

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
WEDNESDAY, OCTOBER 28, 2020, 5:30 P.M.
SANGRE DE CRISTO ARTS AND CONFERENCE CENTER AUDITORIUM
210 NORTH SANTA FE AVENUE, PUEBLO, COLORADO**

ROLL CALL AND DECLARATION OF QUORUM

Commissioners Present: Donald Bruestle, Beth Gladney, Kiera Hatton, Judy Leonard, Philip Mancha, Michael Schuster, Zachary Swearingen, and Stephen Varela.

Commissioners Absent: Epimenio Griego.

Staff Present: Carmen Howard, Director; Gail L. Wallingford-Ingo, Deputy Director, and Sandra Smith, Office Support Services IV.

Others Present: Marci Day, Assistant Pueblo County Attorney; and Dominga Jimenez-Garcia, General Services Engineer, Pueblo County Engineering and Public Works Department.

Acting Chair Hatton called the Pueblo County Planning Commission meeting to order at 5:45 p.m.

The following roll call attendance was taken:

Mr. Bruestle--present.
Ms. Gladney--present.
Ms. Leonard--present.
Mr. Mancha--present.
Mr. Schuster--present.
Mr. Swearingen--present.
Mr. Varela--present.
Chair Griego--absent.
Acting Chair Hatton--present.

APPROVAL OF OCTOBER 28, 2020 AGENDA

Mr. Varela motioned to approve the agenda of the October 28, 2020 special meeting as mailed. Mr. Schuster seconded the motion.

The following roll call vote was taken:

Mr. Bruestle--yes.
Ms. Gladney--yes.
Ms. Leonard--yes.
Mr. Mancha--yes.
Mr. Schuster--yes.
Mr. Swearingen--yes.
Mr. Varela--yes.
Acting Chair Hatton--yes.

The motion carried unanimously.

CHAIRPERSON'S REPORT

Acting Chair Hatton stated as a reminder that all members of the Commission must wear a mask that covers both their mouth and their nose throughout the hearing unless they are speaking, at which time, they will be allowed to remove it from their face if it makes it easier. Also, if anyone from the audience is going to give a presentation, she asked that they give it to Ms. Gail Wallingford-Ingo. She is in the front row and will be able to reference for evidence and get it ready to present.

DIRECTOR'S REPORT

The Director's Report was presented by Ms. Carmen Howard. She stated there will be one vote to accept the Director's Report after the summarized late correspondence has been presented.

(a) Correspondence--Two pieces of correspondence were distributed:

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

- E-mail dated October 20, 2020, from Mr. David M. Shohet, of Monson, Cummins & Shohet, LLC, Attorneys-at-Law, requesting a continuance of the Amendment Request of Special Use Permit No. 2016-007 to a date in January or February 2021. Also, included was the Department of Planning and Development's reply letter dated October 21, 2020.
- Fax dated October 26, 2020, from Ms. Velma Rinks containing two pieces of correspondence dated October 26, 2020 and October 21, 2020, stating her comments on the Amendment Request to Special Use Permit No. 2016-007.

Ms. Howard requested the Commission take action to accept the late correspondence as presented.

Mr. Varela moved to accept the late correspondence and make the Commission's comments a part of the record of the proceedings. Ms. Leonard seconded the motion.

The following roll call vote was taken:

Mr. Bruestle--yes.
Ms. Gladney--yes.
Ms. Leonard--yes.
Mr. Mancha--yes.
Mr. Schuster--yes.
Mr. Swearingen--yes.
Mr. Varela--yes.
Acting Chair Hatton--yes.

The motion carried unanimously.

STATEMENT OF HEARING PROCEDURES BY CHAIRPERSON

Acting Chair Hatton reported that the applicant and/or representative are called upon to speak, followed by any parties in favor and then those in opposition, with the applicant having the final say.

REGULAR ITEMS:

Statement of Conduct and Demeanor

Acting Chair Hatton stated in order for the business of the Commission to be conducted in the most effective and expeditious manner, it is necessary that all persons maintain a demeanor of civility toward each other. Uncivil conduct will not be tolerated. Such behavior shall constitute the forfeiture of a person's right to remain in attendance and may result in them being asked to leave the meeting by the chairperson or, upon their refusal, being escorted out of the meeting by the proper authority.

Acting Chair Hatton stated this is a public hearing for an amendment to Special Use Permit No. 2016-007 Fremont Paving & Redi-Mix, Inc. The hearing will begin with a short staff summary followed by a presentation by the applicants not to exceed twenty (20) minutes. Testimony by proponents is limited to three (3) minutes per person with the total of the applicant and proponent's testimony not to exceed one (1) hour. Testimony by the opposition expert testimony or a presentation by a group representative is limited to twenty (20) minutes and any other opposition testimony is limited to three (3) minutes per person. The total of opposition testimony is not to exceed one (1) hour. Then the applicants will have an opportunity to give rebuttal testimony which is limited to issues raised by the opposition and will be limited to no more than twenty (20) minutes.

Finally, there will be deliberation by the Planning Commission. The Commission may choose to keep the hearing open and continue it to a date, time, and place certain to receive further testimony and evidence. They may choose to close the hearing and take it under deliberation and continue the hearing to a date, time, and place certain to render a decision, or they may close the hearing, deliberate, and render a decision today. The total time allotted for the hearing today is three (3) hours.

When testifying, please be respectful to all in attendance. Address your testimony to the Commission. Do not address testimony to the applicants, staff, or others in attendance. In the interest of time, please do not repeat testimony that has already been offered by others.

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

For purposes of this hearing, the Pueblo County Planning Commission is sitting in a quasi-judicial capacity. As such, they are prohibited from obtaining evidence from either side outside of the public hearing. The Commission must apply the standards in the existing Pueblo County Code to facts presented at this hearing to arrive at a decision.

Please limit your testimony to information relevant to the amendment requests before us. This is a hearing for an amendment to a Special Permit for mineral and natural resource extraction and mining operations. The Commission may consider only the amendment requests and may not make changes to other parts of the permit that are not properly before the Commission today.

Staff is recommending approval of the requested amendments.

For those in the audience, please do not be disruptive during testimony. Please do not speak loudly, fail to silence your cell phone, or applaud during the hearing, or you may be asked to leave.

Acting Chair Hatton stated that Commission members Ms. Gladney and Mr. Swearingen wanted to disclose working history relative to interested stakeholders prior to the hearing.

Ms. Gladney stated that she was employed by the Colorado State Land Board from the summer of 2014 through the fall of 2017. Her duties were clerical in nature, and she did not have any decision-making power. She felt confident that she could hear testimony and make an unbiased decision in this very important matter.

Mr. Swearingen stated that he worked public relations (PR) for this particular gravel pit four or five years ago. As much as he would like to participate, he felt it would not be the best thing to do and, therefore, stated he would like to recuse himself from this hearing.

Ms. Day informed Mr. Swearingen that since he was recusing himself from the case, he would not participate in any part of the hearing. She stated that if he wanted to leave the stage, he could do so. Mr. Swearingen replied okay and thanked her. Note: Mr. Swearingen left the hearing location at 5:56 p.m.

Acting Chair Hatton stated that as part of the late correspondence, there was a request to continue the hearing. She asked if any of the members wanted to make a motion to continue. Ms. Day stated that staff was opposed to the continuance request. She stated that no motion was required to move forward with the hearing of the case. However, if someone wanted to entertain the continuance, she would like a motion for that as well.

Mr. Mancha motioned to continue the Amendment Request to Special Use Permit No. 2016-007. There was no second to the motion. Acting Chair Hatton stated the motion failed due to the lack of a second. The hearing continued.

Ms. Day stated that staff requests the staff report be made part of the record of proceedings.

- **Special Use Permit No. 2016-007 Amendment Request**, Pueblo County, c/o Gary J. Raso, Assistant County Attorney (Applicant), Fremont Paving & Redi-Mix, Inc., c/o John P. Ary, President (Applicant), State of Colorado, Pritekel Brothers Farm, LLC and Danny J. and Cindy L. Henrichs (Owners within mine area and adjacent haul road - Permit Boundary Parcel No. 2), and Pikes Peak Home Center, Inc., Douglas G. Thacker, Public Service Company, Fremont Paving & Redi-Mix, Inc., and State of Colorado (Owners within haul road - Permit Boundary Parcel No. 3 - Route A and Permit Boundary Parcel No. 1 - Route B).

The applicants are requesting an amendment to the special use permit as approved on March 22, 2019, to modify the conditions of approval due to the change in the designated haul roads which are now located entirely on private property with the only exception of a single crossing at Lane 40.

The amendment also proposes the modification of Condition No. 25, as originally approved, due to legal concerns expressed by the County Attorney's Office that the original condition imposed restrictions on operations associated with a different special use permit (SUP 709) that was not before the hearing body and, therefore, not subject to review and consideration under Special Use Permit No. 2016-007.

All other aspects of Special Use Permit No. 2016-007, specifically the previously approved use for mineral and natural resource extraction, mining operation and processing, and

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

temporary scale house/office within a 1,517± acre permit boundary area (including four (4) mining phases with an affected mining area of 307± acres and a proposal to reclaim the mined area to its post mining use of rangeland) in the A-1, Agricultural (minimum 35 acre) Zone District remain unchanged and are not subject to the amendment request. The permit boundary is located south of Olson Road, west of Wheeler Lane if extended southerly, and east of Lane 36.

