

August 28, 2007

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SIXTEENTH MEETING

The Board of Commissioners of the County of Fremont, State of Colorado, met in Regular Session on August 28, 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; Bill Giordano, Planning and Zoning Director and Kris Lang, Deputy Clerk.

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

APPROVAL OF AGENDA

Finance Director, Dana Angel advised the Project Closeout CDBG Starpoint Building Acquisition Public Hearing is scheduled for 10:00 AM on the Agenda. The public notice issued reflects the time as 10:30 AM. **Commissioner Norden** announced the Public Hearing will start at 10:30 AM.

Commissioner Lasha made a motion to accept the Agenda as revised. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Stiehl, aye; Commissioner Norden, aye. The motion carried.

CONSENT AGENDA

Commissioner Stiehl stated he had two minor language changes on the Minutes of August 14, 2007. He addressed Page 3 (Coyote's Coffee Den Extension of Paving Requirements). The minutes reflect the motion was seconded by Commissioner Stiehl who commented that he was not in favor of dust control hard surfacing unless it was absolutely necessary. Commissioner Stiehl revised the minutes to read that he was not in favor of hard surfacing unless it was absolutely necessary. He addressed Page 8 (CUP 07-001 Holcim Inc.). The minutes read Commissioner Stiehl stated he was going to vote against the CUP because he does not feel it is compatible with the area and it is at odds with the vision of the future. He revised the minutes to read that he was going to vote against the CUP because he does not feel it is compatible with the area and it is at odds with the vision for the future including tourism.

Commissioner Stiehl moved to approve the Consent Agenda as amended.

1. Approval of Minutes, August 14, 2007
2. Approval of Bills August 28, 2007/ \$465,011.16

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

ADMINISTRATIVE/INFORMATIONAL

1. Staff/Elected Officials

Commissioner Lasha reported Siloam Road experienced a flood wash-out and the road and bridge crews have not been able to address the repair. The repair project has gone out for bidding and those bids are presently being reviewed. He advised the repairs would require some road closures and that the public would be notified and thanked the residents for their patience.

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Commissioner Stiehl reported that the Upper Arkansas Water Conservancy District does not include the eastern two-thirds of Fremont County at this time. He advised the judge has approved a ballot question to present to the voters this November 2007. The election ballot would include the eastern portion of Fremont County as part of the Upper Arkansas Water Conservancy District. He announced an organizational meeting is scheduled at 1:00 PM this date at the bank in the Penrose area. He stated the Board of Commissioners are in support of the proposed inclusion.

Commissioner Norden remarked heavy rains and wash-outs on the west-end of the County have taxed the road and bridge department. He said there was a severe wash-out on the portion of Bear Creek Road that comes into Fremont County from Chaffee County. He reported it will be a few weeks before repairs can be scheduled.

Commissioner Norden acknowledged the passing of Marge Boughan a long time member of the Fremont County Fair Board. He commended all her efforts and years of service and said she will be greatly missed.

2. Citizens Not Scheduled

Attorney, James Potter stated he was representing the concerned citizens in Coaldale. He requested the Board of Commissioners revisit its decision of August 14, 2007 to allow the reopening of the Holcim mine in Coaldale. He advised that he had sent a letter to the Board indicating they believe Commissioner Lasha may have a conflict of interest with regard to the vote. He asked that the vote be revisited and rescinded until they can determine whether or not there is a true conflict of interest in this case.

Commissioner Norden stated the Board has noted the comments and are also in receipt of the letter by mail and e-mail. He advised the public hearing is on record from the August 14, 2007 meeting and any disclosures were made at the meeting. He asked if any other commissioners or staff want to address the issue today. Hearing none, Commissioner Norden advised he was not going to press for any change in the schedule of the agenda. Mr. Potter said with respect to the reopening of the mine, no rights have been vested since the conditional use permit has not been issued. He advised the Board that it is within their power to revisit that issue and determine whether or not that vote should be retaken. **Commissioner Lasha** stated he made the disclosure at the August 14, 2007 as not having a conflict and hasn't changed his opinion as of today.

Susan Patterson, Coaldale Resident extended thanks to the Board of Commissioners for allowing the citizens to speak and reviewing their comments and correspondence. She said that they are disappointed in the outcome and hoped the Holcim representatives were honorable and sincere and that she looked forward to working with them in trying to make the best of what is a very tragic and bad situation. She remarked there is a saying out here in the west. If mama ain't happy, ain't nobody happy and wanted the Commissioners and the Holcim representatives to know that if Coaldale ain't happy with the fulfillment of these conditions, they would be sleeping on the proverbial political sofa for many nights to come.

