

SEPTEMBER 9, 2009

1

SEVENTEENTH MEETING

The Board of Commissioners of the County of Fremont, State of Colorado, met in Regular Session on September 9, 2009, 615 Macon Avenue, Room LL3, Fremont County Administration Building, Cañon City, Colorado. Commissioner Chairman Michael J. Stiehl 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 Bill Giordano, Planning and Zoning Director; George Sugars, County Manager, and Tina Taylor, Deputy Clerk.

There was a moment of silence for our troops overseas.

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

APPROVAL OF AGENDA

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

CONSENT AGENDA

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

1. Approval of Minutes August 25, 2009
2. Approval of Bills, September 9, 2009 / \$ 716,206.78
3. LIQUOR LICENSES / None

ADMINISTRATIVE/INFORMATIONAL

1. Administrative and Elected Officials

County Manager Sugars stated this week was a shortened work week due to Labor Day on Monday, our furlough day on Tuesday and the fourteen (14) hour day scheduled for saving energy by closing on Friday. He asked the public to be patient with our county staff because we only have two days to process a lot of work.

Commissioner Lasha related that there on a couple of big events coming up in District 2. Pioneer Day on September 19th which has been a big event in Florence for 50 years and on October 3rd is the Apple Day Parade in Penrose.

Commissioner Norden stated the State of Colorado has withdrawn the availability of funds from several funding grant programs including the Mineral Impact Grant program for the fall application cycle. A program that has been beneficial to us for many years is the Gaming Impact Grant dollars. Fremont County is a neighboring county to Teller County and the original legislation made Gaming Impact dollars available to us. We have relied on the funds repeatedly through the years to maintain roads to Cripple Creek, High Park Road, Garden Park Road and Phantom Canyon. Our application that was submitted earlier this spring was for not because of the State's budget problems. All of the funds have been removed from the Department of Local Affairs for distribution to local governments. \$5.5 million dollars that was to be available at this end of this month for distribution to the gaming and neighboring counties has been withdrawn.

2. Citizens Not Scheduled - None

NEW BUSINESS

ASSIGNMENT OF AIRPORT LEASE FOR HANGAR 12-E

County Attorney Jackson stated that she has reviewed the assignment and it is acceptable. It is not really a county matter except that any of the hangar leases at the airport require Board of Commissioners approval before they can be transferred. This is a request for a transfer from David Johnson to Robert P. Pierotti.

Commissioner Lasha moved to approve the assignment of the airport space for Hanger 12-E from David Johnson to Robert P. Pierotti. Commissioner Norden seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

RATIFY APPROVAL OF SIGNAED CONTRACTS BY PRO-TEM FOR THE ENERGY AND MINERAL IMPACT GRANTS OF PATHFINDER PARK ENGINEERING AND PURHCASE OF PLOW TRUCKS.

County Manager Sugars stated that we were fortunate to get two (2) Energy Impact Grants. One is for the plow trucks for \$200,000.00 in grant money. We have to match the grant dollar for dollar. We will purchase three (3) plow trucks to keep our fleet going and to maintain our roads. We also received \$21,500.00 for the engineering at Pathfinder Park for a water line. We have signed the contracts but it needs ratification.

Commissioner Norden stated that we had just submitted the application for the water line design contract at Pathfinder Park when we had learned that the fall cycle for the Energy and Mineral Impact grants was being canceled. The application for \$21,000.00 instead of going through the typical review panel for the Energy and Mineral Impact went directly to the executive director of the Department of Local Affairs. An administrative decision was made to award the grant. In the chairman's absence I signed the contract so a motion needs to be made to ratify my signature.

Commissioner Lasha moved to ratify the approval of the signed contracts by pro-tem Commissioner Norden for the Energy and Mineral Impact grants for Pathfinder Park engineering for the water project and purchase of the snow plows. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Stiehl, aye; Commissioner Norden, aye. The motion carried.

A RESOLUTION TO ESTABLISH SPEED LIMITS ON ASH STREET BETWEEN REYNOLDS AVENUE BRIDGE AND ELM AVENUE

County Manager Sugars stated speed studies were undertaken between Ash Street and Reynolds Avenue Bridge. It was determined in the study that eighty-five percent (85%) travel between 35 mph and 40 mph in this stretch of road. Our recommendation to the Board is to post it at 35 mph for a safe speed. Presently the speed limit is 30 mph.

Commissioner Stiehl stated that the eighty-five percentile is a well established bench mark in the traffic engineering field. It measures what drivers typically drive. It has been proven many times the eighty-five percentile is a safe speed. People can drive a prudent speed on a road given the conditions of the road, sight and traffic.