Mr. Gary J. Raso, Attorney-at-Law, 215 East Pitkin, Pueblo, Colorado 81004, represented the special use permit amendment request on behalf of Pueblo County. He stated he was here on a joint application with Fremont Paving & Redi-Mix, Inc. for an amendment to Special Use Permit No. 2016-007. The Planning Commission originally adopted the special use permit in 2017. It was appealed to the Board of County Commissioners, modifications were made, and it was re-adopted by the Planning Commission in February 2020. The permit approves mineral and natural resource extraction and mining activity subject to twenty-five conditions of approval. The amendment request was made by a letter dated April 1, 2020, which had three attachments and three exhibits. He felt it was made a part of the record, but he wanted to make sure, noting it was also attached to the staff review. Ms. Day replied that the entire staff review has been made part of the record including the exhibits. Mr. Raso summarized why the application was made jointly, noting they felt it was for very simple reasons. The motivational causes for both Pueblo County and Fremont Paving & Redi-Mix, Inc. arose about the same time. They felt it would be the most efficient way to proceed and be considerate of the Planning Commission's time and the public's time. He stated it did not make sense to have two separate applications, have two separate fees, two separate sets of notices, two staff reports, two sets of published notices, and two separate meetings because the amendments were concerning the same special use permit. He assured the Commission there was nothing more behind the joint amendment than those considerations. He stated that Mr. Ary and Mr. Ranson would present their request relative to the changes in the haul routes to be located on private property. He stated Pueblo County's request simply stated that Condition No. 25, as it now stands, purports to regulate and impose conditions on an entirely separate special use permit commonly referred to as the State Pit permit. He stated the State Pit special use permit was originally granted in 1990. He noted that the State Pit permit was not properly before the Planning Commission nor before the Board of County Commissioners on appeal. The people that would be entitled to notice were not notified nor was the applicant or permittee in that case notified that the State Pit was going to be under consideration for modification for changes. A separate legal process, not a difficult process, but a separate process, to amend the State Pit must come before the Planning Commission. Notices to the permittee and all surrounding landowners must be given, and the application must go through all the same steps they had to go through to put this evening's case before the Planning Commission. He stated it was elementary due process, noting it was stated in his letter that the legal term of the act purporting to add regulations to the State Pit permit was *ultra vires*, i.e., beyond the scope of the power that the law gives the County in these matters. From the County's perspective, this amendment purports to correct the error that was part of the conditions of approval, more specifically, the last sentence of Condition No. 25, which states, "Any restrictions applying to hauling shall also apply to trucks leaving the State Pit." This was not in the staff conditions when the case went before the Board of County Commissioners. There was one Commissioner who was in opposition that suggested the additional conditions. He felt this was a legal mistake. He should have caught it at the time but did not. It was pointed out by more than one person, including Fremont Paving & Redi-Mix, Inc., which was why this amendment was before the Planning Commission. He reminded the Commission that the State Pit was under the Planning Commission's jurisdiction, noting there were several ways the conditions of approval could be taken into consideration. He stated the other changes in Condition No. 25 were prompted by Fremont Paving & Ready-Mix, Inc. concerning moving all of the haul roads to private property.

Ms. Day interrupted to point out to the Planning Commission that Attachment 1 to the first exhibit in staff's review had the redlines of the changes being requested this evening.

Mr. Raso stated he would be willing to answer or address any questions or concerns that the Commission may have. He did want to point out that staff had recommended approval of the proposed amendments to the special use permit. There being no further questions, he turned over the testimony to the representative of Fremont Paving & Redi-Mix., Inc.

Mr. Richard Ranson, 1140 Hunters Ridge Drive, Colorado Springs, Colorado 80919, represented the special use permit amendment request on behalf of Fremont Paving & Redi-Mix, Inc. He stated that on the screen was a map of the proposed haul routes. When the special use permit was heard a few years ago, there was some opposition to the haul routes

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

on the west and on the east of 40th Lane. He stated they have acquired the right to move the haul routes south to get away from the areas that were objectionable. The haul route was moved east so that it was no longer in an area that was objectionable. The State Pit would now be accessed from the east side rather than the south side. They have acquired the legal right to move the haul routes onto areas that were no longer in any proximity to anything that was objected to previously. The alternate route was moved onto the south end of the south pit to the far southeastern corner. Again, some distance from objectionable areas that were raised previously. He stated that this was all they were doing. They were moving the haul route to a place which was less objectionable, noting they were on private property the entire way except for crossing 40th Lane. They felt this was a win-win for everybody involved.

Ms. Day questioned staff about the map being presented and if it was included in the staff report. Ms. Wallingford-Ingo replied that it was not included in the staff report. The map presented was just introduced. Ms. Day questioned Mr. Ranson if he wanted to make the map he presented and was currently presenting a part of the record. Mr. Ranson replied he would like it to be a part of the record. Ms. Day stated that it would be entered as Applicant's Exhibit A. Mr. Ranson stated he would answer any questions. He stated it was a simple process in which they were trying to address the safety, environmental, and health concerns by moving the haul routes away from places that were previously objectionable, noting he felt that was accomplished. He asked for approval from the Planning Commission.

Mr. Mancha questioned the location of the school in the area and requested it be pointed out on the map. Mr. Ranson replied that the school was to the north and was off the map. He stated it was quite a distance from the area being discussed. Mr. Ranson stated that "nowhere near" would be the answer.

Mr. Schuster questioned if haul trucks eventually went down 36th Lane. Mr. Ranson questioned if he meant after it was processed. Mr. Schuster replied yes. Mr. Ranson stated that after processing, it would be on the same route that was currently being used to pull materials out of the State Pit. He stated nothing would change. The only changes happening were moving haul routes to accommodate objections that were previously made. This was all they have done.

Mr. Schuster stated that it was written in staff's report that 70 loads a day would be hauled out of the pit. Mr. Ranson replied that the rules and conditions that were previously approved by the Board of County Commissioners were not changing. The only change being requested was moving the haul routes to accommodate previous objections. Nothing else that was previously approved was before the Planning Commission.

Mr. John Paul Ary, Owner, Fremont Paving & Redi-Mix, Inc., 2985 Sierra Court, Canon City, Colorado 81215 represented the special use permit amendment request. He wanted to make the Planning Commission aware that he was in attendance to answer any questions. In addition to Mr. Ranson's comments and what has taken them down this path, there was a landowner in the area working with a large solar project. Making this adjustment to the haul route has made more land available for that landowner working with the solar company.

IN FAVOR

Mr. Danny Henrichs, 49707 East Highway 50, Avondale, Colorado 81022, spoke in favor of the special use permit amendment request. He stated that one of the Comanche Power Plant's towers was going to be decommissioned and a solar facility would take its place. He stated that the proposed solar facility site was an area that would work well in conjunction with the mining operation. He stated he supported this amendment.

IN OPPOSITION

Acting Chair Hatton questioned Ms. Wendi Kern if she was going to be speaking on behalf of the opposition for the twenty-minute time period. Ms. Kern replied that she would take part of the time, and the attorney would take the remaining time.

Ms. Wendi Kern, 39555 Fields Road, Avondale, Colorado 81022, spoke in opposition to the special use permit amendment request. She stated that she lived approximately a mile and half from the proposed haul route. She distributed her PowerPoint presentation to the Commission and asked that it be entered into the record. Ms. Day stated the documents would be labeled Opposer's Exhibit No. 1. She stated that she was also representing the

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

Pueblo County Aggregate Opposition Committee (PCAOC) as its Chairperson. She stated the proponents testified that the only condition that was changing was Condition No. 25, which was presented by Pueblo County. The PCAOC was in favor of taking out the last sentence as presented. She did not feel that the whole condition needed to be changed. One of the other reasons brought up for the change of the haul routes was for Mr. Doug Thacker to be able to use his land for additional solar uses. She stated there were many residents in the area that have been approached about solar. She stated that they would like considerations made specifically for them that regard their use of their land. Condition No. 2, which was originally Condition No. 1, was the first letter in the packet she distributed. It was from Fremont Paving & Redi-Mix, Inc., noting she referred to it as the Rusler Agreement. This was addressed at the second Planning Commission hearing when Fremont Paving & Redi-Mix, Inc. and the Ruslers entered into a private agreement and the 80 acres that was set aside, which was now Condition No. 2 in the proposal, was specifically to benefit one landowner excluding all of the rest of the landowners in the area. There were two considerations for two private landowners, i.e., one for Doug Thacker to put solar on his land and one made with the Ruslers to not have mining near their home. She stated the letter that says Fremont Paving & Redi-Mix, Inc. was the birth of the resolutions that were struck with Pueblo County, the Planning Commission, and eventually the Board of County Commissioners. The next item in the packet was a \$1,000-page advertisement that Fremont Paving & Redi-Mix, Inc. ran in the Pueblo Chieftain prior to the original hearing. It stated that they were the only ones concerned about the safety of the children. They promised to install a lot of infrastructure on 36th Lane, noting that nothing has been done in the past three years. She felt that during this COVID-19 time, it would have been the best time to do the work because there was nobody using 36th Lane at the time. These are broken promises by Fremont Paving & Redi-Mix, Inc. to get a vote from School District No. 70. The applicant had promised to make all of these changes to make 36th Lane safer for the school children.

