

THIRTEENTH MEETING

The Board of Commissioners of the County of Fremont, State of Colorado, met in Regular Session on July 10, 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	Present
Michael J. Stiehl	Commissioner	Present
Brenda Jackson	County Attorney	Present
Norma Hatfield	Clerk and Recorder	Absent

Also present Finance Director, Dana Angel; Marshall Butler Assistant 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 Norden stated that consideration to extend the NOV appeal deadline would be added as Item #4 under New Business. **Commissioner Lasha** stated consideration to approve the lease transfer for Hanger #30 at the Fremont County Airport would be added as Item #1A under New Business. **Commissioner Stiehl** made a motion to approve the Agenda as revised. The motion was seconded by Commissioner Lasha. Upon vote: Commissioner Stiehl, aye; Commissioner Lasha, aye; Commissioner Norden, aye. The motion carried.

CONSENT AGENDA

Commissioner Stiehl made a motion to approve the Consent Agenda.

1. Approval of Minutes June 26, 2007
2. Approval of Bills, July 10, 2007 /\$738,869.30
3. LIQUOR LICENSES
4. SCHEDULING OF PUBLIC HEARING FOR AUGUST 14, 2007

REQUEST: CUP 07-001 HOLCIM INC. – COALDALE GYPSUM QUARRY

Request approval of a Conditional Use Permit, Department file #CUP 07-001 **Holcim Inc. – Coaldale Gypsum Quarry to allow surface mining of gypsum**, by Holcim (US), Inc., for property which is *located approximately 0.65 miles south of the intersection of US Highway 50 and County Road #6, aka Hayden Creek Road, on the west side of County Road #6 is the haul road (included in the permit acreage) then approximately -.5 miles west along the haul road to the mining site, in the Coaldale Area.*

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

ADMINISTRATIVE/INFORMATIONAL

1. Staff/Elected Officials

Commissioner Norden announced that Fremont County Clerk and Recorder, Norma Hatfield would present the June 2007 report at the next Board of County Commissioner Meeting. He advised the postponement was due to excessive business transactions in the motor vehicle department.

Commissioner Norden cautioned bicyclists to wear a helmet and emphasized his recent bicycle accident would have been more serious if he had not been wearing a protective helmet.

Commissioner Norden reported that Betty Hanawalt, Veterans Service Officer has scheduled an open-house at the Veterans Service Office on the lower level of the Fremont County Administration Building on Friday, July 20th from 1:00 P.M. to 4:00 P.M. All citizens particularly veterans and their families are invited.

2. Citizens not scheduled / None

NEW BUSINESS:

NOTICE OF BID AWARD A.I.P. PROJECT NO. 3-08-0009-08

Richard Baker, Fremont County Airport Manager reported the State and FAA has accepted the \$113,521.05 bid from Contractor, Maxwell Asphalt, Inc. of Salt Lake City, Utah for the crack fill and seal coat portion of the project at the airport. He said the total budgeted project was \$141,678.00 (FAA portion is \$61,071, State portion \$63,200 and Local match of \$17,407). Mr. Baker advised the project priorities were the main parking area and the two (2) taxi-ways going onto the main runway.

Commissioner Lasha made a motion to approve the Notice of Bid Award A.I.P. Project No. 3-08-0009-08 to Maxwell Asphalt, Inc. of Salt Lake City, Utah in the amount of \$113,521.05. The motion was seconded by Commissioner Stiehl. Upon vote: Commissioner Lasha, aye; Commissioner Stiehl, aye; Commissioner Norden, aye. The motion carried.

ASSIGNMENT OF AIRPORT LEASE HANGER #30

Commissioner Lasha advised glider hanger #30 at the airport was in the process of being sold to MSSSI Inc. and the original lease Resolution #76 Series of 1993 would be assigned as part of the transaction. He moved to approve the assignment of the lease, pending the completion of the required signatures and the final approval by Fremont County Attorney, Brenda Jackson. The motion was seconded by Commissioner Stiehl. Upon vote: Commissioner Lasha, aye; Commissioner Stiehl, aye; Commissioner Norden, aye. The motion carried.

Richard Baker, Fremont County Airport Manager expressed thanks to DOSS Aviation of Pueblo for donating \$5,000 to cover the additional cost of applying oil to another taxiway.

RESOLUTION #34 REVOCATION OF CUP 98-7 J&J STONE PIT #1

Marshall Butler, Assistant Planning and Zoning Director stated the department had received notification releasing Double "S" Enterprises for J&J Stone Pit #1 from the Division of Reclamation, Mining and Safety since reclamation at the site has been completed and accepted. He advised that Double "S" Enterprise for J&J Stone Pit #1 was notified by mailing on May 22, 2007 that the Conditional Use Permit would be revoked. Mr. Butler reported the department has not received any response from Double "S" regarding the notification.

