

**FREMONT COUNTY  
PLANNING COMMISSION MEETING MINUTES  
JUNE 5, 2012**

**MEMBERS PRESENT**

Dean Sandoval, Chairman  
Daryl Robinson, Vice Chairman  
Steve Smith  
Joe Lamanna  
Larry Baker  
Mike Krauth, Jr.

**STAFF PRESENT**

Bill Giordano, Planning Director  
Vicki Alley, Planning Assistant

**MEMBERS ABSENT**

Byron Alsup

**1. CALL TO ORDER**

**2. PLEDGE OF ALLEGIANCE**

**3. APPROVAL OF AGENDA**

**4. APPROVAL OF MINUTES**

- a. May 1, 2012 Planning Commission Meeting

**5. UNFINISHED BUSINESS**

NONE

**6. NEW BUSINESS**

**a. REQUEST: SRU 12-002 WEST STATION TO PORTLAND TRANSMISSION LINE UPGRADE - BLACK HILLS ENERGY**

Request approval of a **Special Review Use Permit, Department file #SRU 12-002 WEST STATION TO PORTLAND TRANSMISSION LINE UPGRADE - BLACK HILLS ENERGY, by Black Hills Energy, to allow for four miles of a transmission line upgrade (in an existing easement that has been expanded to 100 feet), and construction of two miles of a new transmission line (in a newly purchased 100 foot easement), from the Eastern Fremont County line to the Portland substation, generally located within Sections 20, 27, 28, 29, 35 and 36, Township 19 South, Range 68 West, in eastern Fremont County. The 100 foot easements will contain approximately 61 acres and are located within the Agricultural Forestry Zone District.**

**REPRESENTATIVE:** *Christopher Burke, Vice President, Colorado Utility Operations, Black Hills Energy / Colorado Electric Utility Company, LP.*

**b. REQUEST: SRU 12-003 MUTSCHELKNAUS (CHAINSAW CARVING - CARPENTER SHOP)**

Request approval of a **Special Review Use Permit to allow Chainsaw Carving (Carpenter Shop), Department file #SRU 12-003 Mutschelknaus (Chainsaw Carving - Carpenter Shop), by Audrey Mutschelknaus, for her property, which is located on the north side of U.S. Highway 50, 330 feet west of Fremont County Road # 3A, in the Royal**

*Gorge Area.* The property fronts on a portion of U.S. Highway 50 that is included in the Gold Belt Tour Scenic & Historic Byway. The proposal is to allow the owner to carve wood bears, signs and the like outside near the 10' by 10' shed. The property contains a residence, a 24' by 24' shop (which will be used in the painting and sanding of the carvings), a 60' by 66' outdoor retail sales area, a 10' by 10' foot shed (which will be used in the display and cutting) and a garage which will not be used in the operation. The property is zoned Business and contains approximately 2.73 acres.

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

c. **REQUEST: SRU 12-004 MERCURY TOWERS (COTOPAXI)**

Request approval of a **Special Review Use Permit, Department file #SRU 12-004 Mercury Towers (Cotopaxi), by Mercury Towers, LLC, for property which is owned by Cotopaxi Consolidated Schools, to allow for the installation of a one-hundred-thirty (130) foot monopole (with an eight foot lightning rod on top of the tower), which will contain three (3) antennas, an 11.5' X 20' equipment shelter, a 50 kW generator, a 500 gallon propane tank, a 10' ice bridge, and a multi meter service rack, which will all be housed inside a 6' chain link fence.** Access to the site will be via a twenty (20) foot easement from County Road #12. *The property is generally located approximately ¼ mile northwesterly of the intersection of U.S. Highway 50 and County Road #12, on the west side of Fremont County Road #12, in the Cotopaxi Area.* The tower and associated items will be located within a fifty (50) foot by fifty (50) foot, two-thousand-five-hundred (2,500) square foot lease area inside a 45.03 acre parcel. In addition, the 10' X 25' turnaround and parking area will be included in the leased area. The property which will house the tower contains the Cotopaxi School and its accessory buildings, and is located in the Agricultural Suburban Zone District.

