

**FREMONT COUNTY
PLANNING COMMISSION MEETING MINUTES
DECEMBER 6, 2011**

MEMBERS PRESENT

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

STAFF PRESENT

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

MEMBERS ABSENT

Steve Smith

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. APPROVAL OF AGENDA

4. APPROVAL OF MINUTES

- a. November 1, 2011 Planning Commission Meeting

5. UNFINISHED BUSINESS

NONE

6. NEW BUSINESS

a. VPR 11-001 FREMONT COUNTY ROAD #50

Request approval of a **Vacation of Public Right of Way, Department file #VPR 11-001 Fremont County Road #50 (Cotopaxi Area), by Fremont County**. The vacation of the roadway (approximately twenty (20) feet in width) will be from the intersection of County Roads #12 and #50, east approximately 996 feet to the end of the roadway, which is approximately to the east property line of the Colorado Department of Transportation parcel. A right of way access easement has been provided to Fremont County and the Colorado Department of Transportation. The entire roadway is located within the property owned by Gerald Mullins; therefore, a boundary line adjustment will not be required. The entire roadway, which consists of approximately 0.225 acres, is located within the Agricultural Suburban Zone District.

REPRESENTATIVE: Matt Koch, Cornerstone Land Surveying, LLC

b. SRU 11-003 ROYAL GORGE ZIP LINE TOURS NO. 2

Request approval of a **Special Review Use Permit for a Rural Recreational Facility, Department file #SRU 11-003 Royal Gorge Zip Line Tours No. 2, by Ty Seufer, for property owned by Anna Seufer, Cathy Brittain and Davis & Associates Builders Inc. with AJET Ventures, LLC the future property owner**. The proposal is to allow up to

ten (10) zip line runs, with up to fifteen (15) line departures a day during the peak season, four (4) to six (6) line departures will be the daily average, seven (7) days a week, on a year around basis. The zip line tours will be guided by a minimum of two (2) trained “zipping” guides. The zip line tour will be structured as a small group experience for eight (8) to ten (10) participants. All participants will be shuttled to the course via AJET Ventures, LLC drivers and vehicles from 45045 U.S. Highway 50, which is approximately 3.0 miles east from the site. The property contains two (2) residential dwellings which will be used as vacation homes; however, they will not be used in conjunction with the zip line operation. The property is located *on the north side of U.S. Highway 50, where the Arkansas River crosses under U.S. Highway 50, in the Parkdale Area.* The property is zoned Agricultural Forestry and contains approximately 110.34 acres.

REPRESENTATIVE: Matt Koch, Cornerstone Land Surveying, LLC

7. ADJOURNMENT

8. WORKSHOP

Master Plan: Review Chapter 2

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 December 6, 2011 Fremont County Planning Commission Meeting Agenda.

MOTION

Mr. Larry Baker moved to accept the December 6, 2011 Fremont County Planning Commission Meeting agenda as written.

SECOND

Mr. Daryl Robinson seconded the motion.

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

4. APPROVAL OF THE NOVEMBER 1, 2011 PLANNING COMMISSION MEETING MINUTES

Chairman Sandoval asked if there were any changes, additions or corrections to the November 1, 2011 Fremont County Planning Commission Meeting Minutes.

MOTION

Mr. Byron Alsup moved to accept the November 1, 2011 Fremont County Planning Commission Meeting Minutes as written.

SECOND

Mr. Robinson seconded the motion.

Chairman Sandoval called for a roll call vote.

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

Chairman Sandoval announced that the motion passed with five Aye votes and one abstention.

5. UNFINISHED BUSINESS

NONE

6. NEW BUSINESS

a. VPR 11-001 FREMONT COUNTY ROAD #50

Mr. Matt Koch, Fremont County Surveyor, was present to request approval of a Vacation of Public Right of Way, Department file #VPR 11-001 Fremont County Road (FCR) #50 (Cotopaxi Area), by Fremont County. The vacation of the roadway (approximately twenty (20) feet in width) will be from the intersection of County Roads #12 and #50, east approximately 996 feet to the end of the roadway, which is approximately to the east property line of the Colorado Department of Transportation (CDOT) parcel. A right of way access easement has been provided to Fremont County and CDOT. The entire roadway is located within the property owned by Mr. Gerald Mullins; therefore, a boundary line adjustment will not be required. The entire roadway, which consists of approximately 0.225 acres, is located within the Agricultural Suburban Zone District.

