

The board met in a Special Land Use Public Hearing on Tuesday March 19, 2019 at 9:00 A.M.

Present were:

Garrison Ortiz, Chair

Terry Hart, County Commissioner

Chris Wiseman, County Commissioner

Gary Raso, Special County Attorney

Joan Armstrong, Director, Planning and Development

Peggy Pleasant, Clerk to the Board

Commissioner Ortiz: Noted the change of location from the BOCC Chambers to the Sangre de Cristo Arts and Conference Center.

Peggy Pleasant: Led the Pledge of Allegiance.

The Land Use Agenda for Tuesday March 19, 2019 was approved.

Commissioner Hart: Moved to approve the Land Use Agenda for Tuesday March 19, 2019.

Commissioner Wiseman: Seconded the motion.

Commissioner Ortiz: Confirmed motion and second. There being no further discussion or objection,

All in Favor:

WISEMAN-AYE

HART-AYE

ORTIZ-AYE

The motion passed unanimously.

Commissioner Ortiz: Thanked everyone for being here then stated there were a few things he needed to address before the start of this hearing.

Commissioner Ortiz: Recently on February 14, 2019 the Applicant submitted a Motion to Dismiss to Pueblo County requesting that the appeal be dismissed. The Applicant argues that the parties requesting the appeal lack standing to challenge the Planning Commission's decision then stated he would like to address the Motion to Dismiss.

The Board has conferred and responds to the Motion to Dismiss and stated as follows:

On February 14, 2019, counsel for Fremont Paving transmitted a motion to dismiss this appeal to the Pueblo County Attorneys' Office. That office then forwarded the motion to the Board of County Commissioners for its consideration. Through the motion, Fremont argues that the parties requesting this appeal lack standing to challenge the Planning Commission's decision.

The Pueblo County Code does not contemplate pre-hearing motions. For that reason, it's questionable whether Fremont's motion even needs to be addressed. That said, the Board can simply consider the motion as it would any correspondence or documentary evidence submitted in advance of the hearing.

Even though there is no formal motions practice before the Board, addressing the motion now makes sense because it raises a threshold issue – in other words, if Fremont is right, there is no need for the hearing, but if they're wrong, we can proceed. Even assuming the motion was filed properly, the Board has still decided to deny it on the merits.

Fremont's primary argument is that none of the persons or entities seeking this appeal qualify as a "person aggrieved" under Section 17.140.100 of the Pueblo County Code. Fremont first says the appellants fail to meet their burden in proving that they are aggrieved and then says that even if they had tried they could in no way qualify because they do not occupy or own the land in question.

This Board rejects both arguments. Fremont cites to a 1963 decision of the Colorado Supreme Court interpreting the term “person aggrieved” in a specific statute as it relates to judicial standing. See City & Cnty. of Denver v. Miller, 379 P.2d 169, 172 (Colo. 1963).

This Board acknowledges that the General Assembly is permitted to regulate causes of action and that there are certain constitutional limitations on judicial standing.

Those considerations, however, do not influence what categories of persons may ask this Board to review a decision by the Pueblo County Planning Commission. Where a local government's interpretation is consistent with "generally applied rules of statutory construction, the administrative interpretation is entitled to deference." Sierra Club v. Billingsley, 166 P.3d 309, 312 (Colo. App. 2007).

Black's Law Dictionary defines "aggrieved" as "having legal rights that are adversely affected." A legal right is defined by the particular proceeding at issue and so depends in large part on context.

Here, a decision on a Pueblo County Special Use Permit considers, among other things, the effect that permit would have on the surrounding properties and the public, health, safety, or welfare. See Section 17.140.050. That section recognizes and creates legal rights in persons beyond those occupying or owning the property seeking the SUP. In other words, the Code gives persons in the neighborhood the right to weigh in to an SUP application and to be free of an SUP that is not harmonious with their properties or is contrary to the public safety, health or welfare. By recognizing rights, it follows that the Code would allow them to be vindicated.

By imposing a required finding relating to the surrounding neighborhood, the Code has given rights to those persons who with a connection to the surrounding properties. The Commission permitted testimony from many of the appellants and we agree that at least some (if not all) have rights that could be vindicated under the Code. Because the findings in Section 17.140.050 create legal rights in these persons, we agree that those rights could have been adversely affected by the Commission's decision. For that reason, we believe that at least some (if not all) of the appellants are aggrieved within the meaning of the Code and that this appeal is proper.