**REPRESENTATIVE:** *Nick Constantine, Tower Engineering Professionals*

7. **ADJOURNMENT**

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1. **CALL TO ORDER**

Chairman Dean Sandoval called the meeting to order at 4:02 pm.

2. **PLEDGE OF ALLEGIANCE**

Pledge of Allegiance was recited.

3. **APPROVAL OF AGENDA**

Chairman Sandoval asked if there were any changes, additions or corrections to the June 5, 2012 Fremont County Planning Commission Meeting Agenda.

**MOTION**

Mr. Larry Baker moved to accept the June 5, 2012 Fremont County Planning Commission Meeting agenda as written.

**SECOND**

Mr. Joe Lamanna seconded the motion.

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

4. **APPROVAL OF THE MAY 1, 2012 PLANNING COMMISSION MEETING MINUTES**

Chairman Sandoval asked if there were any changes, additions or corrections to the May 1, 2012 Fremont County Planning Commission Meeting Minutes.

**MOTION**

Mr. Lamanna moved to accept the May 1, 2012 Fremont County Planning Commission Meeting Minutes as written.

**SECOND**

Mr. Daryl Robinson seconded the motion.

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

5. **UNFINISHED BUSINESS**

NONE

6. **NEW BUSINESS**

a. **REQUEST: SRU 12-002 WEST STATION TO PORTLAND TRANSMISSION LINE UPGRADE - BLACK HILLS ENERGY**

Mr. Christopher Burke, Vice President, Colorado Utility Operations, Black Hills Energy / Colorado Electric Utility Company, LP, was present to request approval of a Special Review Use Permit, Department file #SRU 12-002 West Station to Portland Transmission Line Upgrade - Black Hills Energy, to allow for four miles of a transmission line upgrade (in an existing easement that has been expanded to 100 feet), and construction of two miles of a new transmission line (in a newly purchased 100 foot easement), from the Eastern Fremont County line to the Portland substation, generally located within Sections 20, 27, 28, 29, 35 and 36, Township 19 South, Range 68 West, in eastern Fremont County. The 100 foot easements will contain approximately 61 acres and are located within the Agricultural Forestry Zone District.

Mr. Lamanna disclosed that he works for Holcim, the cement plant on the east side of the County, and part of this upgrade is an easement that goes through property that is owned by Holcim. I have been working with Black Hills Energy on that easement.

Mr. Burke stated that they plan to upgrade or construct a total of twenty-two (22) miles of transmission lines extending from our West Substation in Pueblo County to the Portland Substation here in Fremont County. The portion of the transmission line project that resides within Fremont County is a total of six miles. The plan is to upgrade that 69 kV line to a 115 kV line by wrecking out this 69 kV line from the Pueblo County Line midway through the path to Portland Substation and replacing it with new construction. The portion from Portland Substation to the tap which goes to Penrose needs to stay in place and remain 69 kV because that is the primary feed to Penrose. The end result will be three parallel rights-of-way on the transmission lines going from Portland Substation eastward. One of them is going to split off and go to Penrose. The other two are going to continue on to West Substation. The purpose of this particular project is to enhance the reliability of the transmission infrastructure in this part of our service territory, specifically to guard against what is known as an "N minus one" contingency. When the Cañon City W. N. Clark facility, for example, trips off-line, and if another contingency then takes place, i.e. the loss of a transmission line, then this part of our service territory is in jeopardy of having low voltage support. The new construction we are proposing with this Special Review Use Permit will

bolster the transmission infrastructure sufficiently to safeguard against that “N minus one” contingency.

Mr. Steve Smith asked if there is any other reason to upgrade this transmission line. Is there some reason why you need more power?

Mr. Burke answered there are a couple of reasons. Starting in 2009, Black Hills Energy first identified the need for this project. In 2010, it was incorporated into our 3206 filing with the Public Utilities Commission for future transmission projects. This project was designed to safeguard against the “N minus one” contingency that I just spoke about. We have also previously announced plans to take the W.N. Clark facility off-line and retire it by the end of 2013. Given the loss of that generation asset, there is an additional need to bolster the transmission infrastructure in this part of our service territory. So this project will serve a dual purpose in that regard.

Mr. Smith asked if this project is because of retiring the W.N. Clark facility.