Mr. Koch stated that FCR 50 is the road that leads to the County Shop, the CDOT shop behind, and the State Patrol Office. Although this road has been called FCR 50 on maps, it was never dedicated as a right-of-way. No right-of-way was ever given by the owners. This road does not provide the main access to any of the residences along the south side. Some of the property owners have verbal agreements with Mr. Mullins to access their property from FCR 50, which will remain as the owner sees fit.

Mr. Giordano noted that a sign was posted, and all the property owners adjacent to the right-of-way were notified, as well as any others that may want access to the road. Sangre De Cristo Electric and CenturyLink were also notified. There was a ten (10) day response time and the Department received no response to the notifications. One of the criteria for approval of this application is that if the roadway is vacated, the vacation cannot leave any properties without access. The notifications included the dates of the Planning Commission meeting and the Board of County Commissioner (BOCC) meeting.

Chairman Sandoval remarked that this is the first time he has seen a Department Review without any recommended conditions or contingencies.

Mr. Giordano stated that the only contingency is that the County cannot approve the vacation if any property is to be left without access to their property.

Mr. Alsop asked if there have been any comments from the members of the public who were notified.

Mr. Giordano answered that the Department has not received any comments.

Mr. Lamanna asked where the access is for the CDOT and Fremont County properties.

Mr. Koch answered the subject road (*FCR 50*). Those agreements are still in place and they won't go away, so there will be legal access to the properties.

Mr. Lamanna asked if those agreements are with Mr. Mullins.

Mr. Mullins stated that there was a verbal agreement between his grandmother and CDOT when they first got the lot, which became a written agreement when he contacted CDOT several years ago.

Mr. Giordano noted that the right-of-way is included in the County deed, which reads "Said County has right-of-way across adjacent land, to and from the County Road West of said property, to enter and leave the above described parcel of land." The CDOT deed reads in part "I, Gerald L. Mullins, ... hereby grant unto the Colorado Department of Transportation (here in after referred to as CDOT) the right to ingress and egress CDOT property from County Road #12 through my property on the established road that has direct access to the CDOT Cotopaxi property."

Chairman Sandoval called for comment from members of the public.

Mr. Ken Russell

I live on a property bordering FCR 50. (*Mr. Russell distributed a petition representing some of the people bordering FCR 50.*) The petition can be found in the Departments application file.

Mr. Russell added that the property owners are concerned that there could be an issue if the property changed hands or at the owner's whim.

Mr. Lamanna had questions about the statement in the petition that the vacation would deprive access to the Fire Department and Emergency Medical Services. He also asked if CDOT had been notified of the application.

Mr. Giordano answered that CDOT was notified as an adjacent property owner.

Mr. Lamanna asked if notifications included the Sheriff's Department or the Fire Department.

Mr. Giordano answered no, because they are all on the County's property, and this is a County application.

Ms. Jackson stated that the Fire Department has been involved in this issue from the beginning and they are aware of what is going on, as is the Sheriff's Office.

Mr. Robinson asked if the incentive for this application is the benefit of the County.

Ms. Jackson answered that this is a negotiation over property boundary disputes and encroachments in that area between the Mullins properties, the County property, and the

CDOT property. There is a tentative agreement, but part of that agreement says there is no guarantee that a vacation will occur of this roadway. It has to go through the County process, Planning Commission and Board of Commissioners with notification to all adjoining property owners. Planning Commission members don't have to assume that there is anything attached to this as far as an obligation to vacate this roadway. This needs to be looked at objectively.

Mr. Glen Baker, Chairman of the Deer Mountain Fire Protection District Board of Directors

We are in negotiations with the County Commissioners and Mr. Mullins to revise some of the property lines which will clear up a problem that occurred four or five years ago where a metal building that houses a vehicle for the Fire District encroaches on Mr. Mullins' property. We have reached a tentative agreement to rectify that problem and compensate Mr. Mullins for the encroachment. I would encourage you to do whatever possible to make this deal happen. Otherwise, the Fire District is going to be faced with some serious expense of moving the building. Part of this deal was to vacate the subject roadway, and we are in favor of that.

Mr. Alsop asked Mr. Russell if there are some issues with getting access to the back of his property that he can't get to from the front of his property.

Mr. Russell answered that he can't make it to the back of his property without going around.

Mr. Alsop noted that most of the property owners take their access from the front of the property off of Plum Street. He asked Mr. Russell if there is no way to guarantee that his access will continue.

Mr. Russell answered no, we would like to see the subject roadway remain a County road. It has been a County road for sixty years.

Chairman Sandoval asked if this is officially a County Road, even though it is under private ownership.

Mr. Giordano responded that the roadway is not under private ownership, it is a use by right road. This roadway is not a deeded right-of-way, it is prescriptive use roadway. FCR 50 is listed as an official County road on Highway uses map and report.