For those reasons, the motion is denied and the hearing will go forward.

Commissioner Ortiz stated the rules and format of this hearing as follows:

Staff requests that once the hearing is opened the staff reports and case summary will be made part of the proceeding. Consistent with the agenda, we will begin the hearing with a staff report and presentation not to exceed thirty minutes.

After the staff presentation, the Applicant will be given the opportunity to provide a presentation not to exceed forty minutes. An additional forty minutes will be allowed for proponents to provide testimony. Each individual wishing to provide testimony in support of the special use permit will be granted two minutes to speak then clarified that they will grant the request to share time by individuals.

The Board will then take a fifteen-minute break and after the break we will hear a presentation from the opposition not to exceed forty minutes. An additional forty minutes will be allowed for opponents to provide testimony. Each individual wishing to provide testimony opposing the special use permit will be given two minutes to speak and will also be allowed to share time.

The individuals who have signed up prior to the start of this hearing will be the only ones allowed to testify or share time either in support or opposition to this Special Use Permit.

The Applicant will then be allowed a rebuttal session for a period of twenty minutes during which time they may only address issues raised by the opponents during testimony. After the Applicant rebuttal we will close the hearing and the Board will deliberate and make a decision or deliberate and continue the hearing to a date, time and place certain to render a decision. The time allotted for today's hearing is approximately four hours but reserve the right to adjust accordingly if the Board of County Commissioners have additional questions or would like further clarification at any point during this hearing.

When testifying please be respectful to all in attendance. Address your testimony to the Board and limit your testimony to information that is relevant to the case before us. Do not address testimony to the Applicant, staff or others in attendance. In the interest of time, please do not repeat testimony that has already been offered by others. If you agree with the testimony of other witnesses, you may inform the Board that you agree with such testimony in lieu of repeating the testimony. However, please be aware that the Board Chair has the discretion to interrupt and stop repetitive or irrelevant testimony.

For purposes of this hearing the Board of County Commissioners is sitting in a quasi-judicial capacity. As such, the Board members are prohibited from obtaining and/or considering evidence not presented at the public hearing. The Board must apply the standards in the existing Pueblo County Code to facts presented at this hearing to arrive at a decision.

As stated, this is a de novo hearing on a Special Use Permit Application.

Standards

Before approving an application for a Special Use Permit, the Board shall find, based upon evidence and testimony presented at the hearing, that the following conditions have been met:

A. The requested use is a use listed as a special use in the zone district in which the parcel is located. Alternatively, the Board may find, based upon the determination of the Pueblo County Zoning Administrator or upon its own finding, that a requested use is similar to those uses listed as uses-by-right or -by-review in the zone district in which the parcel is located. A similar use determination by the Zoning Administrator or by the Board shall not be site specific and shall thereafter be binding upon Pueblo County in the interpretation and administration of this Title unless and until the same is amended in accordance with law and regulation.

B. The granting of the Special Use Permit will not substantially modify the Land Use plan or the intent, purpose and spirit of the Pueblo County Land Use Code.

C. The Special Use Permit proposal incorporates reasonable means to create an environment harmonious with that of the surrounding properties.

D. The Special Use Permit will not adversely affect the public health, safety, or welfare.

One last note, for those in the audience please do not be disruptive during testimony. Please do not shout, fail to silence your cell phone or applaud during the hearing or you may be asked to leave.

At this time, I will open the hearing and turn it over to staff for a presentation.

PUBLIC HEARING

STAFF REPORT

Joan Armstrong: Staff requests Staff Memorandum dated March 13, 2019 with Exhibit A and Exhibit 1-16 be entered into the public record of this Public Hearing. Also, she entered into the public record, additional correspondence received after the Board of County Commissioners staff review was completed and sent out March 13, 2019 or missed emails by staff in the Staff Report. This list was compiled on March 16, 2019 by Planning and Development staff. Ms. Armstrong listed names and dates received from 22 opponents and 1 proponent then stated she will take the files, staff memorandum and documents to the clerk to enter into the public record.

