

**FREMONT COUNTY  
PLANNING COMMISSION MEETING MINUTES  
JANUARY 4, 2012**

**MEMBERS PRESENT**

Daryl Robinson, Vice Chairman  
Byron Alsup, Secretary  
Mike Krauth, Jr.  
Joe Lamanna  
Larry Baker  
Steve Smith

**STAFF PRESENT**

Bill Giordano, Planning Director  
Brenda Jackson, County Attorney  
Vicki Alley, Planning Assistant

**MEMBERS ABSENT**

Dean Sandoval, Chairman

**1. CALL TO ORDER**

**2. PLEDGE OF ALLEGIANCE**

**3. APPROVAL OF AGENDA**

**4. APPROVAL OF MINUTES**

- a. December 6, 2011 Planning Commission Meeting

**5. UNFINISHED BUSINESS**

NONE

**6. NEW BUSINESS**

- a. **REQUEST: VPR 11-002 NE CORNER OF BROADWAY & FREMONT STREET & THE SW CORNER OF THE ALLEY ADJACENT TO LOTS 11, 12, 13 & 14, BLOCK 50, THIRD AMENDED PLAT OF THE TOWN OF PENROSE**

Request approval of a **Vacation of Public Right of Way and alley, Department file #VPR 11-002 NE corner of Broadway and Fremont Street and the SW corner of the alley adjacent to Lots 11, 12, 13, and 14 Block 50, Third Amended plat of the Town of Penrose, by Conrad L. and Sandra S. North**. The vacation of the street rights-of-way and alley right-of-way are a portion of Broadway and Fremont Street adjacent to the SW frontages and a portion of an alley adjacent to the NE corners of Lots 11, 12, 13 and 14, Block 50, Third Amended Plat of the Town of Penrose. The property to be vacated will be used for the purpose of increasing the front setback for the house and the vacated portion of the un-maintained alley will be used for buffering. The portions of streets and alley to be vacated will be added to the lots owned by the North's through a lot line adjustment, if approved. The street vacation consists of 4,206 square feet, more or less and vacation of the alley consists of 200 square feet, more or less. The rights-of-way proposed to be vacated are adjacent to properties zoned Business.

***REPRESENTATIVE: Matt Koch, Cornerstone Land Surveying, LLC***

**b. REQUEST: CUP 11-001 CAÑON DOLOMITE QUARRY**

Request approval of a Conditional Use Permit, Department file #CUP 11-001 **Cañon Dolomite Quarry for mining of dolomite and rock and gravel, which may include drilling, blasting, on-site crushing and screening and hauling rock from the site**, by Rocky Mountain Landscape Materials (applicant) for property owned by Castle Concrete Company (lessor). The property is located *on the west side of U. S Highway 50, approximately 0.8 miles north of Tunnel Drive, west of Cañon City*. The property is vacant; however it was previously mined prior to County regulation. The property contains approximately 481 acres. The property is located in the Agricultural Forestry Zone District and the Agricultural Farming & Ranching Zone District.

*REPRESENTATIVE: Kenneth Klco, Azurite, Inc.*

**7. APPROVAL OF PLANNING COMMISSION CALENDAR**

**8. ELECTION OF FREMONT COUNTY PLANNING COMMISSION OFFICERS**

**9. ADJOURNMENT**

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**1. CALL TO ORDER**

Vice Chairman Daryl Robinson called the meeting to order at 4:04 pm.

**2. PLEDGE OF ALLEGIANCE**

Pledge of Allegiance was recited.

**3. APPROVAL OF AGENDA**

Vice Chairman Robinson asked if there were any changes, additions or corrections to the January 4, 2012 Fremont County Planning Commission Meeting Agenda.

**MOTION**

Mr. Larry Baker moved to accept the January 4, 2012 Fremont County Planning Commission Meeting agenda as written.

**SECOND**

Mr. Byron Alsup seconded the motion.

Vice Chairman Robinson called for a roll call vote, and the motion passed unanimously. (6 of 6)

**4. APPROVAL OF THE DECEMBER 6, 2011 PLANNING COMMISSION MEETING MINUTES**

Vice Chairman Robinson asked if there were any changes, additions or corrections to the December 6, 2011 Fremont County Planning Commission Meeting Minutes.

**MOTION**

Mr. Alsup moved to accept the December 6, 2011 Fremont County Planning Commission Meeting Minutes as written.

**SECOND**

Mr. Joe Lamanna seconded the motion.

Vice Chairman Robinson called for a roll call vote, and the motion passed unanimously. (6 of 6)

5. **UNFINISHED BUSINESS**

NONE

6. **NEW BUSINESS**

**a. VPR 11-002 NE CORNER OF BROADWAY & FREMONT STREET & THE SW CORNER OF THE ALLEY ADJACENT TO LOTS 11, 12, 13 & 14, BLOCK 50, THIRD AMENDED PLAT OF THE TOWN OF PENROSE**

Mr. Matt Koch, Cornerstone Land Surveying LLC, was present to request approval of a Vacation of Public Right of Way and alley, Department file #VPR 11-002 NE corner of Broadway and Fremont Street and the SW corner of the alley adjacent to Lots 11, 12, 13, and 14 Block 50, Third Amended Plat of the Town of Penrose, by Conrad L. and Sandra S. North. The vacation of the street rights-of-way and alley right-of-way are a portion of Broadway and Fremont Street adjacent to the SW frontages and a portion of an alley adjacent to the NE corners of Lots 11, 12, 13 and 14, Block 50, Third Amended Plat of the Town of Penrose. The property to be vacated will be used for the purpose of increasing the front setback for the house, and the vacated portion of the un-maintained alley will be used for buffering. The portions of streets and alley to be vacated will be added to the lots owned by the Norths through a lot line adjustment, if approved. The street vacation consists of 4,206 square feet, more or less and the vacation of the alley consists of 200 square feet, more or less. The rights-of-way proposed to be vacated are adjacent to properties zoned Business.