Mr. Burke answered it is not because of retiring the W.N. Clark facility. This project was begun before we had determined that we were going to take that plant off-line, but the retirement of the plant bolsters the initial support for the need to do this construction project.

Mr. Smith asked if there was no other reason except to upgrade the power line.

Mr. Burke answered that is correct. The project will upgrade the power line to improve the reliability of the transmission infrastructure in this part of our service territory.

Mr. Mike Krauth asked the capacity of the new Pueblo facility to supply this voltage. Are you fully on line?

Mr. Burke answered that the Pueblo Airport Generation Station has been on line since January first of this year and it is a 380 megawatt power plant.

Mr. Krauth asked if the generators use natural gas or coal.

Mr. Burke answered they are all natural gas and there are a total of six individual generators at that facility. They may not all be on line at this particular moment because they may not be dispatched, but they are all available to be on line.

Mr. Krauth asked if the new facility eliminates the need for the local plant.

Mr. Burke answered it does not. The Pueblo Airport Generation Station was designed to replace the purchase power agreement that previously supplied 300 megawatts of capacity from Public Service Company to Black Hills Energy.

Mr. Smith asked if this project will be overhead power lines, or underground power lines.

Mr. Burke answered these will be 115 kV overhead power lines.

Mr. Giordano showed a video of the area and summarized the recommended conditions, waiver requests, and additional notifications in the Department Review.

Mr. Krauth asked if all of the easements are valid and recorded.

Mr. Giordano answered there are easements in place for the existing transmission line. Some of the easements were extended or widened.

**MOTION**

Mr. Robinson made a motion to approve SRU 12-002 West Station to Portland Transmission Line Upgrade – Black Hills Energy, subject to the following:

**RECOMMENDED CONDITIONS:**

- A. Special Review Use Permit shall be issued for the life of use.
- 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 Special Review 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.

- G. If a Special Review Use Permit is to be transferred it shall comply with all applicable Federal, State and County regulations regarding such transfer.
- H. Days and hours of operation shall not be limited.
- I. 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, if required.
- J. 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.
- K. Only the named party on the permit shall be allowed to operate this Special Review 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 Special Review 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 Special Review Use Permit.
- L. A Special Review 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 8.14 of the Fremont County Zoning Resolution (*complete reapplication*).

*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. State Historic Preservation Office
2. Fremont County Sheriff's Office
3. Fremont / Custer Historical Society
4. The Colorado Nature Conservancy
5. Colorado Division of Wildlife
6. Arkansas Headwaters Recreation Area
7. Fremont County Weed Control Officer

*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** (*of County Commissioners*). 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 it is impractical, if not impossible, to buffer and landscape a transmission line, and the towers are wood poles that would blend into the background.*

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 use does not require any parking spaces.*

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 use does not require any parking spaces.*

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 use does not require any parking spaces.*

**SECOND**

Mr. Baker seconded the motion.

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

**b. REQUEST: SRU 12-003 MUTSCHELKNAUS (CHAINSAW CARVING - CARPENTER SHOP)**

Mr. Matt Koch, Cornerstone Land Surveying, LLC, was present to request approval of a Special Review Use Permit to allow Chainsaw Carving (Carpenter Shop), Department file #SRU 12-003 Mutschelknaus (Chainsaw Carving - Carpenter Shop), by Audrey Mutschelknaus, for her property, which is located on the north side of U.S. Highway 50, 330 feet west of Fremont County Road # 3A, in the Royal Gorge Area. The property fronts on a portion of U.S. Highway 50 that is included in the Gold Belt Tour Scenic & Historic Byway. The proposal is to allow the owner to carve wood bears, signs and the like outside near the 10' by 10' shed. The property contains a residence, a 24' by 24' shop (which will be used in the painting and sanding of the carvings), a 60' by 66' outdoor retail sales area, a 10' by 10' foot shed (which will be used in the display and cutting) and a garage which will not be used in the operation. The property is zoned Business and contains approximately 2.73 acres.