Rolf Sigford, Coaldale Resident asked how they could find out if Holcim, Inc. is presently conducting any other business or leasing out the property at the Coaldale site and whether that complies with the zoning regulations for that area. **Commissioner Norden** advised the question could be reinstated on request following the discussion of the conditions.

OLD BUSINESS:

RESOLUTION #39 CONDITIONS FOR APPROVAL, FILE CUP 07-001 HOLCIM, INC., - COALDALE GYPSUM QUARRY (Continued from August 14, 2007 BOCC meeting.)

Commissioner Norden announced the Board of Commissioners met with staff on August 20, 2007 to review the drafted conditions. A copy was distributed to Holcim, Inc. and Mr. Sigford by August 23, 2007 and Holcim did respond on August 27, 2007.

Bill Giordano, Planning and Zoning Director summarized the proposed conditions. The term of the CUP shall be for thirty-five years. The Department shall review the permit annually. The applicant shall conform to all drawings, plans and comply with all laws and regulations. All loads and material will be hauled with applicable Colorado Revised Statutes. The days and operations are limited Monday – Friday 8am to 6pm. The number truck trips shall not exceed twenty (20) per day. If the Conditional Use Permit is abandoned, discontinued or terminated the applicant will advise the County and if the CUP is to be transferred that it comply with all applicable Federal, State and Local regulations. The County retains the right to modify any of the conditions if there are problems or violations. Only the named party on the permit shall be allowed to operate this CUP. Prior to mining the submission of permits or licenses are required: Department of Natural Resources (DOW), Colorado Department of Public Health and Environment, Air Pollution Control, Water Quality Control Division, Colorado Division of Water Resources US Department of Labor, Mine Safety and Health Administration, US Army Corp of Engineers, CDOT access permit. The paving of CR 6 from mine site entrance to US Highway 50 as specified by the Road Foreman or County Engineer before the year 2010. The applicant shall be financially responsible for all traffic and road signs. The applicant shall provide issuance of an acceptable sewage disposal system, building permit and well permit. The applicant shall comply with the recommendations of the Colorado State Forest Service and Deer Mountain Fire Protection District. The application of a chemical dust suppressant on the access road from CR 6 to the site is required along with the installation and monitoring of wind recording equipment. The applicant shall maintain a list of all blasting reports as required by the Colorado Division of Mining, Reclamation and Safety to the Department not to exceed ten blasts per year and to develop a plan which provides notification to the residents of the date and time when blasting will occur. Mr. Giordano addressed the recommended contingency of compliance documentation from the Division of Wildlife or Department of Natural Resources.

Mike Toelle, Holcim (US) Inc., requested clarification on Condition B: that the holder of the CUP shall submit other permit, licenses, or the like, as required on Condition E. **Bill Giordano** responded the submission was for expired permits, licenses or the like.

Commissioner Norden reported the Board would review each of Holcim's submitted responses. He addressed Condition G: days and hours of operation limited from Monday through Friday from 8 AM to 6PM. Holcim responded that the condition is unacceptable since the shorter time frame increases the traffic density of the haulage operation. Additionally limiting the hours may extend the duration of the mining operation in each year and they are requesting the hours be setback to the original 6 AM to 6 PM. **Commissioner Lasha** proposed hours from 7 AM to 6 PM and the Board and the representatives of Holcim, Inc. agreed. **Commissioner Stiehl** commented that even though the mining operation has been in operation for years in the past it is now in the middle of a residential area requiring consideration of the residents who live in the area.

Commissioner Norden addressed Condition L: that only the named party on the permit shall be allowed to operate the CUP. Holcim responded that the condition is unacceptable since they are the primary operator and accept full responsibility and accountability. Holcim proposed alternate language that only the named party on the permit and its designated contractors, sub-contractors shall be allowed to operate this CUP. **Commissioner Stiehl** commented that he preferred the alternate language as proposed. The Board and the representatives of Holcim, Inc. agreed to adopt the alternate language as a condition.

Commissioner Norden addressed Condition N: requiring the paving of CR 6 from mine site entrance to US Highway 50 as specified by the County Road Foreman or County Engineer to be completed by September 1, 2010. Holcim responded that the condition is unacceptable. They have met with the County Road Foreman and discussed the needed repairs. Holcim is proposing a payment to the County of \$30,000 in 2007 for the repair of the county road and another \$30,000 in 2008 for the purpose of chip-sealing the county road.