Mr. Koch noted that the house at this location butts right up against the existing property line. The residents want more of a buffer between the roadways and their house. This will also make the property more conforming to the requirements of the zone district. The portion of the roadway to be vacated is not maintained; it is gravel and broken up asphalt. The right-of-way is really large in this area. Originally, when Penrose was platted, there was a statue in the middle of this intersection, which was removed because people kept running into it. After the vacation, the right-of-ways will remain one-hundred (100) feet on Broadway and eight (80) feet on Fremont, which is greater than the standard, which is sixty (60) feet in most cases. We are proposing to vacate the back portion along the alley, which is also unmaintained. One area has been fenced off, and is not being used by anybody. This will be incorporated into the lots as well. As you can see on the drawing, a vacation of right-of-way was done in 1997, right across the street, and they did the same thing. They eliminated the curve and vacated the back corner. This application follows suit with that vacation.

Mr. Lamanna asked if the previous vacation was Beaver Park.

Mr. Koch answered that it was the Beaver Park Water Lot Line Adjustment, in 1997.

Mr. Lamanna asked when the right-of-way was done to begin with.

Mr. Koch answered that Penrose was platted in the early 1900's (1908, 09).

Mr. Alsup asked if the curved area is used for driving.

Mr. Koch said some people cut across there because it is there. It is not maintained. There are three or four inches of asphalt where the roadways lie, and dirt and broken up asphalt in the area of the proposed vacation.

Mr. Bill Giordano, Fremont County Planning Director, showed a video of the area.

Mr. Koch pointed out that the property owners on the south side of the street have landscaped and made a square of their property. The right-of-way has never been vacated, but they have taken it over.

Mr. Giordano summarized the Department Review. In considering an application for vacation of right-of-way, one of the criteria is that a property cannot be landlocked with no access. In this case, that is not an issue. If this vacation is approved, the applicants will be required to replat this property to include the vacated portion into their lot.

Mr. Baker asked who is the rightful owner of these properties (*right-of-ways to be vacated*)?

Mr. Koch answered they belong to the County. There are no utilities that cross any of these portions that we are trying to vacate. The residents have purchased the home and are remodeling the inside and the outside so they can move in.

Mr. Baker asked about the company, Industrial Gloves, a vendor from Colorado Springs that used the corner for approximately 20 years, which is mentioned in the comment letter from Mr. McGuire.

Mr. Koch answered that is a vendor booth that is set up one day a year for Penrose Apple Day.

**Mr. Bill McGuire, Executive Director, Penrose Chamber of Commerce**

Mr. McGuire stated that a concern is that if the corner is vacated, it might hinder some of our vendors who have been set up there. We are hoping that if that corner is vacated, the owners could put up a privacy fence and allow Apple Day to use that corner as part of Broadway. Our main concern is that we use Broadway for our vendors, and some of the vendors have been there for several years.

Mr. Steve Smith noted that the street is closed down during Apple Day. Why can't you still use the street?

Mr. McGuire answered we could but we are not sure how a vacation works, whether they would stop us from using that corner altogether.

Mr. Smith asked if the vendors use any other residents' corners.

Mr. McGuire answered they do. They are all willing to work with us. We hope this new owner will work with us too. We haven't talked to him. He showed a little hostility toward us last year.

Mr. Baker asked what the loss of revenue would be for that spot.

Mr. McGuire answered that there are about three or four spaces on that corner, so it would be approximately \$200 for the one day per year.

Mr. Alsop asked where Mr. McGuire was suggesting that the property owner put a privacy fence.

Mr. McGuire answered that if he could line up with the front of the buildings down the street, which would probably be the property line. That would still leave the street open, even if he squared the corner off. That was just a suggestion that might work out for him and everyone concerned.

Mr. Koch stated that he believes the front of the buildings (*down the street*) follow the property line, as Mr. McGuire mentioned, so if the property owner does put up a privacy fence, it should be pretty close to the fronts of those buildings.

Mr. Alsop asked if the owner wants to expand and is running into problems because of the setback.

Mr. Koch said the owner's main concern is the vehicles coming so close to the front of the house. The complaint he had with Apple Day last year is a vendor pulled in early in the morning before light with his headlights shining in their bedroom window, and making noise right out in front of the house. That, and other considerations of people walking right in front of the house, made him want to vacate this right-of-way.

Vice Chairman Robinson asked the approximate distance from the street pavement edge to the property line.

Mr. Koch answered that he didn't measure it, but it is probably about twenty feet.