Commissioner Stiehl made a motion to approve **Resolution #34** Series 2007 Revoking CUP 98-7 J&J Stone Pit #1 following satisfaction of the reclamation project. The motion was seconded by Commissioner Lasha. Upon vote: Commissioner Stiehl, aye; Commissioner Lasha, aye; Commissioner Norden, aye. The motion carried with the Adoption of **Resolution #34**.

CONSIDERATION OF THE UNION MILL HILL GRAVEL PIT PROPOSAL

Commissioner Norden reported the Board of Commissioners and the Road and Bridge Department opened a second round of bidding. One bid was received from Fremont Paving. **Commissioner Lasha** made a motion to deny the single bid proposal from Fremont Paving. The motion was seconded by Commissioner Stiehl. Upon vote: Commissioner Lasha, aye; Commissioner Stiehl, aye; Commissioner Norden, aye. The motion for denial was carried.

BOE APPEALS BOARD DEADLINE EXTENSION

Commissioner Norden reported following review and discussions between the Board and the Assessors Office the new deadline for citizens to file protests of property valuations with the Board of Equalization is Tuesday, July 24, 2007. **Commissioner Norden** made a motion to extend the BOE deadline until Tuesday, July 24, 2007 at 4:30 P.M. for property owners who have already received a notice of determination from the Assessors Office. The motion was seconded by Commissioner Stiehl who clarified the request to appear before the BOE must be received in writing in the Commissioners Office by 4:30pm on July 24th. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye; Commissioner Lasha, aye. The motion carried.

ADOPTION OF RESOLUTION #33, SRU #70-001 CAPTAIN ZIPLINE ADVENTURE TOURS

Commissioner Norden advised the formal language adoption of **Resolution # 33** for **SRU #70-001 Captain Zipline Adventure Tours** was inadvertently left off the Consent Agenda and would now be addressed as New Business. **Commissioner Norden** made a motion to revise the Agenda and Adopt **Resolution #33**. The motion was seconded by Commissioner Lasha. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye. The motion carried with the Adoption of **Resolution #33**.

PUBLIC HEARING
REQUEST SDP #07-001 LINCOLN CENTER SALOON
10:00 A.M. JULY 10, 2007

Thomas Lincoln, Owner stated they were requesting approval of a Site Development Plan file #**SDP 07-001 Lincoln Center Saloon** to allow a saloon, bar and lounge for their property which is *located at the southeast corner of the intersection of 9th Street and South Broadway Avenue, in the Penrose Area.* The property will contain a bar and lounge, a covered patio, an outdoor recreation area, which will be fenced with a six (6) foot cedar fence, and a closed storage area. The property is zoned Business and contains 0.5 acres. Mr. Lincoln said he was closing Marv's Place at 103 Broadway and moving the tavern to the building he had purchased at 700 Broadway in the Penrose area. He addressed the concern about the tavern being too close to the school property and read the state of Colorado, department of revenue, liquor enforcement division code regulation 12-47-313 stating any building within five-hundred foot of a public or parochial school will be measured from the nearest property line of land used for school purposes to the nearest portion of the building in which liquor is to be sold, using a route of direct pedestrian access. Mr. Lincoln contended the proposed saloon is 1200 feet from the school and the empty field was in a flood zone and could not be used for school building purposes. He presented petitions with more than 300 signatures requesting approval of the permit.

Commissioner Norden asked Mike Mathews if he was going to address the Board and he responded that he did not have anything to say at this time.

Assistant Planning and Zoning Director, Marshall Butler stated the posting, publication and property owner notification requirements have been met. He advised at the June 5, 2007 meeting the Planning Commission reached a split vote. The motion passed with a vote of 4 to 3 and the Site Development Plan was forwarded to the Board of County Commissioners for scheduling of this hearing. Mr. Butler reviewed the six (6) recommended contingencies: 1) Copy of a liquor license prior to operation. 2) All parking areas, driveways shall be a four (4) inch asphalt surface, and all sidewalks shall be four (4) feet in width and four (4) inches in depth with an adequate sub-base, as proposed by the applicant. 3) All other improvements as noted on the site development plan (i.e. two (2) lightening poles, outdoor recreation area with six (6) foot cedar fence, trash disposal area and six (6) foot cedar fence, covered patio, closed storage area, parking spaces and sidewalks), shall be completed prior to the operation of the business. 4) Documentation as to the acceptance of the installation of "no parking" signs along County roadways from the County Road Foreman prior to operation of the business. 5) Label the loading area on the site plan and remove the words "loading area" from the smoking/covered patio area. 6) Drainage from the parking area shall be directed into the proposed detention pond, to be located in the southeast corner of the property. In addition, storm water quality measures shall be included.

He reported there were additional notifications required to the Fremont County Sheriff Department and Fremont County Road Foreman. Mr. Butler advised following the notification of the fifty-two property (52) owners within 500 feet, the department had received four responses in favor and fourteen against the proposed location.

Commissioner Norden asked the applicant if he had anything additional to add and **Mr. Lincoln** requested a delay of one year to complete the necessary paving.

