

**FREMONT COUNTY
PLANNING COMMISSION MEETING MINUTES
JANUARY 5, 2016**

MEMBERS PRESENT

Byron Alsup (Chairman)
Michael Pullen
Larry Brown
Larry Baker
Gardner Fey
Dennis Wied

STAFF PRESENT

Matt Koch, Planning Director
Brenda Jackson, County Attorney
Donna Monroe, Planning Assistant

MEMBERS ABSENT

None

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. APPROVAL OF AGENDA

4. APPROVAL OF MINUTES

December, 5 2015 Planning Commission Meeting

5. UNFINISHED BUSINESS

None

6. NEW BUSINESS

Request approval of a Special Review Use (SRU) Permit, Department file #SRU 15-004
RoCnJeN's HaYe, to allow a Feed Store on an Agricultural Rural zoned property in Penrose.

REPRESENTATIVE: Jennice Fagin

6. ADJOURNMENT

1. CALL TO ORDER

Chairman Byron Alsup called the meeting to order at 3:00 p.m.

2. PLEDGE OF ALLEGIANCE

Pledge of Allegiance was recited.

3. APPROVAL OF AGENDA

Chairman Alsup asked if there were any changes, additions or corrections to the January 5, 2016 Fremont County Planning Commission Meeting Agenda.

MOTION

Mr. Larry Baker moved to accept the January 5, 2016 Fremont County Planning Commission Meeting agenda as presented.

SECOND

Mr. Dennis Wied seconded the motion.

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

4. APPROVAL OF THE DECEMBER 5, 2015 PLANNING COMMISSION MEETING MINUTES

Chairman Alsup asked if there were any changes, additions or corrections to the December 5, 2015 Fremont County Planning Commission Meeting Minutes.

Hearing from no other Members, Chairman Alsup stated that on page 4, the second to last paragraph of the December 5th minutes, it should be WFFPD, not North West EMS.

MOTION

Mr. Larry Baker moved to accept the December 5, 2015 Fremont County Planning Commission Meeting Minutes with the correction that was mentioned.

SECOND

Mr. Gardner Fey seconded the motion

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

5. UNFINISHED BUSINESS

The Planning Commission had no unfinished business.

6. NEW BUSINESS

Request approval of a Special Review Use (SRU) Permit, Department file #SRU 15-004 RoCnJeN's HaYe, to allow a Feed Store on an Agricultural Rural zoned property in Penrose.

Ms. Jennice Fagin stated that she is applying to sell one product from her home. She stated that she is the Southern Colorado Chaffhaye distributor which covers Fremont, Teller, El Paso, and some of Park counties. She stated that she gets once a month deliveries, at most every forty-five (45) days. No deliveries have ever happened before 8:00 a.m. or after 6:00 p.m. The deliveries will come by semi-trucks to 295 I Street, enter the thirty-two (32) foot yard gate where the product will be offloaded which takes about one (1) hour. Ms. Fagin stated that the Chaffhaye is offloaded with a forklift that she owns. Her average delivery arrives every forty-five (45) days. The delivery is short-term, less than an hour. No semi-trucks have stayed overnight or blocked the road at the 295 address. She did have a semi-driver that showed up at 5:00 a.m. Normally, if the drivers show up before 8:00 a.m. they have to go to the Kwik-Stop and that is by the Chaffhaye company because the drivers are paid by the company to deliver the hay to her place. She only gets deliveries to her address between the months of April through November.

Ms. Fagin stated that she works a full-time job at the Department of Corrections on swing shift so her business hours are 9:00 a.m. to 12:30 p.m. Tuesday through Saturday. On her days off she is at home so her hours are 9:00 a.m. until 5:00 p.m. She never gets deliveries on Sundays. When customers come to her place to pick up Chaffhaye, they usually buy it by the ton. She picks up a pallet with the forklift and slides it into their truck and they're gone in five (5) minutes; they don't even have to get out of the vehicle.

Chaffhaye sells itself, she doesn't need to have any neon flashing signs in front of her place. Her customers are her friends, they know where she lives, they usually buy a month's worth of product and she'll see them again the next month.

