

August 12, 2008

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### **FIFTEENTH MEETING**

The Board of Commissioners of the County of Fremont, State of Colorado, met in Regular Session on August 12, 2008, 615 Macon Avenue, Room LL3, Fremont County Administration Building, Cañon City, Colorado. Commissioner Chairman Pro Tempore Michael J. Stiehl called the meeting to order at 9:30 A.M.

Larry Lasha	Commissioner	Absent
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.

Larry Chell from the Christian Family Fellowship gave the Morning Prayer.

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

**Commissioner Norden** stated that Commissioner Lasha is also on the Board of St. Thomas More Hospital and is attending an annual retreat, thus his absence is noted today.

#### **APPROVAL OF AGENDA**

**Commissioner Norden** added Item #6 on the Consent Agenda, scheduling a Public Hearing for August 26, 2008 for Project Echo Grant. The standard Public Hearing for their grant application was conducted July 22, 2008. The publication notice had not been completed and this will meet the formal notice legal requirement.

**Commissioner Norden** moved to approve the Agenda with the addition of Project Echo on the Consent Agenda. Commissioner Stiehl moved to second the motion. Upon vote: Commissioner Norden, aye; Commissioner Stiehl. The motion carried.

#### **CONSENT AGENDA**

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

1. Approval of Minutes July 22, 2008
2. Approval of Bills, August 12, 2008 / \$1,297,502.04
3. **LIQUOR LICENSES**  
Allie-Gator Lanes dba Canon City Lanes  
2970 East Main St.  
Canon City, CO  
Hotel & Restaurant Liquor License Renewal with modifications  
  
Jee Enterprises Inc.  
Gateway Liquor  
710K W 4th St.  
Pueblo, CO 81003-2304  
Retail Liquor Store License Renewal - Malt, vinous and spirituous
4. Martin Timothy L Martin Barbara F  
Gooseberry Patch Restaurant  
660 Hwy 115  
Penrose, CO 81240

Hotel and Restaurant Liquor License Renewal - Malt, vinous and spirituous

5. **SCHEDULING OF PUBLIC HEARINGS FOR SEPTEMBER 9, 2008:**

1. **REQUEST: 26TH AMENDMENT TO THE ZONING RESOLUTION**

Request for approval of various amendments to the Fremont County Zoning Resolution including the creation of an Airport Zone District and a number of clerical, and reorganization items.

2. **REQUEST: ZC 08-002 AIRPORT VICINITY ZONE CHANGE**

Request approval of a zone change from Airport Industrial Park and Industrial to Airport and Industrial Park Zone Districts, by Fremont County for property surrounding and including the Fremont County Airport, which is located on the south side of US Highway 50 and east of Colorado State Highway 67.

6. **SCHEDULING OF PUBLIC HEARING FOR AUGUST 26, 2008 9 (ADDED)**

1. **PROJECT ECHO**

The Public Hearing for Project Echo Block Grant was held July 26, 2008. This hearing is to formalize the legal requirement for public notification.

**ADMINISTRATIVE/INFORMATIONAL**

1. Staff /Elected Officials

**Norma Hatfield, Fremont County Clerk & Recorder**, submitted the Clerk's Report and stated that the revenues earned in the Clerk's Office for July was \$773,764.44 and that was \$9,436.65 more than a year ago. County Sales Tax collected was \$70,324.55 which was less \$8,954.79. Overall what goes to the County for distribution to the entities was \$438,866.51 which was an increase of \$17,098.25.

**Commissioner Norden** moved to approve the County Clerk and Recorder's report. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

**Norma Hatfield, Fremont County Clerk & Recorder**, stated there is a little over 28,000 registered voters in the county. A large turn out was not expected for the primary because there is not a lot on the local ballot. Ballots were mailed out for the primary and 502 have come back. We expect to mail out about 5,000 ballots for the general election. September 24, 2008 is the deadline for entities who want to have questions on the general election ballot. **Commissioner Stiehl** inquired where mail out ballots should be turned in today. Clerk & Recorder Hatfield stated they must be turned at the County Clerks Office, 615 Macon Ave., Canon City, CO. Also a new statue has come into effect this year that allows voters to register to have a mail ballot sent to them permanently.

**Commissioner Norden** stated that Loaves and Fishes and Manna House stock of food was running low because of the economic situation for a number of families. The commissioners sitting on the Board of Human Services distributed some money to assist in restocking. Also Fremont County Employee Food drive has been initiated for canned and nonperishable food items which will be collected here at the Administration Building in the atrium through August 29<sup>th</sup>.

