

**FREMONT COUNTY
PLANNING COMMISSION MEETING MINUTES
OCTOBER 2, 2012**

MEMBERS PRESENT

Dean Sandoval, Chairman
Daryl Robinson, Vice Chairman
Steve Smith
Joe Lamanna
Byron Alsup

STAFF PRESENT

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

MEMBERS ABSENT

Larry Baker
Mike Krauth, Jr.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. APPROVAL OF AGENDA

4. APPROVAL OF MINUTES

- a. September 5, 2012 Planning Commission Meeting

5. UNFINISHED BUSINESS

NONE

6. NEW BUSINESS

a. REQUEST: SRU 12-005 COLORADO PROPANE SUPPLY DISTRIBUTION FACILITY (Bulk Fuel Storage)

Request approval of a **Special Review Use (SRU) Permit, Department file #SRU 12-005 COLORADO PROPANE SUPPLY DISTRIBUTION FACILITY (Bulk Fuel Storage)**, by **Aercrete Land LLC, a Colorado Limited Liability Company, dba Fremont Land Partners**, to allow for a propane distribution facility, which will consist of 48 tanks with a total propane storage capacity of 1,440,000 gallons. The propane will be shipped by train to the site; one train every two days with six to eight cars per train and two tractor / tankers per car. There will be three work shifts per day, with each shift consisting of two to three employees for a total of five to seven employees per day. The property is located on the north side of Colorado State Highway 120, approximately one mile east of the intersection of Colorado State Highway 115 and 120. The SRU permit property contains 35.15 acres and is zoned Industrial.

REPRESENTATIVE: Charles C. Crum, PE, M.V.E. Inc.

7. ADJOURNMENT

8. MASTER PLAN WORKSHOP

Continue with review of the Master Plan (*if time allows*)

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**

Chairman Sandoval asked if there were any changes, additions or corrections to the October 2, 2012 Fremont County Planning Commission Meeting Agenda.

MOTION

Mr. Daryl Robinson moved to accept the October 2, 2012 Fremont County Planning Commission Meeting agenda as written.

SECOND

Mr. Byron Alsup seconded the motion.

Chairman Sandoval called for a roll call vote, and the motion passed unanimously. (5 of 5)

4. **APPROVAL OF THE SEPTEMBER 5, 2012 PLANNING COMMISSION MEETING MINUTES**

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

MOTION

Mr. Joe Lamanna moved to accept the September 5, 2012 Fremont County Planning Commission Meeting Minutes as written.

SECOND

Mr. Robinson seconded the motion.

Chairman Sandoval called for a roll call vote, and the motion passed unanimously. (5 of 5)

5. **UNFINISHED BUSINESS**

Mr. Lamanna asked about the request at the September 5, 2012 meeting to have the County Attorney look into the question of whether there is a difference between mineral rights and oil and gas rights.

Mr. Giordano stated that based on correspondence from Ms. Brenda Jackson, County Attorney, "The statutes on notice regarding proposed development (sketch plan, preliminary, final) to mineral owners do not distinguish oil and gas from other minerals. Therefore, all owners of mineral interests, including oil and gas, that meet the criteria for notice, would be entitled to notice. Oil and gas is already included, so no extra language is required."

6. **NEW BUSINESS**

a. **REQUEST: SRU 12-005 COLORADO PROPANE SUPPLY DISTRIBUTION FACILITY (Bulk Fuel Storage)**

Mr. Charles C. Crum, PE, of M.V.E. Inc. was present to request approval of a Special Review Use (SRU) Permit, Department file #SRU 12-005 Colorado Propane Supply Distribution Facility (Bulk Fuel Storage), by Aercrete Land LLC, a Colorado Limited Liability Company, dba Fremont Land Partners, to allow for a propane distribution facility, which will consist of 48 tanks with a total propane storage capacity of 1,440,000 gallons.

The propane will be shipped by train to the site; one train every two days with six to eight cars per train and two tractor / tankers per car. There will be three work shifts per day, with each shift consisting of two to three employees for a total of five to seven employees per day. The property is located on the north side of Colorado State Highway 120, approximately one mile east of the intersection of Colorado State Highway 115 and 120. The SRU permit property contains 35.15 acres and is zoned Industrial.