Ms. Fagin stated that because she is the only distributor if she doesn't get the SRU permit it will negatively impact five (5) feed stores and many individuals that won't be able to get the product. One of the five feeds stores is a local store; D & K Feed. The D & K Feed Store is holding her hay because she can't sell it from her house until she gets the permit. So the Chaffhaye that is at D & K, she owns it. There is about twelve thousand (12,000) dollars' worth of product.

Ms. Fagin stated that most of the product is delivered by her and not picked up at her house. She delivers in Florissant, Divide, Cotopaxi, Colorado Springs, Black Forest, and Payton. She loads the hay in her pickup truck and delivers it.

Ms. Fagin stated that if she did have more than a one (1) ton delivery, she has a thirty-three (33) foot flatbed trailer that she can put three (3) tons on. If a customer orders six (6) tons of hay or more, it will be delivered to them directly from the company in Dell City, Texas. She added that this product doesn't have any effects on the area water or cause any unsightly problems on her property. She wants her property to remain agricultural as much as possible. She doesn't want her business classified as commercial in any way because it is strictly one product and she is a distributor. She is not and does not want to be a "9:00 to 5:00 feed store."

Ms. Fagin showed slides of the neighborhood properties north of her property on I Street.



Neighbor south of her who sells hay off of the semi.



There were additional pictures.

Mr. Matt Koch reviewed the application submittals and conditions. He made note to the following:

Condition H stating that the hours of operation will be seven (7) days a week, 9:00 a.m. to 5:00 p.m. and by appointment.

Condition M stating that the Fremont County Department of Transportation will review the permit yearly to determine if an impact fee should be assessed for traffic impact.

Mr. Koch stated that condition M specifically relates to the semi-trucks and any damage that might incur from the turning into the property.

He reviewed the three (3) Recommended Contingencies and the Waiver Requests.

Mr. Fey inquired of the applicant about the real estate sign in front of the house.

Ms. Fagin state that she was told by her neighbor to “get her sh*t and get out.” It caused so much physical and mental anguish that she did put her place up for sale. She looked at ten (10) of fifteen (15) places and she found the perfect across the highway. It was a boot and

leather shop. She got an apprasel done because she thought the price was a little bit high. Somebody came in from New Jersey and paid cash for it that same week. So her mood was dashed. She just left the sign up hoping somebody would buy it and she wouldn't have to go through all of this.

Mr. Fey inquired if she gets the permit and finds another property, would the permit be transferrable or would she have to start all over again.

Mr. Koch state that the permit is based on this property.

Mr. Fey inquired if her property sells can the permit be transferred to the new owner.

Mr. Koch stated that it could.

Mr. Wied state this is an SRU for a feed store so potentially she could sell other products. He inquired of Ms. Fagin what happens in the months that she doesn't get deliveries.

Ms. Fagin state that usually in November she gets twenty-three tons of the hay delivered which is more than enough to carry her through until the first cutting.

Mr. Wied stated that in her application she indicates that she will have deliveries approximately twice a month for approximately one (1) hour.

Ms. Fagin stated that she put that information in there at the advice of the Director and her Consultant so as not to short sale herself. She's been in the business for three (3) years and her business is of course supply and demand. There might be a time when she gets six (6) tons dropped off and then another six (6) ton in another thirty (30) days; just because that truck is on its way to another state. The company hires out trucks and the company posts it on the internet. There might be somebody in Littleton who is getting twelve (12) ton so the company will ask her if they could fill the truck out with an order to her. She might not need it right then but but they might come. On average what she bought for the last three (3) years was around forty-five (45) days.

Attorney Jackson stated that applicants are routinely advised to plan for the future in their application so they don't end up in violation in two (2) years if their business grows. So the County routinely advise them not to plan for what you have today but to plan for the future.

Ms. Fagin stated that she doesn't want a feed store, she doesn't want to sell other products. She doesn't feel passionate about other products. She's just not interested in that. She has twelve (12) more years to work at the prison before she retires.

Mr. Wied stated that his question about the feed store was not so much to question her motives but to indicate that in the future it might be an oportunity for her, not a limiting factor.