Ms. Kern began her PowerPoint presentation with a beautiful picture of a sunrise from the community indicating that this was what rural life should look like in the A-1, Agricultural Zone District. She stated the image of the proposed haul route looking east to Badger Hills was taken from 36th Lane. She wanted the Planning Commission to picture that area with 140 earth-moving dump trucks per day traveling back and forth along that haul route, 5 days a week. It was stated there would be 70 loads a day; however, trucks go in both directions. Therefore, they would be looking at 140 trips the haul trucks would be traveling along this haul route. She indicated that American Bald Eagles have taken up nesting in the Badger Hills area. She shared an image of what rural, A-1 land looked like in the community compared to a site with heavy industrial mining such as the State Pit, noting that this was the destination location for gravel removed from the Badger Hills Pit (SUP 2016-007). Badger Hills does not have a point of sale and no permanent scaling. Badger Hills does not exist without the State Pit and the State Pit cannot exist without Badger Hills. She showed a picture of the first accident on 36th Lane at approximately 10:30 a.m. It was a Blasi truck which was determined to be a subcontractor of Fremont Paving & Redi-Mix, Inc. They run on a daily basis to the Martin Marietta Plant. She confirmed with the Martin Marietta Plant manager on Santa Fe that they do buy rock from the State Pit. They do not hire trucks, and Blasi Trucking was not an approved hauler for Martin Marietta. She showed a slide stating this was a common occurrence at 36th Lane and South Road, which is a very dangerous intersection. It has stop signs north to south but none east to west. You could tell this truck ran the stop sign. The proponents said they were going to put stop signs at 40th Lane for the new haul route. She questioned if the trucks do not obey the stop signs at 36th Lane and South Road, why should we believe they are going to follow them on 40th Lane. The gentleman that ran the truck that day told her they were with the applicant, noting she had a video. They were subcontractors of Fremont Paving & Redi-Mix, Inc. They have now been charged with harassment charges for harassing her. They came down and got put on service that day for running illegally for Federal criteria, noting they were now being charged with harassment.

Acting Chair Hatton questioned Ms. Kern on her testimony not being relative to the amended haul roads, noting she was speaking mostly about 36th Lane. Ms. Kern replied she was getting there. Acting Chair Hatton stated she would give her a couple more minutes to get there. Ms. Kern showed a photo of a second accident at 36th Lane involving another Blasi truck and a school bus carrying migrant workers, noting the driver of the bus was taken to the hospital. This also supports the fact that they were a subcontractor running that day. She said that if there had been children in that bus, they would have been like popcorn in the bus. She showed a picture from the State Pit site showing the silica dust in the air, noting that silica dust was a well-known carcinogenic causing the fatal disease called silicosis. She stated that she has submitted more than 700 photos to the Department of Planning and

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

Development, and nothing has been done to enforce this condition. She stated by adding the additional 70 loads per day from the Badger Hills Pit would only make the condition worse. The next slide showed the second lightning fire just south of Badger Hills in the summer of 2019. She stated that the Department of Planning and Development failed to notify the Emergency Services Bureau (ESB) in its request for comments. The proposed haul routes were within the jurisdiction of the Emergency Services Bureau. The ESB was not able to comment on the proposed amendments. She stated there were two fires in that area this year, noting the people that live within that area would be trapped because there was no way out. The next slide was titled, "Planning Department Omissions". She stated the Planning Department failed to send out requests for comments to the Emergency Services Bureau, First Students Bus Services, which runs a bus route on 40th Lane currently being affected by the special use permit, and St. Charles Mesa Water. She noted there were water supply lines next to 40th Lane within 20 feet of where the haul trucks would be stopping. The Planning Department sent a letter requesting comments to the Army Corps of Engineers, noting the address had not existed for more than a year. The gentleman that it was addressed to had not been with the department since June. She noted this was a major concern because the haul route would affect the wetland area, which was considered very important because of the underground springs. She questioned how many other agency letters were sent to incorrect addresses. Also, on the comment letters, it states there was a link to the application materials, noting it was left off the letters. She stated out of thirty-six letters that were sent out requesting comments for this hearing, those agencies had no way to interact with the information. She felt this needed to be pointed out to the Department of Planning and Development. She stated there was a question as to why this information was before the Commission this evening. She stated that Pueblo County and Fremont Paving and Redi-Mix, Inc. were asking, as applicants, to forsake safety, health, and welfare. The applicants were asking to remove two conditions, in the redlined conditions. She noted that they were asking for more things to be amended in addition to changing the haul route. Almost all of the conditions of the special use permit have been redlined. She stated that the traffic that travels on 40th Lane, especially now due to COVID-19, consists of more families taking their children to school. They have had a huge increase in marijuana companies, and now marijuana employees use 40th Lane in addition to people who normally travel on 40th Lane to get back and forth to work. She showed a photo of a large truck that was proposed to be traveling on 40th Lane. They were the large trucks currently being used at the State Pit. She did not understand the ability to use semi-trucks over the route areas coming out of the Badger Hills Pit. She noted that the larger trucks are taller than a vehicle and taller than a modular building. You cannot see over, under, or around them. She stated the applicants want 140 of these crossing 40th Lane every day. The boundary for the special use permit cannot be amended or expanded to include any other haul routes, Condition No. 3. She stated to the Commission that their words matter, their votes matter, noting the Pueblo County Planning Commission and the Board of County Commissioners voted for this condition. Do the words of the Pueblo County government mean something or not?

Ms. Day informed Ms. Kern that her testimony was at two minutes. Ms. Kern replied that she would get through her testimony as quickly as she could.

Ms. Kern referred to the public notice showing Pueblo County and Fremont Paving & Redi-Mix, Inc. as applicants, noting that other people in the community would like to get free legal help from the County. She felt it was incorrect that the County provided one of their attorneys to help out. She showed a letter from Pueblo County School District No. 70 stating all trucks on the haul routes, noting it was entered into the record and was the last letter sent by School District No. 70. The applicants were forsaking the safety of the children, the families, the bus route, yet again, on 40th Lane. The letter referred to "the haul route" and was in Special Use Permit No. 2016-007. She shared minutes from a previous Planning Commission meeting that stated they incorporated unreasonable means to create an environment harmonious with the community. These were the conditions of approval the Planning Commission has to use. The Planning Commission found that not supporting School District No. 70 would go against the harmonious surroundings and the safety of the community. The next slide showed the record of vote from that hearing. She noted that the superintendent of School District No. 70 indicated that the Planning Commission upheld those words in a unanimous vote. She questioned why the Commission would consider, once again, changing the times that were in place on 40th Lane. She stated that Resolution No. 17-020, dated August 17, 2017, protected School District No. 70, and Resolution No. 20-005, dated February 19, 2020, protected School District No. 70. Why would the Commission now vote against School District No. 70? She stated that this would be modifying Conditions No. 8 and No. 9, noting that School District No. 70 wants the Commission to deny the amendment request. She showed a photo of an additional accident on 36th Lane. She questioned why we should consider the

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

applicant's business practices would be any different. She felt it went against the safety, health, and welfare of the children, the community, and the citizens. Above all, it was the County's responsibility to protect the citizens against large, outside interests that would do harm and provide a safe and harmonious environment for the citizens to thrive in.

Ms. Kern stated, in closing, she had dedicated the last four years trying to help protect her home, the homes of her neighbors, and the community's country way of life. Most citizens believe that they have no voice in their government. They believe most of their government officials care more about receiving money from special interest entities than representing the wishes and rights of the people that voted them into office. She stated on the Colorado Secretary of State's website, right before the original hearing, Fremont Paving's John Paul Ary donated \$5,000 to Garrison Ortiz's campaign. We submit to the Board of County Commissioners all of the violations from the applicant, and they are falling on deaf ears. She stated that she lived next to the gravel pit on 36th Lane. It was within 4.2 miles of her home. She likened it to being on an airplane with a small toddler screaming. The first ten minutes you feel bad for the parents. The last three hours you feel like jumping out of the plane with no parachute. She stated it was a horrible way to live, noting she has to listen to the activity all of the time. The dust on haul routes would definitely affect the prairies and pastures.

Mr. Doug Davies interjected and stated he wanted to donate his allotted three minutes to the PCAOC's legal counsel.

Mr. David Shohet, Attorney with Monson, Cummins, & Shohet, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, Colorado 80921, represented the Pueblo County Aggregate Opposition Committee (PCAOC) in opposition to the special use permit amendment request. He gave a PowerPoint presentation, which he stated he would introduce it into the record at the end. He indicated that Mr. Raso's April 1st letter, that sets forth the application, and Mr. Ranson indicated all they wanted to change was the haul route and amend Condition No. 25 for some legal issues. The applicants were actually seeking to change, alter, or delete 12 of 25 conditions. Almost all of these conditions have to do with the haul routes themselves and health and safety issues that were in the original conditions. The April 1st letter states that the additions and issues should be obvious, noting those were Mr. Raso's words. He had heard this statement numerous times, noting none of them were obvious to him. Particularly, since Mr. Ranson said earlier that all they wanted to do was change the haul routes which was a complete fabrication. On the face of the original special use permit, Condition No. 3 stated the special use permit cannot be amended or expanded to include additional haul routes, yet we were here this evening amending haul routes. Condition No. 8 dealt with the time limitations when the hauls could be made out of the Badger Hills Pit. This was for the school children. The applicants seek to eliminate all of the conditions. This evening's hearing was seeking to change terms and conditions on the face of the original special use permit that this Commission said could not be changed. He believes that changing these conditions constitutes a breach of contract and has serious concerns. He stated that this Commission has a fiduciary duty to uphold the special use permit that the Commission enacted and was committed to uphold the health, safety, and welfare of this community. He stated there was a potential breach of the Commission's fiduciary duty by changing these terms proposed by the applicants, i.e., Pueblo County and Fremont Paving and Redi-Mix, Inc. He wanted to make clear that were some changes that they could live with if they had to. They were in support, to some degree, to removing 36th Lane as a haul route. If that was what the applicant wanted to do, they were more than happy to agree to that. The changes to the original Condition Nos. 11, 12, and 13 of the special use permit were acceptable and something they could live with because they all touched 36th Lane. Condition No. 14 was to clean up a typo and was another condition they could live with. The first change was to Condition No. 1. This seeks to have a new exhibit of the haul routes, and on the face of the special use permit, the conditions to the haul routes could not be changed. Condition No. 3 red lines propose to scratch out the language that no haul routes could be amended. The box below was the applicant's explanation to say that Condition No. 3 was no longer needed because there was no need for further haul routes. In addition, new Condition No. 14 prohibits future haul routes. Condition No. 14 does not prohibit future haul routes. He said he would talk about that further later, noting that the language basically states that all previous haul routes were removed. However, this language specifically states, "no other haul routes", and they propose to erase that language off the face, which means we could be back here in six months, one year, two years, or endless amounts of time changing and amending these haul routes. He wanted to discuss Condition Nos. 8 and 9 together because they were relative to the school time zones. He pointed out the red lines that were proposed were to eliminate the condition of hauling materials to only be done from 7:30 a.m. and 5:00 p.m. In theory, they could now haul

