

**FREMONT COUNTY
PLANNING COMMISSION MEETING MINUTES
SEPTEMBER 8, 2010**

CHAIRMAN DEAN SANDOVAL BROUGHT THE SEPTEMBER 8, 2010 MEETING OF THE PLANNING COMMISSION TO ORDER AT 4:00 P.M.

MEMBERS PRESENT

Daryl Robinson
Tom Doxey
Dean Sandoval, Chairman
Byron Alsup
Herm Lateer
Joe Caruso

STAFF PRESENT

Bill Giordano, Planning Director
Brenda Jackson, County Attorney
Donna Monroe, Planning Assistant

MEMBERS ABSENT

Mike Schnobrich, Vice Chairman (*notice of absence was provided to the Chairman*)

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. APPROVAL OF AGENDA

4. APPROVAL OF THE AUGUST 3, 2010 PLANNING COMMISSION MEETING MINUTES

5. REQUEST: CUP 10-003 TAYLOR RANCH EXPLORATION/BLACK RANGE MINERALS COLORADO, LLC 1ST AMENDMENT

(This item was tabled at the August 3, 2010 meeting until the September 8, 2010 meeting)

Request approval of a Conditional Use Permit, Department file # CUP 10-003 Taylor Ranch Exploration/Black Range Minerals Colorado LLC, 1st Amendment to allow for expansion of mineral exploration area by Black Range Minerals Colorado, LLC, for property which is leased from various property owners. The property is *located south of Fremont County Road #2 and west of County Roads #21 and 21A, in the Tallahassee Area*. The proposed operation is anticipated to be completed within an eight (8) year time frame. There will be no more than 6 to 8 active drill sites at any given time. The existing Conditional Use Permit file #08-001, Resolution #47, Series of 2008 was recorded on July 14, 2008. If this application is approved it will replace the existing Conditional Use Permit. The property included in this amendment will consist of 2,210 acres combined with the previous acreage of approximately 8,169 acres for a total acreage of 10,379 acres. All properties are zoned Agricultural Forestry.

REPRESENTATIVE: Ben Vallerine, Exploration Manager-USA, Black Range Minerals

6. REQUEST: ZC 10-001 KAHNKE ZONE CHANGE

Request approval of a **Zone Change from the Agricultural Rural Zone District to the Business Zone District, Department file #ZC1 9-001 Kahnke Zone Change**, by Joe & LaVonne Kahnke. The property is *located at the northwest corner of Colorado State Highway 115 and 7th Street, in the Penrose Area*. The proposal is to allow a sales office for the sale of

tractors and equipment. The property presently houses a residence which is intended to be used as the primary sales office, a metal building which is intended to be used as assembly and fabrication of agricultural supplies, a maintenance shed which will remain the same use, a 16ft. by 20 ft. modular field office which may expand to 32ft. by 20ft. if additional space is needed for expansion. The property to be rezoned contains 4.6 acres.

REPRESENTATIVE: Mick Kahnke, North Star Engineering and Surveying, Inc.

7. REQUEST: MS 10-001 B & K TROGDEN MINOR SUBDIVISION

Request approval of a **two (2) lot minor subdivision, Department file #MS 10-001 Trogden Subdivision**, by Bryan & Kathy Trogden, for their property *which is located at the southwest corner of the intersection of Lombard Street and Poplar Avenue, in the Lincoln Park Area*. Proposed lot 1 will consist of 1.004 acres and contains a two-story house, 2 garages and a shed/shop (*that encroaches into the right-of-way for Poplar Avenue by 4.6 feet*). Proposed lot 2 will consist of 3.576 acres and is vacant. The side yard setback for the shed/shop is non-compliant with the setback requirements of the Agricultural Suburban Zone District (*5 foot side-yard setback required-shed/shop encroaches 4.6 feet into the County Right-of-way*). The property is currently being used for residential uses and consists of approximately 4.58 acres. This application, if approved, would result in the creation of the third lot from a parent parcel (*see SW 88-6 Bumgarner, Resolution No. 84, Series of 1988, recorded under Reception #554955 in Book 892 at page 20*) since June 1, 1972.

REPRESENTATIVE: Matt Koch, Cornerstone Land Surveying, LLC

8. REQUEST: MS 10-002 LONE EAGLE MINOR SUBDIVISION

Request approval of a **three (3) lot minor subdivision, Department file #MS 10-002 Lone Eagle Subdivision**, by Douglass C. & Cathie T. Brill, for their property *which is located approximately 1.25 miles northwest of the intersection of Fremont County Road #45 and U.S. Highway 50 addressed as 10140 Fremont County Road #45, in the Howard Area*. Proposed lot 1 will consist of 20.135 acres and an existing well and driveway access(es). Proposed lot 2 will consist of 22.864 acres and a manufactured home (with a full basement and additions), metal barn and existing well. Proposed Outlot A consists of 1.332 acres and is currently vacant (*the proposed outlot is severed from the property by County Road 45 and the Union Pacific Railroad*). The property is located in the Agricultural Farming & Ranching Zone District with a total acreage of 44.332 more or less. The property is currently being used for residential and agricultural purposes.

REPRESENTATIVE: Matt Koch, Cornerstone Land Surveying, LLC

9. DISCUSSION ITEMS

Discussion of any items or concerns of the Planning Commission members.

10. ADJOURNMENT

1. CALL TO ORDER

Chairman Dean Sandoval called the meeting to order at 4:00 pm.

2. PLEDGE OF ALLEGIANCE

Pledge of Allegiance was recited.

3. APPROVAL OF AGENDA

4. APPROVAL OF THE AUGUST 3, 2010 PLANNING COMMISSION MEETING MINUTES

Chairman Sandoval asked if there were any changes, additions or corrections to the August 3, 2010 Fremont County Planning Commission Meeting Minutes.

MOTION

Mr. Byron Alsup moved to accept the August 3, 2010 Fremont County Planning Commission Meeting Minutes as written.

SECOND

Mr. Daryl Robinson seconded the motion.

Chairman Sandoval called for a roll call vote.

Mr. Lateer	Nay	<input type="checkbox"/> Aye	<input type="checkbox"/> Abstain
Mr. Caruso	Nay	<input type="checkbox"/> Aye	<input type="checkbox"/> Abstain
Chairman Sandoval	Nay	<input type="checkbox"/> Aye	<input type="checkbox"/> Abstain
Mr. Alsup	Nay	<input type="checkbox"/> Aye	<input type="checkbox"/> Abstain
Mr. Doxey	Nay	<input type="checkbox"/> Aye	<input type="checkbox"/> Abstain
Mr. Robinson	Nay	<input type="checkbox"/> Aye	<input type="checkbox"/> Abstain

Chairman Sandoval welcomed the public in attendance to the meeting. He stated that the next item on the agenda is revisiting CUP10-003 Taylor Ranch/Black Range Minerals Colorado, LLC 1st Amendment.

5. REQUEST: CUP 10-003 TAYLOR RANCH EXPLORATION/BLACK RANGE MINERALS COLORADO, LLC 1st AMENDMENT

Chairman Sandoval called on the Planning and Zoning Director, Mr. Bill Giordano.

Mr. Giordano stated that at the August 3, 2010 meeting, the Planning Commission members decided that they needed more time to review the water analysis information and because of the volume of information delivered by public input. In the Department Review we just took the same conditions as in the current CUP, but Mr. Ben Vallerine wanted to change a couple of the conditions. There was some question as to why this is an amendment instead of a new application and basically they are the same thing. If there is a motion made for approval the Board can look at the conditions that Mr. Vallerine would like to change and make their recommendations accordingly.