Mr. Koch stated that his client has just over 2.7 acres just past the turnoff to Royal Gorge on Highway 50. There is an existing residence, garage, shop, and a little shed. What she wants to do is cut chainsaw carvings out in front of the shed and display them and sell them on her property. Retail Sales is a permitted use; the chainsaw carvings (carpentry shop) is the SRU that we are requesting. The structures exist on the site now. The owner is not proposing any other structures at this time. All the Conditions and Contingencies are acceptable, except we want to discuss the requirement regarding the cistern. The Fire Department is not requiring a cistern, they are recommending it. We have checked on costs, and it would be too expensive for this situation. We are requesting that the cistern not be required. We can meet all the other Conditions and Contingencies.

Mr. Giordano showed a video of the area and summarized the recommended conditions, contingencies, waiver requests, and additional notifications in the Department Review. The Cañon City Fire Protection District did make a recommendation for a fire protection cistern. Because they did not make the cistern a requirement, it becomes an item of consideration by the Planning Commission.

Regarding recommended contingency number three, "documentation from the Division of Water Resources that the existing well permit is transferred to the name of the existing owner," Mr. Koch stated that this item has already been completed.

Chairman Sandoval noted that for this application, the Cañon City Fire Protection District recommended a fire protection cistern, and for the next application a different fire protection district also recommended a cistern. Is this something that we might be hearing from this point on? What is the Department's opinion?

Mr. Giordano responded that we need more information from the fire protection districts as to why they are making this recommendation. What is the justification behind it? There is not too much on the site to burn, so I can't see the problem. I am assuming the fire district must have some concern, but not enough to make the cistern a requirement.

Mr. Smith commented that is a large expense to make someone put a cistern in, and then not know if the cistern is even full if there is a fire.

Mr. Krauth stated we need clarification from the fire department because they may be making the recommendation based on combustible fuels with the chain saw plus the chippings, or due to the environment because there is a fourteen minute response time. A fireman responding to a fire up there would probably appreciate having 40,000 gallons of water available.

Chairman Sandoval asked the estimated cost of the cistern.

Mr. Koch stated that the estimates on a 20,000 gallon tank ranged from \$15,000 to \$22,000. That was for the cistern, as well as all the mechanics and plumbing to make sure it was attached to the well. If the well wouldn't support the cistern and the house, the owner would have to haul water in. In other applications where a cistern was required, they have to be kept topped off year around, so they have to be checked periodically and maintained. There is a lot of maintenance involved; it is not just a big box full of water.

Chairman Sandoval asked how the applicant is going to handle the County Engineer's requirement for additional gravel.

Mr. Koch answered that the gravel is already piled on site, and the owner just has to spread it. We applied for a permit from CDOT, and are not anticipating any problems, because there are already two lanes (*on Highway 50*) in front of the property. The well permit has been transferred to the current owner.

Chairman Sandoval suggested that in the motion, clarification be required from the fire district that provides some parameters for their recommendation for a cistern.

Mr. Koch suggested that the Fire Protection Plan Form be modified so the fire department would be required to provide justification / explanation on the form.

Mr. Giordano responded that the Department will modify the form.

Mr. Lamanna commented that when the County is under fire restrictions, one of the restrictions limits the use of power tools. From what you can see from the photography, there isn't much vegetation in the area. Most of the activity is going to be done in the gravel parking area. When we are under extreme drought conditions, it might be prudent to have a couple fire extinguishers available, or make sure the activities are done where there are no combustibles nearby.

Mr. Giordano stated that in times of high fire danger, I don't believe that you cannot operate chainsaws.

Mr. Smith commented that we should not burden a small business like this with a \$15,000 to \$20,000 cistern.

Mr. Baker agreed.

Mr. Krauth also agreed. That's a huge cost. If it works out to be \$1 per gallon for a cistern installed, a 40,000 cistern is a \$40,000 liability on a person who is trying to start a small business. That's where we need to have clarification from the fire department.

Mr. Lamanna said he agrees also, but if there is a bigger issue in that area, then it needs to be discussed with the local residents. A 40,000 gallon tank would provide a water resource if there is a fire in the area. Rather than rely on one person to supply that water resource, there should be a community development plan to get that in place.

Mr. Robinson said with the several businesses that are up on that stretch of highway, there could be a communal cistern to use within a mile or two of all the sites. I think it would be an undue burden on one business, and I agree that we not make that a contingency.

