Department and Environmental Health Services. Commissioner Lasha seconded the motion. Upon vote: Commissioner Stiehl, aye; Commissioner Lasha, aye; Commissioner Norden, aye. The motion carried.

CDOT OFFICE OF GOVERNMENT RELATIONS / US50 ROCKFALL MITIGATION PROJECT

Mark Andrew, CDOT Resident Engineer, gave a presentation for the road project that will be done between Coaldale and Cotopaxi involving rock fall mitigation work. He introduced Mike Bass the Project Engineer and Darrel Taylor the Project Manager. An \$800,000.00 grant was received to provide some scaling (rock removal), some bulking to stabilize potential loose rock and placement of wire mesh for about one quarter mile of US HWY 50. The project start date is September 15th and will take about two months to complete. There will be during the day some lane closures involving 30 to 45 minute delays of traffic while the scaling work is being done. There will be a complete closure of Hwy 50 for the night operation detouring traffic on CR 39 for the rock reinforcing phase during October. Trucks over 12 tons will be let through from 11:00 P.M. to 2: A.M. **Commissioner Norden** inquired about other traffic coming on to CR 39. **Mike Bass** replied there would be flaggers. **Commissioner Stiehl** inquired about emergency services. Mike Bass stated there is good cell phone coverage in that area and they can contact them when the emergency vehicle is coming through. There will be a plan put in place so the emergency vehicles are not delayed. Residence in the area would also be notified prior to the start of construction. CR #39 will be graded and given a treatment of magnesium chloride for dust suppression and this will also be done when the project is completed so it will be in better condition than before the project.

FREMONT COUNTY ROAD AND BRIDGE DEPARTMENT POLICY USE OF UNCONSTRUCTED COUNTY ROAD RIGHTS-OF-WAY

County Attorney Brenda Jackson stated that over the years we have had controversies arise between adjacent land owners who have a county right-of-way that is platted but not constructed separating their properties or adjoining their properties in some way. The question is; what can the property be used for, what can be placed on it and for how long. In an attempt to resolve some of the disputes, Road and Bridge has reviewed the policy that the Commissioners outlined stating that if the right-of-way exists and is adjacent to a private landowner's property there are certain uses that can be allowed. Essentially it allows either adjoining property owners to use the property to the center of the right-of-way with temporary structures only, crops or grass that can be easily removed if the right-of-way is ever going to be constructed into a county road. The policy provides some notice requirements and clarifies the extent of use that an adjoining land owner can make of the unconstructed right-of-way. This does not apply to any right-of-way being used for access to another property. Access always comes first whether the right-of-way is constructed or not. So this is for unused and unconstructed right-of-ways only. Title for the county right-of-way property never transfers, it remains with the county but some temporary uses will be allowed by policy. **Commissioner Stiehl** stated that this is for county property that has not ever been put to use for roads. He requested clarification of adverse possession of property. **County Attorney Jackson** stated the doctrine of adverse possession has never been applied against a governmental entity; it is contrary to statute and case law. It is impossible to adversely possess against a governmental entity whether the property has been used by the government or not. **Commissioner Norden** stated they can not anticipate every possible scenario but this policy gives some guidance as to the basic premise for preserving the right-of-way for access if it is needed but still allows property owners bordering the right of way to use it for limited personal use.

Commissioner Norden moved to adopt the new policy for Unconstructed County Road Rights-of-Way. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

AUTHORIZATION FOR THE CHAIRMAN TO SIGN SERVICE AGREEMENT WITH TEC (THE ENGINEERING COMPANY) FOR CONSULTATING SERVICES ON FLORENCE WATER SERVICE STUDY OF PATHFINDER PARK AND BREWSTER AREA

Commissioner Norden stated that this was a formality. We have previously entered into an agreement with TEC and the City of Florence to do this study for possible water service to Pathfinder Park and to take a look at the possibility of water service extending west to the Brewster area. TEC indicated that they failed to forward the original service agreement. **Commissioner Norden** stated he would authorize the Chairman to sign. Commissioner Stiehl seconded the motion commenting the Canon City Park and Recreation District will also be benefiting and have help to fund the study. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

REQUEST: MS 08-001 HINTON SUBDIVISION

Request approval of a **two (2) lot minor subdivision, Department file #MS 09-001 Hinton Subdivision**, by Stan & Kristina Hinton, for their property *which is located at the northeast corner of 10th and A Streets, in the Beaver Park Area*. Proposed lot 1 will consist of 4.84 acres and is vacant. Proposed lot 2 will consist of 4.55 acres and it contains a single-family dwelling and a garage. The property is being used for residential/agricultural uses. The property consists of approximately 9.39 acres and is located in the Agricultural Rural Zone District.