2. Citizens not scheduled/None

**OLD BUSINESS – NONE**

**NEW BUSINESS**

**4-FAMILIES OF THE YEAR PRESENTATION**

Kayla Gray, a member of the 2007 4-H Family of the Year made a presentation to the Commissioners for being 'true friends' of the local 4-H stating that through their efforts they have made sure that there has been funds for the county fair. They have been instrumental in the building of Pathfinder Park not just for 4-H families but for the whole community. The commissioners have made the 4-H experience available to many local young people.

**Commissioner Stiehl** stated they support the 4-H program because of the outstanding kids that have turned out over the years who have participated in the program.

**RESOLUTION FOR GOCO FUNDING SUPPORT FOR PATHFINDER PARK**

**Commissioner Norden** stated that the county is going through an application process to secure a \$200,000.00 grant from Great Outdoors Colorado (GOCO) for restrooms, outdoor lighting and bleachers for the outdoor arena at Pathfinder Park. Commissioner Norden complimented Verla Noakes at the County Extension Office for putting the application together. Part of the documentation that is sought for the grant is not only a letter of support from the Board of Commissioners but formal passage of a resolution. The resolution language explains the increase in demands from crowd attendance, the need of lighted bleachers and restrooms and that there is not a public entity or commercial enterprise in the vicinity of Pathfinder Park that can make available such facilities.

**Commissioner Norden** moved to approve **Resolution #50, 2008** in support the application GOCO Trust Fund to fund enhancements and improvements for Pathfinder Park. Commissioner Stiehl seconded the motion. **Commissioner Stiehl** stated no tax payer's money has been expended on the Park. Commissioner Norden stated it has been Colorado Lottery Funds and Conservation Trust Fund. Commissioner Stiehl said contributions came from the Road and Bridge Department also. Commissioner Norden said that some of the Lottery Funds have reimbursed the Road and Bridge Department. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

**AUTHORIZE CHAIRMAN TO SIGN CONTRACT WITH WESTERN WATER & LAND FOR OVERSIGHT OF HYDROGEOLOGY ON BLACK RANGE MINERALS TAYLOR RANCH PROJECT**

**Commissioner Stiehl** stated this is a requirement of Black Range Minerals to fund a third party hydrogeologist to oversee the operations for the uranium exploration project on the Taylor Ranch that was approved July, 2008. Twelve firms were submitted for review with the help of Colorado School of Mines and the US Geological Service (USGS). Western Water and Land (WWL) of Grand Junction was chosen for their expertise, dedication to the project and ability to communicate with all the entities involved. A scope of work has been designated for the next three years. Black Range Minerals will pay \$35,000.00 for the first three years and \$35,000.00 for the next five if the project is still going. **Commissioner Norden** stated WWL has been in contact with Susan Wyman who is the Black Range hydrogeologist and sampling of various domestic water wells in the neighborhood of the Taylor Ranch and the Tallahassee area has already begun.

**Commissioner Norden** moved to authorize the chairman to sign the contract with Western Water and Land (WWL) for the oversight of hydrogeology which would include the scope of work agreed upon between the Board and Western Water. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Stiehl; aye. The motion carried.

**REQUEST: TUP 07-007 PENROSE CHAMBER OF COMMERCE APPLE DAY**

Request approval of a Temporary Use Permit to allow the Apple Day festivities by the Penrose Chamber of Commerce. The events will be held in downtown Penrose (Broadway from Elm to Illinois and ½ block south on Grant, and Fremont Street from Broadway to one block north) on Saturday, October 4, 2008, from 7:00 A.M. to 4:00 P.M.

REPRESENTATIVE: William McGuire, Penrose Chamber of Commerce

**William McGuire, Penrose Chamber of Commerce**, stated the theme for this year is Orchard of Celebration which was chosen by the Penrose school pupils. 4-H will be

helping with the clean up. Mr. McGuire stated there are a lot of vendors participating, flight for life will be there and they have a large number of entries for the parade.

**Planning and Zoning Director Bill Giordano** stated the Chamber has submitted all the minimum requirements for TUP application. The action required today is they need approval of the event. The Chamber is requesting a waiver of the application fee, the clean up fee and acceptance of the liability insurance which is the same as last year.