Vice Chairman Robinson asked if there is room to set up their booths between the street and the property line.

Mr. Koch responded that it might be a little tighter than in years past, but he thought they could make it work.

Mr. Lamanna asked if the property owner would purchase the vacated right-of-way from the County.

Mr. Koch answered that there is no purchase involved. The County would not maintain or be responsible for anything in that area.

Mr. Giordano pointed out that the Lot Line Adjustment would make the vacated portion part of the applicant's property.

Mr. Smith asked if the County is giving the property to this gentleman, and he now does not want anybody to be on it.

Mr. Koch responded the County would give the property to him through the vacation and lot line adjustment, then he would start paying taxes on it and it would become his property, and that would give him the buffer that he would like to keep people from the front of his house.

Mr. Smith stated that doesn't sound right to me. We give somebody the property and then they want to keep everybody off of it.

Mr. Koch said that in this circumstance, with the house so close to the front, it makes sense to keep that buffer.

Mr. Smith commented that it makes sense to the landowner, because he is getting some land, but it doesn't make sense to me that we give him land and then he wants to fence it off. The best thing to do is to leave it the way it is, and then he has no rights to it.

Mr. Koch responded that the County does not maintain that portion. The owner could call requesting maintenance. The County could spend money to pave it and maintain it, which they don't want to do now. It would cost the County more money to keep it.

Mr. Smith said he thought people just encroached and the previous owners allowed that to happen. He didn't realize it was actually a (*platted*) right-of-way. I think the owner should make some concessions too, if we are going to give him something.

Mr. Koch stated that the owner will pay more property taxes. The applicants are going through the process. They are bringing the property into conformance with zoning. There are a lot of positives to this vacation. In circumstances like this, it doesn't make sense for the County to maintain this area. This is the process that we follow.

Mr. Krauth asked if the property was originally square.

Ms. Jackson answered that it was platted round.

Mr. Alsup asked if it is the Department's view that this will help bring the property into conformance, so you don't have a problem with it for that reason.

Mr. Giordano responded that would be an end result, but that is not the reason why this is being requested. From a safety standpoint, the vacation makes sense because the house is so close to the right-of-way. The house was constructed prior to regulations so there were no setback requirements.

Vice Chairman Robinson noted that in the blocks to the east, it is obvious that the buildings are next to the property lines.

Mr. Giordano stated that it is not uncommon for the setbacks to be less than required as most of these buildings in the area were built prior to regulations.

Mr. Baker asked about the property to the west. That was originally a rounded corner also, and was vacated some years ago.

Mr. Koch answered that happened in 1997, and was a vacation and lot line adjustment.

**Christine Williams, 511 9<sup>th</sup> Street, Penrose, Colorado 81240**

I don't have a problem with the owners vacating the corner but why would the County gift that portion of the property when nobody else gets free land out there? Yes, they would be paying taxes on the property, but they would be paying taxes on it whether they bought the property or not. If that's the case, then let's give everybody who lives out in Penrose fifteen or twenty feet of the roads. We live right behind a restaurant and there is a good fifteen feet out to the road which people drive on it all the time, right in front of our house, but it is part of the County. We don't come in and ask for free land. I think the owners should be required to pay whatever the land value is, and then pay taxes like everybody else out in Penrose.

Mr. Lamanna asked Ms. Jackson if that (*the applicant paying for the property that is vacated*) is an issue. Can that be asked or required?

Ms. Jackson stated that public policy says that government should not hold any property that it can't use for beneficial use by the public. Policy favors vacation of any kind of public property if there is no useful public purpose being served by the property. The statutes provide for the process for vacation. These people, I assume, paid the application fee to go through the process. If there is no useful public purpose such as access or other intended use, then governments are not supposed to hold land speculatively, and they are not supposed to make a profit, because government isn't in business to make a profit. If they could make a profit, private sector could take over those functions. If it is not serving a public purpose, then it needs to be put on the tax

rolls. The only way to do that is to divest the County of the property, and it goes to the underlying property owner. Keep in mind, when this was all platted, the County didn't pay for any of this property that was dedicated to public use. To profit from it when they take it out of public use and put it back on the tax rolls is kind of contrary to public policy. The government is not supposed to speculatively hold property for profit. That is why the vacation process exists.

Mr. Smith asked if Apple Day is considered a public use.

Ms. Jackson answered that Apple Day is put on by a private organization with a County permit. It is definitely a public function, but it is a privately sponsored one. The County doesn't sponsor Apple Day; it just permits things such as sanitation, and making sure there is adequate police protection, and things like that. Every vacation of a roadway is a discretionary call by the Board. If you think that the roadway serves a useful public purpose, then it may not be appropriate to vacate. Otherwise, there isn't any real reason why the request should be denied simply because the County is not making money on it. That is really not a consideration when looking at vacation of public right-of-ways.

Mr. Smith said at first I had no problem with this because it doesn't make sense for the road to curve around that way. Then the issue was brought up that it is more or less a vindictive thing towards Apple Day because the owner got upset with them last year. Now he is going to get back at the vendors so they can't use the area. That's what bothers me. Is this landowner willing to make concessions on that one day a year to allow these folks to use part of this area for that concession?