Mr. Michael Pullen stated that he would like to hear from some of the people in the audience who might like to speak.

Ms. Marsha Hartman stated that she lives at 1226 N Street in Penrose. She has been a customer of Ms. Fagins since October 2012 during the bad drought. Unfortunately the reason she sought out Ms. Fagin for her Chaffhaye was because a month prior to purchasing the Chaffhaye she lost a horse due to colic because of bad hay. It is nothing anyone wants to go through, to see that animal in pain and you can't do anything about it. She had to have the horse uthenized and had a second horse that she almost had to have uthenized. He was so skinny because of the crap hay that was being shipped in from other states, paying outrageous prices for it. Since she has been feeding Chaffhaye she has not had a single case of colic, has not had to have anymore horses put down, and it's a lot easier to manage instead of an eighteen (18) foot trailer with one hundred (100) bales of hay on it. She gets a pallet or two (2) of the Chaffhaye and it takes up a fraction of the space. Storage is a lot better. Allergy wise, she can feed the Chaffhaye all day long and doesn't sneeze or break out in rashes. It is all-around a better product. With it being non-flammable she doesn't have to worry about putting it in her barn and having one of the bales combust and burning down her whole barn, thus losing everything in the barn; tractor, hay, trailers, or horses. She is grateful to Ms. Fagin for supplying it to them, not only for herself but to other customers that feed the product as well.

Ms. Stephanie Orcutt from Amarillo, Texas but originally from Colorado Springs and Ms. Fagin is her little sister. She was in Penrose in 1999 and that is when they chose this property for Ms. Fagin when their parents passed away. Ms. Fagin has been very passionate about her property that she owns; she's owned other properties in Colorado Springs. Ms. Orcutt stated that when Ms. Fagin takes on a project or whatever, she is very passionate about it and she doesn't stop.

Ms. Orcutt stated that out of the sixteen (16) years that Ms. Fagin has lived there, she has gone through nothing but daily harassment. This all came about because of a neighbor. One of the letters that the Commission received was from a person on 3rd Street that doesn't even know Ms. Fagin, so its neighborhood gossip mongers that have written the bad letters. She can address each one of those problems that they see is going to arise. She has personally witnessed, when she's been here visiting, the people on her property, people looking with binoculars from their property to see what she's doing. It's a constant spy game and harassment. If Ms. Fagin does anything outside of her fence or inside her fence, they call the Sheriff. It's a constant thing. When Ms. Fagin was rescuing horses, she got called in and the Sheriff was over there. She had to call her vet out to prove that they weren't her horses, that she had rescued them and the Sheriff was called again, and again, and again. The neighbors will not leave her alone and that's why she wants the northern fence built. All Ms. Fagin wants to do is go to work; she's a correctional officer. Ms. Fagin wants the privacy fence built so the neighbors will leave her alone.

Ms. Orcutt stated that she knows they all said the Pledge of Allegiance before the meeting, and yes she is an American. She lives in a city that is a big cattle city. Two weeks ago they lost thirty thousand (30,000) head of cattle to the storm that blew through there because the only thing that comes between them and the North Pole is a barbedwire fence because they are flatter than a pancake. Thirty thousand (30,000) cattle is a lot of cattle to come up missing from being frozen. Ms. Fagin wants this little business and she has to go through all of this, pay all of this money because of a neighbor. Ms. Orcutt doesn't see the upholstery shop and

those other businesses, the four businesses that are on the deadend street don't have a permit. She thinks that needs to be investigated a little bit more.