Chairman Sandoval asked if Mr. Vallerine was present. It was confirmed that he was. Chairman Sandoval stated that he has discussed this issue with a couple of the Planning Commission members since he wasn't present at the August 3, 2010 meeting and what he suggested was that the meeting would take off from where it was left off at the last meeting with Public Comment. I will try to keep it as abbreviated as possible and limited to those who have not spoken before. He has three applications and as he recalls all three of the individuals have spoken previously. He asked Mr. and Mrs. Seger if that was correct and they confirmed that statement. Chairman Sandoval asked Mr. Alter if he had spoken at the last meeting and he confirmed that he had, although what he has to say today is related to a different subject. Chairman Sandoval stated that he needed to open the Public Discussion

today for those who haven't spoken before. He asked for a show of hands other than the three (3) individuals he already spoke to (he didn't state how many people raised their hand). He asked the Board how they felt about three (3) of the same individuals speaking again. The Board agreed to let them speak.

Chairman Sandoval called Mr. Richard Seger (1147 Allen Road, Cañon City, CO 81212) to the podium. Mr. Seger stated that his position hasn't changed so he doesn't think that there is any reason for him to speak on this subject. His position is still against.

Mr. Giordano stated that there was a number of public comment emails and letters that the Department had received and that copies of them were handed out to each of the Planning Commission members prior to the meeting.

Mrs. Nancy Seger (1147 Allen Road, Cañon City, CO 81212) stated that since the last time we were here a month ago, some things have come up regarding compliance and the drilling of monitoring wells and the fact that they weren't done. Also some comments were made by Mr. Haynes (*Mr. Mike Haynes, Black Range Minerals Managing Director*) at the Abbey indicating that the project at the Taylor Ranch was of no economic value. I don't see how the two areas can go together if the one is not feasible. This looks like a major change, as opposed to a minor change. When Mr. Vallerine spoke, one of the last comments he made was that the new rules for uranium exploration and uranium mining could take years and the rules in effect today apply. If this goes forward, they are grandfathered, which means that the protection for the water and for the aquifers, and lining the pits when they drill, won't happen. I think that is a travesty because (*garbled*) was one of the leaders in saying that they wanted the water protection.

Mr. Lee Alter (0489 CR 21A, Cañon City, CO 81212) noted that it was suggested that the so-called amendment to make modifications to the two (2) year old CUP was inappropriate because everything is so different. The County Attorney asserted that there was precedent for this and that there were examples in the past of CUPs that had been amended with substantial different area or additional area. She didn't give any particulars or any specifics, so we don't know exactly what the circumstances were; however, it's more than likely, almost guaranteed that if this was a mining CUP it was related to the structure materials or coal - sand, gravel, aggregate, gypsum mines, or whatever, and certainly not metal mining; hard rock metal mining, and certainly not exploration drilling through aquifers and certainly not uranium, because there's been no uranium activity but for the Black Range activity on the Taylor Ranch project for the last thirty (30) years. What we are looking at is a dramatic expansion to the concept of modifying or amending an existing CUP where everything is different. You have different surface properties owners, different mineral right ownership, you have different neighbors, different roads of access, and in fact different water courses, different surface streams, and as stated by the Black Range consultant in their report, a completely different hydrology in the South T Bar and Hansen ore body area compared to the Taylor Ranch project. This cannot be considered a simple amendment, an expansion of existing stuff. You folks two (2) years ago considered in great detail the issue of the potential for contamination of the water supply. In fact, this Commission recommended a denial of the original Black Range CUP primarily because of that. Here we have different hydrology, different neighbors, different people, different ownership, and the only thing that is common is that it's Black Range Minerals. I would submit to you that the concept of a major modification or amendment is inappropriate. If you are compelled to consider it as an amendment and don't come to a resolution today, then

consider the fact that the issue that concerned you two (2) years ago has not yet been resolved. There is evidence from Black Range's own data that contamination of the surface streams and the domestic water levels has increased, and the only source of this increase is the drilling that was done in 2007 without the County permit and subsequent to that after the CUP was approved, because the previous drilling that was done thirty (30) years ago we could expect that by natural attenuation that the levels of contamination would go down in those aquifers. In fact they've gone up. Now we have looked at the report that the County's independent hydrogeologist compiled from the Black Range quarterly data over the last year, from 2009. We asked a series of questions and directed them to the County Commissioners to be relayed to Mr. Smith at Western Water and Land because we had concerns then, back in April, that his own report suggested that there was a problem; that he, himself a year and half or so earlier had said was unlikely. The County Commissioners never forwarded our inquiries to Mr. Smith, so we don't know what Mr. Smith's response is. Until you resolve the issue of whether or not there has been any impact on the domestic water sources in the Tallahassee area as a result of the Black Range exploration activities, you cannot consider going further because the situation related to the Hanson ore body is in fact more hazardous. There was an understanding that there was a high level of contamination of the water in and around the Hanson ore body at a depth where the ore body is, and it was recommended well over ten (10) or twenty (20) years ago, that if the property was developed into residential parcels of thirty-five (35) acres, that in order to protect the integrity of the domestic water wells that would be drilled on that property that they should not drill down to six hundred fifty (650) feet, which is where the contamination level was detected. Now the wells have been drilled, I have no idea what the depths of those well are, the wells there and within South T Bar have been drilled, the wells around it have been drilled since then, and now we are looking at six hundred and fifty (650) to one thousand (1,000) feet of depth of exploration drilling into the uranium ore body, going through aquifers that are known to serve that area. Until you get some sort of understanding of the hydrology from the County's own hired expert you can't consider going into this project.

Chairman Sandoval closed the public comment and asked Mr. Vallerine if he wanted to address any of the items or if he had any additional information to share.

Mr. Ben Vallerine stated that he just wanted to ask if any of the Commission members had any questions. Ms. Susan Wyman, our certified hydrologist, is qualified to answer any questions about water, and I am happy to answer any questions you have as well.

Mr. Caruso stated that he knows that Ms Wyman can't answer this question directly, but typically what would you say is the consistent depth of the water in that particular area? I know that it changes drastically by terrain.

Ms. Susan Wyman, hydrologist for Black Range Minerals, inquired if Mr. Caruso was asking about the South T Bar Ranch area.

Mr. Caruso answered that he was asking about the additional 2000 acres, but could she also address the other approximately eight thousand (8,000) plus acres also.

Ms. Wyman stated that it is a very large area so actually you do see some variability in water levels and as you all know, and as in the information provided in the original CUP, there are multiple aquifers in that area. If you were to drill for water, your first strike might be within fifty (50) feet of the surface. So there is shallow groundwater and that's obviously quite often shallow alluvial groundwater from rapid streams. A surface stream may be an expression of

where the actual water table is effectively. Of course as you drill deeper you go through combining units, water bearing units, combining units, and water bearing units. As Mr. Alter pointed out in the South T Bar area an ore deposit is at a significant depth, on the order of 600 feet below ground, and that area is saturated as well with naturally occurring constituents. As you would expect, as uranium occurs in the ore body, it is in the groundwater as well.

Mr. Alsup stated that at last month's meeting the Planning Commission was told that in the original application process Black Range agreed to drill, perhaps a dozen, water monitoring wells, and then we were told that those wells were never drilled. Can you address that for me?