Mr. Krauth asked if there has been discussion about reaching an agreement between the property owner and the private residents on Plum Street to have access even if the roadway is vacated. If the landowner is in favor of vacating FCR 50 and the only objection would be the people on Plum Street for access to those properties, has there been any discussion to eliminate public access but to allow private access?

Mr. Mullins answered that he has a written agreement with a number of the property owners who live along Plum Street.

Mr. Krauth asked Mr. Mullins if he is willing to allow any of the property owners on Plum Street that have used this as access to their backyards to continue to access.

Mr. Mullins answered that he is willing to allow access to those who have talked to him about it. I have not seen the names on the petition. As far as I know, anyone who wanted access, I have talked to them and have had an agreement with them for a number of years.

Mr. Baker asked if the agreements are in writing.

Mr. Mullins answered that the agreements are in writing. I was advised by an attorney to attach some money to the agreements, so I have attached a minimal amount, and it is renewable every year. I have a written agreement with six or seven property owners. Mr. Mullins then read a prepared statement that can be found in the Department's application file.

Mr. Mullins noted that Mr. Russell's statement says "CR 50 was the original main road before the County put in the existing paved access road, also known as CR 51." This is erroneous. CR 51 has been there longer than I have been around.

Mr. Lamanna asked Mr. Mullins if the neighbors have been using the road regularly and whether he was aware that they were using the road.

Mr. Mullins answered in the affirmative. A number of people have been using the road for quite awhile. Several property owners have used the property between the road and the rear of their property for a long time, and they have been paying a small amount of money for it, but there was never anything in writing.

Mr. Krauth asked if Mr. Mullins has been receiving compensation from some of the property owners but not all.

Mr. Mullins answered that he and his brother have received compensation, but never from Mr. Russell.

Mr. Krauth asked Mr. Mullins if he will be satisfied if the road is vacated for public use, but will still allow private use by any of the people on Plum Street. Are you going to restrict access?

Mr. Mullins answered that he has no intention of restricting anyone from using the roadway.

Mr. Krauth stated that he is trying to find some middle ground. My belief is that neighbors need to get along with neighbors. If the Planning Commission makes a decision today to vacate the road, are we going to leave people on Plum Street hanging with no access? According to the aerial view it looks like there may be structures on the Mullins property.

Mr. Mullins stated that the structures are not on his property. The lines overlaid on the aerial view are off.

Chairman Sandoval stated that there are property owners who would like to continue to use the road for access. I see that as an issue. Secondly, some of these same people feel that public services might be affected. A third issue is that you object in part to what the County is proposing. The fourth issue is that you might allow access for some of the property owners, but not all.

Mr. Mullins stated that he never thought about denying access to anyone. If anybody wants a permanent easement, I suggest they do that while I am still alive, because I can't guarantee what the next owner of the property is going to do. Otherwise, it will be on a year to year basis. I have no intention of forbidding anyone from using the property if they come to me

and tell me they would like to use it. As far as I know, everyone is using it who wants to use it.

Mr. Baker asked if everyone wants to use the roadway, will they have to pay a fee? Mr. Mullins said, some people are paying now, but perhaps not all of them.

Mr. Mullins answered that Mr. Russell is not paying because he has the easement in his deed.

Mr. Alsup asked Ms. Jackson if the Planning Commission recommends approval with a condition that all the property owners on Plum Street would continue to have access to the rear of their properties in perpetuity, would that take care of these issues that we are discussing now?

Ms. Jackson answered that would probably take care of the one issue – access. The statute on vacation of roadways was changed a few years ago. It never used to allow for reservation of easements or vacating the public use and making a private use road, but there is some flexibility now. The legislature fixed that problem, so if you vacate a public road you can reserve use of the roadway for easements, certain kinds of access, and there is some flexibility in the statute. Of course, the issue of getting from the road to the property boundary is still between Mr. Mullins and his neighbors, because the County jurisdiction ends at the edge of that roadway. If we vacate the road, we still can't guarantee that they can cross that property in between the road and their property lines, but we can reserve private easements and public easements for limited purposes on a vacated roadway.

Mr. Krauth asked if that is because the road doesn't directly border those properties.

Ms. Jackson stated that the properties don't butt up against the roadway; there is a gap of property in between. The issue of access to the property is one that you absolutely have to consider on every application for vacation of roadway. If you determine that they are going to lose access to at least a portion of their property, then you can do an all or nothing, or you can do something in between, reserving easement access and vacating the public use.

Mr. Alsup stated that there is still the issue of getting across Mr. Mullins' section of property to theirs.