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Commissioner Norden explained that the Board's intent on the proposed 2010 date was to allow time to determine what kind and type of impact truck traffic would have on the road and subsequently receive determinations from the County Road Foreman and the County Engineer on the appropriate repair and maintenance. **Commissioner Stiehl** stated input would be necessary from the County Engineer as well as the Road and Bridge Foreman. He acknowledged the present and future heavy traffic vehicles that are not associated with the operation and understood Holcim's concern in not being responsible for the total road maintenance. He explained that due to Tabor the County could end up with revenue limitations by accepting the \$30,000 and subsequently end up refunding it to the taxpayers. **Commissioner Norden** asked if the \$30,000 figure was initiated by the Road and Bridge Foreman, Paul Garrett. Mr. Toelle responded that it was. Commissioner Norden advised that the Road and Bridge Foreman has not communicated or informed the Board of any preferences or solutions. **Commissioner Lasha** proposed returning to this condition at the end of the review.

Commissioner Norden addressed Condition V: requiring that the applicant apply an acceptable chemical dust suppressant on the access road from CR 6 to the site and on portions of the site as needed. Holcim responded the condition is unacceptable since this requirement is enforced by the Colorado Department of Public Health and Environment. Mr. Toelle stated this condition is redundant since it is enforced by the State of Quality Control Division. **Commissioner Stiehl** commented it is more than likely that the State will address dust pollution and particulates; however in the event the concerns of the County are overlooked in the permit, the condition enforces the requirement. **County Attorney, Brenda Jackson** explained the ultimate objective is to control dust and said if the State standards are less than what the County feels is necessary for dust control, this allows the County additional control. Commissioner Norden proposed leaving the language as is. The Board and the representatives of Holcim, Inc. agreed.

Commissioner Norden addressed Condition W: requiring the applicant install a wind monitoring and recording system. Holcim responded the condition is unacceptable since that is enforced by the Colorado Department Health and Environment. **Michael Toelle, Holcim (US) Inc.** stated it is the same issue as previously addressed. **Jason Morin, Holcim Florence Plant Manager** stated they were not against the condition itself but were trying to eliminate duplicative permit requirements. **Commissioner Stiehl** reported he has been in contact with Robert Jorgenson of the Colorado Department of Health and Environment and wind recording is not a State requirement. Mr. Jorgenson suggested that an hourly average wind temperature be recorded and that Holcim, Inc. present the proposed type of equipment and method of recording to the BOCC. The Board can then submit it to him for review. Commissioner Stiehl remarked the original condition had been modified removing the cease operation requirement due to high wind since the County does not want to be continued regulator. He said this type of recording would be beneficial for historical use. Commissioner Norden asked if there was any interest by the Board to remove the language in Condition W. **Commissioner Lasha** said he would like to keep the Condition W but proposed adding the language that the records are made available upon request to both Condition W and Condition X. The Board and the representatives of Holcim, Inc. agreed.

Commissioner Norden referred to Condition P and stated the Board did not have any objection to dropping the word applicable and replacing it with County Road 6 and County Road 45 as requested by Holcim, Inc.

Commissioner Norden returned to Condition N. **Jason Morin, Holcim Inc.** stated the biggest concern was having an open-ended requirement that is not defined. He remarked that Holcim, Inc. financial obligations need to be outlined to determine accurate future projection. **Commissioner Lasha** proposed terminology requiring the paving of Fremont County Road 6 from the mine site entrance to US Highway 50, specifying a three (3) inch asphalt overlay to be completed by September 1, 2010. **Commissioner Stiehl** added that the projected work should be coordinated with the Fremont County Road and Bridge Department. The Board and the representatives of Holcim, Inc. agreed.

Michael Toelle, Holcim Inc. commented on the Contingency requiring compliance documentation on the recommendations from Jim Aragon, Colorado Division of Wildlife. He explained the letter was reviewed and questioned by the Division of Reclamation, Mining and Safety and was incorporated into the permit. **Commissioner Lasha** advised the contingency has been removed.

Commissioner Norden addressed Condition Y: limiting blasting to ten (10) per year and that Holcim, Inc. shall develop a plan which provides a location where the notice is to be posted with the date and time that blasting will occur. The Board agreed that Holcim, Inc. would be responsible for implementing and notifying citizens of the blasting schedule.

Commissioner Stiehl addressed the whereas and findings of the Resolution. He questioned Finding B stating that the location of the proposed use is compatible with other land uses in the area and does not place an undue burden on existing transportation, utilities, and service facilities in the vicinity, except as otherwise noted. He remarked there were plenty of findings to justify the decision that was made but he does not believe the use is compatible with other land uses in the area. He read Finding E that the proposed use, if it complies with all conditions on which this approval is made contingent, will not adversely affect other property in the vicinity or the general health, safety and welfare of the inhabitants of the County, and will not cause significant air, water, noise or other pollution. Commissioner Stiehl said he was not comfortable with these Findings and recommended striking Findings B and E from the Resolution.