Mr. Koch responded that he doesn't think this request is vindictive – it is somebody trying to utilize the property that they own, given what is happening next to their property. People drive by the front of their house every day. This application was in no way vindictive.

Mr. Lamanna commented that looking at the intersection as a whole, the property owners on the other corners seem to have solved the problem by landscaping. There is only one option that Apple Day has on that intersection, and that is this property. The house is right up against the roadway which appears to be a safety issue. Something would have to be done. Could the intersection be modified to allow a buffer between the house and the roadway and still leave enough room for Apple Day to set up a booth? Is there enough room to do that?

Vice Chairman Robinson noted that Mr. Koch addressed that. There is about twenty feet between the road pavement edge and the property line that is available. To the east of this property, there is parking along the frontage of those buildings that is out of the roadway. I would assume that same width is available the entire length of Broadway. While this would be closer to the road edge, it would not be in the roadway itself. I don't know if twenty feet is adequate for a booth, but it is certainly reasonable. If they are using the same concept the entire length of Broadway between the buildings and the roadway, this would follow suit.

Mr. McGuire said there is about twenty feet in front of those buildings, then there is a sidewalk in front of those buildings (*to the east where the grocery store is*) which is about twenty or thirty feet wide, then there is a space where the roadway sits. I think the owners would have adequate room to put up a fence and still have plenty of room for Apple Day.

Vice Chairman Robinson said he has a problem with vacating this land and putting a bunch of conditions on a private citizen to accommodate one day a year event. I don't think that is fair or reasonable.

**MOTION**

Mr. Baker made the motion to vacate the NE corner of Broadway & Fremont Street & the SW corner of the alley adjacent to Lots 11, 12, 13 & 14, Block 50, Third Amended Plat of the Town of Penrose, subject to the following:

**RECOMMENDED CONTINGENCIES:**

Contingencies shall be submitted to the Department within six (6) months of the date of final approval as per the Fremont County Subdivision Regulations XV., C., 6.

1. If approval is granted it will be required that a Lot Line Adjustment application be submitted to the Department and approved as per the Fremont County Subdivision Regulations XV., H., 2.
2. The drawing title should state that the vacation is for a portion of Broadway and Fremont Street.
3. The name of the applicant should be removed from the subtitle of the drawing or if to be included it shall contain the name of both property owners.

**SECOND**

Mr. Alsup seconded the motion.

Vice Chairman Robinson called for discussion of the motion.

Mr. Alsup gave reasons for why he is in favor:

1. Public safety, with traffic going right in front of this house. This will alleviate the safety problem.
2. This will put the land on the County tax rolls, and remove any County maintenance issues.
3. The issue of beneficial use that Ms. Jackson talked about.

Vice Chairman Robinson called for a roll call vote.

Mr. Baker	Nay	<input checked="" type="checkbox"/> Aye	Abstain
Vice Chairman Robinson	Nay	<input checked="" type="checkbox"/> Aye	Abstain
Mr. Smith	<input checked="" type="checkbox"/> Nay	<input type="checkbox"/> Aye	Abstain
Mr. Krauth	Nay	<input checked="" type="checkbox"/> Aye	Abstain
Mr. Lamanna	Nay	<input checked="" type="checkbox"/> Aye	Abstain
Mr. Alsup	Nay	<input checked="" type="checkbox"/> Aye	Abstain

Vice Chairman Robinson announced that the motion passed with five Aye votes and one Nay vote.

**b. CUP 11-001 CAÑON DOLOMITE QUARRY**

Mr. Kenneth Klco, Azurite, Inc. was present to request approval of a Conditional Use Permit, Department file #CUP 11-001 Cañon Dolomite Quarry for mining of dolomite and rock and gravel, which may include drilling, blasting, on-site crushing and screening and hauling rock from the site, by Rocky Mountain Landscape Materials (applicant) for property owned by Castle Concrete Company (lessor). The property is located on the west side of U.S. Highway 50, approximately 0.8 miles north of Tunnel Drive, west of Cañon City. The property is vacant; however it was previously mined prior to County regulation. The property contains approximately 481 acres. The property is located in the Agricultural Forestry Zone District and the Agricultural Farming & Ranching Zone District.

Mr. Klco is a representative of Rocky Mountain Landscape Materials, the applicant. The Cañon Dolomite Quarry is a historic mine operation that has been in operation at one time or another since 1927. The general area was operated at several locations in the earlier days. All of those operations have migrated to what would be described as the north end of the property due to geologic and structural conditions. In the late 1990s, the property was acquired by another mining company which continued to mine the property. The raw material, a magnesium calcium carbonate material, was used as flux in the steel mills in the early days, and continued to be used in smaller quantities since the steel mill closing, and was also blended into the landscape and aggregate type of rock. In about 2000 the mining company went into bankruptcy and Castle Concrete purchased the property in 2001. They didn't operate the property from that time, looking at different business conditions, until 2010 when Rocky Mountain Landscape Materials, operated by Ed Tezak Jr., instrumented a lease for the property for mining of landscape materials. The mine operation is planned to run year-round at a maximum production level of about 150,000 tons per year. The truck haulage rate from the site would be approximately two trucks per hour, five days per week, twelve hours per day, at maximum production levels. The site has a merge and acceleration / deceleration lane already in place on Highway 50. The access point across a small portion of the Atwood property close to the highway has been re-instrumented directly with the lessee, Rocky Mountain Landscape Materials, and the Atwood family. That use point won't change. In fact, the haul road will not change, nor will any aspect of the operation that has been evident for the last several decades.