Ms. Jackson said that there is nothing within the County's jurisdiction to ensure that, short of condemnation, which we are not going to do. That is not part of the application. As far as traveling along the roadway, we can address that.

Mr. Krauth stated that we could reserve access of the vacated County road to residents on Plum Street, but those residents will still have to work out agreements with Mr. Mullins, because our jurisdiction ends at the edge of the County road. They need an agreement with Mr. Mullins to cross his property.

Ms. Jackson added that they could have some other legal right of access that is outside of our scope.

Mr. Mullins stated that he thought Mr. Russell had access to the rear of his property from the front. I am sure that everyone else on that street has access off FCR 51 to their property, and can get clear to the back of their property. Several of the property owners would like to buy a portion of land to the rear of their property. A number of years ago I talked to a

County representative about selling and was told that I could not do that because of the Subdivision Regulations. I suggested leasing for 99 years, and was told I can't do that either.

Ms. Jackson stated that if the property is less than 35 acres but is being attached to an existing legal lot, then it can be done through Boundary Line Adjustment. The County representative was probably talking about selling a little segment, which would be a subdivision violation; but there are some exceptions, and adjoining an existing lot is one of those.

Craig Reed, 0077 Plum Street, Cotopaxi, Colorado

I am new to the area. I moved to Cotopaxi for a retirement home, but because of all this that is going on I'm sorry I did. I am confused. I don't have a beef with Mr. Mullins, it is his property and he can do what he wants, but who is bringing this vacation application? Is it the County?

Ms. Jackson answered that the County has been in negotiations with Mr. Mullins to clear up all the encroachments, and the road was one of the issues that came up. It has to do with clearing up some encroachments and boundary disputes in that area and the road is part of that, and that is how the County comes into it, because it is on our road maps as a county road.

Mr. Reed stated that he can't access the back of his property from FCR 51. I have to go around the back to access my property. I have been paying Mr. Mullins a fee. I don't have a problem with the fee he charges me. There may be two other people besides Mr. Russell and myself, who can't access the back of their property from FCR 51. Mr. Mullins has said he wouldn't restrict people. I don't want this to be an issue for as long as I live in that house, and I don't want a problem. I would like a piece of paper for a long term thing, to exist as long as I live there, or my family. If someone else wants to buy it, they can deal with it. I don't want this yearly issue of going down this road to get to the back of my property.

Mr. Lamanna asked Mr. Reed if FCR 50 borders his property.

Mr. Reed answered that he doesn't know. I'm not sure if this vacation will affect me getting into the back of my property, even though I do have an agreement with Mr. Mullins.

Mr. Krauth said from what Mr. Mullins says, vacating the county road will not affect or impact your access. If we were to vote in favor of vacating FCR 50, our jurisdiction ends at the southern edge of the road. You still have to cross Mr. Mullins' property to get to your property, because the southern edge of that road doesn't adjoin or abut to your property.

Mr. Reed stated that he would like to buy that little piece of property at the back at a fair price just so there isn't a hassle.

Chairman Sandoval said these are things you can work out on your own. The County Attorney did explain that there are exceptions (*to the Subdivision Regulations*). You can do a Lot Line (*or Boundary Line*) Adjustment.

Mike Oswald, 241 FCR 51

We have had an agreement with the Mullins for a long time, and have never had a problem with them. We don't see a problem with vacating this road, because all it will do is eliminate public access. It is not going to eliminate our private access because of our agreement with Mr. Mullins. I don't want to make trouble, but the reason these people cannot access the rear of their property from FCR 51 is because they built buildings that prohibit vehicle access. They have blocked it off. I would like to see this vacation happen because it restricts the public access and makes it a private access. We would also like to be able to purchase that little piece of property between our property boundary and the CDOT property.

Albert Francis, Mr. Mullins' son-in-law

All Mr. Mullins wants is a return of what was actually his. The County put a road in there. He has tried and spun his wheels because of all the legalities. I am not aware of Mr. Mullins denying his neighbors anything. That is not the issue. The issue is that the County took away his property for a road. He owns the property. The access to these people's property has nothing to do with getting rid of the road. They still have to go through the legality of access or make a deal with Mr. Mullins.

Mr. Mullins noted that there is an irrigation ditch that runs through his property. I own that water right. Everyone who lives along here has my permission to use water from that ditch.

Mr. Robinson asked who will be responsible for maintaining the access to the County and the CDOT properties. Is that part of the agreements with the landowners, and the County is not involved? That will be an issue, not only for the public property owners, but also the private property owners who want to access their property.