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

materials anytime they wanted, i.e., 2:00 a.m., 4:00 a.m., or not at all. This language goes to haul routes that were being removed. Moreover, they removed the language that talked about the hauling of materials before 9:00 a.m., noting that was specifically for the school children. Then they want to remove Condition No. 9, which was the haul times that were previously proposed, noting they would like to get rid of this one condition altogether. The purpose for both of these was that no trucks would be on public roads. At least, that was the rationale in the April 1st letter to the County. He stated it was a misstatement; it was a lie. The applicant, Fremont Paving & Redi-Mix, Inc., was going to cross 40th Lane, noting it had been stated numerous times. The language actually creates ambiguity because all the language regarding the haul routes was being removed from the special use permit. In theory, they would not be able haul anything out of Badger Hills given the language with the changes they would like to make. He did not think that was the intent. Obviously, he felt they were allowed to haul from the Badger Hills to the State Pit, but with the removal of the language, they could haul materials whenever they liked. The language that was proposed creates an ambiguity and should not be allowed to change. The proposed change to Condition No. 15 says all vendor and customer traffic accessing the site shall use a designated haul route. For some reason, the applicant wants to remove customer traffic, and he supposes they were talking about customers accessing Badger Hills. If this language was going to be amended, it should say that all traffic shall use the designated haul routes. He didn't know why the applicant was referring to customer traffic. He stated there was no rationale given in the letter to the County. He supposed that customers do not go out to Badger Hills. He felt the language as proposed created ambiguity as to what and who was using the haul route. It also seemed to encourage left-hand turns off 40th Lane into the Badger Hills Pit, which was one of the reasons why all traffic crossing to the Badger Hills Pit needs to use the designated haul route crossing 40th Lane rather than making a left off 40th Lane into the Badger Hills Pit area.

Mr. Leonard DiGrado interjected and stated that he wanted to give up his personal three minutes of testimony to Mr. Shohet. Acting Chair Hatton accepted his request, noting Mr. Shohet had one and half minutes left for testimony.

Mr. Shohet stated the new changes were trying to reflect, based on the applicant's testimony, that the applicant was not going to use 36th Lane. Changes do not have to be made if the applicant wants to agree not to use 36th Lane. There was nothing stopping the applicant from saying they were not going to use 36th Lane. There was no need for the amendment. The amended language was also language that prohibited any other haul routes, noting this was simply not the case. It was not what the language actually said. It said that the previous haul routes were amended to the new haul routes. Condition No. 3 was the only condition that was existing that actually prohibited future haul routes, which the applicant said the new amended language did, which it did not. It was a confusing point, and he understood that. However, the language being sought to amend Condition No. 17 did not do what it said. It does not prohibit future haul routes, and it does not actually remove 36th Lane as a haul route. If the applicant wants to remove 36th Lane, they should expressly state this in the amendment and say, 36th Lane would not be used. The change to Condition No. 25 was the County's application for the amendment. The concern here was that when the material comes out of Badger Hills, it goes to the State Pit. Once it gets to the State Pit, it gets all commingled. It was not known if the material belongs to the Badger Hills Pit or State Pit. The concern here was that anything that was going to come off the State Pit was going to have the same conditions and terms of hauling the materials away, i.e., they are not going to allow for additional trucks to come from the State Pit and down 36th Lane, which they would do, and that was why 36th Lane was relevant. The terms and conditions the applicant wants to remove now allows the hauling and the use of the State Pit as the pass through from Badger Hills to get on 36th Lane during the times that they should not be on the road. These were the times the Commission decided they should not be on the road, which was during the school times. This provision prohibits the commingling of materials from just simply passing through the State Pit and going on to a road. This was what this Commission was trying to do when they enacted the original language. He stated that Mr. Raso indicated that this was a simple amendment. He felt the simple fix was just giving notice, noting that should be the solution. He stated that language does not get removed. The applicant should just provide notice to whatever they are going to do on the State Pit. Ms. Day stated he had two more minutes left. He just wanted to clarify that the changes to Condition No. 25 were to prevent Fremont Paving & Redi-Mix, Inc. from commingling materials. He was not sure if he agreed with the County Attorney's position, noting this was beyond the scope. Fremont Paving & Redi-Mix, Inc. could, on its own volition, agree to not haul materials off the State Pit site. He felt there was no need for an amendment. All they had to do was simply state that they agreed not to haul materials off the State Pit site during these times. This was not an amendment to the

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

permit; it was a simple private agreement that could be made and agreed to in this process. He stated those were all his comments and appreciated the Commission's time and thoughtfulness towards the proposed amendment.

Mr. Bruestle asked Mr. Shohet if he could provide a summary of what it was he was trying to accomplish. In other words, what was the point he wanted to make? Mr. Shohet replied Fremont Paving & Redi-Mix, Inc. and this Commission came to an agreement regarding no amendments to the haul routes. We are here this evening amending the haul routes. The haul routes were thought out with terms and conditions that contain health, safety, and welfare portions especially those protecting school children. For some reason, those were going by the wayside. The point to get out of this was that there were agreements in place. There were no justifications as to why a lot of the conditions were being changed. The testimony from Mr. Ranson stated all they wanted to do was change the haul routes. That was not all they wanted to do. There were a lot of other things going on that were specifically impacting the health, safety, and welfare of the community if the proposed changes were made and approved.

Mr. Varela questioned if the new haul route was going to be on private property. Mr. Shohet replied that it would be except where it crossed 40th Lane, noting that the haul routes have always crossed 40th Lane, i.e., old and new routes. Mr. Varela stated that since the routes were on private property and only crossed 40th Lane, there was essentially no change to the routes. Mr. Shohet replied that was his point. There shouldn't be a change to the times, particularly to the times protecting the school children, because crossing at 40th Lane was still occurring. If a tunnel or a bridge were built for 40th Lane, then removing some of those terms and conditions would make sense. However, because 40th Lane was being crossed as it always has been, there was no reason to change the rest of terms that were enacted and agreed upon to put those protections in place. The point was they were still using public roads.

Mr. Mancha questioned who owned the private land that they would be crossing. Mr. Shohet replied he could not answer that, noting he would defer to the applicant. Ms. Kern replied that the private land was owned and had always been owned by Mr. Doug Thacker. She stated the applicant wants to change the haul route to benefit Mr. Thacker's land to allow him to establish a solar facility. She stated that the proposed changes were to benefit Mr. Thacker not the County, not the community, and not the people that live in the area but to benefit Mr. Thacker personally so he could put solar on his land. The purpose of this hearing was because Mr. Doug Thacker wants solar on his land, as well as a royalty-paying haul road that he would probably make \$1,000,000 from Fremont Paving & Redi-Mix, Inc.

Mr. Shohet asked if there were any more additional questions. Acting Chair Hatton stated she may have some for him later. She asked if there were any other parties that wanted to speak in opposition of the special use permit.

Mr. Leonard DiGrado, 4207 41½ Lane, Avondale, Colorado 81022, spoke in opposition to the special use permit amendment request. Acting Chair Hatton stated that he had relinquished his time. Mr. DiGrado stated that he gave up his personal time. He was actually presenting letters of late correspondence. Acting Chair Hatton stated that was fine. He stated he would be reading letters from Ms. Velma Rinks, an adjacent property owner. The first letter was dated October 21, 2020. "In review of the above amendment of Special Use Permit 2016-007, I would like to express my concerns. In 2017, when the original permit was approved, I voiced my great concerns about the schools located on or in the immediate area. In reading the new proposed amendments, all references to 36th Lane have been removed meaning no restrictions on drivers during hours that schools are opening in the mornings or releasing in the afternoons. This is a time when school buses and parents are delivering or picking up children. It is a time when teenage drivers are entering or leaving Pueblo County High School in all directions. It is a time when children run across 36th Lane into the school yard. It is a time of congestion and heavy traffic. It is a time when all heavy trucks should not be allowed to travel for the safety of our children, teachers, and parents. The original permit stopped Fremont Paving from running during this time. It did not stop other trucking companies from running. Fremont Paving was able to get around this regulation by parking their trucks and sub-contracting with other companies to haul gravel down 36th Lane during school hours. When children are let out of school, it is common for parents to park along 36th Lane as parking lots are full. It is also not uncommon to see these gravel trucks weaving in and around these parked cars. Added to the fact that the roads are narrow at school entrances, (Mr. DiGrado added that the road is 22 feet, which is pretty narrow for two big

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

trucks) it creates a further safety hazard. (Mr. DiGrado added that 36th Lane was never designated as a commercial haul route by the County.)