### **MOTION**

Mr. Smith made a motion to approve SRU 12-003 Mutschelknaus (Chainsaw Carving – Carpenter Shop), subject to the following:

### **RECOMMENDED CONDITIONS:**

- A. Special Review Use Permit shall be issued for the life of use. *The applicant's justification for life of the use is that the property, etc. is owner occupied / owner cuts and sells the product.*
- 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 Special Review 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.
- G. If a Special Review Use Permit is to be transferred it shall comply with all applicable Federal, State and County regulations regarding such transfer.
- H. Days of operation shall not be limited.
- I. Hours of operation will be limited to 7 am to 7 pm.
- J. 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, yearly.
- K. 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.
- L. Only the named party (**Audrey Mutschelknaus**) on the permit shall be allowed to operate this Special Review 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 Special Review 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 Special Review Use Permit.
- M. A Special Review 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 8.14 of the Fremont County Zoning Resolution (*complete reapplication*).

**RECOMMENDED CONTINGENCIES:**

The approval recommendation is made contingent upon, at a minimum, the following items being provided to the Department, by the applicant, within six (6) months (*no extensions except through regulatory process*) after approval of the application by the Board of County Commissioners:

- 1. Determine whether a fire protection cistern should be required as per recommendation from the Cañon City Fire Protection District. If a cistern is required, the applicant shall

provide documentation as to acceptance of the installation of the cistern from the Cañon City Fire Protection District. ***The Planning Commission recommended that a fire protection cistern NOT be required for this use.***

2. Documentation as to proof of access from the Colorado Department of Transportation.
3. Documentation from the Division of Water Resources that the existing well permit is transferred to the name of the existing owner.
4. Documentation as to compliance with the County Reviewing Engineer's recommendation, in his letter dated April 28, 2012 which is as follows:
  - a. About 400 square feet of gravel must be added to extend the southern four parking spaces.

***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. Colorado Department of Transportation
2. Fremont County Sheriff's Office
3. Colorado Division of Wildlife
4. Fremont / Custer Historical Society
5. Cañon City Planning Department

***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 (of County Commissioners)**. 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 due to the size of area, they would like to keep the area as natural as possible, and there are no neighbors.*

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 gravel allows for a rural look and creates less stormwater impact.*

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 retail area is not lit, so no customers will be arriving after daylight.*

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 applicant is trying to keep the natural appearance.*

## **SECOND**

Mr. Baker seconded the motion.

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

Chairman Sandoval asked Mr. Giordano how to get the process started to get more information from each fire district.

Mr. Giordano answered that the Department will first do as Mr. Koch suggested and change the Fire Protection Plan Form to request rationale or explanation for the fire protection districts' recommendations.

### **c. REQUEST: SRU 12-004 MERCURY TOWERS (COTOPAXI)**

Mr. Nick Constantine, Tower Engineering Professionals, was present to request approval of a Special Review Use Permit, Department file #SRU 12-004 Mercury Towers (Cotopaxi), by Mercury Towers, LLC, for property which is owned by Cotopaxi Consolidated Schools, to allow for the installation of a one-hundred-thirty (130) foot monopole (with an eight foot lightning rod on top of the tower), which will contain three (3) antennas, an 11.5' X 20'

equipment shelter, a 50 kW generator, a 500 gallon propane tank, a 10' ice bridge, and a multi meter service rack, which will all be housed inside a 6' chain link fence. Access to the site will be via a twenty (20) foot easement from County Road #12. The property is generally located approximately ¼ mile northwesterly of the intersection of U.S. Highway 50 and County Road #12, on the west side of Fremont County Road #12, in the Cotopaxi Area. The tower and associated items will be located within a fifty (50) foot by fifty (50) foot, two-thousand-five-hundred (2,500) square foot lease area inside a 45.03 acre parcel. In addition, the 10' X 25' turnaround and parking area will be included in the leased area. The property which will house the tower contains the Cotopaxi School and its accessory buildings, and is located in the Agricultural Suburban Zone District.