Mr. Giordano showed a video of the area of the proposed quarry and highlighted the Department review.

Mr. Klco noted that the southern disturbance was a former mine operation. That area has been reclaimed and there are no plans to mine in the area where you see the large fracture, where a large part of the canyon has collapsed into the area below. That area has not been mined since the 1970s, back when CF&I operated the pit. The area that will be mined is in the northern end of the property where the road goes up to the highest elevation, at least a half mile from the highway, and probably three-quarters of a mile or more from the nearest landowner or residence area. They will stay on the level where mining will take place, at the proposed rate, for the next seventy years. I see no change in the viewscape or the aspect of this operation over time, because they are going to stay on this level, and make a horizontal cut, about a 30 foot bench, up to about 200 feet wide, and none of that is really visible from the highway. The cut won't change radically from what you see from the highway right now. They will just continue to mine to the south from there. When they complete that one level, they will just come back to the top of the road and take another cut. That will be twenty years out, at minimum, if not more. The 480 acres is the property boundary, and the acreage that was instrumented in the lease. Castle Concrete leased the entire site to Rocky Mountain Landscape Material.

Mr. Alsup asked if this permit will affect any ongoing reclamation on the rest of the property. Will that cause a cessation of reclamation efforts?

Mr. Klco answered no. This area had been stripped of topsoil and overburden, and is exposed rock. There are no topsoil stockpiles in this area now, and no overburden piles in this area. There won't be any further development work. The rock is on the surface and will be mined as it sits there. There won't be any other development needed, or any other materials moved from there. All that work had been done in the past.

Mr. Alsup asked if there is any reclamation work going on right now on this property.

Mr. Klco answered no. The southern area near the collapsed feature had reclamation work performed, and will stay as it is. There won't be any disturbance, other than the haul road moving through there. In that particular area, there will be no change.

Mr. Alsup asked if question #28 in the application has been correctly addressed.

Mr. Klco answered that the question asked if the property was in the City of Cañon City's Urban Growth Area. The Urban Growth Area map wasn't clear and we answered the question based on feedback we got from the Planning and Zoning staff. The property itself is not within the Urban Growth Area. The thin strip that borders Highway 50, which includes part of the access road, is the only part that is within the Urban Growth Area.

Mr. Giordano noted that the recommended contingency requires documentation from the City of Cañon City as to compliance with its Urban Growth Area requirements either way.

Mr. Alsup asked about the control of erosion and silt at the entrance road and the site gate that Mr. Moore, County Engineer, referred to. Has that been addressed?

Mr. Klco answered yes, it has. The operator has committed to continuing with daily maintenance in these areas, and to further that effort, has committed to applying milled asphalt to the curves in the haul road and at the main entrance gate to better control dust and erosion potential at those areas. Keep in mind that this road has been used off and on, and the mine has never gone into temporary cessation or been closed since 1927; however, in the last years there hasn't been a lot of haulage on the road nor a lot of maintenance. The road is in exceptionally good shape given those conditions, so we look to the future as having more control for erosion and more control of dust by having daily maintenance – water truck operation as necessary, motor grader maintenance, and maintenance of the shoulders and ditches along the haul road.

Mr. Alsup asked if there will be any visual impacts at all beyond what is already there.

Mr. Klco answered there won't be any significant change other than maybe being able to see the top of a stockpile once the stockpile is constructed. The stockpile would be built through a crushing and screening circuit that would put the stockpile on the ground probably three months out of the year, then the trucks would haul from the stockpile through the rest of the year. As far as daily mine operations, that won't be the case. There isn't that much production to warrant a crusher all the time. They would put a stockpile down and then haul on a daily basis as needed.

Mr. Lamanna referred to the Mining Plan, which says that the last time the area was reclaimed was 1989. Is that when reclamation ceased?

Mr. Klco said he thinks that refers to reclamation work performed on part of that collapsed feature in the southern part of the mine operation. It is obvious that it has been re-graded in that area and planting medium was brought in to the floor of the former pit area and graded up to the point where the collapsed feature occurred, and that has been re-vegetated. That work was probably done in that timeframe.

Mr. Lamanna asked the status of the mining permit now. Has any of that area been taken out of the bond, or is it still active?

Mr. Klco answered the area is bonded for about \$68,000, reflecting the work on the particular twenty-six acres of disturbance that is going to be mined. It is an active mining permit status right now. There is a bond on the property to ensure that area will be reclaimed at the end of mining.

Mr. Lamanna asked where the permitted mining area is.

Mr. Klco pointed out the twenty-six acre area on the northern end of the property, where the operator will be performing his work.

Mr. Lamanna asked how the reclamation will proceed after the mining.