Mr. Crum stated that M.V.E. Inc. is a civil engineering firm in Colorado Springs, representing Fremont Land Partners, who have a tract of land southeast of town. They are proposing to put a propane facility on the property, and to have railroad cars come in and download the propane, then upload into trucks for delivery. The facility will have a capacity of approximately 1.5 million gallons. A total of seven will be employed, in three different shifts. Sometimes during the winter they will go down to two shifts. Staff has helped us a lot to put everything together. We have the majority of the requirements done, and anything that is not done will be completed before the public hearing or before the permit is issued.

Mr. Crum asked specifically about Recommended Condition I in the Department Review regarding hours of operation, which are exactly as submitted in the application. However, what if there was a weather emergency, or if a train got held up? Mr. Crum requested that the hours of operation be amended to add an exception for weather or train delays.

Mr. Crum also asked about Recommended Condition N. We have applied for this SRU doing business as Fremont Land Partners. We are considering a separate LLC for liability insurance reasons. If an LLC is set up prior to the BOCC meeting, could the permit be issued in the name of the new LLC?

Mr. Giordano stated yes.

Mr. Crum asked about Recommended Contingency Number 2, which reads “Documentation from the Union Pacific Corporation as to use of the railroad spur line for the proposed use.” In our research, we found there are several railroads involved, and we would ask that this contingency read “Documentation from the controlling railroad entity as to use of the railroad spur line for the proposed use.” If the controlling entity is not Union Pacific Corporation, but somebody else, then that is who we need to get permission from.

Mr. Crum continued, we are still requesting the waivers for buffering and landscaping, and surfacing, lighting and landscaping of the parking area. He displayed pictures of similar facilities, and explained that this facility will be off Highway 120, close to the Arkansas, and visually it won't impact the area. We have been in contact with Mr. Gene MacKinnon, District Fire Chief of the Florence Fire Protection District. We are going to provide the fire protection he needs and answer a few more questions for him in the next week. We will be controlled by the State Agency as far as the way we have to suppress the fires. I think Mr. MacKinnon was more worried about wildfires. Mr. Crum introduced Mr. Tom Tulk, managing partner of Fremont Land Partners.

Mr. Giordano showed a video of the area and summarized the Recommended Conditions, Contingencies, Waiver Requests, and Additional Notifications. He stated that there is no problem with extending the hours of operation in an emergency situation, but he would ask that the operator notify the Department if they deviate from the hours specified in the permit. Regarding Recommended Contingency number 2, he has no problem changing the wording from “Union Pacific Corporation” to “controlling agency or railroad entity,” except they need

to assure the County that they are the controlling entity. The Department has been provided a copy of the Fire Protection Plan Form and comments from the Florence Fire Protection District.

Mr. Smith asked Mr. Crum if they are going to have the system tested.

Mr. Crum said there is an existing fire hydrant, existing lines, and two 125,000 gallon tanks. Assuming that the system works, the 250,000 gallons total will be four to six hours of supply at 1,000 gallons a minute. We will probably test the system with the fire department to make sure that it drains and that we are getting 1,000 gallons per minute, because we need to satisfy the fire department requirements.

Mr. Smith asked Mr. Crum why they haven't tested the system.

Mr. Crum answered that we have a fire suppression plan that propane tank areas like this use, and they don't use water. We spoke to the fire department and they said they also want protection so if the propane tanks did catch fire, didn't get suppressed and it started a wild land fire, that we would have water there for that. That is why we haven't tested it. We weren't being negligent. I'm sure we will have to test the system, but we will need to have the fire department sign off on it, so we will do whatever they need us to do. That will be done before the County Commissioners' meeting.

Mr. Lamanna asked Mr. Crum to describe the layout of the site where the tanks will go and how the tanks will be set up.

Mr. Crum referred to the site plan and pointed out the proposed layout.

Mr. Lamanna asked if there would be a permit required from the Division of Oil and Safety.