Mr. Vallerine stated that one of the last reasons that we never drilled was that we were under lawsuit. TAC challenged the validity of our CUP issuance. It wasn't until early this year that the lawsuit went away. Black Range did not want to invest a lot of money while that was still up in the air. Since the lawsuit has been resolved, we haven't had a rig on site. Also, in the last year our focus has shifted a little bit, so we are in the process of revising those plans, to focus more on this amended area. So, there are several reasons (*why monitoring wells were not drilled*). We are in fact monitoring groundwater at six locations. We are monitoring water change and water concentrations, which gives us a lot of data that we can use to determine water quality. The data is automatically transmitted every two (2) hours, twenty-four (24) hours a day and then it gets downloaded every six months, and Ms. Wyman's team processes that data. In addition to that, we are sampling between thirty and forty domestic wells. So although we haven't done everything we said we would do, there are reasons for that: 1) a slight change in focus, 2) we were under a lawsuit, there was some doubt over the issuance of the CUP, and 3) we are getting valuable groundwater data.

Mr. Alsup stated that he is still troubled by the fact that Black Range didn't do what you promised you would do last time in drilling the wells. That gives me an issue of credibility to what you promise to do in the future now. I'm not sure why the lawsuit would prevent you from doing what you promised to do in the original application process.

Mr. Vallerine answered that there wasn't a timeframe (*in the resolution*) for drilling the monitoring holes.

Mr. Alsup asked if there was a timeframe.

Ms. Brenda Jackson, County Attorney, stated that there was no timeframe and there has not been a violation. It is not under this board's authority to find violations of the permit. That is solely for the Department and the Board of County Commissioners.

Ms. Wyman added that in terms of the water quality data; we have collected a significant amount of groundwater data from domestic wells. That information is never given directly to the County because of confidentiality on behalf of the homeowners. We will never share any of the homeowner data with anyone except the homeowner and the County's hydro-geologist. So Mr. Bruce Smith with Western Water and Land has received that data and has the ability to analyze it and Whetstone analyzes it as well. In addition to the domestic wells which we monitor twice a year, we've also been monitoring surface water four (4) times a year and have plotted all of that data. We are analyzing about 37 or 40 different constituents and we have plotted that on what is called time of observation charts and we do not see any increases in concentrations. (She showed an exhibit) This is one example where we plotted total dissolved solids in the surface water samples stations, and we compared it to some data that was collected

by Cyprus Minerals in 1977 and 1978 or 1978 and 1979, and each station has different geochemical signature. If you went to the north part of Cañon City you might get a different water quality from a well than if you went to the east part. So for any surface water stations we monitor, we see very little change, except that there is a station called Salt Creek where we do see some change, but it is within the range of natural variation of water. To demonstrate that, we need to apply the data from twenty (20) or thirty (30) years ago, and it is also within that range. So there's no statistical significance in that trend. In addition, this is a plot of nuclides and alpha particle emissions. This is in domestic waters so there are no names on here, and no personal data is being given out. What you see is a huge amount of normal natural variation in the water. As a professional engineer and a professional hydrologist, my ethics would not allow me to misspeak. Although I have not provided my charts to Mr. Smith; he has gotten all of the raw data. I would be more than happy to provide this chart to him so he can make these combinations as well.

Mr. Caruso stated that based on the data that has been collected, and these are naturally existing wells that are out in that area, where do they fall compared to the clean water act standards?

Ms. Wyman stated that quite a few of the wells, in excess of sixty (60) percent, are naturally elevated in gross alpha and it is naturally occurring in areas where no exploration was done to her knowledge, including back in the 1970s. There are a series of ore deposits in that area and depending on where a homeowner drilled their well, they may or may not have a well that is close to a natural ore deposit. I think this was an eye opener for some of the homeowners to find out that this type of chemistry is there and a lot of people didn't know it is there. I think it is useful for everyone to know and understand that this represents a baseline data set and it will be important for the County to continue to monitor water quality over time and look for changes. If any changes are perceived, are they the natural variations we see in groundwater, or is there a trend or some ridges? There are statistical ways of determining that to technical satisfaction where myself or anyone that looks at it can say "Yes, that is a change."

Mr. Vallerine stated that the uranium is naturally occurring. The rocks in the area are uriferous, they contain uranium, so a lot of the wells out there are going to have uranium in them. This is the nature of the geology – the uranium is in the rocks. There is a high concentration of uranium in the base rocks - this is the way we have uranium pockets.

Mr. Caruso stated that's what I understood and realized, and I am appreciative that Ms. Wyman stated that it's the baseline, it's the beginning. Continue to monitor and see if the baseline changes; fluctuates up or down, because at the same time, you don't know, it could possibly go down.

Mr. Vallerine stated that typically baseline monitoring is not required for exploration for uranium. In the new laws, baseline monitoring may be required at the discretion of DRMS, on a case-by-case basis. We are ahead of the curve in conducting the monitoring that we are conducting. It is not a requirement by the State, it is not a requirement of the County resolution, it is a bonus.

Chairman Sandoval asked a question regarding the confidential (in terms of who the well readings came from) sample. How did you determine where the readings came from?

Ms. Wyman stated that is was on a voluntary basis. Back when the original CUP was under review, Black Range offered to perform domestic water sampling. We drew a perimeter around

the project boundary; originally it was going to be half a mile, but became one mile. Any homeowner within one (1) mile who wants to be in the program was added in. What my team does is, we have all the homeowners on a list, and these are homeowners who have been in it from the start, probably 90 to 95% have continued with the program. They can opt out at any time and other homeowners can opt in at any time. As you probably know from reading the application, adding in the South T Bar area will increase the number of homeowners that can opt into that monitoring.

Chairman Sandoval stated that there is obviously a pro and con contingent. Could Ms. Wyman tell the Board if the sampling is a representation of both pro and con of the homeowners there? I know the testing is on a voluntary basis, but would you say that some of the people who have volunteered to have their wells tested are against this type of exploration up there?

Ms. Wyman stated that certainly that is the case and their motivation is not to support this project, so by no means should you look at the forty-five (45) people who sample and say that these are forty-five (45) people who support this project. It is forty-five (45) people who, like everyone in this room, is concerned about groundwater. The cost of this monitoring is very expensive, so if a homeowner was doing it themselves and sent it in, it would cost almost five hundred (\$500.00) dollars just for the laboratory analysis. So five hundred (\$500.00) each time would add up to one thousand (\$1,000.00) dollars a year. I think a wise homeowner says I would rather have the data so that everyone knows what the baseline is. They did have one homeowner opt out right after they did the first round; he stated that he didn't want anyone messing with his well anymore. Black Range said that's fine and they've had a couple of other homeowners move and opt out in that way.

Chairman Sandoval said I read Mr. Smith's (County Hydro-Geologist) report and I didn't really see a consensus or a summary in terms of sampling of water. It seemed to be more directed toward the methods and if the methods used for testing were followed through. Now we're looking for some tangible information here, so when can the County (the Department, the Planning Commissioners, and the BOCC) expect to have a representative sampling of tested wells.

Mr. Giordano stated that in Condition K is basically (*can't understand*) if somebody tells us that there is a violation then (*can't understand*) they can analyze the information and if somebody comes back and says that there has been a violation on one of the conditions then (*can't understand*). In Condition K it states:

The applicant's reimbursement of the Independent Consultant's fees shall include, but not be limited to, those fees associated with the Independent Consultant's: (a) discussions with applicant's water consultants regarding the baseline water monitoring program to be submitted to State agencies, (b) review of applicant's baseline water monitoring program to confirm that applicant is complying with the baseline monitoring plan that is approved by the Colorado Department of Natural Resources Division of Reclamation, Mining and Safety ("DRMS") and/or Colorado Department of Public Health and Environment ("CDPHE"), (c) review of reports generated from the baseline data gathered by the applicant to confirm applicant has collected that data and prepared its reports in conformance with the State agency approved baseline water monitoring program and in compliance with industry best practices for administering such baseline monitoring programs, and (d) preparing and submitting reports to the Department of its review of applicant's work associated with items (a), (b) and (c). County may, in its

discretion, request the Independent Consultant to assist and advise concerning other matters contemplated within the scope of this CUP, but under no circumstance shall applicant be held responsible or liable for consulting costs in excess of the amounts set forth herein.