**Commissioner Norden** moved to approve TUP 07-007 for the Apple Day festivities on Saturday, October 4<sup>th</sup> waiving the application fee, clean up fee and approval of the insurance submission. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

**REQUEST: PP 08-001 MAPLE LEAF ESTATES FILING NO. 3**

Request approval for a three (3) lot preliminary plan, Department file #PP 08-001 Maple Leaf Estates, filing No. 3, by Edward & Linda Jarosz, for their property which is located southeast of the intersection of Windsor Avenue and York Street, on the east side of York Avenue, in the North Canon Area. Lot 1 is vacant and Lot 2 contains an 84 by 20 foot stall. Both will contain 3.98 acres. Access to Lots 1 & 2 will be along York Avenue with access to Lot 3 being via a 30 foot wide access easement from Reservoir Road. The property is zoned Agricultural Suburban and contains approximately 10.01 acres.

REPRESENTATIVE: Matt Koch, Cornerstone Land Surveying, LLC

**Matt Koch, Cornerstone Land Surveying**, stated they are requesting a three lot split of ten (10) acres in the north part of town on the intersection where Windsor meets York. The split was approved five years ago but the improvements were never completed and expired.

**Planning and Zoning Director Bill Giordano** stated an issue that came up is “Mr. Sandoval moved to request that the County Board of Commissioners take under advisement as to seeking some type technical advice in regard to water availability situations between the Special District and the State Engineer”. The statement was made because the State Engineers office is questioning the availability of water that Park Center say they have. We have consistently, the last two to three final plats at least, tried to address this because Park Center continues to say they will provide the service. We ask to have a statement on the final plat that the sub divider, owner, seller, etc. will provide the potential purchasers of any of the lots with a copy of the State Engineers opinion letter dated June 5, 2008 concerning public water service from Park Center District prior to the sale. Director Giordano stated the County Engineer has concerns about drainage. We have asked to have a statement on the plat concerning the debris flow of the lot specific soil site investigation. Aquila has requested that all existing power lines and existing easement right of ways for Aquila transmission electrical distribution facility be shown on the plat. We normally do not request this. We do ask to the right-of-way shown on one of the drawings. Some right-of-ways are not permanent.

**Commissioner Norden** inquired when the filing was approved previously. **Director Giordano** stated in 2003 with similar contingencies. Commissioner Norden stated they had approval of water from Park Center in 2003 and now. Mat Koch stated yes.

**Commissioner Stiehl** inquired about the individual sewage. Mr. Koch stated there is no public sewage available in the area so there will be individual septic systems for each lot.

**Commissioner Norden** stated that in regard to the water issue it is the Boards’ obligation to recognize Park Centers Water District and their Board of Directors proof of water.

Commissioner Norden moved to approve the Preliminary Plan for Maple Leaf Estates Filing No. 3 with Recommended Contingencies #1 through #7, #9 through #12 and #14 as presented and authorization of the Waiver Request as listed. Recommended Contingencies #8 and #13 deleted having been satisfied. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Stiehl, 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

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eighteen (18) months after approval of the application by the Board of County Commissioners:

1. Statement on the final plat that the sub divider/owner/seller/etc. will provide the potential purchasers with a copy of the state engineer's opinion letter dated June 5, 2008, concerning public water service from Park Center Water District, prior to the sale.
2. Documentation as to compliance with any requirements of the County Engineer concerning the following:
  - a. Culvert sizes and slope are needed for the driveway culverts. The culvert for lot 2 will require design details for the ditch along the north side of the long driveway, to divert flow into the York Avenue ditch without causing erosion.
  - b. An estimate of the difference between the storm water flow from existing ground and the developed area is needed, along with the engineer's proposal to detain one-hour's quantity of that increased flow.
3. The final plat shall contain the following statements:
  - a. A report investigating the effects of a possible debris flow event and proposed mitigative measures should be evaluated prior to issuance of the building permit.
  - b. A "Lot-specific foundation investigation and subsurface testing should be conducted prior to issuance of a building permit to determine subsurface geologic characteristics that may impact foundation design (expansive soils, shallow groundwater, etc.). Appropriate mitigation methods should be incorporated into the designs to accommodate specific geologic conditions". Foundation drainage should be incorporated into all building designs with subsurface elements within 4 feet of the seasonally high groundwater level. Establishing positive grading away from structures will allow water to move away from structures rather than potentially developing problems along the foundations.
4. As per letter from Aquila, dated June 18, 2008, the final plat shall provide for the following:
  - a. A 10-foot wide easement on road frontages.
  - b. Existing power lines and existing easements / rights of way for Aquila transmission and electrical distribution facilities should be shown on plat.
  - c. The Developer shall provide Aquila with a 15-foot easement for the existing electrical facilities. If the Developer desires Aquila's facilities to be removed or relocated, the Developer will be responsible for the total cost incurred in either the removal or relocation process.
5. Proof of purchase of water taps or documentation for all lots. If water taps are not purchased and water main is not installed prior to recording of the final plat an improvement and escrow agreement may be provided. Proof of purchase will be required prior to release of escrow funds and/or recording of the final plat. (May be a contingency item).
6. Fire hydrants as required by the Cañon City Area Fire Protection District as per fire protection form dated June 10, 2008, which are as follows: (May be contingency items).
  - a. A fire hydrant with a minimum flow of 750 gpm will be required on Lot 1 at the northwest corner of the lot on York Avenue.
  - b. A fire hydrant with a minimum flow of 750 gpm will be required within 400' of the building site on Lot 2, measured along an approved route. The approved