Commissioner Ortiz: Stated all materials listed by Ms. Armstrong will be made part of the official record of these proceedings.

1. SPECIAL USE PERMIT APPEAL NO. 2017-001

The Board of County Commissioners has granted a request for a *de novo* hearing of Special Use Permit Application No. 2016-007 pursuant to the provisions of Pueblo County Code, Title 17, LAND USE, Division I. ZONING, Chapter 17.140, *APPEALS*, Section 103. The application proposed to allow mineral and natural resource extraction and mining operation excepting therefrom any processing within the special use permit boundary within a 1,508± acre permit boundary area in the A-1, Agricultural (minimum 35 acre) Zone District. The application includes a proposed southwest haul road and alternate haul road by use of private roads (easements) that will eventually access Special Use Permit No. 709 (aka Special Use Permit No. 1990-016 (State Pit, Division of Reclamation, Mining and Safety File No. M-1990-112) and 36th Lane, four (4) mining phases with an affected mining area of 307± acres, a life expectancy of the permit being 10 to 15 years, and a proposal to reclaim the mined area to its post-mining use of rangeland. The proposed permit boundary is composed of the mine area, main haul road and alternate haul road; the southwest haul road extends from the main mine area then southwesterly across 40th Lane to the northeast corner of Section 33, Township 21 South, Range 63 West of the 6th Principal Meridian where it will then extend north to Special Use Permit No. 709 and then the alternate route will be the same up to the northeast corner of said Section 33 where it will continue west to 36th Lane.

The Permit boundary is located within portions of Sections 24, 25, 33, 34, 35, and 36, Township 21 South, Range 63 West and Sections 19 and 30, Township 21 South, Range 62 West of the Sixth Principal Meridian, Pueblo County, Colorado.

Ms. Armstrong: Stated this concluded her report.

Commissioner Ortiz: Asked if staff had any further comment regarding this report.

Gary Raso: Reiterated an Appeal de novo, which is what this is, the Board in this case, may consider the record of the lower body, the Planning Commission, which has been made part of the record. The Board may hear new evidence but what is important is their review of the evidence in the application of the law is made without deference to the lower body. The Board's decision will either affirm, modify or reverse the Planning Commission's decision with the important being a new decision based on their application of the evidence to the standards which Commissioner Ortiz read to govern determination.

Commissioner Ortiz: Stated they have a robust amount of material to review including testimony from the lower board, which have all been entered into the record and that is one of the reasons why they are having a structured meeting today. He stated as a Board they have had ample time to review the documents given to them.

APPLICANT PRESENTATION

John Ary, Owner/Applicant: Presented the BOCC with 2 binders containing the Power Point with original and new information. Mr. Ary stated he will start off with comments from the other owners.

Nancy Pritekel, Owner: Read a letter describing how she and her husband John acquired their land and her husband's wishes for their sons and the vision he had for the use of their property. Ms. Pritekel asked the Board to consider approving this application.

Tom Pritekel, Owner: Outlined a brief history on the company's steps towards obtaining this SUP commenting on the Planning Commission's decision then addressed the opposition's effort to stop this SUP, the benefits it would bring. Mr. Pritekel asked the BOCC to do what the Planning Commission did by a 5-1 vote and approve this SUP then thanked the Board for their consideration.

Dan Hendrichs, Co-Applicant: Stated he has 400 acres near the Bessemer Ditch then gave a brief history of his credentials which validate his knowledge in this matter. Mr. Hendrickson went through some of the slides showing justification that this is not prime grazing land, the uses of water regarding the property as well as stating specific facts that this application will not affect farming. After elaborating further regarding the land he asked the Board consider all the facts and approve this application.

Phil Courtney, Solid Mineral Leasing Manager, Colorado State Land Board: Stated the mission of the State Land Board is to manage an endowment of assets for financial support of Colorado's Public Schools and act in the best interest of the beneficiaries. He went on to give detailed facts of the financial benefits over the last 10 years. He spoke of the lease agreement and breakdown of those funds collected. Mr. Courtney commented on the expectations of this lease agreement and they will work with the state and county.

Josh Ary, VP, Owner/Applicant: Spoke on the safety being a high priority, safety meeting for employees, letter from insurance carrier and their team of experts. Mr. Ary stated his belief that this is the best planned project for Pueblo County and vital for economic use of any community.