Ms. Debra Weger stated that she has been Ms. Fagin's roommate for the past two years. She has been involved in Ms. Fagin's Chaffhaye business. She's helped load the product into the vehicles and helped deliver it. Both of them lift the fifty (50) pound bags to load up the pickup or whatever customers we are delivering to. All of her customers love her dearly. Ms. Fagin goes above and beyond to help her customers and their animals. They love the product; some of the animals won't eat anything other than Chaffhaye. As far as being an eyesore or running a feed store, it is not a feed store. A feed store has several, multiple items that are all different. A feed store has the signage. Ms. Fagin is just trying to help her customers and the animals by distributing Chaffhaye which happens to be one product. There are Avon distributors, there are horse breeders, there's horse trainers, there's farriers, this is agricultural. Fremont County was founded on agriculture and we'd like to keep it that way. If they wanted to live in the city, they'd move to the city. They don't. As far as the neighborhood, they don't care what it looks like. They don't care what the neighbors do. They just want to be left alone to make animals alive and well and the customers happy with their animals. Ms. Weger believes that this is an ongoing issue that has nothing to do with Ms. Fagin and her feed store. She believes that it is one neighbor that wants to control what Ms. Fagin is doing on her property when they should just mind their own business and do what they do on their own property and leave her alone. She thinks the neighbors are just micromanaging Ms. Fagin, telling her "You can't do this because we don't like it. You can't do that because we don't like it." She hopes that the neighbors have to prove their falsehood in their letter because that letter is very false on a lot of the accusations. Ms. Weger is in support of Ms. Fagin because in the longrun, she is preparing for her retirement as well. She would like to have this homebased business without being harassed and hassled every time somebody comes on the property there are pictures taken. They sneak through the fence and take pictures. It's harassment because they don't like what Ms. Fagin is doing. Ms. Weger went up to the neighbor's door, knocked on it and ask if they could, as adults, solve the problem. She asked them what they would like for Ms. Fagin to do. The neighbor said "for Ms. Fagin to get her fing sh*t out of here and get out" and then he slammed the door in her face. She asked if this is how adults resolve issues. Ms. Weger stated that the neighbors won't even speak to her or Ms. Fagin to tell them what they are doing wrong so it can be corrected. If they knew what they were doing wrong, they would correct it. She thinks its just ludicrous that every time Ms. Fagin does something the neighbors call the Sheriff and have brought in other factors that doen't even matter to the Chaffhaye business. Instead of being a hater, be a helper. Love they neighbor, treat them as you would like to be treated. Ms. Weger stated that she would just like to say that Ms. Fagin's Chaffhaye is not the problem, it is the solution. She pointed out all of the supporters that were at the meeting compared to the non-supports. She stated that she would like the Planning Commission to grant permission for this permit.

Serena Smith stated that she currently lives in Pueblo but that she used to live in Fremont County and was raised in Fremont County. She has known Ms. Fagin a little over eight (8) years and lived two (2) houses down the road in 2012 and 2013. She was a witness to one of the first horses that Ms. Fagin got that was skin and bones and she started feeding him Chaffhaye. That horse looked worse than her thirty-two (32) year old horse before he died. A little over a month and the rescue horse had put on so much weight. She met Ms. Fagen when

she was working at the Kwik-Stop in Penrose and has never met anyone who has worked harder for the community. Ms. Fagin helps with a lot of extra community activities. Around the Fourth of July she usually helps with the program they have up around the Penrose Park. She's a DOC worker and has been for a really long time. As long as Ms. Smith has known Ms. Fagin she's been a dedicated person, very kind and loving toward animals, and her community. She would like to say that she is definitely in support of Ms. Fagin and her selling this wonderful product.

Mr. Roger Montgomery stated that he lives at 245 I Street in Penrose. He thinks that the Planning Commission members got a copy of the letter that he sent in. He tends to disagree with a lot of what was said this afternoon. They have had trucks parked on the street overnight. They've even had the problem of when the forklift would breakdown or time of when the pallets of Chaffhaye would be left on the side of I Street overnight if not longer. Those things have happened in the past. The street is in pretty bad disrepair; there are pretty big potholes in it. With the economics, he knows that FCDOT has a lot of trouble keeping up what is there now. It would be better having that road torn up, it's in such bad shape and with increased traffic of semis it's certainly not going to help the matter. As far as the Chaffhaye itself, he's sure it's a good product and he has no problem with the product at all. D & K Supply is selling it now; they are very reputable and a good feed store. He doesn't know why they cannot continue to do so. One of his worries is that when the permit is granted, today they only want to sell Chaffhaye but as the Commission has said, if she wants to sell a whole line of products in the future, there's nothing to stop that. He lives in a residential, agricultural area. He moved there thirty (30) some years ago, that's what he moved there for, not to have businesses on the street. Other than that he just wants to reiterate that he is definitely against this.