This would be compounded further by the fact that Fremont Paving would be adding 70 more trucks moving material from the proposed pit to the State Pit on 36th Lane. Common sense tells you that that would increase the number of trucks delivering material out of the State Pit, which would increase traffic onto 36th Lane. Add that number to the already existing trucks going down 36th Lane past our schools. This would create added congestion and traffic.

Another dangerous place is 36th Lane and South Road. There is a stop sign there, however, it is not uncommon for these trucks to slow down and go through the stop sign. I am aware of a truck hitting a bus there plus other accidents on Lane 36. I am pleading with you, the Commissioners, to not only keep the original regulations in place but to extend them to all trucking firms, not just Fremont Paving. KEEP OUR CHILDREN SAFE.

It was my understanding at our first hearings, Fremont Paving was to do road improvement in front of Vineland Middle School (Mr. DiGrado stated they had a big fancy sign and all that good stuff with big, beautiful pictures.) including curb and gutter, flood control, etc. They have had three years to complete such work. Now it seems they are trying to get out of that also.

In the original permit, Fremont Paving indicated they would do dust mitigation by spraying the haul routes. Their road comes very close to the 6-mile wet lands that drain into the Arkansas River. How often would these roads be sprayed to prevent dust blown onto fragile lands and homes surrounding it and is this spray approved by the FDA (Mr. DiGrado said responsible agencies.) for wet lands?"

Ms. Day informed Mr. DiGrado that Ms. Rink's letters were received by the Planning Commission in the late correspondence packet prior to the meeting, noting that they were included in the record. Mr. DiGrado questioned if all the members had the opportunity to read them. Ms. Day replied that there was a delay in starting the meeting, which would have given the members plenty of time to review the correspondence.

Mr. Varela questioned Mr. DiGrado if the concerns he just read would be relative to the private property. Mr. Grado replied that the haul route was always on private property. It was never on public land. Mr. Varela asked if he was concerned with the private property. Mr. DiGrado replied he was reading a letter from an adjacent property owner, noting that he had no concerns with the private property; however, he did not see a difference in moving the route as proposed. The biggest problem that they had was at the possible two crossings when the two trucks meet each other, and who was going to go first. This has always been kind of a strange situation, noting those were his concerns.

Ms. Kern questioned if she could make a point of clarification for the record. Acting Chair Hatton allowed it. Ms. Kern stated that five of her Committee members were not able to be here tonight, Ms. Rinks was one of them, because they are considered at-high-risk COVID-19 people. Because there was no option to have a Zoom meeting, which they would have been willing to attend, she felt this meeting was somewhat labeled as a closed hearing instead of a public hearing. She wanted to state this for the record.

Ms. Jennifer Davis, 2912 40th Lane, Avondale, Colorado 81022, spoke in opposition of the special use permit amendment request. Her concern was about the haul route in general, noting her family lived on the property directly to the north of the proposed haul route. They had been opposed to this, and now she was hearing there have been some considerations made for some residents of the area, noting none have been made for her and her family. She tried to seek out options that would be sustainable; however, trees were a costly option and keeping them watered was also a costly option, noting it was not a highly irrigated area. Any haul road that was south of their property was a concern because of the amount of winds and dust that would be created. There was already a significant amount of traffic along the road, and it was concerning that more trucks were being proposed, which would increase the levels of dust that was not natural dust. Having to figure out solutions to this themselves, as private citizens, did not seem that their requests were being taken into consideration. It seemed that a select few were being accommodated along the haul route. Looking at one of the haul routes, she noted that it was being moved to the south portion of the property, which was still less than a mile from her house and even less than that from her livestock, which were raised on the south portion of her property. She was concerned with the change to the haul road and to the fact that there were only certain people being taken into consideration. She understands that not everyone was going to be happy, noting she had concerns about

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

the safety, health, and welfare of her family. She has one child that is immunocompromised with Stage 3 COPD and any kind of dust added to her life that was not already there would make it worse. She sees this as being a huge problem with their way of life in general. They were not seeking to build a wind farm or a solar farm or anything like that. They were just seeking to live their country life and have their family and livestock without the added concerns of commercial interests in the area. She was wondering if there were any other possibilities or other ways that this could be handled. She did not have all of the solutions but did not think what was proposed was the answer. Acting Chair Hatton asked Ms. Davis to show her where her property was on the map presented by the applicant. Ms. Davis indicated on the map where her property was. She stated that the original haul route was going to run by the south edge of her property. Acting Chair Hatton stated that this amendment actually moved the haul route further from the edge of her property. Ms. Davis replied that it did; however, it was still within 1,200 feet from the house. Acting Chair Hatton stated that the applicant already had the haul route closest to her house available to them. In her opinion, she would always consider wanting a haul route further from her. The applicant still has access to the haul route closest to her house. She questioned if it would make sense to have the haul route further from her home. Ms. Davis replied that it would, noting it would also make sense to have it further from anyone's home. She stated while it was better, it was still not a good solution because it was only being moved a couple hundred feet further south. Acting Chair Hatton stated that she understood that she would want to have the route even further away, but that was not what they were hearing this evening, noting they had two options to consider. Ms. Davis replied that her concerns were that accommodations were being made to the haul route for other people's interests, but no concerns were being given to people that were living in the area that would be greatly impacted by the haul route. She said they were changing the haul route for a specific reason for a specific purpose, and it was great to move it a little bit south. It was her understanding that something came up, which was why the route needed to be moved to the south, but she could not remember why. All she knew was that it had nothing to do with accommodation her family. Acting Chair Hatton stated that as the Planning Commission, one of the things they could not make judgments on was private agreements formed between companies and private land holders. She stated that there were times that she would like to do that, but it was not something they could do. The Planning Commission could only make judgments on the special use permit that was being presented. She recommended having a conversation with Mr. Ary about her concerns. Ms. Davis replied that was something of a sore subject. She stated her point was that the reason the applicant was requesting the haul route be reorganized and redone was to provide a special interest to somebody. She asked the Commission not to consider the proposed haul routes.

Mr. Varela questioned what special interest she meant. He understood they could not make a decision based on it, but he keeps hearing about it, and he was just curious. Ms. Davis replied that if accommodations were being made and if the route was being redrawn because there was another interest at hand, such as the solar farm that was brought up, then she questioned if the haul route would be changed to accommodate her solar project. These were her questions, noting they were not addressed at the first hearing. If there were reasons specific to the health, safety, and welfare that were being addressed, then changing the haul route would be one thing. However, it looked to her and appeared from the testimony that it was not being changed for any of those reasons. Mr. Varela stated he had not heard any of the concerns for the public health, safety, and welfare. All he has heard was somebody was getting solar or someone was getting money. He questioned what her concerns were for health, safety, and welfare because, as Acting Chair Hatton stated, if the haul route was being moved further away from her home, he would think that was a good thing. Ms. Davis replied that it was a plus; however, they would still receive the majority of the dust being the closest to the haul route. She said she understood it was a private agreement, but she was concerned with why they were changing the haul route now. Was there a specific purpose other than the fact that they want to accommodate a private agreement between certain people?

Mr. Mancha questioned whether she has had any discussions with or been approached by the applicant who was redrawing this map. Have there been any attempts to negotiate or try to work with them in some positive way? Ms. Davis replied she had never been approached, and she had never seen this particular map before this evening. She was not provided nor has had access to the map of the original haul route prior to the previous hearing. When she was provided with the map, she knew it was going to run across the south end of her property. She moved to the property after the initial negotiations for the special use permit. She was told by the people who occupied the house prior to her that they would take her name and number so that they could ask Mr. Ary to get in contact with them. She was just

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

put in contact with John Paul Ary approximately a month ago, if that. She has not had the opportunity to speak to anyone about her concerns about the redrawing of the routes. She noted she did not have the money to hire a private attorney to help protect her from this, and she did not believe that Pueblo County had any interest in protecting them either. Mr. Mancha questioned if she was surprised by the map provided by the applicant. Ms. Davis replied she was surprised by the map being shown. Mr. Mancha questioned if she had any idea of what was going on. Ms. Davis replied she had no prior knowledge of this. She did get a letter in the mail indicating that Mr. Ary had some changes, but it had not been brought to her attention. She stated that hearing testimony this evening about the reasons why the haul route was being changed concerned her. Since it was a private agreement and the Commission has no jurisdiction over it, it was a whole other story. Mr. Mancha thanked her for her comments.

Ms. Kern questioned if she could make a point of clarification to the Commission. Acting Chair Hatton allowed it. Ms. Kern, using the map being presented, stated on the haul route up here and the two parcels that are here, a parcel that was being vacated for the haul route, Fremont Paving & Redi-Mix, Inc. bought that house. Mr. Ary paid the people twice what the house was worth to get them to move. The property directly below that was also owned by Mr. Doug Thacker. She stated if the current haul route was going to be moved, they could have moved it even further because Mr. Doug Thacker owned that property. Acting Chair Hatton thanked her for her comments.

Acting Chair Hatton called for others that would like to testify in opposition. Hearing and seeing none, she called for the rebuttal. She informed Mr. Ary, his representative, and Mr. Raso that they had twenty minutes for rebuttal.