Mr. Constantine explained that this request is essentially a re-submittal of application number SRU 10-008 which was submitted approximately two years ago. The major change is instead of Alltel, the applicant and tower owner is Mercury Towers, and they will be leasing out areas within their compound for future carriers. Another difference is the tower height, 130 foot versus 100 foot previously. Another issue is the 40,000 gallon cistern which the fire district has recommended. This seems like a request for the fire department in general, because they want the cistern placed on the north side of the school and plumbed all the way down to the tower, apparently for the protection of the school, and not necessarily for the communications facility.

Chairman Sandoval asked why this is a reapplication.

Mr. Constantine answered that Alltel was bought out by AT&T, and the previous application expired.

Mr. Giordano explained that the contingencies were never submitted, so after a six month period of time the approval expires. He noted that another difference in the application this time is the addition of a propane tank to run a generator for emergency situations. The 40,000 gallon cistern was also recommended last time (*without the propane tank*).

Mr. Giordano showed a video of the area and summarized the recommended contingencies, conditions, waiver requests, and additional notifications in the Department Review. He noted the color chart in the Planning Commission's information packets. Last time this tower was considered, the Board chose "Beetle" Green for the color of the tower. Also last time the Arkansas Headwaters Recreation Area recommended "fake" tree branches on the tower.

Mr. Krauth recalled that last time the Planning Commission chose a color to paint the tower, but did not require the fake branches.

Mr. Robinson commented that no one is fooled by those limbs. They are more of an eye-sore. I think the tower on Monument Hill looks ridiculous and the one on Highway 115 looks fine.

Chairman Sandoval asked when the tower would be up and operational.

Mr. Aaron Gunn, Mercury Towers representative, answered that in speaking with the school district, the goal is to have the tower completed before school starts again.

Mr. Lamanna asked what coverage this new tower will provide in the canyon.

Mr. Constantine answered approximately one mile along Highway 50 either side of the tower, which is about as far as you can see line-of-sight through the valley.

Mr. Lamanna asked if this tower will provide coverage mainly for Cotopaxi.

Mr. Constantine answered yes.

Mr. Robinson commented on the fire protection cistern. I don't think we should recommend a cistern for this SRU either, especially because of the recommended location on the north side of the school. I don't see how that could be attributed to the propane tank.

Mr. Krauth asked if fire suppression is planned within the building.

Mr. Constantine stated that is something we can do, and it is an easy fix – a standard FM200 Fire Suppression System, which AT&T includes inside their shelters. There are also temperature alarms, so the technician will know it is getting hot in there before anything actually sparks.

Mr. Lamanna commented that fire suppression is a good investment on the owner's part, because it protects the equipment.

Mr. Robinson asked what the shelter will look like.

Mr. Constantine answered a stucco brown color.

Mr. Robinson stated that he personally does not care about the color of the tower. He would rather have it galvanized.

### **MOTION**

Mr. Krauth made a motion to approve SRU 12-004 Mercury Towers (Cotopaxi), subject to the following:

### **RECOMMENDED CONDITIONS:**

- A. Special Review Use Permit shall be issued for a thirty (30) year term. *The applicant has requested life of the use; however, the lease is for an initial five year term with five additional five year terms with an option for additional terms.*
- 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 Special Review 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.
- G. If a Special Review Use Permit is to be transferred it shall comply with all applicable Federal, State and County regulations regarding such transfer.
- H. Days and hours of operation shall not be limited.
- I. Documentation from the County Reviewing Engineer shall be provided to the Department, noting that the lower end of the new roadway near the cemetery has been constructed to divert flows from eroding the existing dirt roadway, **prior to operation**, as per his letter dated April 28, 2012.
- J. 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, if required.
- K. The applicant / owner of the tower shall allow the tower to be used for co-locating purposes, if appropriate. If antenna collocation is proposed, appropriate process through the Department will be required.
- L. 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.

- M. Only the named party on the permit shall be allowed to operate this Special Review 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 Special Review 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 Special Review Use Permit.
- N. A Special Review 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 8.14 of the Fremont County Zoning Resolution (*complete reapplication*).

**RECOMMENDED CONTINGENCIES:**

The approval recommendation is made contingent upon, at a minimum, the following items being provided to the Department, by the applicant, within six (6) months (*no extensions except through regulatory process*) after approval of the application by the Board of County Commissioners:

1. The applicant shall provide the Department with a copy of the recorded lease between Mercury Towers, LLC and Cotopaxi Consolidated Schools for the 50' X 50' lease area, 10' X 25' turnaround and parking area and the proposed 20' access and utility easement.
2. The applicant shall provide the Department with a copy of an approved Fremont County Department of Transportation Driveway Access Permit prior to construction.
3. A report by a Colorado registered engineer demonstrating compliance with applicable structural standards and the general capacity of the proposed facility.