route shall be along an all-weather road 26' in width, capable of supporting 50,000 lb. fire apparatus. Any fire access roads in excess of 150 feet must have an approved fire apparatus turn-around.

- c. A fire hydrant with a minimum flow of 750 gpm will be required on Lot 3, at the southeast corner of the lot on Reservoir Road.
7. Water line plans and profiles, if applicable, (approved by Park Center Water District) including fire hydrants, (approved by the Cañon City Fire Authority) from the existing main to the site and all water lines and hydrants within the subdivision, shall be provided. (Final plat application requirement)
8. The final plat shall contain a front setback line for Lot 2. **The Planning Commission recommended deleting this contingency as the lot configuration was changed to exclude the flag lot. (ITEM #8 DELETED)**
9. A Colorado Professional Registered Engineer's estimate for installation of all improvements associated with the installation of the fire hydrants. (Final Plat application requirement).
10. Final plat shall note dedication of an additional 5 feet of right-of-way, to provide for 35 feet of right-of-way from the centerline of York Avenue.
11. A quit claim deed to the County for a right-of-way thirty-five (35) feet in width from the centerline of York Avenue. (May be a contingency item)
12. An executed ratification, consent and release form will be required for deeds of trust found at reception # 849360. The form which requires final plat information will be provided with the review of the final plat. (May be a contingency item)
13. An executed copy of the "Annexation Agreement to the City of Canon City". (Final Plat application requirement) **The Planning Commission recommended deleting this contingency as the response from the City of Cañon revealed that they had no concerns. (ITEM #13 DELETED)**
14. Proof of payment to the Colorado Geological Survey for their review fee will be a requirement of final plat approval.

**The Planning Commission recommended approval of all the following waiver requests.**

Waiver of the following requests are **GRANTED**:

1. Individual sewage report
2. Erosion Control Map and Report
3. Geologic Hazard Map & Report
4. Potential Mineral Resources Areas Map & Report
5. Wildfire Hazard Map & Report
6. Soils Boundary Map & Report

**Commissioner Stiehl** closed the regular session and opened the Public Hearing.

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**PUBLIC HEARING**  
**REQUEST: ZC 08-003 BROWN ZONE CHANGE**  
**AUGUST 12, 2008                      10:00 A.M.**

Request approval of a Zone Change from the Business Zone District to the Agricultural Suburban Zone District, Department file # ZC 08-003 Brown Zone Change, by Matthew S. Brown, for his property which is located on the north side of US highway 50, approximately 675 feet east of Swissvale Road (private road), in the Swissvale Area. The property currently contains two storage buildings. The applicant proposes to construct a new single-family dwelling on the property upon receiving approval of the zone change. The property to be rezoned contains 3.5 acres.

REPRESENTATIVE: Greg Powell, Esq

Matt Brown stated he is the owner of the property located in Swissvale and is requesting zone change from Business to Ag Suburban to build a house on it.

**Commissioner Norden** inquired what the current use is of the property. Mr. Brown stated he intended to build a house to live in with his family. The property is approximately three and one half acres on the Arkansas River. Mr. Brown showed the site plan for the house with the access to the property. **Commissioner Stiehl** stated the property is currently zoned Business and is surrounded by Ag Suburban with the exception of the lot that is fronting HWY 50 which is zone Business.

