

**RECORD OF PROCEEDINGS  
PUEBLO COUNTY PLANNING COMMISSION  
MARCH 22, 2011**

A meeting of the Pueblo County Planning Commission was held on March 22, 2011, at 5:00 p.m., in the Pueblo County Conference Room, 1001 North Santa Fe Avenue. Those members present were: Betty Alt, Chair; Thelma Archuletta; Donald Bruestle; Richard Clark; Epimenio Griego; Rob Leverington; Ronald Leyba; Shirley Ozzello; and Arnold VanZandt. Also present were Gary Raso, Assistant County Attorney; and Pat Coffee and Dave Benbow, County Public Works Department. Planning and Development staff present were: Joan Armstrong, Senior Planner; Dominga Jimenez-Garcia; Louella Salazar; and Gail Wallingford-Ingo. Ms. Alt, Chair, called the meeting to order at 5:00 p.m.

**APPROVAL OF FEBRUARY 22, 2011 MINUTES**

Chair Alt stated she has received several telephone calls and a nice letter from members of the opposition to the nuclear plant (PUD No. 2011-001) commenting about how they appreciated the Planning Commission taking the time to listen to them and the fact the Commission was courteous.

Mr. VanZandt motioned to approve the minutes of the February 22, 2011 meeting as mailed. Mr. Griego seconded the motion. Motion carried unanimously.

**DIRECTOR'S REPORT:**

(a) Acceptance of Map Amendments

Ms. Armstrong reported staff has received no new rezoning applications this month.

(b) Correspondence:

Ms. Armstrong reported there was no additional correspondence.

(c) Continuances:

Ms. Armstrong reported there were no continuances this month.

(d) Withdrawals:

Ms. Armstrong reported there were no withdrawals this month.

(e) Board of County Commissioners' Action

Action taken by the Board of County Commissioners, at its meetings held on March 15, 16, and 17, 2011, was distributed at this evening's meeting.

(f) Administrative Reviews:

Ms. Armstrong reported there was one administrative review:

- **Special Use Permit No. 2008-003**, on behalf of Koury Real Property, which allows natural deposits, extraction, and processing of construction material (gravel) on 33.3 acres of a 62.85-acre parcel of land described as Parcel D of Subdivision Variance No. 320. No crushing or material washing will occur on site. The operation will use a load, grader, and bulldozer. The extraction will be conducted in four phases and take approximately 10 years to complete. The extraction will be referred to as Koury Gravel. The property is in the A-1 Zone District and located on the west side of I-25 North, north of and adjacent to the Boat and Recreational Vehicle Storage property which is north of the Rocky Mountain Travel Center and Koury Trucking Company.

Ms. Armstrong reported the applicant would like to have the special use permit kept in place and once the economy turns around he can get back to doing the gravel operation. Mr. Koury e-mailed staff on March 3, 2011 requesting this.

Staff recommends the Planning Commission accept the administrative review, thereby approving the continuance of the permitted use with the existing conditions and a new Staff Directive to prepare an administrative review during the month of March, 2012 and to present a report to the Pueblo County Planning Commission at its April, 2012 meeting.

Ms. Armstrong requested the Commission take action to accept the administrative review as read into the record.

**RECORD OF PROCEEDINGS  
PUEBLO COUNTY PLANNING COMMISSION  
MARCH 22, 2011**

Mr. Griego motioned to accept the administrative review as read into the record and make the Commission's comments a part of the record of this evening's proceedings. Mr. Bruestle seconded the motion. Motion carried unanimously.

**STATEMENT OF HEARING PROCEDURES BY CHAIRPERSON**

Chair Alt reported that the applicant and/or representative are called upon to speak, followed by any opposition, with the applicant having the final say.

**PUBLIC HEARING**

Ms. Armstrong explained there is one item on this evening's Consent Agenda. She explained the item listed under the "Consent Items" is for that case which there has been no opposition where staff is recommending approval and the applicants have reviewed and agree with the recommended Conditions of Approval. She stated anyone who wishes may have the item removed from the Consent Items to be scheduled for full public hearing, noting if the item is removed from the Consent Items, then it is automatically placed at the end of the Regular Items. If this item is not removed, the action is a single motion and second to approve the item under the Consent Items. Ms. Armstrong summarized the one Consent Agenda Item. She asked if there was anyone present who wished to have the item just summarized removed from the Consent Items and placed under the Regular Items. No one requested the item be removed from the Consent Agenda.

Chair Alt asked the Consent Items be made a part of the record.

**CONSENT ITEMS:**

Mr. Bruestle moved to approve the one Consent Item listed below with the Conditions of Approval and the Directive to Staff following the item. Mr. Griego seconded the motion. The motion passed by an 8-0-1 vote, with Mr. Clark abstaining his vote due to a possible conflict of interest.