REBUTTAL

Mr. Raso rebutted the testimony. He stated he would defer to Mr. Ary and Mr. Ary's representative for most of the rebuttal. He wanted to say a couple of things. Ms. Kern, noting that this was something that has never happened to him before, has accused him of doing free work. He assured the Commission that the work he did was for Pueblo County and paid by Pueblo County. Mr. Ary and Mr. Ranson supplied everything that they needed to supply. As he previously stated, they could have done two separate applications. He wanted to clarify that. He stated that Mr. Shohet, in his opinion, was mocking his use of the word "obvious" in his letter, "that the reasons should be obvious". Maybe he was looking at it too simply. The way he looked at it was that all the conditions being proposed for the modification referred to public roads. The use of the public roads was the problem, which had been illuminated. The reason he thought it was "obvious" was because each modification in the permit stems from the fact that the public roads were no longer involved other than the crossing of 40th Lane. He stated more restrictions have been placed on this crossing through suggestions of the Pueblo County Public Works Department than were in the permit as it now stands. This was why he used the word "obvious". He asked the Commission if they had any questions of him.

Mr. Schuster questioned Mr. Raso with the haul routes being internal, whether or not it affected 36th Lane as far as any conditions that have changed since the permit was approved in 2016 or 2017. Mr. Raso replied not to his knowledge, noting this was now all on private property. He stated that he could understand impacts on 36th Lane through activity at the State Pit. The State Pit, if you need to review it, was subject to quite a list of restrictions. He stated that those restrictions could also be changed. The amendments to Special Use Permit No. 2016-007 propose the haul routes to be on private land except for the crossing at 40th Lane. He stated he did not see how it would impact 36th Lane other than what comes out of the State Pit. He asked if this answered the question. Mr. Schuster stated that the concern was there was going to be more activity on 36th Lane and wanted that addressed. He stated he was not part of the other hearing and just wanted to get some information. He questioned if there were limitations to using 36th Lane by certain times when trucks could go, etc. He was not sure if there was a limit on the number of trucks. He wondered if it had been addressed in the original permitting. Mr. Raso replied it was taken care of in the permitting of the State Pit, noting that was where the restrictions were. In some cases, those were more restrictive than what was found on the original permit for this case. In some cases, less in terms of hours of operation and school days. He stated that by putting all routes on private land, noting this why he said it was "obvious", was that all of the public road usage has gone away. He understood the concerns with the State Pit, but that was a separate special use permit, and it has its own set of restrictions that were available for review.

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

Ms. Gladney stated she was also not part of the first application and apologized for any silly questions. She questioned the egress and ingress for the State Pit and if the green route would be abandoned. Mr. Raso replied he was not sure and would have to defer the question to the other applicant. He stated he was not part of the State Pit hearings or the original hearings for this permit. He stated if there were no other questions for him he would sit down.

Ms. Gladney stated she would ask a few questions that could be answered all at once. She wanted to know about the abandonment of the original route, and if it was the only egress and ingress for the State Pit, and whether the roads on the private lands were dirt roads and if loads would have to be covered when hauling between routes.

Mr. Ranson rebutted the testimony. He stated he would like to provide a little bit of a history lesson. There was an axiom in the law that says, when you don't have good facts, you create confusion. Some of that has occurred tonight. Originally, the haul route out of Badger Hills went north to Highway 50. To a large extent, when they talk about no haul roads, that was an agreement that was reached to not go north to Highway 50. This was the haul route being questioned, noting there would not be a haul route going north to Highway 50. Second, in an effort to accommodate objections, the processing of materials mined at Badger Hills was essentially moved to the State Pit. Rather than there being two processing facilities, by agreement, they agreed to use the State Pit. Materials are being hauled off the south end of Badger Hills, go west and up into the State Pit where it gets processed. The idea that materials would be passed through on its way to the market was incorrect. The material has to be processed. When the original Commission's decision was rendered for this special use permit, there were restrictions placed on the State Pit's special use permit, noting that the State Pit was not part of the hearing for this permit. It was pointed out that there was an overreach into the permit for the State Pit, which was not part of the hearing being held. Therefore, the County agreed, rightfully, that they would remove those restrictions on the State Pit that were part of the original Commission's decision. He stated this was what they were doing. They were cleaning up a bit of a mess, noting that it happens. This idea that they were abandoning 36th Lane as a haul road was incorrect. He stated that 36th Lane was the route from the State Pit to Highway 50. It has its own separate, lengthy set of restrictions, which do not affect Badger Hills. He stated the layout of the original haul route has a number of turns and curves in it. They have tried to eliminate most of those because they were maintenance issues and difficult for trucks to maneuver during deceleration and acceleration. They tried to take the turns out, noting they have come down from five or six to two. He called these simple, logistic things that just make life easier. Are they accommodating Mr. Doug Thacker? Yes, they were, but why wouldn't they? He stated it was not difficult to just move the road south and west and into the backside of the State Pit. To answer the question about the green route on the map, the original requirement was to have two ways to get into the State Pit. The route that runs east and west, which was asked to be eliminated, was originally proposed as the primary route. You would go out to 36th Lane and then up to the State Pit to re-enter. He stated they were eliminating that route in its entirety. The access was also moved from the middle of the route that was eliminated to the east end of the route. He stated there were two ways in and out, noting this was what they have proposed. They were cleaning up the issues and confusion of the State Pit's restrictions, which should not be part of this permit. The County agrees, we all agree, so why not just take it out. The State Pit restrictions stand on their own; they remain in place, i.e., when they haul, how long they haul, what to do, etc. Other than that, they were trying to move the route a little bit south and west, clean up some curves, and make it a cleaner route that was easier to maneuver. To answer the questions about dust. Dust was subject to Health Department requirements, i.e., clean air. The requirements have to be attended to as required by State law and by the County as well, noting he was not sure about the County. Certainly, by State law all of the haul routes have to be covered or treated with dust control. He called Mr. John Paul Ary to the podium to address the concerns of using the big trucks that would be used to haul the materials, noting he felt it was nonsense. He stated he would have Mr. Ary, a guy that knows how to do this business responsibly, address those concerns. He asked if there were any further questions for him. He stated it had been a long process, noting they have tried their best to accommodate the people. They got rid of the north route, got rid of the processing, and moved the haul route south. They were trying very hard to do the right thing.

Mr. Ary rebutted the testimony. He stated if there were any more questions about what they were eliminating, he would be happy to answer them. The hash marks drawn on the map were the routes that were going to be eliminated. One of the major factors was that the access on the edge of that map was 36th Lane. If this route was to stay in place, they would be permitted to go down 36th Lane into the entrance of the State Pit. He stated there was sizable opposition to that route. He pointed out six boxes on the map that represented a

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

sizeable piece of property. The person that owned that property was adamantly against this special use permit. The map shows the haul route being moved farther to the east away from that opposition. They have already discussed moving the haul route to the south from Mr. and Mrs. Davis. To answer Mr. Mancha's question, he sat at the kitchen table of the owners of that property prior to the Davises on no less than a half a dozen times trying to work with those people to decide what they could do different. At the end of the day, the property owners decided not to oppose the permit because they want to go to work for him, noting they were the ones that own the trucks hauling across the road. The time between that conversation and the actual voting of the permit, the property owners sold the property to the Davises. Since then, he has made multiple attempts to contact them, noting he finally talked to Mr. Davis a couple of months ago. Mr. Davis was given a business card and was told, if there was anything he could do to make the situation better, he would be happy to do it. Mr. Mancha stated, if he was hearing Mr. Ary correctly, Mr. Ary approached the Davises a long time ago before the map being shown was drawn and that the Davises were aware of the proposed haul route changes. Mr. Mancha asked if that was correct. Mr. Ary replied that he met with the previous property owner numerous times. The previous property owners sold the property to the Davises without the Davises knowing what was going on. This was his understanding of the situation. The previous property owner, Mr. Ary's employee and a neighbor to the Davises, contacted the Davises and gave them Mr. Ary's business card and told the Davises if there was anything that Mr. Ary could do, to contact him. Mr. Ary stated he made several attempts to go by the Davis's home to see them. He left business cards in the door and never received a return phone call. He found Davises in their driveway a couple months ago and pulled in to talk to Mr. Davis.

Mr. Ary referred to the haul trucks. He stated that the haul trucks that were pictured were the haul trucks that were used within the site at the State Pit; they are off-road trucks. Acting Chair Hatton questioned if those trucks crossed at 40th Lane. Mr. Ary replied absolutely not, noting he would love it if they were allowed. However, that was not what they were doing. Another point of clarification, which he felt was made but would like to reiterate, was that there was absolutely nothing they were doing today that changed anything on 36th Lane except for removing their right to use 36th Lane for this source. All of the restrictions on 36th Lane stay in place. Another point of clarification he wanted to make addressed the discussions about the amendments and the red lines. This permit was approved after endless hours of conversations and meetings. It was approximately 11 p.m. when it was finally approved. There was a Commission member that read off two-pages of conditions that he wanted changed and taken under advisement. Days or weeks went by before the final approval document was written. When he finally saw the document, it was hard for him to recognize, and it was hard for the Commission members to recognize. There was some language that just did not fit. These issues were why they were having this meeting this evening.

Mr. Schuster questioned if the loads were going to be covered. Mr. Ary replied that they were only crossing 40th Lane. Normally, they would not cover a load for that short of a distance, but they could be covered. He stated the loads being hauled were unprocessed aggregate. It was 10 inch or less sized rocks. There would be no intent to cover them, but if that was an issue, it could be added. He stated that one of the regulations of the permit was to meet with Pueblo County every year in October to discuss any and all issues with the 40th Lane crossing. Any suggestions or problems that needed to be addressed would be brought up at that time.