**Planning and Zoning Director Bill Giordano** stated the applicant has notified all property owners within five hundred feet, posted the property and published in the newspaper. The July 1<sup>st</sup> Planning Commission Meeting recommend approval of the zone change. One contingency item is a deferral of the pecculation test until the time of Building Permit when the single family dwelling will be constructed. There was a concern by the County Engineer who would like documentation for the access to the site from the Department of Transportation. The Engineer would also like a FEMA map amendment because the line have been drawn inaccurately where there is a steep bank to the river and the concerns is that Mr. Brown may have to get flood insurance on property that is not in the flood plain. The Planning Commission has recommended that the Board consider the storage shed located on the southeast corner that does not meet set backs to be nonconforming use due to a 2001 lot line adjustment. In most cases such as storage shed, that are easy to move, we ask that they be brought into compliance. The extenuating circumstance with the storage shed is they are claiming that we did not ask them to move it with the lot line adjustment was done, which I am not sure is appropriate because that was not really a subdivision at that time, it was an administrative process. The owner states he will lose the building if it had to be relocated so they are asking for a waiver of the requirement that it has to comply and leave it as nonconforming. Additional notifications have been completed as well as notification of property owners. This will require a resolution and justification and findings for approval.

**Commissioner Norden** inquired as to how long the property has been zone business. Mr. Brown stated to his knowledge it dates back to the 80's. Commissioner Norden inquired if it ever had any business uses. Mr. Brown stated it was a campground. Commissioner Norden inquired what the HWY 50 frontage was. Mr. Brown stated one hundred feet. Commissioner Norden stated the HWY 50 frontage does not offer much for business development. Mr. Brown stated that it does not as far as visibility.

**Commissioner Stiehl** inquired about the FEMA designation for the river. Mr. Brown stated that there is a forty foot steep bank down to the river and he is aware that he may have to have flood insurance until the map can be corrected.

**Commissioner Stiehl** asked for public comments.

**Kathleen Baker** purchased the property in front from Mr. Brown to open a clock repair and clock history museum. Ms. Baker stated that she purchased the property because it was zone business but has not been able to acquire a business license from the state because of insufficient acreage and county regulations. **Commissioner Norden** stated that the hearing was for if the neighborhood is served by Mr. Brown's requested zone change and whether you feel that you would be affected. Ms. Baker stated that she did not have a problem with the zone change.

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**Commissioner Stiehl** inquired when the lot line adjustment was done. **Mr. Brown** stated it was done in 2001. Mr. Brown stated he changed the property from three lots into two lots. **Director Giordano** stated that any time on a lot that is nonconforming that exists, when they do a lot line adjustment, they cannot increase the degree of nonconformity. In this case the lot probably got less nonconforming. He stated that he was not sure that the business zone district does not allow two acres as a minimum. **Commissioner Norden** inquired if the approval of this zone change would affect the nonconformity of Ms. Baker's lot one way or the other. **Director Giordano** stated no, that the lot is an existing nonconforming lot of record and the regulations are specific on nonconforming lots of record. Permits will be issued on the lot provided they meet the minimum setbacks and the development requirements of the zone district.

**Commissioner Stiehl** closed the Public Hearing and returned to regular session.

**Commissioner Norden** moved to approve ZC 08-003 for the Brown Zone Change with the findings a statement of justification Item D The proposed zone change will be in conformance with comprehensive master plan for the area. Under Item 2 C. D. and E no affect on existing traffic, no affect on adjacent uses the proposed development will be in harmony and compatible with the surrounding land uses. Commissioner Stiehl seconded the motion.

**Director Giordano** inquired about the contingencies. **Commissioner Norden** stated to adopt Contingencies #1 and #2 as written and adopt the Planning Commission recommendation to allow the nonconforming use of the shed. **Resolution #51, 2008 ZC 08-003 Brown Zone Change.**

Upon vote: Commissioner Norden, aye; Commissioner Stiehl, 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:

1. Applicant has requested that the percolation test be deferred to the time of building permit submittal. **(GRANTED)**
2. Documentation as to compliance with the following requirements as per the County Engineer's review letter dated June 3, 2008:
  - a. Documentation from the Colorado Department of Transportation as to access to the site.

Note: The applicant is encouraged to apply to FEMA for a Letter of Map Amendment, to remove the building site from the designated floodplain.

3. The wood frame shed used for storage on lot 1 shall be removed or relocated on the lot so as to comply with all minimum setbacks of the Agricultural Suburban Zone District. **The Planning Commission recommends that the Board strongly consider allowing this non-conforming use due to the 2001 Lot Line Adjustment. (GRANTED)**

**Recommended Additional Notifications: COMPLETED**

1. Fremont County Road Foreman, District 3
2. Fremont County Sheriff's Office
3. Colorado Department of Transportation (Region 5)
4. Arkansas Headwaters Recreation Area

**Commissioner Stiehl** adjourned the meeting at 10:45 A.M.

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County Clerk