Mr. Giordano said that I assume that with state reviews, that if there is some problem, someone would bring it up. That would be the reason why they are doing the baseline analysis. It is a matter if one, are they doing the testing properly, and two, is there a problem with the findings. We haven't had that to my knowledge. He asked if that answered the question.

Mr. Robinson asked if there is a health risk out there at this current time.

Ms. Wyman answered that there is a health risk to the extent that any constituent exceeds the EPA's maximums. We divide the data into three categories. We send the homeowner their data and a form letter which says one of three things (paraphrased): 1) Purity results – everything is fine, 2) Purity results – you should consider water treatment, and 3) Purity results – you should treat your water. In response to that a lot of homeowners have reverse osmosis (RO) systems. If you do that you can take out a lot of the natural constituents in the water that you need like calcium and magnesium. There is a pamphlet that has been published about groundwater in Fremont County, and when drilling a well now in almost any location in the county, there is at least a ten (10) percent probability of exceeding the EPA maximum contaminant level of uranium, and there are some significant areas not even in the Tallahassee Creek area where they have greater than a one hundred (100) percent chance of exceeding the EPA levels.

Mr. Robinson asked if that was naturally occurring regardless of the exploration around.

Ms. Wyman stated that it is naturally occurring regardless of Black Range Minerals exploration. There are domestic wells in areas that to my knowledge no drilling has occurred where the levels are naturally high.

Mr. Vallerine said it is based on geology. Certain rock types have more uranium in them than other rock types.

Mr. Caruso stated that he wanted to go back to the previous meetings minutes to something that the County Attorney had said just to clarify a comment that was made earlier. She said that this is not the first time the County has treated an expansion of a mining area as an amendment and that is what this is. It is an amendment to a mining area. She did say the pit up on Barrett Road (Red Canyon Quarries) increased the acreage more than four (4) times the existing acreage. That was treated as an amendment. Parkdale Quarries which is now Front Range Aggregates, (so she named two (2) different areas), increased their area by almost double and was treated as an amendment and she goes on to state that it has been County practice and policy to treat expansion of an area, as long as it is an adjacent area, as an amendment or modification to the existing permit. We are acting consistently with best practices that the County has done. Based on that comment alone I don't know why we are going through such a huge undertaking because this is mining. Right now all Black Range is doing is drilling holes, trying to find out if they really want to mine. It would be like me wanting to go hunting up in the Parkdale area. I'm not going to go up there during the hunting season, I'm going to go up there before to scout to see whether or not it's going to make sense for me to spend ten (10) or twelve (12) hours trudging around. I'm a little bit perplexed after reading the minutes of all the comments. I understand that this is uranium, but based on everything I've read I see it to be done in a very

responsible manner right now and based on what the County Attorney said, and if you look at it just from common sense, this is a mining amendment; no different than Tezak, Holcim, or anybody else.

Chairman Sandoval stated that he wanted to make sure that the Planning Commission members exhaust all questioning and comments before anyone makes a motion. He asked, for the existing CUP, what was the estimated time that this CUP would be in existence?

Mr. Giordano stated that it was for an eight (8) year term.

Chairman Sandoval asked Mr. Vallerine if that is eight years from the time that they began operations.

Mr. Vallerine stated that he requested in the application eight (8) years from the approval of the amendment.

Chairman Sandoval stated to the Department that based upon what Mr. Caruso just reviewed per Ms. Jackson's comments; say for instance this exploration, should it be approved, proves to not be a viable effort that would mean the Black Range Minerals could apply for an amendment again based on the CUP. So, we could be looking at another eight (8) years if after two (2) or three (3) years they find out that it's not financially feasible to proceed with that particular area.

Ms. Jackson stated that the Hanson ore body is fairly well documented already, so the probability of having another amendment for another area is low.

Chairman Sandoval asked how we would know that.

Ms. Jackson stated that it is because of data from the past exploration in the area.

Mr. Vallerine stated that there are other deposits in the area that are not under our CUP.

Mr. Giordano stated that there is no amendment process, so you do it one (1) of two (2) ways. You either do a whole new submittal redoing the whole application, or you go in and update the answers that would change what is appropriate in the application. When we are talking about an amendment process, it is the entire process. They are not redoing the studies they did on the original application. They are doing additional studies on the new things. That makes more sense. Why would you want to have one study over here and another over there, when it is all one project?

Chairman Sandoval stated that is not actually my question. The question was about amending the existing CUP and actually the question was relative to this possibly being a repeated request.

Mr. Giordano stated that he was responding more to Mr. Caruso's comments. When we are talking about an amendment process, it is a CUP process.

Ms. Jackson stated that whether they do anymore amendments or not, they can file for extensions on the amendment. The duration of the permit is set initially, but they can apply for an extension.

Chairman Sandoval stated that they could come in for an amendment to the existing CUP to not include the two thousand (2,000) acres that they have presented for this particular amendment. It could be that they need more time than the eight (8) years for the original CUP for that

particular acreage. Let's say for instance some technology has come about that allows them to maybe find a viable source in the original eight thousand (8,000) acre CUP but they need more than the eight (8) years.

Ms. Jackson stated that they could come in and ask for an amendment to the Condition concerning the term of the CUP, and the BOCC would determine if it is appropriate to extend the permit.

Mr. Vallerine mentioned the fact that timeframe could be affected by the fluctuation of uranium prices.

Mr. Robinson stated that Mr. Alter implied that there have been some changes in Black Range Minerals practices between what was current at the time of the original CUP and current date. He asked for an explanation of what those differences are and what the impact might be if they were to have to conform to the current standards.

Mr. Vallerine stated that he is not sure what Mr. Alter was referring to. Do you mean the changes in legislation? The state may require pit liners. Currently, we are not required to do that and there is no guarantee that they will require it. The state has a lot of discretion about groundwater monitoring and pit liners.

Mr. Robinson asked if Black Range has compromised the safety of the drilling or exploration process.

Mr. Vallerine stated that they have to be compliant with state regulations.

Chairman Sandoval stated that he had two (2) late submittals for two (2) individuals to speak.

Leslie Suleiman (113 Latigo Lane, Cañon City, CO 81212) stated that she had a couple of points to make. The baseline testing can't be considered accurate because there were seventy (70) exploration wells drilled before that baseline testing (so-called) began. We have no idea what the exploration drilling did to the groundwater. This was done before the CUP was even applied for, when people started asking questions up there. Also, it should be known that two (2) years ago during the Commissioners' meeting, Ms. Susan Wyman stated that domestic well testing alone, without monitoring wells, would be inadequate and inconsequential. Ms. Suleiman stated that uranium mining is indeed mining; however, we are trying to set the standards higher than for rock mining, gravel mining, etc. The oil companies have to meet higher standards, and that is what we are asking for.

Anita Minton (12150 Highway 9, Cañon City, CO 81212) stated that she also disagrees with the baseline and referred the Commission members to the information that Ms. Kay Hawkle submitted at the previous meeting with the 1976 data that shows a clear baseline that the contamination had to have occurred due to the exploration. This is the biggest deal that the County has done in a long time. This is a uranium mining issue and it is very dangerous, and it has pitted neighbor against neighbor and brother against brother.

Ms. Susan Wyman stated that the 1976 and 1977 data came from a USGS Natural Uranium Resource Evaluation (NURE) database. We have that data. The first water stations that USGS evaluated back then do not exactly correspond with the stations that we are evaluating now. You have to recognize that they might be five hundred (500) feet downstream. The fact is that

in the range of normal variation of samples, we don't see any difference between the late 1970's USGS data and the current data for any of our surface water stations.