*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. The Federal Communication Commission
2. Colorado State Historic Preservation Office
3. The Fremont County Department of Transportation
4. Fremont County Sheriff's Office
5. Fremont / Custer Historical Society
6. Colorado Division of Wildlife
7. Arkansas Headwaters Recreation Area
8. 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** (*of County Commissioners*). 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 site is already screened by existing trees and shrubs.*

- 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 site compound and access drive will be composed of six inches of crushed run gravel over geo-textile fabric and that the only traffic will be site technicians three to four times a year.*

*Note: The Fremont County Engineer has recommended a waiver of the paving requirements as noted in his letter dated April 28, 2012.*

- 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 site will remain unmanned except for routine inspections and emergency visits by carrier personnel; therefore, lighting was not added to the parking / turnaround area to minimize visual impact at the site.*

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 there is minimal traffic and only parking / turnaround space is proposed.*

5. **Dimensions of all buildings on the property:** Dimensions to determine lot coverage, etc.

*The applicant's justification for the waiver request of the dimensions for all buildings on the property is that the property consists of a large number of school buildings and structures that are not relevant to this proposed project. If required, we can supply rough dimensions based on aerial images; however, to get truly accurate dimensions, an extensive, costly survey would need to be completed.*

#### **ADDITIONAL CONSIDERATIONS:**

1. Determination as to the color of tower as to reduce visual obtrusiveness. *The Planning Commission moved to defer the choice of color to the Board.*
2. Determine whether the recommendation by the Cotopaxi Fire Rescue, Fire Chief, which is: "It would be of benefit to have a cistern installed in the area consisting of at least 40,000 gallons of water with fire department hook-ups and a way to secure the hook-up so the water is not taken by non-fire department people. The cistern would have to have an auto fill capacity. This cistern would need to be located north of the school building and plumbed down to a hydrant no less than 100 feet from the propane tank and tower locations" shall be required.

*The Planning Commission recommended that a fire protection cistern NOT be required for this use. The applicant agrees to install a fire suppression system inside the shelter.*

#### **SECOND**

Mr. Robinson seconded the motion.

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

Mr. Lamanna made a comment regarding the two recommendations for fire protection cisterns. Maybe we could put an item on a future agenda to have some representatives of the fire districts here to review with us what some of the issues are.

Chairman Sandoval said the Fire Protection Plan Form will be changed to ask for clarification as to any recommendations.

Mr. Giordano added that we will see how the fire district reacts to the change. If that doesn't work, then we can get together.

Mr. Smith commented that we should be careful what we ask for. If the fire districts come back with something that holds us to requiring a cistern, such a large expense could devastate a small business. I have concerns about being locked into something like that.

Mr. Giordano stated that if you do not feel the justification is adequate, you do not have to follow the recommendation.

Mr. Robinson said he would feel very uncomfortable going against a requirement. I think that requiring a cistern would kill a project like the Chainsaw Carving – Carpenter Shop and we couldn't do anything to prevent that. We could approve the SRU, but it would never get off the ground.

Mr. Giordano said if you don't have adequate justification, you might ask for clarification or more information, but if you don't feel comfortable that the recommendation is valid, you are not tied to it.

Mr. Krauth said if the trend is that the fire districts are seeking strategic placement of 40,000 gallon water tanks in areas where there is a business district that is something that the Board needs to address with the fire authorities, and get a fee in place to go toward the cistern.

Mr. Robinson said that is a special district.

Mr. Krauth said we can't lay that financial burden on individual applicants, or we won't have businesses.

Mr. Lamanna added that it sounds like it is an on-going issue with some of the fire districts so at some point it will need to be addressed.

**7. ADJOURNMENT**

Chairman Sandoval adjourned the meeting at 5:10 p.m.

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CHAIRMAN, FREMONT COUNTY PLANNING COMMISSION

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DATE