Mr. Klco answered that mining will occur from the north end, moving to the south on a thirty foot face. The face is already developed there. Probably the last time there were stockpiles was in the late 1990s to early 2000. The mining face will migrate to the south as the rock is extracted from the thirty foot bench, and at the southern end there will be a face left. There are materials that can be used as planting media surrounding this area and along the high wall edge. At that point, another mining phase will start at the north end and again migrate to the south as the extraction proceeds. Over the life of the mine, the seventy year period we are projecting, there may be two benches extracted from this particular area. At the end of that time period, the operator will either continue to mine at lower benches, or do final reclamation on that flat area by bringing in planting medium from the general area and applying to the top of the mine bench.

Mr. Lamanna asked if there will be a twenty year adjustment to the reclamation plan, which would have to be approved by the Division of Reclamation, Mining and Safety (DRMS).

Mr. Klco said the DRMS approves mining permits for the life of the mine, not for a term. They have not reviewed the next phase of reclamation yet. It is expected that about every five years, the DRMS will come in and regenerate a bond number for this site. They will recalculate the cost of doing reclamation on this twenty-six acre site in approximately five year increments. They will show up, do their analysis, and submit a bond adjustment at that point. They can do that at any given time, but it is usually about a five year term.

Mr. Lamanna asked if any of the property has been released from the bond.

Mr. Klco answered that to his knowledge; he doesn't believe that any bond has been released from this property. The paperwork on this file shows that the \$68,000 to \$70,000 bond has been in place for the last twenty years, with no petitions for bond review or bond release.

Mr. Lamanna questioned the applicants request to the Colorado Department of Transportation (CDOT) to waive the acceleration / deceleration lane.

Mr. Klco answered that CDOT has a standard acceleration / deceleration distance from the road entrance to merge into the existing traffic pattern. One of the merge lanes was within that standard; the other was a few feet short. Technically a waiver was requested and granted by CDOT. They reviewed the waiver request given that there is a gradient there, that oncoming traffic would not be hauling very hard coming into that area, that there was enough visibility, that there was enough distance, and that the few feet short of their standard length of merge lane was still quite effective.

Mr. Alsop commented that if this was seventy or eighty years ago, I would be looking at this differently because of the visual impact to the area. The fact that this is an existing mine and we have what we have and because we can't go back that far, I can't see a way we can really buffer this visually, so I would have to withdraw any objections.

Mr. Lamanna commented that at least having an active mining operation, DRMS still has to approve the next phase of reclamation. Looking at the status of the operation right now, I would

see them requiring additional work to rehabilitate the area fully. I see having a mining operation there as an advantage, because there will be some ongoing activity by someone who has the potential and the resources to reclaim it over the life of the mine.

### **MOTION**

Mr. Lamanna moved to approve CUP 11-001 Cañon Dolomite Quarry with the following:

### **RECOMMENDED CONDITIONS:**

A. The term of the Conditional Use Permit shall be for life of the mine (*estimated as 70 years*). ***The applicant's justification for life of the use is that the material from this site will be extracted on an as needed basis.***

B. The Department shall review the permit annually to determine compliance with the conditions of the permit and forward it to the Board for their review as required by regulations. It shall be the responsibility of the permit holder to provide the Department with copies of other permits, licenses, or other documentation showing compliance with the requirements of any other governmental agency (*to include items such as changes to the documents, updates, renewals, revisions, annual reports*). Further it shall be the responsibility of the permit holder to provide the Department with copies of any documents that would affect the use of the subject property, such as but not limited to updated or renewed leases for use of or access to the subject property. Copies of these documents shall be submitted to the Department prior to the anniversary date of the approval of the use permit each year. If the Department has to notify the permit holder that the anniversary date has passed and / or request said documentation, then a penalty fee shall be charged to the permit holder. If the required documentation and penalty fee are not submitted to the Department within twenty (20) days following notification to the permit holder, then violation procedures may be commenced, which could result in termination, revocation, rescission or suspension of the use permit.

C. The Applicant shall conform to all plans, drawings and representations submitted with or contained within the application except as may be inconsistent with the other provisions of the permit.

D. The Applicant shall comply with all laws and regulations of the County of Fremont, its agencies or departments, the State of Colorado, its agencies or departments and the United States of America, its agencies or departments, as now in force and effect or as the same may be hereafter amended.

E. Applicants shall obtain, prior to operation, and keep in effect, throughout operation, all other permits, licenses or the like, including renewals, required by any other governmental agency and as otherwise may be required by Fremont County and shall provide copies of such to the Department. Revocation, suspension or expiration of any such other permits shall revoke, suspend or terminate the permit authorized hereunder, as the case may be.

F. If a Conditional Use is abandoned, discontinued or terminated for a period of six (6) months, the approval thereof shall be deemed withdrawn, and the use may not be resumed without approval of a new application. Provided, however, if the holder of the permit intends to or does temporarily cease the special review use for six (6) months or more without intending to abandon, discontinue or terminate the use, the holder shall file a notice thereof with the Department prior to the expiration of the six-month period stating the reasons thereof and the plan for the resumption of the use. The requirement of a notice of temporary cessation shall not apply to applicants who have included in their permit applications a statement that the use would continue for less than six (6) months in each year and such fact is noted on the permit. In

no case, however, shall temporary cessation of use be continued for more than two (2) years without approval by the Board. **The applicant has not requested a temporary cessation at the time of application.**

G. If a Conditional Use Permit is to be transferred it shall comply with all applicable Federal, State and County regulations regarding such transfer.