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

Paul Dearing, Neighborhood Resident expressed a safety concern with the patrons backing out of the parking lot in close proximity of the pedestrian crosswalks. He stated that there were six roads that joined in that area, and adding a bar to that is a bad scenario.

Billy Haddow, Neighborhood Resident stated his reasons against the proposed bar were safety, increased traffic and decreased residential property values. He stated the empty field in the flood plain was used by the school children for physical education exercises and field trips.

Alex VanAcker, Neighborhood Business Owner stated he owns the dental office next to the proposed saloon property. He advised the area is subject to flooding and since the building proposed for the saloon encroaches on the survey line, there is limited space to address drainage issues. The property is an island of commercial property surrounded by residential properties. He commented that in 1985, the original variance was granted based on the fact that there would be two quiet businesses there: a medical office and a dental office. He feels a saloon would have a negative impact on his dental practice. Mr. VanAcker shared the previous concerns regarding the safety of the school children in the crosswalks and general area.

John Dearing, Neighborhood Resident stated the proposed location of the bar is too close to the schools and the posted drug free zone in Penrose.

Mike Matthews, Lincoln Center Saloon Consultant remarked if there were any business restrictions on the property initiating from the original variance it would be noted on the deed and there were none. He stated there was over thirty feet of roadway from the pavement of the road to the proposed parking lot and the existing pedestrian crosswalk being discussed is another thirty feet away.

Fremont County Sheriff, Jim Beicker expressed a concern regarding noise on the proposed outdoor recreation and patio area in a largely residential area. He stated the sheriff's department has no ability to enforce a noise ordinance in that area and that could be an issue as this moves forward.

Thomas Lincoln, Owner responded to the sheriff's concern regarding noise. He said the outdoor patio area is on the north side of the building, away from the houses on the south side. He remarked live music is generally scheduled on new years and would be inside. Mr. Lincoln stated he runs a quiet neighborhood bar and does not feel there would be a noise issue. He explained the bar does not open until 10:00 A.M. with limited day business and does not feel the safety of the school children would be a concern. He commented that 95% of his customers already pass the proposed location to get to his present location at 103 Broadway and does not agree that there would be any increased traffic.

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

Commissioner Lasha read a portion of the letter received from John Merriam, Superintendent of the Fremont RE-2 School District with regards to the empty field stating during the school year and throughout the year the path in the empty field area is open to and used by students and adults. The path was created from a GOCO Grant that was secured through a partnership between the School District and the Penrose Parks and Recreation District several years ago.

Several conditions were required to meet the criteria determined for this use of state funds for the pathway project and feels the pathway project would not have been approve at the time, if a tavern was located within this distance. **Mr. Lincoln** responded the location was away from the property line and is not within the jurisdiction. Commissioner Lasha advised Mr. Lincoln that county maps indicated otherwise.

Commissioner Norden asked **Fremont County Attorney, Brenda Jackson** if the liquor license five-hundred foot requirement should be considered as part of the site development plan. Ms. Jackson responded the site development plan application involves an establishment that would require a liquor license, therefore, it would be a consideration factor but not necessarily conclusive in this proceeding. She continued that the school district has exercised ownership and control over the property and confirmed school student usage. Under the liquor code it is school property for purposes of calculating and the liquor code enforcement states you absolutely cannot approve a liquor license if the determined pathway to school property is five-hundred feet or less. The Board of Commissioners would need to determine the normal pedestrian route. Ms. Jackson remarked that today's zoning application is being reviewed on the compatibility with the neighborhood and other similar factors

Commissioner Lasha remarked he has reviewed all the information forwarded by the school district, county engineer, county road and bridge foreman, planning and zoning department and the planning commission. He stated the location is a land use issue involving a complicated lot and intersection. He addressed the concerns of safety, traffic, parking, drainage, and potential noise in an existing residential neighborhood. He acknowledged the church and school opposition as well as the public hearing testimony expressed earlier. **Commissioner Lasha** made a motion to deny the SDP #07-001 Lincoln Center Saloon.

The motion was seconded by **Commissioner Norden** who shared similar concerns regarding the public sentiment voiced. He remarked that as he was reviewing the application and the planning commission minutes, he was particularly concerned about the vicinity of the bar near the school crossing. He shared a safety concern and the negative impact that the two have with each other. Commissioner Norden said he was more concerned with the safety crossing issue than the five-hundred foot measurement.

Commissioner Stiehl stated the property lot size is insufficient for the proposed use. He remarked that the traffic ingress and egress cannot be adequately addressed. He said the disruption and noise in a residential area from a tavern is inappropriate. **Commissioner Norden** advised the comments of the Board of County Commissioners will be adopted as findings for denial of SDP #07-001. Upon vote: Commissioner Lasha, nay; Commissioner Norden, nay; Commissioner Stiehl, nay. The motion for denial was unanimously carried.

Commissioner Norden adjourned the meeting at 10:40 A.M.