REPRESENTATIVE: George R. Hall, Crown Point Land Services

George Hall, Crown Point Land Services stated there is a two lot Minor Subdivision at the corner of A Street and 10th Street if it was constructed. 10th Street is a county maintained road currently. There is an existing irrigation ditch and the water is split to go to each field. The property currently is all one piece with two different hay fields. They

are requesting an easement across Lot 2 to maintain the irrigation on Lot 1. There is an existing garage that is three and one half feet of the existing irrigation line. They propose to put a ten foot irrigation easement through two and one half feet north and east of the existing line and seven and one half feet south and west of the line.

Planning and Zoning Director Bill Giordano stated there was a Planning Commission meeting on June 3rd and the Commission did recommend approval. He stated in regarding to Contingency #4 the existing dwelling site is on the property line and does not meet the setback requirement of the zone district. We are asking for a statement on the plat (which George has placed on there) that if the building is ever moved it will have to meet the setbacks. We are not allowing them to file a non conformance for it would be replaced in the same location. Director Giordano stated as far as Contingency #5, it is a requirement of Don Moore. Normally when the irrigation ditch is not a major ditch we usually don't get into requiring easements. He assumed Mr. Moore's reasoning was to ensure that the other lot gets service through an irrigation ditch. Mr. Hall stated that Beaver Park's water distribution point is ten feet to the east of this property and it is actually a private line just for that property. We want to create this easement to make sure that Lot 1 has adequate ability to make repairs to get ditch water across Lot 2. **County Attorney Jackson** stated that there is no legal requirement to transfer water with the property. Lot 1 may not even have water once the transfer is done and if they do transfer water they can handle the transmission lines at the time of the sale. I do not see a need as a subdivision requirement because there is no legal requirement to put water on Lot 1. **Commissioner Norden** stated if it was the ditch company's line it would be different but if it is the lateral to deliver water that property owner's have shares for they can place the lateral line where ever they want water delivered. **County Attorney Jackson** stated that every property owner that owns irrigation water rights has a statutory right to condemn a right-of-way for an irrigation line. This would be an issue that is handled at closing when they sell the lot if they decide to transfer water with. **Mr. Hall** stated that is what they are trying to get away from by creating an easement right on the plat. **Commissioner Stiehl** moved to approve the request for Minor Subdivision 08-001 Hinton Subdivision deleting Contingency #3 and changing the wording in the irrigation ditch easement to the submitted "lying five feet (5) feet on either side of the described centerline". Commissioner Norden seconded the motion. Upon vote: Commissioner Stiehl, aye; Commissioner Norden, aye; Commissioner Lasha, aye. The motion carried.

RECOMMENDED CONTINGENCIES:

The approval recommendation is 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. Final plat and copies (*copies to be provided after recordation of the plat*) as required by the Fremont County Subdivision Regulations (FCSR).
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. An executed quitclaim deed with a deed restriction addressing the maintenance of any drainage facilities, drainage easements, rights-of-way, etc., if required. **The Planning Commission recommended deleting this contingency.**

Contingency #3 – Deleted

4. The final plat shall contain a statement "Replacement, for any reason, of any non-compliant structures on the subject property shall be in compliance with all zoning requirements at the time of replacement."
5. Documentation as to compliance with the following requirement as per the County Engineer's review letter dated May 20, 2008:
 - a. The Minor Subdivision plat includes an irrigation ditch easement note in the bottom right corner. Assuming the line shown is the centerline, add a clarification phrase "**lying five (5) feet on either side of the described centerline**" at the end of the sentence. Otherwise, the easement's outer (north and south) boundaries are subject to future interpretation.

REQUEST: TRANSFER OF CUP 98-8 SPOTTED BURRO PIT

Request for transfer of Conditional Use Permit, Department file # CUP 98-8 Spotted Burro Pit, from Pete Lien & Sons, Inc. d/b/a Trans Colorado Concrete, to Rockbottom, LLC. The existing CUP is for the operation of an Open Pit Sand and Gravel Mine (to include the removal of construction aggregate, crushing and screening). This property is located South of County Road 123 and East of Eight Mile Creek in the Watersville Subdivision area.

REPRESENTATIVE: Joe Gagliano, LJ Development, Inc.

Joe Gagliano, LJ Development, Inc. stated his clients, Rockbottom LLC, purchased the property. They have transferred the mine permit into their name and bonded it for \$50,000.00 with the State. They have accepted everything in the CUP. They are just asking for a change of ownership. There are three managing members and they are the sole owners of the LLC. **Planning and Zoning Director Bill Giordano** stated they have provided all the minimum requirements. The approval of the transfer is the only item left and they will be required to pay the recording fees for the transfer of the permit.