Ms. Jackson said that whoever owns an easement has maintenance responsibility for the easement. Whenever you vacate a roadway, the ownership reverts to the underlying property owner by operation of law – nothing has to be done to accomplish that, it happens as soon as the vacation is recorded. As far as maintenance of everything not subject to an easement, that would revert to Mr. Mullins. Whoever has a right of an easement would have responsibility for maintaining their own easements. From FCR 12 to the boundary of the County property, the County would continue to maintain, probably in cooperation with CDOT because they access through there too.

MOTION

Mr. Alsup made the motion to vacate Fremont County Road 50 with the condition that it is subject to private easement for all the property owners along Plum Street. That gives them the same access that they have now, because they still have to negotiate with Mr. Mullins anyway. This will protect their property rights and access as much as we can do, and we also resolve a lot of on-going issues surrounding this property.

Mr. Krauth clarified that in the condition, County jurisdiction ends at the southern boundary of the vacated road.

SECOND

Mr. Robinson seconded the motion.

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

Mr. Mullins requested a complete transcript of this hearing.

Chairman Sandoval responded that draft minutes will be available in a couple of weeks.

b. SRU 11-003 ROYAL GORGE ZIP LINE TOURS NO. 2

Mr. Matt Koch, Cornerstone Land Surveying LLC, was present to request approval of a Special Review Use Permit for a Rural Recreational Facility, Department file #SRU 11-003 Royal Gorge Zip Line Tours No. 2, by Ty Seufer, for property owned by Anna Seufer, Cathy Brittain and Davis & Associates Builders Inc. with AJET Ventures, LLC the future property owner. The proposal is to allow up to ten (10) zip line runs, with up to fifteen (15) line departures a day during the peak season, four (4) to six (6) line departures will be the daily average, seven (7) days a week, on a year around basis. The zip line tours will be guided by a minimum of two (2) trained “zipping” guides. The zip line tour will be structured as a small group experience for eight (8) to ten (10) participants. All participants will be shuttled to the course via AJET Ventures, LLC drivers and vehicles from 45045 U.S. Highway 50, which is approximately 3.0 miles east from the site. The property contains two (2) residential dwellings which will be used as vacation homes; however, they will not be used in conjunction with the zip line operation. The property is located on the north side of U.S. Highway 50, where the Arkansas River crosses under U.S. Highway 50, in the Parkdale Area. The property is zoned Agricultural Forestry and contains approximately 110.34 acres.

Mr. Koch stated that this applicant put a zip line course in at the top of Eight-Mile Hill a year ago. This has been such a success that the owner has decided to put in another zip line, located at Parkdale on the North side of Highway 50. There are three 35+ acre residential lots that my client has purchased for a total of about 110 acres. There are two vacation rentals, one on each of two of the lots, and the third lot is vacant at this time. We are proposing a zip line course, consisting of ten zip lines and one trainer course. A zip line development company called Bonsai Designs evaluates the property, lays out where the lines should go – best fit, most fun, most drama, they have their own engineering, their own design, they lay everything out, build the towers and poles. For the first zip line course, we got a building permit, but all the inspections were done by Bonsai. They approved everything and certified everything. We have a drainage report in to Mr. Don Moore, County Engineer, which is being reviewed at this time. The structures that are built are very minimal, open based, with no drainage issues, but there is some consideration with the Arkansas River being so close. The customers will check in at the Royal Gorge Rafting and Zip Line Office on Eight-Mile Hill; they go through all the paperwork; they are driven to the site in vans by employees; they run through the course with two trained guides; then they are driven back to the restaurant at Royal Gorge Rafting. We have gotten Department of Health approval for portable chemical toilets as well as allowing bottled water, so there will not be water or permanent restrooms on site. This course will be run the same way as the other zip line course.

Mr. Ty Seufer, the applicant, stated that Royal Gorge Rafting and Royal Gorge Zip Line Tours all operate from 45045 Highway 50, where the Whitewater Bar & Grill is. Last year we bought a tough shed from Real Quality Structures out of Penrose, which is where we stored the gear. That building was nice, it was functional, but it got a little too hectic, so we brought in another building. This winter Real Quality Structures had some buildings on clearance, so I bought three of them. I put one by the gear storage shed and one back by the rafting office, which will be an office for me, my partner, the guy who

runs the zip line tours, and the guy who runs the rafting. The inside dimensions are approximately 13½ feet by 18½ feet. I plan to put one more tough shed next to that for somebody to answer the phone. They are all moveable tough sheds on skids.