H. All loads of material transported from the site shall comply with applicable Colorado Revised Statutes.

I. The applicant shall provide the Department with a copy of the updated lease when renewed.

J. Days of operation will be limited to Monday through Friday from 7 am to 7 pm.

K. The number of haul truck trips shall not exceed twenty-four (24) per day and thirty-four (34) total vehicles. *(A trip is considered as a single or one direction vehicle movement with either the origin or the destination (exiting or entering) inside the subject property.)*

L. Prior to operation the applicant shall provide to the Department, documentation from the Fremont County Weed Coordinator that the applicant has in place an acceptable weed control plan, further the applicant shall implement and maintain the plan.

M. Provide a copy of the following approved permits, licenses or the like, prior to mining and any approved future changes to such: *(If not required provide documentation from the listed entity that the following is not required, prior to mining.)*

1. Approved copy of the Colorado Department of Public Health and Environment, Air Quality Control Division, Fugitive Dust Permit and Plan and APEN permit(s).
2. Approved copy of the Colorado Department of Public Health and Environment, Water Quality Control Division, Storm Water Management Plan and Discharge Permit.
3. Approved copy of the Colorado Department of Transportation Access permit for the proposed use.
4. A copy of the approved Colorado Department of Natural Resources, Division of Reclamation, Mining and Safety Reclamation Permit.
5. United States Department of Labor, Mine Safety and Health Administration MSHA number.
6. Valid license to store and use explosives from the State Office of Labor.

N. Dust suppressant may be required, by Fremont County, on any portion of the operation in the future if determined to be needed.

O. Buffering and landscaping of the mining site property may be required, by Fremont County, in the future if determined to be needed.

P. Documentation as to compliance with the following requirements of the Fremont County Reviewing Engineer, as per letter dated, November 16, 2011:

1. Due to potential impact of run-off on the adjacent floodplain, the applicant should provide copies of periodic stormwater discharge control inspection reports after State Inspection.

Q. The County shall retain the right to modify any condition of the permit, if the actual use demonstrates that a condition of the permit is inadequate to serve the intended purpose of the condition. Such modification shall not be imposed without notice and a public hearing being provided to the Applicant at which time applicant and members of the public may appear and provide input concerning the proposed modifications to the conditions of the permit.

R. Only the named party on the permit shall be allowed to operate this Conditional Use Permit. Board approval shall be required prior to allowing any other person or entity to operate at the site under the conditions of this permit. All persons, entities or others requesting Board approval to operate under this Conditional Use Permit must agree to abide by all terms and conditions of this Permit and shall be required to be named on this Permit as additional parties who are bound by the terms and conditions of this Conditional Review Use Permit.

S. A Conditional Use Permit shall not be modified in any way without Department approval for Minor Modifications or approval of Major Modifications by the Board in accordance with Section 8.2 of the Fremont County Zoning Resolution (*complete reapplication*).

**RECOMMENDED CONTINGENCY:**

The Planning Commission recommended that approval be contingent upon the following contingency 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. The answer provided at application item #28 is incorrect regarding the site being located within the Cañon City Urban Growth Area. The site is located within the growth area and the entire question should be readdressed. Documentation from the City of Cañon City shall be required as to compliance with its Urban Growth Area requirements.

***The Planning Commission recommended the following:***

**ADDITIONAL NOTIFICATION REQUIREMENTS:**

In addition to the required notifications, the following shall also be notified, by certified mail, return receipt requested, in accordance with regulations, at least fourteen (14) days prior to the public hearing by the Board of County Commissioners:

1. City of Cañon City, Planning Department
2. Fremont County Department of Transportation
3. Fremont County Sheriff Office
4. Fremont – Custer Historical Society
5. Colorado Division of Wildlife
6. Colorado Department of Transportation

***The Planning Commission recommended waiving the following:***

**WAIVER REQUESTS:**

1. **5.2.6 BUFFERING & LANDSCAPING REQUIREMENTS:** The applicant shall be required to provide screening or a buffering strip, which will act as an opaque visual barrier, unless waived by the Board. Where, in these regulations, any such screening or buffering strip is required to be provided and maintained, such buffering strip shall consist of a row of trees or continuous un-pierced hedge row of evergreens or shrubs of such species as will produce within three (3) years a screen height of at least six (6) feet and shall be of the following minimum sizes at time of installation:

Deciduous shrubs	4' height
Spreading evergreens	30" spread
Tall evergreens	3' height
Screen planting ( <i>evergreen</i> )	4' height
Trees	2 and ½" caliper
Ground cover	2 and ½" pot

The entire buffer strip shall be immediately adjacent to the lot line or portion thereof, with consideration given to utility or drainage easements. The remainder of the strip shall be used for no other purpose than the planting of shrubs, flower beds, grass, or a combination thereof. The buffer strip shall be at least eight (8) feet in width and shall be graded and planted with grass seed or sod and such other shrubbery or trees. The entire area shall be attractively maintained and kept clean of all debris and rubbish.

In required buffer strips where a natural buffer strip is considered to be impractical or inappropriate, an opaque fence may be substituted in whole or in part for a natural buffer provided its specifications are approved by the Board.