Mr. Vallerine also commented on that baseline data. Ms. Hawkle indicated last month that the 1976 to 1978 data is the true baseline study, done before all exploration and all drilling. Uranium mining started in Tallahassee in 1952 or 1954, so the data that Ms. Hawkle presented as the true baseline was actually post-mining, not post-drilling. So mining started in 1952, then approximately 2000 drill holes were drilled from 1977 to 1983, and then we drilled 76 holes. We are never going to get a baseline that is satisfactory. Also, baseline monitoring is not required for exploration drilling.

Mr. Caruso asked in the worst case scenario, in Mr. Vallerine's professional opinion, what would it take to treat the water to get it back down to the acceptable levels in a domestic well, and can that be done?

Ms. Wyman stated that in terms of feasibility it is one hundred (100) percent feasible. The existing concentrations are treatable with a Reverse Osmosis (RO) system.

Chairman Sandoval asked if there was anyone on the Board who had questions or comments for the Department or Ms. Jackson.

Mr. Alsup asked Ms. Jackson if the Planning Commission recommended approval, could we ask that Black Range would have to adhere to the new standards of the HB 1161. Would that be appropriate for the Planning Commission to do as far as the lining of the pits and that sort of thing?

Ms. Jackson stated those are discretionary standards, so you would have to be specific as to what you want them to do. If you do a motion to approve you could recommend to the Board of County Commissioners that you would like to see them comply with the highest standards.

Mr. Robinson stated so it can be as vague as that; as the highest standard.

Ms. Jackson stated that the point is to get your concerns across so that the BOCC will include it in the Conditions of the permit.

Mr. Robinson stated that he doesn't know what the highest standard is; whether rubber is better than something else.

Ms. Jackson stated that is the problem of including it in a Condition without expert knowledge of the specifications. If you make it clear what your concerns are, then we can certainly investigate and see what those standards would be. Mr. Vallerine mentioned the lining of the pits, and that is one of the discretionary requirements.

Chairman Sandoval stated that might be a little problematic. I understand that the County Commissioners are going to hear this item next week, if we wanted to do some research into more highly defined parameters.

Ms. Jackson stated that the regulations take care of that.

Mr. Vallerine stated that the reason the state has set it up that way is that they have the experts in-house. That is why it is governed by the state. If the County wanted to govern this, they

would have to have geologists, hydrologists, and other experts. The County doesn't have the budget to do that.

Chairman Sandoval called for a motion.

MOTION

Mr. Caruso moved to approve CUP 10-003 Taylor Ranch Exploration/Black Range Minerals Colorado, LLC 1st Amendment but wanted clarification on the Conditions that Mr. Vallerine had requested to amend.

Mr. Giordano stated that regarding the following two (2) Conditions:

- H. The applicant shall be entitled to conduct operations pursuant to this permit seven days a week from sunrise to sunset, except that in each calendar year it shall be allowed an aggregate of not more than 60 days per calendar year when it may conduct operations after sunset. Further, in the case of emergency, the applicant may operate at any hour to ameliorate, mitigate or resolve such emergency. Applicant shall be required to report, on a quarterly basis, the number of days on which it conducted operations after hours.

Mr. Giordano stated that Mr. Vallerine asked that a clarification be put on the times rather than sunrise to sunset.

- O. Except in the case of emergency or the existence of hazardous or life threatening conditions, ingress and egress to the site by drilling equipment and other related heavy truck exploration traffic will be limited to the use of Fremont County Roads #9A and #21; provided, however, the installation and servicing of portable toilets may occur by use of Fremont County Roads #26 or #21. Personal vehicles may enter the area using either roads #9A, #21 or #26.

Mr. Giordano stated that Mr. Vallerine's comment was that they need to use County Road (CR) #21. The way he reads it they can use CR #21.

Mr. Vallerine stated that the problem is access on CR #26.

Mr. Giordano stated that it is CR #26 then. He read a statement quoting "we need access to bring our trucks in using CR #21". He asked if it's CR #26 or CR # 21.

Mr. Vallerine stated that it is CR #21.

Mr. Giordano asked Mr. Vallerine about the sixty (60) days.

Mr. Vallerine stated that they would like a few more days, perhaps ninety (90) or one-hundred (100) and would like to change the requirement of sunrise to sunset to set hours. Last time we drilled was last Thanksgiving; sunrise to sunset in those months is too short.

Mr. Giordano inquired if from 7:00 a.m. to 7:00 p.m. would be acceptable.

Mr. Vallerine stated yes that would be better and that those were the two (2) items that were concerns.

Mr. Caruso inquired if everything else in the Conditions were good.

Mr. Vallerine stated that perhaps some of the Conditions could be tidied up. There is one about the Fire Plan must be done; we are already required to do that and perhaps the long one about the Hydrologist.

Mr. Giordano stated that the hydrologist condition was determined by the Board of County Commissioners and it should be left up to the Board to renegotiate it since there is money involved. I am not saying to take it out; it's something that the Commissioners need to negotiate.

Mr. Giordano stated that as far as the extended hours and the sixty (60) days, the Planning Commission needs to address them. The issue of CR #21, he thinks that's been resolved. He doesn't see any real problems with the other Conditions. Besides the Conditions there are also a couple of Waiver Requests regarding the surfacing, lighting, and landscaping of the parking areas. Obviously there really aren't parking areas. As to the Additional Notifications, he's asked that the Planning Commission include them in their motion.

Mr. Caruso inquired if ninety (90) days is a fair number instead of one hundred twenty (120); it's a compromise between the two. Then from 7:00 a.m. to 7:00 p.m. instead of sunrise to sunset; as it was stated earlier, in the summertime that could be as late as 9:45 p.m. or as early as 5:15 a.m. which is not conducive to people living up there. Also, include all other Conditions, grant the Waiver Requests for the surfacing, lighting, and landscaping of the parking areas and include the Additional Notifications as noted in the review. The motion would include that it be forwarded to the County Commissioners with approval.

SECOND

Mr. Daryl Robinson seconded the motion.

Chairman Sandoval called for discussion starting with Mr. Tom Doxey.

Mr. Tom Doxey stated that the Amendment bothers him; the water, the pollution, the contamination, the fact that everything runs downhill. He's not sold on the tests that have been done. There is such a conflict between people giving their opinions so he will be voting no.

Mr. Byron Alsup stated that he is concerned with two (2) issues; one (1) would be what Mr. Doxey was talking about. He is not convinced that there has not been water contamination from this project. He's not sure that there has but he's not convinced that there has not. The other issue that he's concerned about is the detrimental effect on property values. He has asked a few realtors that he has run into around town what they think about this project; they won't give him hard answers but one of them told him "Well, ask yourself, would you buy property in the Tallahassee area right now knowing what you know about the project?" I have to ask that to the other members of the Commission and say that if your answer to that is no, then you should be concerned about the property values and the folks who live there. If you look at our criteria for Special Review Use and Conditional Use Permits, those items effect four (4) out of the seven (7) goals and objectives; A2, A3, A4, and A7. He's very concerned about this.

Mr. Herm Lateer had no comment.

Mr. Joe Caruso stated that he would like to make a couple of comments and he will probably ruffle some feathers with them but he speaks his mind. To address one of the comments that was made; people who live up in the Tallahassee area knew five (5) years ago, ten (10) years ago, twenty (20) years ago, thirty (30) years ago that this was an active uranium deposit area.