Mr. Giordano discussed the application that was submitted for the first zip line course. Because they were putting another use on that property (*45045 Highway 50*) we were trying to determine whether they fall under Site Development Plan regulations. Because they were going to keep everything housed inside the buildings that they already had on that property, where the ticket office and the rafting business is, we decided not to make them go through the Site Development Plan process because we did not feel this was a major impact. The applicant stated in the application that this zip line tour is basically the same as the last one. When we visited the site, we found these new buildings.

Mr. Seufer said there are only two new buildings there now. I bought three, but the other one hasn't been delivered yet.

Mr. Giordano continued that the Department received a complaint from a neighbor. The question is, because of the new buildings, is this property (*45045 Highway 50*) now subject to Site Development? In order to make that determination, we needed to know what is the uses of the new buildings. Also, if there are going to be new buildings in association with this new zip line course the application should reflect it.

Mr. Seufer said he had no idea a building permit is required for a tough shed. I will do everything necessary to clear that problem up.

Mr. Alsup asked if these buildings were put on the original property or on the new property.

Mr. Giordano answered the new buildings are on the original property (*45045 Highway 50 where the ticket office is*). At the time of the first zip line application, the question was – that property will be used for the ticket office; should it become part of this Special Review Permit? We said “No” to that question and “No” to Site Development. In the first application, and again in this application, we asked if CDOT has any problem with the additional traffic due to the addition of the zip line course. We have left that property out of the SRU, except that they are operating out of that property for part of the zip line business – the ticket sales. If they are using the new buildings for storage, there is no change in impact.

Mr. Seufer stated that no customers enter any of the three tough sheds.

Mr. Giordano asked if the offices are related to all of the businesses.

Mr. Seufer answered yes, everything. This is not a fancy building; it is just a tough shed with four corner desks.

Ms. Jackson stated that the nature of the use controls the permitting, not necessarily the type of construction.

Mr. Giordano told Mr. Seufer that he needs to deal with the Building Department on the use of a shed as an office. The Planning Department concern was the possibility of increasing the impacts on the existing property.

Mr. Seufer stated that the tough shed that was on the property that was used for the equipment gear the whole time, was moved up to the top of the hill to the other zip line course as a storm shelter. The shed is sitting on a pad, and if there is a lightening storm we can get all the guests in there for safety. No customers have used it yet, but it is now there.

Mr. Giordano noted that anytime you are improving any of the properties that are governed by the SRU, you need to notify the Department of the improvements so as to determine whether it is a Major or Minor Modification.. If you put a shed up on the other property and the Building Department comes after you because you need building permits, you are technically going to have a violation on that property that could affect your SRU. You need to make sure you put the Department on notice and get your building permits.

Mr. Seufer stated the tough shed in question is under 200 square feet.

Mr. Giordano said he didn't think a building permit would be required, but the Planning Department has to be notified of the improvements.

Mr. Robinson asked if there will be any tough sheds on this property (*zip line tours no. 2*).

Mr. Seufer answered that potentially there will be a little gazebo or some type of storm shelter. The elevation is a little higher and there are a lot of rock cliffs. The clients need to be protected if there is a lightening storm. I do not have plans for a tough shed over 200 square feet.

Ms. Jackson noted that you might want to plan for that and include it in your application so you have the option.

Mr. Seufer noted that he has agreed to maintain the entire access road. Because of the size of the property, there is only one house you can see on the zip line tour. There is a spectacular view of the gorge from the property. The course will be built to the same ACCT (*Association for Challenge Course Technology*) standards. Bonsai is a professional company. We are lucky that we found them, and we are lucky that they have agreed to work with us again. This will be a turnkey system. No one got hurt this year except for a scratched finger and a twisted ankle on the trail. As long as the guides are perfectly trained, people can't get hurt. The Gorge is putting in a zip line too, across the gorge. We decided we might as well build this now while we have some momentum before the Gorge gets all the business. People really get a big kick out of the zip line. A lot of our guests have said they want a full day tour. This gives us that option. We can go to one course, come back to the Bar & Grill for lunch, and then go to the other course. There are a couple more zip line courses in the state. The biggest zip line tour in the world is in Durango – they have 27 zips.

Mr. Seufer questioned the operating hours as stated of 7 am to 7 pm. He requested that this be changed to 7 am to 9 pm. He also requested the inclusion of four storage sheds / storm shelters under 200 square feet.

Mr. Giordano noted that “prior to operation” needs to be added to Recommended Condition O which reads “Proof of payment of all Fremont County use tax for all materials used in construction of zip line.”

Regarding the contingency about the portable chemical toilets, Ms. Jackson noted that the Board of Health approved this use at their last meeting.