*The applicant's justification for the waiver request of the buffering and landscaping is that the property is zoned AF and AF& R, the site is well within the required setbacks, there are no buildings on the site, the property is located within ½ mile from U. S. highway 50 and ¾ mile from the nearest residents and the use of the site presents no significant change to visual impact to neighboring land uses or to the veiwscap from Highway 50.*

2. **5.3.2 Surfacing:** Surfacing for all business, commercial or industrial off-street parking areas shall be graded and surfaced to control dust and provide proper drainage. Spaces shall be asphalt or concrete surface unless waived by the Board. If asphalt or concrete, spaces shall be clearly marked. Curbs or barriers shall be installed to prevent parking vehicles from extending over any lot lines.

*The applicant's justification for the waiver request of the hard surfacing of the parking area is that the only vehicles visiting the property will be 4WD, heavy equipment, or haul trucks designed to operate without hard surfacing. Curves on the haul road will be surfaced with recycled, crushed asphalt for erosion and dust control. Proposed width and thickness of crushed asphalt surfacing is 26 ft. wide and 4 inches thick. Hard surfacing of the parking, loading and entrance is not practical due to the nature of the use.*

3. **5.3.3 Lighting:** All off-street business, commercial or industrial parking spaces may be required to be adequately lighted to protect the safety of the individual using the area. Said lighting shall not cast any glare on the surrounding properties.

*The applicant's justification for the waiver request of the lighting of the parking area is that the employee parking area is located directly adjacent to the mobile crusher plant and stockpile. Lighting from the plant will be adequate to protect worker safety. Entrance and egress is with heavy equipment and bulk commodity trucks which have their own lighting systems. Hours of operation are 90% daylight hours.*

4. **5.3.4 Landscaping:** All parking spaces (areas) used for business, commercial or industrial uses may be required to provide appropriate vegetation designed to break up the expanse of the parking area.

*The applicant's justification for the waiver request of the landscaping of the parking area is that the location of the property does not require visual remediation due to distance from adjacent landowners and uses. Any parking area on the site will be informal and will change as the mining operation progresses. As a result paved parking areas and landscaping are not planned for the site.*

**SECOND**

Mr. Baker seconded the motion.

Vice Chairman Robinson called for a roll call vote, and the motion passed unanimously. (6 of 6)

**7. APPROVAL OF PLANNING COMMISSION CALENDAR**

Mr. Giordano stated that the main reason for approval of the meeting date calendar is because of the Wednesday meetings that are listed. Most meetings will be held on the standard first Tuesday of the month, but because of the Wednesday meetings, approval of the calendar is required as the standard meeting date is the first Tuesday of the month, unless otherwise specified.

**MOTION**

Mr. Alsup moved to accept the Fremont County Planning Commission Meeting Date Calendar for 2012 as submitted.

**SECOND**

Mr. Baker seconded the motion.

Vice Chairman Robinson called for a roll call vote, and the motion passed unanimously. (6 of 6)

**8. ELECTION OF FREMONT COUNTY PLANNING COMMISSION OFFICERS**

Mr. Alsup nominated Mr. Sandoval for Chairman. He has been doing a great job for us. I know he is not going to be around a lot longer, but we need some institutional memory and he has more experience than anyone on the panel right now.

Mr. Baker nominated Mr. Robinson for Vice Chairman. You did a pretty good job today and I think we should allow you to continue as Vice Chairman.

**MOTION**

Mr. Baker moved to re-elect Mr. Sandoval as Chairman, Mr. Robinson as Vice Chairman, and Mr. Alsup as Secretary.

**SECOND**

Mr. Krauth seconded the motion.

Vice Chairman Robinson called for a roll call vote, and the motion passed unanimously. (6 of 6)

Mr. Alsup asked Ms. Jackson if she would provide the Planning Commission with a written documents as to the statement she made earlier about beneficial use of public property. You said it very well. It was something I have never known about, and I would like to have it for future reference.

Ms. Jackson stated that another area where we see this a lot is tax sales, where people don't pay their property taxes and they go to tax sale. If no private person bids on the property, then it is stricken off to the County. We are required by statute to sell those properties for at least what the Assessor has them on for, to get them back on the tax rolls, instead of holding them, hoping the property will improve in value someday. It is really clear public policy. I will be happy to write it up.

Mr. Giordano said that roadways are required to be given to the County through subdivision processes or are use by right roads. The right-of-way as per the application which we just acted on was given to us in therefore there was no cost to the County. If there is no public interest or public need then there is no reason that the right-of way should not be vacated.

Vice Chairman Robinson suggested reconvening the Master Plan Workshop in February, if there are no items for the Planning Commission meeting.

Mr. Giordano suggested using the regular meeting time, and then deciding if they want to meet again in two weeks as there are no items scheduled for the February Planning Commission Agenda.

Vice Chairman Robinson said the workshop scheduled for January 17, 2012 is cancelled.

Mr. Alsup recommended that everyone finish Chapter 3 and turn it into Donna so that she will have those for us to work with at that meeting.

**9. ADJOURNMENT**

Vice Chairman Robinson adjourned the meeting at 5:22 p.m.

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CHAIRMAN, FREMONT COUNTY PLANNING COMMISSION

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DATE