John Ary: Continued with the slides that include an overview of the applications, changes made, cost incurred if purchased elsewhere, community effort of outreach, Letter of Support from Senator Larry Crowder and others as well as machine

operations. Mr. Ary discussed the improvements they made on 36th lane and additional improvements then stated the project meets all state and local regulations and asked the Board affirm the Planning Commission's decision.

Commissioner Hart: Asked about the improvements Mr. Ary proposed in connection with this permit, which basically looked like sidewalks and curb gutters also, he is aware that one of the issues is safety for the children crossing and wanted to know if there were any other proposal for control which Mr. Ary addressed then stated the Pueblo County Road and Bridge make those decisions. A question/answer session continued regarding trucks, the direction they will be traveling and Commissioner Hart requested Mr. Ary address the noise and dust issues which he did.

Commissioner Wiseman: Asked what control was in place to ensure they don't extend their operation beyond the boundaries of the agreement which Mr. Raso addressed stating they would be held to the conditions put in place by staff and the state if not, they would be in violation.

Mr. Ary: Further addressed the 1500-acre area in question showing the slide regarding those boundaries.

Commissioner Ortiz: Thanked Mr. Ary for being here then inquired about him working with the surrounding neighbors and posed the question how did the ones that didn't submit a letter feel, if they were for the project. Mr. Ary stated he would have to say they would not protest it but they would not go down and support it. Commissioner Ortiz asked Mr. Ary to go over the changes they have made which he did. He asked Mr. Ary how can they assure the conditions put forth will be followed throughout the length of the permit. Mr. Ary stated they are always in close contact with the Planning and Zoning department which meetings are scheduled to discuss any issues. Commissioner Ortiz asked Mr. Ary to comment on some of the violations on other properties they own. He addressed the violations, one in particular on 36th lane which is exactly what Commissioner Ortiz was requesting. He asked Mr. Ary if he is currently adhering to the conditions set forth by the Planning Commission which he answered yes.

Commissioner Hart: Asked Mr. Ary if the Bessemer Ditch Gravel Pit was operational which he answered yes then continued to elaborate further regarding reclamation and permit.

A question/answer session took place between Commissioner Wiseman and Mr. Ary regarding how many other gravel pits had he completed reclamation on also, Mr. Ary stated they are held under a bond that assured the property will be reclaimed to code.

Commissioner Ortiz: Stated this concluded the applicant presentation then clarified that the 40-minute timeline be adhered to also, that the Board has full latitude to ask that any question be clarified.

A brief discussion took place regarding whether the 2 binders are to be placed in the record which the applicant requested yes.

Commissioner Ortiz: Stated the 2 binders will be entered into the record of proceeding as requested by the applicant. **Applicant/Proponent Exhibit 1-2 Binders (red binder contains new project information; blue binder contains original project information).**

PROPONENT TESTIMONY

All proponent testimony is in favor of this application.

Tom Roberts, Division Manager, Scott Contracting: Spoke of the importance of having aggregate materials available for use helps with cost.

Doug Thacker, Avondale Resident: Stated he leases from the State Land Board and finds no problem with his cattle, dust or noise then said he is in favor of this application.

Gil Trujillo, Pueblo West: Stated his family leases his land on 38th lane. He spoke on his family experiences with the trucks, the route and that the past gravel pit owners were good neighbors.

Dan Montano, Vice President, Montano Concrete: Spoke on the benefits for Pueblo County of having aggregate local and the downfalls of not approving this application.

Emily Price, PW Resident, Taxpayer: Spoke on the cost of hauling gravel from other counties and the cost effect it will have on the taxpayers for roadways. Ms. Price presented a letter and a gravel cost analysis worksheet then passed it out to the clerk to be put into the record.

Applicant/Proponent Exhibit 2-Letter and Gravel Cost Analysis

Ted Lowder, Martin Marietta Materials, General Manager, Asphalt Paving: Stated they have an Asphalt Plant located at 615 S. Santa Fe Dr., Pueblo. Mr. Lowder spoke on behalf of the 57 employees here in Pueblo County and the importance of their business to retain employees.