Chairman Alsop asked if there was anyone else in the audience that wanted to speak. Hearing none, he asked if any of the Commission members had any questions or comments.

Mr. Larry Brown inquire what the status is of the driveway access permit.

Ms. Fagin stated that she hasn't talked to the FCDOT yet but that she will be soon. She's not planning on putting the gates in until she gets her first shipment. D & K Feed, who has her Chaffhaye, is a very small store and cannot take a six (6) ton delivery. They take two (2) tons from her when they need it. Her Chaffhaye business is over at D & K. That is one of the problems that she has; if she does a delivery on her day off she has to pick it up two (2) days early or the D & K is closed. She goes and picks it up, gets ready and goes to work at DOC. The owner says that he doesn't have a problem keeping it there for the term of him owning the store until he retires. He loves the product but she would prefer to have it at her house. The last shipment that she got was in September and she still has eleven (11) tons left. She's not expecting to have another delivery until April. She has prepared so much for this meeting today that she has not even entertained getting a driveway permit. She did speak with the engineer and he said there's not going to be any issues. She stated that if they would like for her to have the permit by the last meeting, she will be sure to have it.

Mr. Brown stated that the only concern he has is the possibility of there being another delivery with a semi and creating a problem with either I Street or Third Street. In the

drawings it is shown where there will be an entrance and an exit where the semi will be pulling into the property to unload. His concern is that the entrance and exit permit occurs prior to any more deliveries.

Ms. Fagin stated that she will absolutely have it before any more deliveries are made. If for some reason she does have to have another delivery made, she will have it delivered to D & K.

Chairman Alsup stated that the driveway access permit is #3 (Approved driveway access permit per letter from FCDOT dated 11-5-2015) on the list of Contingencies.

Mr. Baker stated that he is trying to clarify something. He inquired of Ms. Fagin how long she has been in the business.

Ms. Fagin stated that she has been feeding Chaffhaye for twenty-five (25) years, she worked in a feed store in Colorado Springs for nine (9) years and that is where she was introduced to the Chaffhay product. She was the top salesperson for Chaffhay, she did all the research and advertising for the Chaffhay, however she was not a distributor. What got her to do this business was the 2012 draught. She called the owner of Chaffhay and told him that she needed product right away, there were animals dying off, animals are being turned out, taken to sales. That is when she agreed to become a distributor.

Mr. Baker stated that he was going to rephrase his question. How long have you been doing this business at your home. Obviously you've been doing business there but for what period of time.

Ms. Fagin stated that 2012 was when she got the notice of violation and I had to move it to D & K. She had the business at her home for one year. She's been running it from the feed store for one and a half (1½) to two (2) years.

Mr. Baker stated that he also has a problem with the turning radius and bringing semis in there. It takes a good driver to get in that and back out. The other thing he sees about getting in and back out on the road and the turning radius and how semis tear up roads on a sharp turning radius. The reason he motions that is because he was in business at one time and knows what semis do.

Mr. Koch stated that one of the conditions that the Fremont County Department of Transportation wanted is item M (The Fremont County Department of Transportation will review the permit yearly to determine if an impact fee should be assessed for traffic impact.) for that reason. That way in the future it can be assessed if there is damage.

Ms. Fagin stated that she hopes that they would consider the disrepair of the road before Chaffhay. Again, she doesn't understand why just the two hundred (200) or so feet in front of her property is chip and seal. If they would take that out she would maintain the road herself. She goes out and fills the potholes with a shovel. She's been doing that for years and years.

Mr. Baker stated that he did visit the site and right now there are potholes in that road.

Ms. Fagin agreed and stated that she hits them in her PT Cruiser every time. She would like FCDOT to tear up that road and just put in road base.

Mr. Wied inquired if there are any requirements for people in Penrose growing and selling hay. Baling hay and selling it.

Attorney Jackson stated that it is agricultural

Mr. Wied stated that the only difference in selling hay from your yard and this product is in a bag.