Mr. Giordano discussed the contingency that requires an engineered drainage plan and erosion control plan, which was not addressed in the application. The Planning Commission needs to decide whether you need to see those plans for your review. Mr. Moore’s concern is the drainage possibly going into the flood plain.

Mr. Koch said they got a full engineered drainage report. Mr. Moore wanted to see how we were managing the roadways. On site there is an existing soil conservation pond, and that takes care of all of our drainage issues. The pond holds more than what we are impacting, so there is no impact to the floodways. Mr. Moore received a copy of the report last week, so I am sure he is still reviewing it. Any issues should be fairly minor.

Mr. Alsup stated that this use is a very good fit for the area. He asked Mr. Seufer, on the existing zip line, has anyone tried to gain unauthorized access, such as teenagers at night?

Mr. Seufer answered not to his knowledge. There is a locking gate that slides and we bolt it shut. On each zip line there is a piece of metal that fits over the cable, so you cannot reach and hook onto the trolley. We are locking the zip line down. That is in the ACCT standards, which contain a lot of precautions that are really good.

Mr. Alsup asked if they had sent notification to Arkansas Headwaters Recreation Area (AHRA).

Mr. Giordano stated that was not one of the Recommended Additional Notifications, but that would be a good addition.

Mr. Koch said that will not be a problem. The notifications have not been sent out yet.

Mr. Krauth asked what the existing zoning is on the property.

Mr. Giordano answered Agricultural Forestry. This is considered a Rural Recreational Facility.

Mr. Krauth asked if the same clients that will do the zip line will also stay at the vacation rental houses.

Mr. Seufer answered sometimes, but we have a group of eight to ten people stay at the house, and we take eight to ten people every thirty minutes on the zip line.

Mr. Krauth asked if renting the vacation homes is part of this SRU.

Ms. Jackson answered no, the County doesn’t regulate that.

Mr. Alsup asked how many customers they have had on the first zip line course.

Mr. Seufer answered over 10,000 people. We had a lot of comps (*complimentary tickets*). We gave a lot away, but we needed to build momentum.

MOTION

Mr. Krauth moved to approve SRU 11-003 Royal Gorge Zip Line Tours No. 2 with the following:

The Planning Commission recommended (at the applicant's request) that four sheds / gazebos be added to the application.

RECOMMENDED CONDITIONS:

- A. Special Review Use Permit shall be issued for life of use. *The applicants justification for life of the use is that "Business value and SRU yearly review allows for life of the use without re-submittal."*
- 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 prior to the expiration of the six-month period stating the reasons thereof and the plan for the resumption of the use. The requirement of a notice of temporary cessation shall not apply to applicants who have included in their permit applications a statement that the use would continue for less than six (6) months in each year and such fact is noted on the permit. In no case, however, shall temporary cessation of use be continued for more than two (2) years without approval by the Board.

- G. If a Special Review Use Permit is to be transferred it shall comply with all applicable Federal, State and County regulations regarding such transfer.
- H. Days of operation shall not be limited.
 - a. Hours of operation for tours will be limited to 7 am to 7 pm.
The Planning Commission recommended (at the request of the applicant) that the hours of operation be changed to 7 am to 9 pm.
- I. The applicant / owner will be limited to the use of a maximum of ten (10) zip lines plus one (1) training zip line.
- J. Applicant shall provide to the Department, documentation from the Fremont County Weed Coordinator that the applicant has in place an acceptable weed control plan, further the applicant shall implement and maintain the plan, yearly.
- K. The applicant shall provide to the Department annually, a copy of premises liability insurance in the amount of at least one (1) million dollars for the proposed use and it shall be kept current as long as the business is in operation. The limits of liability may be adjusted by the Board based on a review of coverage no more frequently than every three (3) years.
- L. The applicant / owner shall provide the Department with documentation that all construction of the structures, zip lines and towers are designed according to Association of Challenge Course Technology (ACCT) standards and are reviewed and accepted by the County Reviewing Engineer.
- M. The applicant shall provide the Department with a copy of the yearly inspection of the anchors, cables, towers and pole foundations, etc. by an independent inspection agency or government agency. All inspection documents shall have said inspection signed and sealed by a Colorado Registered Professional Engineer. Failure to correct deficiencies immediately noted by the inspectors shall be cause for operations to cease until remedies are in place and certified by the inspectors.
- N. Proof of payment of all Fremont County use tax for all materials used in construction of zip line.
The Planning Commission recommended adding “prior to operation” to this condition.
- O. The applicant shall keep and make available, at all times, a log of all customer attendance and customers instructed and trained to ride the zip line.