Commissioner Stiehl inquired if the hours of operations were sunrise to sunset, Monday through Saturday. Mr. Gagliano confirmed this. Commissioner Stiehl inquired as to how many truck be running on Highway 67. Mr. Gagliano stated as per the permit when they exceed ten trucks per day for more than ten day they must notify the department.

Commissioner Norden moved to approve the transfer of the CUP 98-8 Spotted Burro Pit from Pet Lien & Sons, Inc. to Rockbottom LLC. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

REQUEST: CUP 07-003 PARKDALE AGGREGATE MINE 1ST ADMENDMENT – DELETION OF CONTINGENCY #1

Request approval to delete a contingency item recently approved by the Commission, wherein Front Range Aggregates, LLC d/b/a Parkdale Quarry agreed to provide a mitigation plan which will address potential problems related to hydrology and water supply wells located within 1 and ½ miles of the permit boundary. Upon receipt of a letter from Rick Greenstreet of Rick's Pump Services, Cañon City, (contacted by Parkdale property owners for consultation) that stated "For the groundwater wells north of the river, I would anticipate that some impacts may exist as the mining progresses under the groundwater table."..."For the groundwater wells south of the river, I would not anticipate that any mining activities at the Parkdale site would have an effect." Front Range Aggregates, LLC requests to delete this contingency. The Parkdale Aggregate Mine 1st Amendment is to allow for continued operation as per Department file #CUP 97-5 Parkdale Aggregate Mine, except for the following listed changes: **Sand and Gravel Mine (existing 54.8 acres to be mined within a 100 acre area, within 5 feet of groundwater, to be reclaimed to wildlife habitat and open space, to 100 acres, within a 112 acre area, 60 feet below ground elevation, and which will be reclaimed to a water storage reservoir), a Granite Quarry (existing 64.3 acre quarry, to an elevation depth of 5780, to be reclaimed to wildlife habitat and open space, to a 72.5 acre parcel within an 83 acre area, to a bottom elevation depth of 5300, and which will also be reclaimed to a water storage reservoir.** The property is located on the north side of U.S. Highway 50, approximately 1.5 miles west of Parkdale.

REPRESENTATIVE: Michael Sheahan, Front Range Aggregates
Kallie Bauer, P.E., Applegate Group, Inc.
Lisa Farmer, Applegate Group, Inc.

Michael Sheahan of Front Range Aggregates stated a suggestion was made for them to do a monitoring program for the wells south of the river. A ground water engineering study of the ground water has been done by the Applegate Group. The local residents specified a Rick's Pump Service to do the monitoring program. Both have said that there is very little possibility that Front Range's new action at the river will have any impact of the wells south of the river. They have been to the State for the modification of their

DRMS permit. The State did not require any contingencies. Mr. Sheahan requested to have Contingency #1 be removed. **Planning and Zoning Director Bill Giordano** stated that when the CUP was approved a contingency was placed on the applicant to provide a mitigation plan for water wells within a mile and one half of the property. When the studies were completed the Board was notified and decided to have the applicant notify all the affected property owners. The applicant has done this and provided a copy of letter. It was concluded by the property owners that the mitigation plan is not necessary.

Commissioner Norden stated the information he was looking for was that the property owners felt that there was no need for a mitigation plan based on the letter the received from the consultants of their choice. **Commissioner Stiehl** stated that the Board wanted a document for a plan if any damage was done to the wells. Since that time the information that has been provided is convincing that it is almost impossible that there will be any effect to water aquifers on the other side of the river.

Commissioner Norden moved to grant Front Range Aggregate to strike Contingency #1 “that the applicant shall provide a mitigation plan to address potential problems related to hydrology and water supply wells located within one and one half miles of the permit boundary” for CUP 07-003. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

**CERTIFIED RECORD OF PROCEEDINGS OF THE BOARD OF COUNTY
COMMISSIONERS OF FREMONT COUNTY RELATING TO A RESOLUTION
AUTHORIZING THE ISSUANCE OF ITS REFUNDING REVENUE BOND
(SANGRE DE CRISTO HOSPICE & PALLIATIVE CARE PROJECT) SERIES
2008 IN A TOTAL PRINCIPAL AMOUNT NOT TO EXCEED \$2,600,000.00**

County Attorney Brenda Jackson stated that this is an identical to the resolution that was approved at the second meeting in May to authorize the issuance of revenue bonds for the Sangre De Cristo Hospice project. By statute the previous resolution was only valid for sixty (60) days and will have expired by the date of closing in mid July.

Commissioner Norden moved to approve Resolution #46 relating to the authorizing issuance of refunding revenue bonds for Sangre De Cristo Hospice and Palliative Care Project for \$2,600,000.00 with no fiscal impact to Fremont County. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

Commissioner Lasha stated Item #9 Vincent Capozzella Reference Public Access to Candle Lane was not present but has received information regarding his question.

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

County Clerk