Scott Fonda, President, Pueblo Association of Homebuilders, Partner/Regency Ridge Development Company: Stated they have been building homes in Pueblo for over 30 years then spoke on the use of the gravel. Mr. Fonda encouraged the Board to approve this application so they may continue to build affordable homes.

John Aragon, JA Concrete: Spoke of the livelihood of their business and also the demand here in Pueblo County.

Dwight and Darlene Miller, Residents: Stated they lived in the area for 20 years and have never had a problem with the truck traffic or safety for the 2 boys they raised. They are both in favor of this permit.

Gail Zimmerman, Rocky Ford: Stated they own 2 gravel pits, one in Crowley County the other in Otero County and were proud to say Fremont Paving is their pit operator. They have farmed, ranched and resided near the Otero County pit for

over 40 years. Ms. Zimmerman stated they submitted a Letter of Support to the Pueblo County Planning Commission dated October 10, 2016.

Shane Milberger, Resident: Spoke on the type of neighbors these gravel pits are and how much they do for our community and it would be an injustice not to allow Fremont Paving to be their neighbor.

Pam Snow, PW Resident: Spoke in support of this application and the extraction of natural resources in our county and embrace the fact that they are willing to provide this service to our community.

Paul Blasi, VP Blasi Trucking: Stated he has over 30 years of professional experience in the transportation business. Spoke on the many years they have worked with the Ary organization. Mr. Blasi spoke on their drivers and safety record then stated he fully endorsed this application.

Jim Moody, Director Industry Relations, Colorado Contractors Association: Stated Fremont Paving and Redi Mix has been a proud member for over 2 decades and they have always known the company to stand for safety, equality and integrity then requested approval for this application.

Rene Brown, Local Business Owner: Spoke of her 53-year Fabrication business and how important it is to create job opportunities here in Pueblo County and strengthen our community.

Todd Ohlheiser, Executive Director, Colorado Stone, Sand & Gravel Association: Stated he represents the mining, construction aggregate industry across the state. Gave a brief overview of the organization mentioning the many different tightly monitoring systems they have in place and he is proud to say that Fremont Paving is part of this organization. Mr. Ohlheiser stated he supports this application.

Tom Peterson, Executive Director, Colorado Asphalt Pavement Association: Stated he echoed and concurred with the testimony before him; the need for aggregate and the reputation of Fremont Paving. Mr. Peterson spoke to Commissioner Ortiz's question of assurance stating they are heavily regulated and just a phone call away from inspection, of enforcement, they meet quarterly with the regulators to see how they are doing; Fremont Paving is not only involved in this process they are driving it. Mr. Peterson asked 3 questions then stated the benefits for Pueblo County by approving this application.

A brief discussion took place between the BOCC, Ms. Armstrong and Mr. Raso regarding the acceptance of written testimony from the people would were on the list that did not get to speak. After discussion it was decided they will accept written testimony from the people until 5 p.m. today. Testimony has to be turned in to Ms. Armstrong at the Planning and Development office by 5 p.m. today.

Commissioner Ortiz: Stated the rest of the hearing will be treated in a similar manner then he read off 3 remaining names on the proponent list; 1) Justin Osborne, 2) Cooper Trahern, 3) Bob Swearingen.

Commissioner Ortiz: Asked that the timer be set for the 15-minute break scheduled on the Agenda and reiterated that in order to run a fair hearing he asked the people not to approach the commissioners; then called a recess.

THE BOCC RECESSED AT 11:14 A.M.

THE BOCC RETURNED FROM RECESS AT 11:32 A.M.

After the recess the following staff returned to the meeting:

Garrison Ortiz, Chair,
Terry Hart, County Commissioner
Chris Wiseman, County Commissioner
Gary Raso, Special County Attorney
Joan Armstrong, Director, Planning and Development
Peggy Pleasant, Clerk to the Board

OPPONENT PRESENTATION

Daniel Hobbs, Landowner/Representing the Opposition: Thanked the Board for allowing them to be here today. Mr. Hobbs mentioned the outreach by Fremont Paving and noted the ultimate permit application that was submitted was an arrangement with 1 single landowner in the county. He went on to state further; characterization of the community at large or any individual are irrelevant arguments and misleading whether it be on the opponent side or the proponent side. Mr. Hobbs begin his power point presentation then stated there is one inescapable fact that made the Pueblo County Aggregate Project fundamentally untenable, from an agricultural land standpoint, it's uphill from the Bessemer Ditch, Huerfano River and prime farmland. He commented that the application should be denied due to an incompatible land use. Mr. Hobbs discussed the Comprehensive Plan, prime farmland and irrigation.