Mr. Tulk answered that this comes under State regulations for above-ground storage tanks for facilities like this. There will be State inspections on the operation.

Mr. Lamanna asked if there will just be an inspection or an actual permit.

Mr. Crum explained that the installation plan has to be submitted to the State and they have to see how we are doing the connections. The State wants to control the lighting because of sparks. The inspection is more than just a perusal walk-through.

Mr. Lamanna asked if there is a permit required.

Mr. Robinson answered yes, it is a L2.

Mr. Alsup asked about the number of employees per shift, winter versus summer.

Mr. Crum said there would be two people on a shift.

Mr. Robinson asked if that covered the office personnel.

Mr. Crum stated there would be one employee in the office.

Mr. Smith asked what they will use to put out a fire, if not water.

Mr. Crum stated he is not a chemist, but he imagines it would be a powder which would contain the fire. Propane goes down. They don't have a requirement, like they do for oil tanks, for a container with berms.

Mr. Smith asked if there was worry about the propane going to the river if there are no berms.

Mr. Tulk answered that the propane basically vaporizes off. In the application we submitted, there is information from an engineering group regarding the safety precautions on primarily the valves and shutoff valves, and where they are located. Much of the safety is in the operational design.

Chairman Sandoval called for questions or comments from members of the audience. (*No members of the public in attendance spoke.*)

Mr. Alsup expressed concern about the fire protection and the lack of testing of water. I assume that will be taken care of before the Commissioners' meeting. Other than that, I don't see any problems with this application.

Mr. Lamanna asked for the actual steps they would take for fire suppression. What are the requirements? What about the chemical fire suppression method? Are you going to be required to have this within a close proximity to the tanks?

Mr. Crum answered that in the information packets there is a brief description of the fire suppression plan, which has to be approved by the State to get the permit. There are automatic valves, so if something starts, signals are sent to the valves which shut the valves off.

Mr. Giordano noted that the section in the application is called the Emergency Shutdown System and is located under Fire Protection in Exhibit 4.1 in the information packet.

Mr. Tulk discussed the limitations on hours of operation. The reason we requested hours of operation from April 1 to September 30 limited to 6 am to 6 pm and unlimited from October 1 to March 31 was to show the seasonality of the propane industry. I would prefer if we weren't constrained by the 6:00 am to 6:00 pm timeframe. The hours of operation are more a function of when a train arrives or when something happens.

Mr. Lamanna asked the reason for a limitation on the hours of operation.

Mr. Giordano answered that is what they put in the application.

Mr. Lamanna asked if it wouldn't be simpler to waive the hours of operation.

Mr. Tulk said they would like to waive the hours of operation and operate at their discretion. Hours of operation is not a critical item of safety, it is due to seasonality.

MOTION

Mr. Smith made a motion to approve SRU 12-005 Colorado Propane Supply Distribution Facility (Bulk Fuel Storage), subject to the following:

RECOMMENDED CONDITIONS:

- A. Special Review Use Permit shall be issued for life of the use. (Estimated duration 30 years) Justification for life of the use is ***“The owners have established the presence of a long term need for propane in the agricultural, industrial and residential arenas of the County. Additionally, an extended period is needed to recoup the initial costs of land, site development, equipment as well as the continued maintenance, replacement and upgrades for equipment in the facility. It is anticipated that owners will be responsible for periodic equipment upgrades and replacement due to the regular inspections and regulatory requirements imposed by the State of Colorado. The regulation addresses the***

continued safety and efficiency of the site but also adds to the cost of operating the facility. A “Life of the Use” duration will provide the owners with the ability to have a long term outlook toward the projected economic viability of the facility at this location.”

The Planning Commission recommended Life of the 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 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 of Planning and Zoning 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 of County Commissioners.

- 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 from April 1 to September 30 will be limited to 6am to 6pm and unlimited from October 1 to March 31.

The Planning Commission recommended the following:

Hours of operation shall not be limited.