They knew it. If he wanted to relocate, as long as the landscaping is what he thinks would be great, he would absolutely do it. When it comes to water, based on what he's heard today from the professional, water can be treated, it can be made so that it will meet the water quality standards. He thinks that when it comes to the lining of the pits, he doesn't think necessarily that it's going to be an issue with them, as Mr. Vallerine stated, they may or may not, if push comes to shove, they line it so that when they are doing the drilling it doesn't go away. His thing on the two (2) issues is the water can be treated so it's safe and based on the information today, someone mined out there in the fifties (50's) before he was even born; before a lot of people in here were born and maybe some of them were younger at the time but mining's been going on. Everyone's been aware of it. He's not discounting what's going on up there but he also sees that there is such a huge difference in mining from the fifties (50's) to the seventies (70's) to now. They aren't drilling oil now the same way they were fifty (50) years ago. They are reclaiming areas of strip mining for granite different now than they were fifteen years ago. He would just like for everybody to realize is that right now all this is, is drilling wholes to see if it's even viable and lets cross that next bridge when we come to it. He thinks a lot of the stuff that is going on is "what if", "what if", "what if", and he kind of compares this to the Y2K. Everybody was concerned about what was going to happen with Y2K; nothing happened.

Chairman Sandoval stated that first of all Black Range Minerals (BRM) has done an excellent job in presenting their application for the Amendment and as far as the scientific data he thinks that's been well covered. He thinks that in terms of pertaining to governmental regulations and concerns that has been addressed. If he were looking for a magic bullet to either deny or approve this request it hasn't happened so being a layperson but a resident and also a Planning Commission member he's going to approach this from a Planning and Zoning direction in terms of his decision. It becomes more of a Master Plan type of a decision for him. When we make our choices we make those based upon information like the applicant has presented or we can make our choices based upon what the residents in the area have presented. We can also make choices based upon being an experienced person in Planning and Zoning so he is going to fall back on Planning and Zoning in his decision. There are a number of things that come right out of the Master Plan which we are still likely to revise some. One item in C3 for this particular district says the primary non-agricultural land use will be residential. In C11, long term Industrial Operations will not be encouraged in the district; C13, Industrial Development should be discouraged and it mentions County Road 2, also known as Tallahassee Road. This is what he is falling back on to make a decision. He stated that with all due respect to Mr. Caruso, he disagrees about mining having been there, that means that in a sense we have to take that under primary consideration. Things change and sure enough it is a property purchaser's responsibility to go out and see what's possible out there but he thinks that some mining is a little less invasive of livelihoods and lives than others. He believes strongly that nuclear development for energy purposes is still an unproven method for the number one reason that no one has ever come up with a way to dispose or to store the waste adequately to protect those around it. He doesn't see that it's been resolved that uranium mining is part of our future, specifically uranium mining. He's really falling back on the Master Plan.

Chairman Sandoval called for a roll call vote.

Mr. Lateer	Nay	<input checked="" type="checkbox"/> Aye	Abstain
Mr. Caruso	Nay	<input checked="" type="checkbox"/> Aye	Abstain
Chairman Sandoval	<input checked="" type="checkbox"/> Nay	Aye	Abstain

Mr. Alsup	<input type="checkbox"/>	Aye	Abstain
Mr. Doxey	<input type="checkbox"/>	Aye	Abstain
Mr. Robinson	<input type="checkbox"/>	Aye	Abstain

Chairman Sandoval stated that the application does not pass by a vote 4 to 2.

6. REQUEST: ZC 10-001 KAHNKE ZONE CHANGE

Mr. Mick Kahnke was present to request the zone change from Agricultural Rural Zone District to the Business Zone District in the Penrose area. He stated that this is his parent’s property and that they had contemplated doing this about three (3) years ago but put it on the back burner for a while because of the economy. Now they have decided to move forward. He stated that he was there to answer any questions that the Board might have.

Mr. Giordano showed a video of the proposed site giving a general idea of the site location and neighboring areas. He stated that there are a couple of requests that from the applicant that he wanted to note; they would like to use the residence as an office, the metal building which is intended to be used as assembly and fabrication of agricultural supplies, a maintenance shed which will remain the same use, and a sixteen (16) foot by twenty (20) foot modular field office which may be enlarged to thirty-two (32) feet by twenty (20) feet if more square footage is needed for expansion. Mr. Giordano stated that depending on the extent of use described as “Fabrication of Agricultural Supplies” at note 18 on the Zone Change Drawing, issuance of a Special Review Use Permit may be required for a Light Industry use.

Mr. Giordano stated as far as the Recommended Contingencies as concerned they will need to have a weed control plan with documentation from the Fremont County Weed Coordinator, as recommended by the County Engineer a driveway access permit, compliance with the requirements of the Florence Fire Protection District that the drive or entrance must be wide enough and adequate for fire trucks, and the address should be at the street or driveway entrance in six (6) inch letters. They will also need a detailed utility plan signed by the appropriate utility companies.

Mr. Giordano stated that as far as the Waiver Requests the buffering and landscaping would be the buffering of the areas that surround the property.

Mr. Kahnke stated that the west property line is what is in question with a residence back there and the applicant will provide that with buffering and then rely on the native vegetation.

Mr. Giordano stated that regarding the Off Street Parking is requesting concrete and the parking area out by the office; the applicant is requesting a waiver of the concrete and using natural rock materials and all parking and loading areas will be by three (3) inch asphalt over a six (6) inch base course material.

Mr. Kahnke stated that the hill that the property sits on has a nice view in from the highway so they can show off their tractors. What they might do is just place some natural in the field. Then the traffic is confined in the parking area so that what you have is the ground impact which is trackless with the bladed tires and that is not good for demonstration purposes. The other area is to be left in undisturbed condition.

Mr. Giordano stated that the applicant will provide lighting in the parking area and that there are very few required parking spaces and that there really isn't any need for landscaping.

Mr. Robinson stated that it looks like they are putting fence on the fence line and not on the property line.

Mr. Kahnke stated that he is correct.

Mr. Robinson stated that it is very neighborly.

Mr. Tom Doxey stated that he could see (on the map) that in the southwest corner there is a little back line, is that pipe that is going to drain the water into the curve over on 7th Street?

Mr. Kahnke stated that it is an outlet swell.

Mr. Doxey asked about the northeast corner; is the water going to go directly into the barrow ditch for the State.

Mr. Kahnke stated that it will be released up at the top without detention which was worked out with Mr. Don Moore, the County Engineer. Down on the lower corner it will be released out at a historic rate.

MOTION

Mr. Robinson moved to approve ZC 10-001 Kahnke Zone Change with the following:

ITEMS FOR CONSIDERATION:

Notes:

- a. **The use of the residence as an office and use of the metal building will be dependent upon the approval of the Fremont County Building Department.**
- b. **Dependent on the extent of the use described as "Fabrication of Agricultural Supplies" at Site Development Note 18 on the Zone Change Drawing, issuance of a Special Review Use Permit may be required for a Light Industry use.**

RECOMMENDED CONTINGENCIES:

The Planning commission recommended that approval be contingent upon 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. Applicant shall provide to the Department, documentation from the Fremont County Weed Coordinator as to the requirement for an acceptable weed control plan, further the applicant shall implement and maintain the plan, if required.
2. Documentation showing compliance with the following requirements, as per the County Reviewing Engineer's letter dated September 23, 2009:
 - a. A Fremont County Driveway Access Permit is required for 7th Street.
3. Compliance with the requirements as per the Florence Fire Protection District as per the fire protection form dated April 2, 2009 or as per more recent correspondence. The requirements of the April 2, 2009 letter are as follows:

- a. Drive/entrance to be wide enough / adequate for fire trucks.
 - b. Address should be at street/driveway entrance in 6 inch letters.
4. Copy of detailed utility plan including approval signatures from all appropriate utility companies servicing the site.