Doug Cockrell, Environmental Planner: Continued with the slide presentation stating this is not the right time then spoke on the Comprehensive Plan. He also spoke on preserving agriculture, quality of grazing and water rights. Mr. Cockrell stated a new Comprehensive Plan is needed and this application should be denied.

Dale McCall: President, Rocky Mountain Farmers Union: Presented a brief overview of the organization and its function. He stated he is opposed to this application. Mr. McCall spoke on preserving agriculture stating that it is the 3rd largest contributor to the state economy then encouraged the Board to use their leadership to keep agriculture productive in Pueblo County.

Bob Beamon, Landowner: Stated he is a lifetime farmer and rancher. Mr. Beamon spoke on the type of terrain in the Badger Hill area, revegetation and reclamation.

Daniel Hobbs: Noted for the record the slide from Total Terrain who submitted a letter in 2016 that the area was not suitable for reclamation, which is part of the record.

Doug Wiley, Landowner/Farmer: Stated his property has been out there for 100 years, the LARGA Vista Ranch since 1917. Mr. Wiley spoke on the water quality and future of Pueblo County.

Daniel Hobbs: Continued with the slide presentation featuring water quality, a Right to Farm Resolution, Hobbs and Myer Farms, FDA requirements, contaminants, native pollinators, food production, dust impact on plants, respiratory issues, cost of production and worker safety.

Nanna Myer, Health Science, Physiology and Nutrition Professor, UCCS/Co-Owner Hobbs and Myer Farms: Spoke on Training the Next Generation slide; the impact this application will have on University Programs where students come to Pueblo County to learn about farming and nutrition as well as the Farm and Food Apprenticeship Program. Ms. Myer also spoke on the Pueblo County sustainability plan, which she stated the gravel pit contradicts.

Wendi Kern, Opposition Chairperson/Landowner: Requested a time check which Commissioner Ortiz stated around 4 minutes left then she handed out a booklet with applicant violations.

Gary Raso: Stated these will be accepted into the record as Opponent Exhibit A.

Opponent Exhibit A-Applicant Violations and Business Practices Booklet

Ms. Kern: Continued with the slide presentation referencing this information. Ms. Kern addressed mining, conditions, dust and wildlife. Ms. Kern submitted a petition with 251 signatures and a booklet labeled the Division of Water Resources regarding the water hauling.

Commissioner Hart: Clarified this will be Opponent Exhibit B and the water hauling booklet will be Opponent Exhibit C which Mr. Raso confirmed.

Opponent Exhibit B-251 Signature Petition

Opponent Exhibit C-Colorado Division of Water Resources Booklet

Commissioner Ortiz: Stated this concluded the Opponent Presentation and thanked them for staying within the timeline then asked the Board if they had any questions.

Commissioner Ortiz: Stated Opponent Exhibit B & C will be made part of the record.

Commissioner Hart: Asked Mr. Hobbs about the applicant's efforts of dust control if he thought it was adequate and if not, why. Mr. Hobbs stated no, he referenced Mr. Beamon and the professional opinion of Mr. Garcia then addressed the issue. Also, discussed was the Mine Land Reclamation Permit the applicant had already acquired. Ms. Kern interjected stating the applicant was going to use equipment that had not been approved by the EPA, state or county. Discussion continued with Commissioner Hart asking Mr. Hobbs to speak to the reclamation issues which Mr. Hobbs also didn't feel was adequate; Ms. Kern spoke to the reclamation and vegetation. Also, drainage Badger Hills Pit which seem inadequate as well. Ms. Kern also discussed water issues.

Commissioner Wiseman: Stated he has gone through a process at the state over the years putting together tools for regulatory agencies used to oversee project like this; there are a lot of agencies involved then asked if they feel the state can't adequately oversee the project in a way that takes into account the health and safety of the people living on the mesa which Ms. Kern addressed regarding inspection and PDPHE then Mr. Hobbs added information. Commissioner Wiseman addressed a question to Mr. Cockrell regarding abandoning river bottoms for gravel, for the Mesa. Commissioner Wiseman stated wouldn't it will be more detrimental to the water drainage then to the Mesa. Mr. Cockrell addressed the question but could not completely answer. Ms. Kern addressed the question more in detail.