Acting Chair Hatton felt that this proposal was a dramatically better haul route than where they started, but she did have two concerns that were highlighted by Mr. Ranson, i.e., Condition Nos. 8 and 9, regulations removing the hours of operation. Because 40th Lane was being crossed, noting that it was a school bus route, she questioned if he would be amenable to removing those redlines. Mr. Ary replied that his understanding of why the language was being removed was because it referenced restrictions on 36th Lane. Those time frames were for 36th Lane, were currently for 36th Lane, and would continue to be for 36th Lane. The language being proposed, noting he thought it was in the redlines, was that they meet with the school district and modify those times as needed. The reasons they did not change the language on 40th Lane was because it was his understanding there was not a bus route on 40th Lane at those times. He stated the times were restrictive to 7:30 a.m. to 5:00 p.m. when they would be allowed to cross 40th Lane. Acting Chair Hatton stated there used to be language in there that said it should not occur before 8:00 a.m. Mr. Ary replied absolutely, that was the language. He stated there were a multitude of hours discussed in the previous meetings, and the language they put in conditions was language representative of the restrictions for 36th Lane. At no point was the crossing of 40th Lane referenced. Acting Chair Hatton stated that she did not feel that it was clearly referenced at all, and it was frustrating.

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

Mr. Ary stated that there were amendments to hours from 7:30 a.m. to 5:00 p.m. as the only hours they were allowed to operate. Acting Chair Hatton replied that was correct, noting that one of the strikethroughs was former Condition No 9, which stated, "During the hours of 2:30 p.m. to 3:30 p.m. there should be no loaded trucks departing or traveling on public roads on days that school was in session. Should the applicant provide evidence from local schools that these hours need to be changed due to changes in school hours, these hours can be amended through the regular special use permit application procedures." Acting Chair Hatton stated that she was comfortable approving the proposed amendments if these redlines were removed. She was less comfortable approving it if they were not removed. Mr. Ary replied that he did not have an issue with the language of the school bus crossings. He stated it was important to acknowledge that the hours could change. Years ago, the State Pit's hours restrictions were completely different from the current hours. The school district changes the bus routes, and it makes no sense to "iron clad" a time frame when the bus routes change. He stated they would have trucks sitting idle at Highway 50 trying to access at the wrong times. He wanted the language to address current school bus routes as needed. Acting Chair Hatton replied that working with School District No. 70 would be reasonable. She felt a full strikethrough of Condition No. 9 did not get them to that conversation with School District No. 70. Mr. Ary replied that was a fair statement, and he did not disagree, noting he had no issue with that. He stated there were lengthy discussions about the ramifications and problems of staging trucks. At one point, he thought they were heading in the right direction. However, it got so late at night, people were getting frustrated, it was decided to just restrict it. He did not believe restricting the hours were the right answer because it would create a backlog of trucks, which creates a higher safety problem than letting trucks flow naturally. He stated this was a totally different argument. He felt that what happened to them at 11:00 o'clock at night that evening was to take the most restrictive and go with it. He stated he did not feel it was the safest option because trucks would be stacked in a line, which creates a safety hazard. Acting Chair Hatton stated she heard his concerns, noting that particular hearing was one of the largest learning experiences she has ever had. Mr. Ary replied that she was at every single meeting, which was a lot of them.

Acting Chair Hatton called for additional questions.

Ms. Gladney questioned staff if there was any opposition from School District No. 70 regarding this amendment. Ms. Gail Wallingford Ingo replied that the Planning Department did not receive a response.

Mr. Varela required some clarification. He questioned Mr. Ary if he would be open to maintaining those hours, noting he was not sure what they came up with. Mr. Ary replied that he would be open to that, but personally felt it was a mistake. If it were looked at more closely, you would see that a worse safety situation would be created. The County has the right to put language in the restrictions at a future date if it becomes an issue. He felt it was a mistake the first night, and he felt it was a mistake tonight. He stated the way they were operating on the State Pit and on 36th Lane was a mistake. Stacking trucks creates a worse safety problem than letting traffic flow normally.

Ms. Leonard needed clarification. She stated that Badger Hills was not going to use 36th Lane. Mr. Ary replied that was correct. Ms. Leonard questioned if 36th Lane was being used by the State Pit, which was not being considered this evening. Mr. Ary replied what they were talking about was trucks being allowed to cross 40th Lane from 7:30 a.m. until 5:00 p.m. They were allowed to enter the property at 7:30 a.m. The trucks would have to go up and load and come back before the loaded trucks could cross again. Ms. Day stated she could clarify a bit. The current language refers to accessing public roads during this time. The reasoning behind removing the language was because using 36th Lane was no longer in play; however, it was brought up by the opposition that it was still relevant because there was a public road crossing, not part of the haul route any longer, but a crossing, which was why we were still discussing whether this language was still relevant and if it should stay in there or some other version of it. Ms. Leonard thanked her for the clarification.

Mr. Varela questioned the redlines on Condition No. 13. It talks about the applicant shall contact the Pueblo County Department of Engineering and Public Works regarding advisory signs and warnings, noting it goes on to say 36th Lane. He questioned why that language would not be kept because they would be crossing 40th Lane. Would it not be necessary to have a sign up that says, large trucks crossing between these times? He stated if large trucks were going to be on the road and a small, electric vehicle comes through, it would not be good. Mr. Ary replied that it was in there as Condition No. 10. Mr. Varela replied that he finally saw it.

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

Acting Chair Hatton acknowledged that it was Mr. Ary's time to rebut the testimony. She stated that there was somebody in attendance that was always talking about this particular traffic issue, and she would like to ask Ms. Kern a question if Mr. Ary was okay with that. Mr. Ary replied it was fine.

Acting Chair Hatton reminded Ms. Kern about previous discussions about stacking the trucks versus a standard flow of trucks and the safety concerns both ways for different reasons. She questioned Ms. Kern if she had a preference. Ms. Kern replied for stacking trucks? She stated Mr. Ary refers to it as stacking. She stated that the County dump trucks currently stack their trucks. The trucks come out of the State Pit from five to nine trucks at a time. Ms. Hatton stated that she could not use the State Pit in this conversation. Ms. Kern replied that she understood. Acting Chair Hatton stated for crossing 40th Lane, if Ms. Kern felt it would be safer to have the hours open to any time from 7:30 a.m. to 5:00 p.m. or did she feel that it was safer for them to stop loading and do the stacking to cross 40th Lane outside of the restricted hours. Ms. Kern replied that since Mr. Ary was being so generous with information this evening, this could be a joint issue that could be discussed. There has never been clarification as to what kind of trucks would be crossing 40th Lane. It was an assumption on her part that those giant, massive dump trucks were going to be used. She did not see how they could run semitrucks with trailers up to Badger Hills. She went up there one time and almost dumped her pickup truck. To answer that question, she would like clarification as to what kind of trucks they were talking about. They are also still talking about people traveling on 40th Lane going to school, going to work, noting that it was a bus route. Buses run at those times in the morning. To answer question, briefly, without any input from Mr. Ary, she would say they need to wait. She stated she did not know, noting that she has counted up to 500 trucks a day on 36th Lane. She has not seen anybody counting the 70 trucks there a day. How many trucks were they talking about at that time in the morning? More clarification was needed from Mr. Ary about the type of trucks, how big they were, and how many there were. Acting Chair Hatton stated that Mr. Ary did state, on the record, that they would be semi-trucks and not the trucks that were shown in the photos. She stated that she was going to take that as the truth unless she got corrected. Even though Mr. Ary would like to use the other trucks, Mr. Ary stated that he was not going to. Ms. Kern stated they needed to wait, noting that the road was getting too dangerous. Acting Chair Hatton thanked her for her comments.

Ms. Gladney questioned staff if the Pueblo County Department of Engineering and Public Works weighed in on whether the times needed to be limited or were they just worried about signage. Ms. Wallingford-Ingo replied that Ms. Dominga Jimenez-Garcia, General Services Engineer, Pueblo County Engineering and Public Works Department, was in attendance, and she would defer the question to her. Ms. Jimenez-Garcia replied she reviewed the amendment to the project and the crossing of 40th Lane. There was previous discussion to the signage, noting the applicant and Public Works were going to work together on it. Everything else that was not being changed was not reviewed. She only looked at what was being amended. Acting Chair Hatton questioned if she had a feeling about best practices for having vehicles cross 40th Lane. Ms. Jimenez-Garcia replied there were going to be stop signs placed on the access roads and signage regarding truck crossing. She stated she would have to ask the Public Works' director how he felt about the concerns with stacking trucks.

Mr. Mancha questioned if there were any laws broken with regards to the processing of the information, specifically the new haul route map. Acting Chair Hatton replied that was an attorney question. Ms. Day replied not that the County was aware of, noting she would certainly be concerned with that. She stated that there were private agreements between the landowners involved and Fremont Paving & Redi-Mix, Inc. Pueblo County weighed in on the crossing of the public rights-of-way. As far as she was concerned, there were no issues.