Attorney Jackson stated that it is a product that is drop shipped to the site and then sold from the site. When they grow and sell their own agricultural products it is treated differently.

Mr. Fey inquired if it is the same if someone buys it from somebody else and sells it at their home like what the neighbor is doing?

Mr. Koch state that according to the zoning resolution you have to grow it and sell it yourself. It could be a violation but we haven't received any complaints on it.

Mr. Fey stated that technically you can't do that. An operation like that would fall into the same trap that Ms. Fagin is in.

Attorney Jackson stated that purchasing the hay from someone else and then selling it would be like what Ms. Fagin was doing.

Mr. Pullen inquired if that is where the feed store part comes into this this.

Attorney Jackson confirmed that selling the product is what makes it a feed store. When Ms. Fagin received the notice of violation she had communication with Code Enforcement, and made arrangements with the feed store to correct the violation. She did what was asked of her in regard to the notice.

Ms. Fagin stated that she didn't consider herself a feed store because she was only selling hay. The guy down the street has done it for a few years. She can name fifteen (15) people in Penrose that does exactly the same thing. They buy hay from out of state or even from Westcliffe by the semi load and bring it down to Penrose; God love them. We wouldn't have what we have if we didn't have small agricultural trading. That's what the American Dream was about. She doesn't have any desire to have a feed store. She doesn't have any desire to sell fifteen (15) or twenty (20) different products. Her cousins in Westcliff have been there since 1868 and they are hay and cattle people. She could have her cousin bring down twenty-five (25) semi loads of hay and drop it off on her property and sell it. But this, because it's in a bag is an issue. There's no definition of a feed store. This is one of the things she talked to Mr. Koch about while she was working on the application. She couldn't find how or why she was in violation because there is no definition of it; it's just there. It isn't like it says "Feed Store: buying and selling of a product."

Chairman Alsup asked if there were any other questions. One more person in the audience wanted to speak.

Mr. Daniel Lehnig stated that he has known Ms. Fagin for nine (9) years and she is really good for the community. She has a lot of friends and has supplied a lot of people he knows with the Chaffhaye and helped a lot of people out. She gives him the manure that she has left over. He knows that she has had problems with her neighbor way before she added the Chaffhaye business because he helped her build bigger fences on her property line.

Mr. Baker inquired about how long Ms. Fagin has had her property up for sale.

Ms. Fagin stated one (1) year.

Mr. Baker asked her if there had been any inquiries.

Ms. Fagin stated that there had some. Unfortunately after talking to her attorney she has to disclose the fact that she has a problem neighbor which is pretty much chasing everybody away. It's been a very difficult time. She has had a lot of medical issues because of it and a lot of going back and forth; should she just drop it, should she file for bankruptcy. She's got almost thirty thousand (30,000) dollars invested in the business; should she just drop it, should she move, should she stay. She came to the conclusion, it's not the Chaffhaye. If she didn't sell the Chaffhaye it would be something else, it would be another thing. It doesn't matter whether she sells this or not. She's trying to get a legal permit, do what's right, and hopefully be left alone. She's been slammed on Facebook and physically assaulted one time.

Mr. Pullen stated that he would like to note just for the record, he compiled all of the letters the Commission received in opposition and support. He would note that the support leads the opposition by 4 to 1.

MOTION

Mr. Wied moved to recommend approval SRU 15-004 RoCnJeN's HaYe subject to all of the recommended conditions and contingencies and granting all of the waiver requests.

SECOND

Mr. Fey seconded the motion.

Chairman Alsup inquired of Attorney Jackson if the Planning Commission is allowed to recommend waiving the ADA parking space hard surfacing.

Attorney Jackson stated that it falls under Building Code and she is uncertain about the requirements of the Building Code for this site.

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

Chairman Alsup stated that there was the item for election of officers. He inquired if anybody wanted to make a motion.

MOTION

Mr. Pullen moved that they maintain the same roster.

SECOND

Mr. Wied seconded the motion.

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

ADJOURNMENT

Chairman Alsup adjourned the meeting at 4:20 p.m.

Byron Alsup 2-2-16
CHAIRMAN, FREMONT COUNTY PLANNING COMMISSION DATE