Commissioner Norden reminded the audience that the Public Hearing concluded two weeks ago and asked if anyone had any clarification questions regarding the conditions.

Susan Patterson, Coaldale Resident asked if other businesses in the same area are going to be bound by the rules governing the use of the roads and are those trips taken into account in the traffic calculations. **Commissioner Norden** responded that any traffic will need to comply with any posted traffic signs and that all the traffic trips were calculated. He clarified the conditions on the permit specifically relate to the applicants operation. Ms. Patterson asked if Holcim owned the haul road from the mine to CR 6. **Mike Toelle, Holcim, Inc.** responded that Holcim does own the road; however, there is a legal easement for property access. Ms. Patterson asked for a definition of what is considered a high wind for ceased operation. Commissioner Norden responded that item was removed although Holcim would be required to install a wind monitoring and recording equipment. She asked for clarification regarding the CDOT access permit. Commissioner Norden responded the application for the CDOT access permit would be signed following the completion of conditions. He advised the CDOT access permit has been added to a long series of various State and Federal Agencies for review and the applicant will also be required to provide documentation as to compliance with any requirements of CDOT.

Rolf Sigford, Coaldale Resident questioned how many other businesses are operating and how many would be allowed to operate at the site under the conditional use permit. **Mike Toelle, Holcim, Inc.** stated the property was previously owned by Georgia Pacific and they leased three (3) buildings on the site. Holcim, Inc. has terminated two of the leases and the third is about to be terminated so there will be no other entity on site.

Karen Kennedy Marteclare, Coaldale Resident asked if it is Holcim's responsibility to install stop signs at CR 6 and CR 45. Commissioner Norden responded the language for Condition P states the applicant shall be financially responsible for any speed limit signs, stop signs, truck entering signs, etc. on CR 6 and 45, as required by the County Road Foreman, prior to hauling. The County will prepare and install all signs. He suggested installing a thirty-five mile per hour speed limit sign for the northbound traffic leaving the haul road onto CR 6. Ms. Kennedy Marteclare asked what type of road repair and maintenance would be available until the year 2010. Commissioner Stiehl responded that the road will be maintained as a county road.

Commissioner Lasha said he felt the location of the proposed use is compatible with other land uses in the area since it is being built in a quarry that has been used in the past. He made a motion to approve the CUP 070-001 Holcim, Inc. – Coaldale Gypsum Quarry with the conditions as discussed and the removal of the contingency. The motion was seconded by Commissioner Norden.

Commissioner Stiehl remarked that he is satisfied with the amended and revised conditions, however, is still not satisfied with language and the findings that the land use is compatible. He stated in the fifteen (15) years that the mine has been inoperative the land use has changed. He commented that in the future, the evolving uses of land in Fremont County should be considered. Commissioner Stiehl stated he will be voting against the CUP even though he is in agreement with the conditions.

Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, nay. The motion carried with the **Adoption of Resolution #39**.

PUBLIC HEARING
PROJECT CLOSEOUT CDBG STARPOINT BUILDING ACQUISITION
AUGUST 28, 2007 11:00 A.M.

Finance Director, Dana Angel advised the Public Hearing is a required formality of the Federal Funds for the Community Development Block Grant Program.

Commissioner Norden reported the grant money was received by Starpoint. He asked for any public comments. Hearing none he closed the Public Hearing and return to Regular Session.

NEW BUSINESS:

GRANT PRESENTATION TO STARPOINT FOUNDATION

The Board of Commissioners presented the CDBG check in the amount of \$350,000 to Starpoint Director, Roger Jensen. Mr. Jensen thanked everyone for their support and advised the facility is primarily the adult center for day programs but also houses the administration and case management offices. He announced invitations for the 30th Year Celebration scheduled on September 29th will be forthcoming.

APPOINTMENT OF PLANNING COMMISSION MEMBER TO A THREE-YEAR TERM FOR THE SEAT CURRENTLY HELD BY KEITH MCNEW

Commissioner Norden advised the Board of Commissioners interviewed four (4) well-qualified applicants for the Planning Commission vacancy. He said the Board attempted to follow guidelines and appoint an individual with western Fremont County connections to ensure that all sections of the County have a voice on the Planning Commission. **Commissioner Stiehl** commented all the applicants were outstanding and urged them to watch for future vacancies.

Commissioner Lasha made a motion to appoint Keith McNew to the Fremont County Planning Commission for another three year term. The motion was seconded by Commissioner Stiehl. Upon vote: Commissioner Lasha, aye; Commissioner Stiehl, aye; Commissioner Norden, aye. The motion carried.

Commissioner Norden adjourned the Meeting at 11:15 A.M.