Ms. Kern questioned if she could make a point of clarification to the gentleman who asked about the stop signs. Acting Chair Hatton allowed it. Ms. Kern stated they have to use 36th Lane for the State Pit. She had to call the Sheriff's Department and those stop signs fall within the private property of the State Pit. As far as the Sheriff's Department was concerned, those stop signs were not enforceable. She stated that if signage was going to be required on 40th Lane, it had to occur on the rights-of-way or the Sheriff's Department would not be able to ticket the trucks for not stopping, noting they do not stop coming out of the State Pit. This would be extremely important because they currently do not have to abide by stop signs that were located on private property. Mr. Ary wanted to make one additional comment to the stop sign issue. He stated that the Pueblo County Department of Public Works and

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

Engineering had approved what they were doing and would be responsible for approving the layout of the signs. He stated he overlooked one of the property owners. He felt that some time had been spent on talking about property owners and property owners' rights. He stated that the Pritekels were in attendance particularly Mrs. Pritekel, noting that she just had her 88th birthday. Mrs. Pritekel and her husband purchased this property for this reason in 1965. He has been working with them for over 20 years and an endless list of neighbors. In the original meetings with the County, there were probably hundreds of people testifying and that they had met with trying to work out solutions. Some of this language was because of those requests. Obviously, at 11:00 p.m., some of the notes that were taken got messed up. This amendment request was an attempt to fix all of that. It was important to recognize that Mr. Doug Thanker has rights, Mr. Hendricks has rights, and the Pritekel family, since 1965, has been trying to make this happen.

Ms. Day questioned if there was any further rebuttal testimony from the applicants. They all responded no. Ms. Day questioned if all the applicants were in agreement with the conditions as proposed by staff. The applicants replied they were. Ms. Day stated that if there was no further rebuttal testimony from the applicants, the proposal could be before the Commission for consideration.

Acting Chair Hatton closed the hearing and entered staff's comments into the record.

MOTION

Acting Chair Hatton stated that all motions were made in the affirmation. She asked for a motion to approve Special Use Permit No. 2016-007 Amendment Request as presented.

Mr. Bruestle made a motion to approve Special Use Permit No. 2016-007 Amendment Request with staff's recommendations, comments, and conditions. Mr. Schuster seconded the motion.

Discussion ensued. Mr. Varela questioned if the motion was to include adding the times for the school buses that Mr. Ary was okay with. Acting Chair Hatton replied that was not how the motion was made. Mr. Varela questioned the motion was made without adding what Mr. Ary was in agreement to? Acting Chair Hatton replied that was correct. Ms. Day stated that Mr. Bruestle's motion was to approve the amendment as recommended by staff with redlines included in the staff review to make those changes. Mr. Varela questioned if he needed to request a friendly amendment because Mr. Ary was okay with the time limits. Ms. Day replied that the motion on the table was for approval with conditions as presented by staff. Mr. Varela was asking if he needed to present a friendly amendment as per Robert's Rules of Order because Mr. Ary was open to the times for waiting for buses. Ms. Day replied there was a motion before the Commission, noting that if he did not agree with the motion that was on the table, he could vote against the motion. If the motion gets voted down, he could make a new motion that included the addition. Mr. Varela questioned he couldn't make a friendly amendment? Was his friendly amendment being opposed? He stated that the applicant was okay with the addition, noting that he was just trying to understand. Ms. Day replied that he could request it; however, the motion on the table was for approval as written. The person that made the motion and the person that seconded the motion would have to both agree to the amendment. Mr. Varela questioned Mr. Bruestle if he would approve his friendly amendment to add the condition that Mr. Ary's was open to, i.e., time restrictions for the school bus? Mr. Bruestle questioned legal counsel if that was what was required to make that discussion binding. Ms. Day replied she did not understand what he meant. Mr. Bruestle questioned if he would need to change his motion to include Mr. Ary's agreement to make the agreement binding. Ms. Day replied if the motion he was making was to include that change, he would have to withdraw his motion. If the intention was to include that specific change when the motion was made, he would have to withdraw the motion that was on the table and make a new motion with that change included. She stated the motion on the table, as she understood it, was to approve the permit with conditions as presented in the staff report and the redlines without the change to the times as was discussed. Mr. Bruestle replied that was correct, noting that his motion did not include any discussions that were not part of the report.

Ms. Day questioned Mr. Bruestle if he wanted to withdraw his motion. Mr. Bruestle replied that he would withdraw his motion and let someone else make the motion. Mr. Schuster questioned if a separate discussion was needed to discuss the friendly amendment, noting that there may be some members that do not want it added. He questioned which way they were going to go. Ms. Day replied there was a motion and a second on the table, noting the motion has been withdrawn. Mr. Schuster stated he would withdraw his second. Ms. Day

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

questioned if someone wanted to make a different motion, noting there was currently no motion on the table. If Mr. Varela would like to make a motion to approve the permit with that change included, he may do so. She informed Mr. Varela if he were to make a motion, to be specific.

Mr. Varela made a motion to approve Special Use Permit No. 2016-007 Amendment Request with the recommendations of the staff as well as Mr. Ary's agreement or the applicant's agreement to the time restrictions for school busses. Ms. Day questioned Mr. Varela if the motion he was making was to approve the amendment that has been presented this evening as presented by staff with the exception of removing the strikethrough of Condition No. 9, which was during the hours of 2:30 p.m. to 3:30 p.m. Mr. Varela stated he wanted to make sure that he had it right. When they had the discussion with Mr. Ary, he was open to the idea. Ms. Day stated Mr. Ary was at the podium if he wanted to clarify with Mr. Ary. Mr. Varela questioned Mr. Ary what he was open to. Mr. Ary stated he would like to address the motion. He stated that he had no issues with it; however, he felt it was a mistake. He felt that it was important to clean up the language and work with School District No. 70 by shutting down in the thirty-minute window when the bus crosses. He checked with School District No. 70, and there was only one bus crossing in the morning, noting the route in the afternoon was changed to an earlier time. He stated to just put a blanket time frame on there was not useful. It would need to state a thirty-minute window, because they know exactly when that bus crosses. Ms. Day stated that she would like to make a suggestion. If Mr. Varela would like to approve the permit as written with the exception of Condition No. 9 and alter Condition No. 9 to state that the trucks would not run to one half hour before to one half hour after school was in session, noting she was not familiar with the bus routes. She stated she thought that the school on 36th Lane was the only school that had a bus route on 40th Lane. If that was the case, then she would suggest one-half hour before commencement of school or one-half hour before school release, noting this would be the restriction. Mr. Ary replied it does not work to have the trucks sit and wait for an hour when they know the bus would be going to cross in, literally, a five-minute window. He stated he was trying to come up with language similar to what she was saying. They would shut down for thirty minutes centered on when that bus crosses. All of the buses are fitted with GPS devices, and they know exactly when that bus would be crossing 40th Lane. He stated that they could modify that at every school year as needed. He appreciates that it was hard to word. It was also very disruptive to close something down for an hour. Ms. Day replied that she felt the intent was to make it minimally limiting on all parties, noting that what was originally written was an hour. Mr. Ary stated they do not have an issue working with the time frames as long as they could figure out how to word it properly. He stated he felt it was a mistake because there would be three to five trucks backed up at one time, which was riskier than letting them cross one at a time, but ultimately, it was up to the Commission. Ms. Day stated that staff had concerns that, once again, the Commission was drafting conditions on the stage, which was what happened previously and created the issues being addressed this evening. Also, enforceability of those conditions was also a concern of staff as well. These were considerations staff would like the Commission to consider when making the motion for this proposal. Acting Chair Hatton stated that the Commission would have future opportunities to make amendments to these particular issues so that we were not doing them on the stage. Mr. Varela stated that made sense and withdrew his motion.

Acting Chair Hatton called for a new motion. Mr. Varela stated he would like to make a motion to approve Special Use Permit No. 2016-007 Amendment Request with the conditions as outlined by the staff. Mr. Schuster seconded. Acting Chair Hatton stated there was a motion and a second to approve Special Use Permit No. 2016-007 Amendment Request. She called for discussion.

Discussion ensued. Acting Chair Hatton stated she had been a party to the hearings for this case from both the audience and a Planning Commission member. She had been a party to this particular situation since 2012 or 2013 before she was appointed as a Planning Commission member. It was one of the things that caused her to put in her application for this particular position because she thought that it was not heard in a way that was both fair and allowable. She felt they could have done better for everyone the first go around, which was why she put in her application for the Planning Commission. She hoped that they have done better, she has some doubts, COVID-19 is a pain, and she did not know what to do about it. There was something that had come up repeatedly, i.e., dust. Dust was one of her biggest considerations in this factor. The idea that Mr. Thacker was going to put in a solar farm when she knows that the biggest enemy to solar production was dust was either foolhardy or indicated that this project was not producing as much dust as was indicated. What that answer was, she had no response to, but she did know that dust was the biggest

**RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 28, 2020**

reduction factor to solar generation. So, if Mr. Thacker can successfully establish a solar farm in the area, it would be a good thing. Her biggest concern was that it would be decreased. She was excited about it because it meant that we could use natural resources, which were needed. It could also mean that there was a big investment for a project that may not work out. She could not say what the outcome was going to be, but it was a big concern of hers this whole time. She wanted her concerns and comments on the record. She thought it was very important to think about all these factors when issuing the decision.

Acting Chair Hatton called for a roll call vote.

The following roll call vote was taken:

Mr. Bruestle--yes.
Ms. Gladney--yes.
Ms. Leonard--yes.
Mr. Mancha--yes.
Mr. Schuster--yes.
Mr. Varela--yes.
Acting Chair Hatton--yes.

The motion carried unanimously.

PCPC Resolution No. 20-012, dated October 28, 2020, was also approved.

ADJOURNMENT

There being no further business, Acting Chair Hatton called for a motion to adjourn the October 28, 2020 Planning Commission meeting.

Mr. Varela motioned to adjourn the October 28, 2020 Planning Commission meeting. Mr. Schuster seconded the motion. The motion carried unanimously.

Acting Chair Hatton adjourned the meeting at 8:03 p.m.

Respectfully submitted,



Carmen Howard, Director
Department of Planning and Development

SMS