Commissioner Lasha moved to approve **Resolution 41, Series 2009** to Establish Speed Limits on Ash Street between Reynolds Avenue Bridge and Elm Avenue at 35 mph. Commissioner Norden seconded the motion. Upon vote: Commissioner Lasha, aye, Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

A REOLUTION ESTABLISHING A PROCEDURE FOR HEARING BEFORE THE BOARD OF COUNTY COMMISSIONERS REGARDING ADMINISTRATIVE PENALTY IMPOSED FOR FAILURE TO REGISTER MOBILE MACHINERY, SELF-PROPELLED CONSTRUCTION EQUIPMENT, OR MOUNTED EQUIPMENT (SPECIAL MOBILE MACHINERY (SMM) REGISTRATION)

County Attorney Jackson stated the County is going re-initiate its active enforcement of SMM penalties which is on mobile machinery and equipment. Essentially this is for off road equipment that is used off the property owner's property and is not listed on Assessor's Personal Property Schedule. The statue under SMM requires the County to impose a \$500.00 penalty or three times the amount of the SMM tax on any equipment that has been operated in the County without having been properly registered. The

equipment has to be operated to impose the penalty. The statute that allows the penalty does not provide a procedure for appealing the penalty. The Court of Appeals last year issued an opinion in a Rio Blanco County case that said if a county does not adopt a procedure for appeal of the SMM penalty, then the penalty cannot be validly imposed. It is the responsibility of the county to come up with a procedure so that if any one who questions the validity of a penalty has an option to appeal it. The resolution before you provided for the procedure for appeal, essentially say that if it is assessed the taxes have to be paid that are due and any other late charges. If there is a disagreement with the administrative penalty they can appeal to the Board of Commissioners. The Commissioners can hear evidence and testimony about the operation of that equipment and decide if the penalty should be imposed. If the owner of the equipment wants to appeal from there it would go under Rule No. 106 of the Rules of Civil Procedure to the State District Court. The penalty can not be enforced by motor vehicle personnel. The statutes states it must be imposed by a peace office which means SMM enforcement office, Sheriff's Deputies, Port of Entry Officers or any one else who is classified as a peace office for this purpose. It would be imposed in the field where it is being moved without proper registration.

Jim Javernick, a resident of Cañon City, questioned if there is a fine if the machine has not been operating. Attorney Jackson stated that with all the new State legislation this year regarding past due registrations those late charges of \$100.00 can be imposed. The \$500.00 or three times the tax is imposed if you are operating.

Commissioner Norden stated that he has gone back to the notes that he taken during the meeting to draft this resolution due to a gentleman that was in his office complaining about the \$500.00 assessment. He stated that Commissioner Lasha phrase it very well in that "it is not the intent of this Board to see people assessed a penalty who show up at the motor vehicle counter to get things legally registered". The penalties would only be applying if some one was operating out in the field and avoiding properly registering the equipment.

Attorney Jackson stated the resolution states the hearing would be held in front of the Board to be held within 30 day of their request and could be during a regular BOCC meeting or specially set. The State says that you have to register the equipment every year if you own it but you do not get a penalty unless you are operating it without registration.

Commissioner Stiehl stated that they were trying to make it easier for people to come into compliance. This is not a matter of revenue for the County but more a matter of leveling the playing field for the honest contractors who are competing with the people, especially on the weekends, who were not complying. Commissioner Lasha stated this includes the out of county contractors as well.

Mr. Ross Jeffery, a Cañon City resident, inquired if this has to do with farm equipment. Attorney Jackson stated that it is exempt.

Commissioner Norden moved to approve **Resolution #42, Series 2009** Establishing the Procedure for Hearing before the Board of County Commissioners Regarding Administrative Penalties on SMM Equipment for failure to register. Commissioner Lasha seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye. The motion carried.

CAÑON CITY URBAN GROWTH BOUNDARY AREA (UGBA)

Adoption of the Resolution for the Cañon City Urban Growth Boundary Area and Annexation Priority Areas map which was approved at the August 25, 2009 BOCC meeting.

REPRESENTATIVE: Fremont County Department of Planning & Zoning

Planning and Zoning Director Bill Giordano stated the UGBA was approved at the BOCC Meeting on August 25th and it has been decided it should be done through a resolution. The department has prepared a resolution adopting the Cañon City Urban Growth Boundary Area and Annexation Priority Areas. Attorney Jackson has reviewed and approved the resolution. We need assignment and approval of the resolution.

Commissioner Norden moved for approval of **Resolution 43, Series 2009** reflecting the prior approval of this Board of the Cañon City Urban Growth Boundary Areas and maps. Commissioner Lasha seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye. The motion carried.

REQUEST: REVOCATION OF SRU 01-011 BANDERA BED & BARN

Request approval to revoke the Special Review Use (SRU) Permit for file #SRU 01-011 Bandera Bed & Barn. In a July 27, 2009 email, Mr. Bandera indicated that the bed and breakfast has not and will not reopen. Subsequently, on July 27, 2009, the Department sent Mr. Bandera a certified letter informing him that the SRU Permit will be revoked since he has decided not to open the bed and breakfast. To date we have not had any objections from Mr. Bandera. The property is located approximately 500 feet east of the intersection of County Road 3A and Pauline Drive, on the north side of Pauline Drive, in the Royal Gorge Area.