ADDITIONAL NOTIFICATIONS

- 1. Fremont County Department of Transportation
- 2. Fremont County Sherriff's Office
- 3. Colorado Department of Transportation
- 4. Colorado Division of Wildlife
- 5. Florence Fire Protection District

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 will provide a vegetative barrier along the west property line to shield adjacent residential development from adverse impacts.**

2. OFF STREET PARKING

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 is requesting a waiver of the hard surfacing requirements and is proposing to be allowed to pursue the use of natural rock materials as ground cover for the product display areas and driveway. All parking and loading areas will be a 3 inch asphalt over a 6 inch base course material or geo-technical recommendation.**

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 be directed toward surrounding properties. **Lighting plan is noted on site plan.**

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 is requesting a waiver of this requirement as the parking areas are restricted to the land immediately surrounding the primary sales office and the barn. The total parking and drive areas are about 9500 square feet. The site contains 4.7 acres and is planned to remain open meadow. The site will arrear as natural grassed meadow from the highway view corridor. Breaking up the central drive area is not planned for these reasons.**

SECOND

Mr. Alsup seconded the motion.

Chairman Sandoval called for discussion on the motion. Hearing no more discussion, Chairman Sandoval called for a roll call vote, and the motion passed unanimously. (6 of 6)

7. REQUEST: MS 10-001 B & K TROGDEN MINOR SUBDIVISION

Mr. Matt Koch was present to request a minor subdivision for MS 10-001 B & K Trogden Minor Subdivision which is at the corners of Poplar and Lombard. The existing house, garages, and out builds will go with Lot 1. The new lot will be three and a half (3½) acres. The fire department is requiring the installation of a hydrant when the building of a house is done on Lot 2; the existing one is not close enough. The anticipation is that will build on the back of Lot 2. As far as the drainage is concerned, we submitted an abbreviated plan which is allowed by the regulations. The only thing that came up is that it is so close to the city limits that we had to have an engineer design it. We talked the County Engineer, Mr. Moore, and he said that he would like to see the drainage plan deferred to the building permit stage, especially since they don't know for sure where they are building the house. Since then Ms. Jackson has reviewed it and found that it would be hard to follow through even with it deferred to platting.

Mr. Giordano showed a video of the proposed site giving a general idea of the site location and neighboring areas. He summarized the Recommended Contingencies up to #5 "Compliance with the following requirements as recommended by the County Reviewing Engineer as noted in a letter dated August 8, 2010 and email dated August 17, 2010." (***It should be noted that an abbreviated drainage plan was submitted.***)

- a. At building permit stage, for the future dwelling, a driveway access permit will be required.
- b. An engineered drainage plan will be required at the building permit stage provided that the final plat contain a statement noting such.

Mr. Giordano stated that Mr. Koch mentioned that he had submitted an abbreviated drainage plan; he's asking for an engineered drainage plan but deferring it. The way the regulations are set up with deferring (*can't understand*) site development plan. We do not have any kind of set criteria in the regulations to make the applicant do the improvements. Under the subdivision regulations you can do that at the time. We quit putting a statement on the plat (*can't understand*) then at the review process it puts the focus on (*can't understand*). It makes a real problem for the (*can't understand*) and that is why we didn't want to see it deferred to the building permit time. Based on that then #7 "A cost estimate for the proposed improvements shall be provided and shall be approved by the County Review Engineer." Mr. Giordano continued reading each of the following Contingencies. He stated that regarding the Waiver Requests, the applicant has requested that the non-compliant shed/shop be accepted as non-conforming and that the following statement on the final plat be accepted instead of removal or relocation of the shed/shop. After having a discussion with Mr. Koch, he doesn't have a problem changing the language to what the Department recommends.

Chairman Sandoval stated that he has a question about the non-conforming shed. If it's non-conforming so if we approve it then it's already non-conforming. Why the additional language? If the County decides to exercise it's right-of-way, do they need language to make sure they still have the right-of-way?

Mr. Giordano stated that under the regulations the applicant has the right to establish a non-conformance. What we are saying is that if the shed needs to be removed so the County can come in and use that right-of-way, we can make them give up their right (*can't understand*).

Chairman Sandoval stated that in other words if the County decides to exercise its right-of-way then at that time the applicant can lift it and move it? Is that the advantage in the language?

Mr. Giordano stated that it is and we don't want them to be able to establish it and replace at some time in the same location. We want them to take it out of the right-of-way.

Mr. Robinson asked if the applicant wanted to replace the shop it would have to conform to the regulations?

Mr. Giordano confirmed the question.

Mr. Alsup asked Mr. Koch if he is okay with the shop non-conformance and Mr. Koch acknowledged that he is.

Chairman Sandoval stated that hypothetically, just to understand the non-conforming issue, let's say we have an eyesore that's non-conforming. So we make a decision and say this is our opportunity to finally get rid of that eyesore that's non-conforming. So we exercise that right as Planning Commissioners and County Commissioners and they have to remove it. So how does this particular applicant manage?

Mr. Giordano stated that there is a difference in a violation and non-conforming. This is a structure that is in place (*can't understand*). So what we are saying is that we are letting people, unless it causes a problem, keep it or if they get rid of it they will not be able to put it back in the same place. This is a little bit of a different situation; this is actually in the right-of-way so if they have to remove it then we're not going to let them put it back where it was. We want the right-of-way back.

Mr. Robinson stated that he isn't very clear on the drainage plan; whether we are leaving it for later, or we don't want them to do it. He's not clear on what the Contingency is.

Mr. Giordano stated that if they guarantee it they (*can't understand*) they don't have to do it. That's the Contingency; we don't want to defer it to the building permit time and we can guarantee it now by recording it through the Subdivision Regulations. They have the option now to design the drainage plan then it's done anyway. Especially with the situation of swells on a piece of property they're not that big of deal, it's just a matter of having enough swells and that they are high enough and can carry and hold water. It usually doesn't matter where they are at as long as it's downhill.

Matt said something in here but I couldn't hear or understand anything he said.

Mr. Doxey asked Mr. Koch about the other structure in the west elevation; there's a pool farther south and then is there a house?

Mr. Koch stated that it is a garage.

MOTION

Mr. Robinson moved to approve MS 10-001 B & K Trogden Minor Subdivision with the following:

RECOMMENDED CONTINGENCIES:

The Planning Commission approval recommendation is contingent upon the following item 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. Final plat and copies (*copies to be provided after recordation of the plat*) as required by the Fremont County Subdivision Regulations (FCSR).
2. An updated title insurance commitment or policy shall be required prior to the recording of the subdivision plat, if said recording date is more than sixty (60) days from the effective date of the title insurance commitment or policy. An updated title commitment may result in additional requirements of the applicant.
3. A copy of a recorded Release of Deed of Trust or an executed Ratification, Consent and Release form for document found at Reception Number 863408 of the Fremont County Clerk and Recorder's records.
4. A quit-claim deed to the County for a thirty (30) foot right-of-way from the centerline of Poplar Street and Lombard Avenue, along the entire property frontage. (*Subdivision regulations require a 50 to 60 foot right-of-way (60ft proposed), which is to be determined by the Board of County Commissioners.*) {*This requirement may not be*

necessary due to Quit Claim Deed recorded under Reception #554954 required by SW 88-6 Bumgarner}

5. Compliance with the following requirements as recommended by the County Reviewing Engineer as noted in a letter dated August 8, 2010 and email dated August 17, 2010. ***(It should be noted that an abbreviated drainage plan was submitted).***
- a. At building permit stage, for the future dwelling, a driveway access permit will be required.
6. An engineered drainage plan.
7. All required improvements (*drainage facilities*) shall be constructed and approved prior to the recording of the final plat or an executed improvement and escrow agreement shall be provided.
8. A cost estimate for the proposed improvements shall be provided and shall be approved by the County Reviewing Engineer.
9. A letter from a Colorado Professional Engineer, who designed the improvements, stating the specified improvements were constructed to the Engineer's design, prior to recording of the plat and/or release of escrow funds from an improvement and escrow agreement.
10. An executed quit-claim deed with deed restriction addressing the maintenance of any drainage facilities, drainage easements, right-of-way, etc, if required.
11. A copy of the approved water contract from the City of Cañon City for the additional water tap.
12. Information adequate to enable the Department to compute addresses.
13. Closure sheets for each lot and boundary.
14. A detailed utility plan showing the proposed location of all utility and irrigation improvement locations.
15. A copy of a tax certificate issued by the Fremont County Treasures Office, noting that all taxes have been paid.