Commissioner Ortiz: Spoke on the correlations being the effect on farming and requested someone address the direct impact currently on farming with the existing pits. Mr. Hobbs and Ms. Kern addressed the dust issue and a current problem at the State Pit. Commissioner Ortiz asked Mr. Hobbs in his opinion, the dust that would stem from approving this Special Use Permit, despite mitigation efforts, would directly impede someone's ability to produce which Mr. Hobbs stated yes. Lastly, he asked if there is any further modification that would be acceptable, short of denial, that will alleviate the concerns he has; Mr. Hobbs stated no, however he requested if they approve the permit they be given 24 hours to assemble some vital protections for their properties and home. Commissioner Ortiz clarified if they had something that would mitigate all their concerns they would have presented them here today which Mr. Hobbs stated yes then elaborated further.

Commissioner Ortiz: Stated this concluded the Opponent Presentation; he reiterated the fact they have until 5 p.m. to turn in written testimony and discussed the shared time, which Ms. Armstrong requested clarification on.

OPPONENT TESTIMONY

All opponent testimony is in opposition of this application.

Sean Svelte, Student: Spoke about working on the Hobbs and Myer farm under one of the programs as well as the farms we are losing and the fragile resource farming has become.

Daniel Hobbs: Spoke on the letter submitted into the record last week regarding property values then read a letter of support in opposition from the Vitamin Cottage.

Commissioner Ortiz: Stated since 5 people donated their time Ms. Rinks has 12 minutes to speak.

Velma Rinks, Retired Rehabilitation Counselor/Landowner: Stated her family also has been out there 100 years and have roads names after them. She voiced her concern for the safety of the children, teachers and parents at Vineland Elementary due to the truck traffic. She noted for the record that she is opposing this permit and if approved the route has to be changed. Ms. Rinks spoke on the Crystalline Dust particles which is an added danger, air quality damaging lungs and all diseases associated with the crystalline particles. Ms. Rinks spoke of alternate material use instead of gravel, the 24 active pits in Pueblo County, the amount of water needed to control the dust and whether or not the school money that will be donated by this project will it be worth it.

Jennifer Davis, Landowner: Stated she and her family moved in 1 year ago but was unaware that this project was in the works, otherwise they would have moved somewhere else. She voiced concern for her children and their safety then stated no one had reached out to them regarding this project and she opposes this application.

Jerad Davis, Landowner: Spoke of the plans of raising cattle, a shooting range and the proposed road which will prohibit them to carry out their plans and what affect it will have on their children. Mr. Davis stated he does not support this application.

Douglas Davies, Landowner: Stated he opposed this SUP as he's opposed them the last 20 years then justified his comments.

Danelle Weatherford, Landowner: Stated she lived 1 mile from the State Pit with the haul route being 100 ft. from the property line then. She stated she also was not contacted then spoke of the dangers to health and welfare of the residents in this community. Ms. Rutherford stated she hope they will deny this permit.

Velma L. Campbell, MD, MPH, Occupational Medicine and Environmental Specialist: Thanked the commissioner for letting her speak. She stated she supports the comments made by the opposition then questioned if this is the right place or time for this permit which should not be approved without the assurance that all the requirements have been met. Dr. Campbell touched on rural neighborhoods, dust, Stormwater and public health concerns.

Judith Rice Jones, Colorado Springs Resident: Stated they rely on getting their food from the farms in Pueblo County; she commented on the water shortage in their community and how this project, if passed, will affect the farmers and their crops.

Commissioner Ortiz: Stated 4 people had donated their time which gave Ms. Morgan 10 minutes.

Suzanne Morgan, Avondale Resident/Landowner: Stated she had been sued by the applicant and the people that are not present do not condone this project, they are scared to be here. Ms. Morgan spoke on children's safety at the county schools, truck traffic, dust, EPA and the spill which they were fined \$112,000. She talked about Reclamation issues in Fremont County and the plagiarism at a Fremont City Council meeting. Ms. Morgan stated their inconsistencies in the SUP then went on to support that comment. Ms. Morgan showed a video of John Ary discussing the business at the Fremont County Council meeting on April 2 then elaborated further. Ms. Morgan pointed out if they would put this by schools in town and requested the Board do the right thing.