- P. All AJET Ventures, LLC personnel that work on site shall be trained in safe operations.
- Q. No customer vehicle traffic or parking is permitted. All customers shall be transported to the site only by AJET Ventures, LLC drivers and vehicles.
- R. Any use of ATVs in the permitted area is restricted to transporting customers within the zip line course, maintenance of the zip lines, or for use in the event of emergencies. No ATV recreational uses will be allowed within the permit area by either customers or guides.
- S. Due to a threat of wildfires occurring in the pinion-juniper trees within the course area, smoking and campfires by customers and employees are prohibited.
- T. 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.
- U. Only the named party, AJET Ventures LLC, 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.
- V. 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 8.2 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. Documentation as to proof that AJET Ventures is the owner of all three parcels.
2. Documentation as to proof of access from the Colorado Department of Transportation.
3. Documentation from the Colorado Department of Transportation that the existing access at 45045 State Highway 50, Royal Gorge Zip Line Tours ticket office is adequate for the increased traffic generated by a second Zip Line business.

4. Applicant shall provide to the Department, documentation from the Fremont County Weed Coordinator that the applicant has in place an acceptable weed control plan or that one is not required.
5. Determination as to the requirement of proof of water. *Applicant has stated that water, other than drinking purposes will not be required for the operation and that bottled water, etc. will be provided for customers.*
6. Documentation from the Environmental Health Office as to the use of portable chemical toilets as the source of sewage disposal and other requirements as per memo dated November 15, 2011.
7. Documentation as to compliance with the County Reviewing Engineer's recommendation, in his letter dated October 26, 2011. The following is a summary of significant comments:
 - a. A CDOT highway access permit is needed. *(Required in Contingency item #2).*
 - b. Engineered drainage plan and erosion control plans are needed. *(Not addressed by the applicant). A determination should be made as to whether the drainage plan and erosion control plan are critical in determination as to whether the application should be approved, denied or continued.*
 - c. Method and site for toilet facilities are needed. *(Required in Contingency item #5).*
8. Copy of an emergency plan for evacuation of customers from zip line in case of accident.

The Planning Commission recommended the following:

ADDITIONAL NOTIFICATION REQUIREMENTS:

In addition to the required notifications, the following shall also be notified in accordance with regulations:

1. Colorado Department of Transportation
2. Fremont County Building Department
3. Fremont County Environmental Health Office
4. Fremont County Sheriff
5. Colorado Department of Wildlife
6. Fremont / Custer Historical Society
7. Colorado Department of Labor and Employment, Division of Oil and Public Safety

The Planning Commission recommended including the following additional notification:

8. **Arkansas Headwaters Recreation Area**

The Planning Commission recommended waiving the following:

WAIVER REQUESTS:

1. *The applicant has requested a waiver of the buffering and landscaping of the permit area. The justification for the waiver is due to the size of area and they would like to keep the area as natural as possible.*

5.2.6 Buffering & Landscaping Requirements:

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

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

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

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

2. *The applicant has requested a waiver of the hard surfacing of the parking area. The justification for the waiver is that the applicant is trying to keep a natural and scenic looking area and that hard surfacing would not be compatible with the natural scenery.*

5.3.2 Surfacing: Surfacing for all business, commercial, or industrial off-street parking areas shall be graded and surfaced so as to control dust and provide proper drainage. The driveway and parking 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 so as to prevent parking vehicles from extending over any lot lines.

3. *The applicant has requested a waiver of lighting. The justification for the waiver is that there will not be any night use.*

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

4. *The applicant has requested a waiver of the landscaping of the parking area. The justification for the waiver is that there is natural vegetation and there will be no parking area.*

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.

SECOND

Mr. Alsup seconded the motion.

Chairman Sandoval asked about the drainage plan.

Mr. Koch said the drainage plan has been submitted, and Mr. Moore is reviewing it. We will follow his requirements.

Mr. Giordano noted that the Planning Commission will not see Mr. Moore's recommendations.

Chairman Sandoval asked about the documentation of the Health Department approval of portable chemical toilets.

Ms. Jackson answered that has been approved – I attended the meeting.

Mr. Koch stated that upon approval (*of the SRU*) the applicant will have to get a contract with the provider (*for portable chemical toilets and maintenance.*)

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

7. ADJOURNMENT

MOTION

Mr. Robinson moved to adjourn the December 6, 2011 meeting.

SECOND

Mr. Lamanna seconded the motion.

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

Chairman Sandoval adjourned the meeting at 5:52 p.m.

CHAIRMAN, FREMONT COUNTY PLANNING COMMISSION

DATE