Planning Commission recommended waiving the following and using the Department wording rather than the Applicant wording.

WAIVER REQUEST

The applicant has requested that the non compliant shed/shop be accepted as non-conforming and that the following statement on the final plat be accepted instead of removal or relocation of the shed/shop:

“Replacement, for any reason, of any non-compliant structures on the subject property shall be in compliance with all Zoning Requirements at the time of replacement.”

However the Department would suggest the following plat statement instead of the applicant's suggested statement:

“Structures that encroach into platted rights-of-way shall be removed at the subject property owner’s expense, upon request of the entity having authority over the rights-of-way and replacement of such structures or other non-compliant structures shall comply with the Zoning Requirements in effect at the time of replacement.”

SECOND

Mr. Alsup seconded the motion.

Chairman Sandoval called for discussion on the motion. Hearing no more discussion, Chairman Sandoval called for a roll call vote, and the motion passed unanimously. (6 of 6)

8. REQUEST: MS 10-002 LONE EAGLE MINOR SUBDIVISION

Mr. Matt Koch was present to request a minor subdivision for MS 10-002 Lone Eagle Minor Subdivision which is in the Howard area. He stated that Lot 1 will consist of 20.135 acres with an existing well and driveway access. Lot 2 will consist of 22.864 acres and a manufactured home, metal barn and existing well. Outlot A consists of 1.332 acres and is currently vacant.

Mr. Giordano showed a video of the proposed site giving a general idea of the site location and neighboring areas. This was previously submitted as a zone change for a Travel Trailer Park & Camp Ground but with the economy he decided not to pursue it. Now the applicant has come back to submit the Minor Subdivision to create two (2) lots.

In the Recommended Contingencies, #1 through #4 are the same as in the previous item; #5 “Compliance with the following requirements as recommended by the County Reviewing Engineer as noted in a letter dated August 8, 2010 and email dated August 17, 2010.” (*It should be noted that an abbreviated drainage plan was submitted*).

- a. At building permit stage, for the future dwelling, a driveway access permit will be required.
- b. Clarification is needed concerning access to the existing dwelling parcel.
- c. An engineered drainage plan will be required at the building permit stage provided that the final plat contain a statement noting such.

Mr. Giordano summarized Contingency #6 through #16.

Mr. Robinson stated that either the registration of the overlay is off a little bit; the drive-way and the house are really close on the north property line on the map (small map included in packets) but it does look like there is adequate setback according to the survey (large map).

Mr. Doxey asked what the big arch signifies.

Mr. Brill (property owner) stated that it is a Gazebo.

Mr. Alsup ask why Mr. Brill is doing an outlot?

Mr. Koch stated that it is an existing lot.

Mr. Robinson asked if Mr. Brill intends to sale the new lot to a different owner.

Mr. Brill stated no that he’s hoping to sale the lot that has the house already there.

Mr. Alsup asked if there is a problem with just having the one access.

Mr. Giordano stated that it is not a problem as long as he treats it as an easement.

Mr. Alsup stated that the drainage report does indicate the 10 and 30 acre lot, the original one for the RV.

Mr. Brill state that where the RV park was going to go (*can't understand*), that's why he only did one fence line, because as you can see, he cut growth sites in and tree rows because he wants to correct that and bring it back.

Mr. Alsup stated that we are back to the same issue with the County wanting the drainage plan up front.

Mr. Giordano stated that the Department basically again not accepting the deferral to the building permit stage. Again they don't have to install it they just need to put a drainage plan in and guarantee that it will be done.

MOTION

Mr. Alsup moved to approve MS 10-002 Lone Eagle Minor Subdivision with the following:

RECOMMENDED CONTINGENCIES:

The Planning Commission approval recommendation is contingent upon the following item 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. Final plat and copies (*copies to be provided after recordation of the plat*) as required by the Fremont County Subdivision Regulations (FCSR).
2. An updated title insurance commitment or policy shall be required prior to the recording of the subdivision plat, if said recording date is more than sixty (60) days from the effective date of the title insurance commitment or policy. An updated title commitment may result in additional requirements of the applicant.
3. A copy of a recorded Release of Deed of Trust or an executed Ratification, Consent and Release form for document found at Reception Number 854692 of the Fremont County Clerk and Recorder's records.
4. A quit-claim deed to the County for a twenty-five (25) foot right-of-way on both sides of the centerline of County Road #45 along the entire property frontage. (*Subdivision regulations require a 50 foot right-of-way (50 to 100 proposed)*).
5. Compliance with the following requirements as recommended by the County Reviewing Engineer as noted in a letter dated August 8, 2010 and email dated August 17, 2010. (***It should be noted that an abbreviated drainage plan was submitted***).
 - a. At building permit stage, for the future dwelling, a driveway access permit will be required.
 - b. Clarification is needed concerning access to the existing dwelling parcel.

6. An engineered drainage plan.
7. All required improvements (*drainage facilities*) shall be constructed and approved prior to the recording of the final plat or an executed improvement and escrow agreement shall be provided.
8. A cost estimate for the proposed improvements shall be provided and shall be approved by the County Reviewing Engineer.
9. A letter from a Colorado Professional Engineer, who designed the improvements, stating the specified improvements were constructed to the Engineer's design, prior to recording of the plat and/or release of escrow funds from an improvement and escrow agreement.
10. An executed quit-claim deed with deed restriction addressing the maintenance of any drainage facilities, drainage easements, right-of-way, etc, if required.
11. Documentation as to compliance with requirements of Sangre De Cristo in their letter dated July 23, 2010 requiring an easement along existing line in the NE corner of Lot 2.
12. Access easement deed shall be provided for access across Lot 1, which will serve as access to Lot 2 shall be shown on final plat.
13. Access easement across Lot 1, which will serve as access to Lot 2 shall be shown on final plat.
14. Information to enable Department to compute addresses.
15. Closure sheets for each lot and boundary.
16. A detailed utility plan showing the proposed location of all utility and irrigation improvement locations.
17. A copy of a tax certificate issued by the Fremont County Treasures Office, noting that all taxes have been paid.

SECOND

Mr. Robinson seconded the motion.

Chairman Sandoval called for discussion on the motion. Hearing no more discussion, Chairman Sandoval called for a roll call vote, and the motion passed unanimously. (6 of 6)

9. OTHER ITEMS FOR DISCUSSION

Chairman Sandoval called for any other items for discussion.

MOTION

Mr. Robinson moved to adjourn the September 8, 2010 meeting.

10. ADJOURNMENT

Chairman Sandoval adjourned the meeting at 6:05 p.m.

CHAIRMAN, FREMONT COUNTY PLANNING COMMISSION

DATE