A brief discussion took place regarding the video and binder of documents supporting Ms. Morgan's testimony then asked Ms. Morgan if she would like this in the record which she stated yes. Mr. Raso stated both items will be put into the record.

Opponent Exhibit D-Video and Binder w/Documents

Commissioner Ortiz: Stated the video and documents will be part of the record. He stated we have time for one more speaker.

Marsha Bryant, Landowner: Stated there was no communication from the applicant and that Velma and Ms. Kern came by and informed her of this application. Ms. Bryant stated her husband is retired army and truck driver. Ms. Bryant stated he has PTSD so they moved out there to enjoy the wildlife and quiet. She is concerned about his health but also the wildlife being driven off.

Commissioner Ortiz: Stated the time was up and it concluded the Opponent Testimony then read the remaining names, Wendi Kern and David Oliver, who will be able to submit written testimony by 5 p.m. today.

Commissioner Ortiz: Informed the applicant that only the questions raised can be addressed during rebuttal and he asked Mr. Raso to help insure this happens and requested staff put 20 minutes on the clock.

APPLICANT REBUTTAL

John Ary: In rebuttal addressed 2 points. Due to the decision possibly being extended he requested the Board come visit the site to get an idea of what it's about and that the information on the website is not accurate regarding 24 pits being active there are probably 6 or 8. Second, Mr. Ary addressed the falsehoods and misstatements over the years in reference to the grazing site. He stated there are no claims, of any kind, supporting the fact that these pits have caused harm to those farms. He touched on erosion control, safety and compliance stating they are highly regulated. In closing Mr. Ary stated they have met all requirements needed for approval of this SUP Permit.

Commissioner Ortiz: Asked for any further clarification from the Board which no one had; he thanked Mr. Ary for his testimony then stated that concluded the Applicant Rebuttal.

DELIBERATION

Commissioner Ortiz: Reiterated at the beginning of this hearing stated the two courses of action they could take. He stated they received a lot of information over the past 2 weeks, including today; also, to be accommodating to the public on both sides, was to allow additional testimony to be submitted up to 5 p.m. today. He stated it is important to the Board to hear and take all the information that has been submitted into consideration. He asked his colleagues how they would like to proceed.

Commissioner Hart: Thanked everyone stating he has done a lot of these type of hearings in his career; the presentations, evidence, quality of the evidence; this is one of the best he’s been involved in which is a testament to both sides but it makes their job pretty tuff. He spoke of the references of material they’ve received and reviewed but he would like the opportunity to compare some of the testimony. Also noted, they allowed written testimony to be submitted by 5 p.m. then recommended the hearing stay open until 5 p.m. then close the hearing and pick a date certain for the decision. Commissioner Hart then stated he would like the time to deliberate but the rules, which he stated again he doesn’t like, state they must have a decision by Friday the 22nd.

Commissioner Wiseman: Agreed as well as thanking everyone who participated today; the information was extremely important and a lot of passion on both sides but there is a lot of additional information collected that he would also like to look over. He agreed with leaving the hearing open until 5 and setting a date to make the final decision.

Commissioner Hart: Stated he’s looking at his schedule and he will be in Denver attending transportation meetings on Friday and requested if they could set it for Thursday.

Commissioner Ortiz: Concurred with the Board’s recommendation to continue the hearing then close the hearing at 5 p.m. today and make the final decision on SUP 2017-001 at the BOCC Statutory Meeting Thursday March 21, 2019 at 9 a.m. in the BOCC Chambers.

Commissioner Hart: Moved to approve the recommendation of the Board as stated by the chair.

Commissioner Wiseman: Seconded the motion.

Commissioner Ortiz: Confirmed motion and second. There being no further objection or discussion,

All in Favor:

WISEMAN-AYE

HART-AYE

ORTIZ-AYE

The motion passed unanimously. The meeting was adjourned.

*Attest: _____
Pueblo County Clerk and Recorder*

By: _____