- J. There shall be no public sale of propane at this site.
- K. 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.
- L. Provide a copy of the following approved permits, licenses or the like, prior to operation: *(If not required provide documentation from the listed entity that the following is not required, prior to operation)*. The applicant shall provide copies of all permits, licenses or the like required from any entity for the operation of the proposed use whether contained in the following list or not.
 - 1. Approved copy of the Colorado Department of Public Health and Environment, Water Quality Control Division, Storm Water Management Plan and Discharge Permit, prior to operation.
 - 2. Copy of a permit or license from the Colorado Department of Labor and Employment, Division of Oil and Public Safety, prior to operation.
 - 3. Approved copies of the Colorado Department of Transportation Access Permit or documentation that existing access is adequate for the proposed use, prior to operation.
 - 4. Documentation from the Colorado Division of Water Resources evidencing that the well(s) are adequate for the proposed use, prior to operation.
- M. 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.
- N. 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 Special Review Use Permit and shall be required to be named on this Special Review Use Permit as additional parties who are bound by the terms and conditions of this Special Review Use Permit.
- O. 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 Planning Commission recommended that approval be contingent upon the following contingencies 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. A copy of a recorded deed for the 35.15 acre parcel in the name of Aercrete Land LLC.
2. Documentation from the Union Pacific Corporation as to use of the railroad spur line for the proposed use.

The Planning Commission recommended that the wording be changed to:

Documentation from the controlling agency or railroad entity as to use of the railroad spur line for the proposed use and documentation that they are the controlling agency.

3. Documentation as to compliance with the Fremont County Environmental Health Officer as per his memo dated August 27, 2012 which is as follows:
 - a. Restroom facilities connected to an approved septic system (*permit issued by Fremont County Environmental Health*) will be required for the office structure on the property; the use of a portable chemical toilet is not permitted for this use. However, the use of portable chemical toilets may be allowed only during construction phase of this facility.
4. A detailed utility plan, including signatures of all utility companies.
5. A Fire Protection Plan, completed by the Florence Volunteer Fire Protection District shall be provided.
 - a. Documentation as to compliance with any requirements of the Florence Fire Protection District.

The Planning Commission recommended that contingency 5 be removed because the Fire Protection Plan has been provided, and the wording of contingency 5a (now 5) be changed to:

Documentation as to compliance with any requirements of the Florence Fire Protection District, including testing to ensure adequate water flows and ability for storage tanks to refill fast enough for continued use of water supply in case of any malfunction.

6. Documentation as to compliance with any requirements of the Fremont County Reviewing Engineer as per his letter dated September 19, 2012.
7. An access easement deed from Colorado State Highway 120 to the site shall be provided and labeled and located on the drawing. (*Legal description on deed and drawing location shall match*).

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 Sheriffs 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:**

In conjunction with the issuance of a building permit or approval of a zone change to a Manufactured Home Park, Travel Trailer Park & Campground, Neighborhood Business, Rural Highway Business, Business, Industrial Park, Airport, or Industrial Zone Districts, and if the property is adjacent to any Agricultural Estates, Agricultural Suburban, Low Density Residence, Medium Density Residence or High Density Residence Zone District, 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 is requesting a waiver of the buffering and landscaping with the following justification: The south side is adjacent to the existing industrial facility; vegetative screening exists along the north side and the east and west sides are buffered by distance and ridged topography.

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 of the off-street parking area with the following justification: There will be no high speed travel and loading operation of propane by piping.

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 has requested a waiver of lighting with the following justification: Off Street lighting will be determined by State Oil Inspector regulations for the type of special lighting to be used in a propane loading facility.

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 has requested a waiver of the landscaping of the parking area with the following justification: Landscaping for parking areas is for breaking up the expanse of the parking area. There are less than 20 spaces required; therefore there should be no need for landscaping the parking area, which is very small in size.

SECOND

Mr. Robinson seconded the motion.

Chairman Sandoval called for a roll call vote, and the motion passed unanimously. (5 of 5)

7. ADJOURNMENT

Chairman Sandoval adjourned the meeting at 4:42 p.m.

CHAIRMAN, FREMONT COUNTY PLANNING COMMISSION

DATE