REPRESENTATIVE: Fremont County Department of Planning & Zoning

Planning and Zoning Director Bill Giordano stated that had been an SRU issued to Bandera Bed and Barn. Since that time Mr. Bandera has indicated that it will not reopen. Mr. Bandera was notified by certified mail to give him an opportunity to respond if he did not desire to have this rescinded. There is nobody here to object. We are asking for approval of the resolution to rescind the SRU. **County Attorney Jackson** inquired if it was ever opened. Director Giordano said no. Attorney Jackson stated the resolution should be to rescind instead of revoke.

Commissioner Lasha moved to approve **Resolution 44, Series 2009** rescinding of SRU 01-011 Bandera Bed and Barn. Commissioner Norden seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

REQUEST: TUP 09-008 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) on Saturday, October 3, 2009, from 7:00 a.m. to 4:00 p.m.

Misty Dawn stated this will be the 74th year for the event. We will be celebrating by having a parade and various vendors. She requested approval of the TUP to have the event October 3, 2009.

Planning and Zoning Director Giordano stated the application has been submitted and has met the minimum requirements of the regulations. The applicant is requesting to waive the application fee and clean up fee. We have had not problems in the past with clean up. They are also asking to accept the liability insurance which is the same as has been in the past.

Commissioner Lasha stated that his job for Apple Day is as a apple pie judge which he really enjoys. Commissioner Stiehl stated that this year is Penrose's Centennial. Ms. Dawn stated yes.

Commissioner Lasha moved to approve TUP 09-008 Penrose Chamber of Commerce Apple Day with the waiver of the application fee, clean up fee and acceptance of the liability insurance. Commissioner Norden seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

REQUEST: FP 09-001 CAÑON CREEK RANCH FILING V

Request approval of a **final plat for a five (5) lot subdivision**, by Susan Jeffery, Jennifer Harriman & Richard Harriman, for their property which is located to the southwest of the south end of Sunlight Way, in the Fourmile Area. Lots, 1, 2, 3, 4 & 5 will contain 10.058, 6.662, 8.546, 4.505 and 74.704 acres, respectively. Lot 1 contains a single family dwelling and all other Lots are vacant. Lot 5 will be used for future development as per the approved preliminary plan. The property contains 104.653 acres in total and is located in the Agricultural Rural Zone District.

REPRESENTATIVE: Matt Koch, Cornerstone Land Surveying

Ross Jeffery stated that he representing his wife Susan Jeffery. He is a small business man who is in the development business. Mr. Jeffery stated that he believes

unintentionally but factually the County and the City have become some what anti-growth in the way things have to be done. He does not mean it as a criticism because it is happening all over this country. Based upon the twenty eight (28) requests from the County and the ten (10) requests from the City Planner and three (3) requests from the City Engineer, we are going to respectfully withdraw our request for the subdivision. It is not economically viable. Today he is here instead to ask for a Boundary Line Adjustment between an existing lot and our proposed three lot subdivision. We have put up \$1,500.00 for the final plat for the subdivision. We have tried to meet all the requirements that relate to surveying etc. for the subdivision. He is asking the Commissioners to give him credit of the \$1,500.00 toward the Boundary Line Adjustment. There has also been a dispute for some time about a small parcel that overlaps between my property and Rodney Sanders. I will give to Rodney Sanders, who is a neighbor, a quit claim deed so that issue is resolve and not have to go through another lot line adjustment. We have overlapping deeds.

Commissioner Stiehl stated that in regards to fees we have staff time involved in the plat so a full refund or credit will be an administrative decision. We will make a decision after consulting with the Planning and Zoning Department and have this addressed separately from the proceedings today. Mr. Jeffery stated that was OK. His questions is can they use the time span and the effort that has been spent for this subdivision process and preliminary plat process to accomplish a lot line adjustment. **Commissioner Norden** inquired if the lot line adjustment was a part of the plat. Mr. Jeffery stated yes. **Director Giordano** stated that it would have taken place but the problem with this is that it is a completely separate application for a lot line adjustment versus a final plat. Director Giordano stated regarding the fees it is up to the Board. Attorney Jackson stated that we need more information about what is involved.

Commissioner Lasha inquired what duplicate efforts would have to be done by the Planning Department staff to get this going. Director Giordano stated Matt Koch would be able to utilize the drawing with different title. Title work would have to be updated. Commissioner Lasha inquired about the time line. Director Giordano stated their regulations are that they must respond within ten (10) working days. Commissioner Lasha stated that this is a reasonable request. Commissioner Norden inquired if this had to go to the Planning Commissioner. Director Giordano stated no, this is an administrative process. The only thing that might create an issue is that once they make the submittal if the Board does not approve refund or credit, then we would have to bring the plat back to the Board for an approval.

Commissioner Stiehl inquired if they were withdrawing their request for the final plat would that mean that the preliminary plat was still in effect. Director Giordano stated yes.

Commissioner Norden stated that he did not have a particular problem with crediting the application fee to the process to complete necessary paperwork to handle the lot line adjustment.

Commissioner Norden noted they have a written submittal by e-mail from Setta Moss that addressed her concerns about the wetland on the Parcel 2 on the south side of the Arkansas River and that becomes a mute point since the final plat is not moving forward.

Commissioner Stiehl adjourned the meeting at 10:35 A.M.