Ms. Armstrong stated she would request the staff report be made a part of the record of this evening's proceedings.

- **Special Use Permit No. 2011-001**, Summit Pressed Brick and Tile Company, c/o Joe Welte (Applicant), Rocky Mountain Ranch and Land (Owner), LJ Development, Inc., c/o Joe P. Gagliano (Representative), portion of the S½ of Section 27 and the N½ of Section 34, Township 24 South, Range 66 West of the 6<sup>th</sup> P.M. Applicant requests that Condition of Approval Nos. 10 and 11 as imposed by the Planning Commission on February 22, 2011 be removed from Special Use Permit No. 2011-001. It was determined after the special use permit was approved that the highwall for the mine had already been evaluated by the Division of Reclamation, Mining and Safety; therefore, the Colorado Geological Survey has no further requirement for any additional investigation or study. The mine area is located on the south side of Pickney Road (CR 343) approximately 3,200± feet southwest of the intersection of Pickney Road and Pardee Drive and known as the Cedarwood Clay Mine.

Ms. Armstrong reported these conditions were imposed in order to ensure the stability of the highwall. It was determined after the special use permit was approved that the highwall for the mine had already been evaluated by the Division of Reclamation, Mining and Safety; therefore, the Colorado Geological Survey has no further requirement for any additional investigation or study.

Staff recommends the Planning Commission approve the amendment of the permit to remove Condition of Approval Nos. 10 and 11, thereby leaving 16 conditions and a staff directive.

**Conditions:**

1. Prior to commencement of mining activities, the applicant shall provide to this Department the following items:
  - Colorado Division of Reclamation, Mining and Safety (DRMS) – Mining and Reclamation Documents/Permits
  - Colorado Department of Health, Air Pollution Control Division – Fugitive Dust Permits
  - Colorado Department of Health, Water Quality Control Division – Stormwater Discharge Permit
  - Pueblo County Department of Public Works – Access Permit
  - Colorado Department of Transportation – Access Permit

**RECORD OF PROCEEDINGS  
PUEBLO COUNTY PLANNING COMMISSION  
MARCH 22, 2011**

The applicant shall provide the Department of Planning and Development a copy of all other required Federal, State, and local permit applications, approvals, amendments, waivers, or releases (e.g., air quality, DRMS, etc.) pertaining to Special Use Permit No. 2011-001 within 30 days of their submittal to the respective agency, and approval by the respective agency.

2. The special use permit is approved for natural deposits extraction and processing, blasting, stockpiling, crusher and screening plant; scale house and an office. Processing and stockpiling shall be restricted to materials excavated from the site.
3. The location of the area used for Special Use Permit No. 2011-001 shall be limited to the 93.25± acre area described in the letter of request identified as Exhibit 4 – Cedarwood Clay Mine area description of this report dated February 7, 2011 and further described as shown on the Pre-Mining Plan Map identified as Exhibit 7 - Exhibit “C” Pre-Mining Plan Map of this report dated February 7, 2011. Any additional area to be used for Special Use Permit No. 2011-001 shall require an amendment to the Special Use Permit.
4. Hours of operation for the permitted use shall be limited to Monday through Saturday, from sunrise to sunset. Hauling of materials shall be limited to Monday through Saturday, 6:00 a.m. to 6:00 p.m. These hours shall not apply to emergency situations that require immediate maintenance or repair to protect the site and surrounding environment, or immediate response to a government directive to supply materials to protect the health, safety, and welfare of the surrounding community. Should the applicant wish to extend the hours or days of general operation, the applicant must apply for and obtain an amendment to this special use permit, through the public hearing process.
5. There shall be no blasting permitted in association with the mineral extraction activities until the applicant submits and receives approval for a Blasting Plan as reviewed and authorized by the Division of Minerals and Geology, EXCEPT THAT, should a blasting plan be approved, there shall be no blasting between the hours of 6:00 p.m. and 8:00 a.m. Monday through Saturday and **NO BLASTING ON SUNDAY**. A copy of said blasting authorization from the Division of Minerals and Geology shall be forwarded to the Department of Planning and Development within 30 days of its issuance.
6. During the month of May 2011, the applicant shall contact the Turkey Creek Conservation District and request they conduct a comprehensive evaluation of the property to determine whether or not noxious species are present, what species are present, and the extent of the infestation. A copy of the weed management plan or a letter stating a weed management plan is not necessary shall be submitted to the Department of Planning and Development on or before July 1, 2011. Staff shall conduct an administrative review during the month of July 2011 and present a report to the Pueblo County Planning Commission at its July, 2011 meeting.
7. For the duration of the operation and reclamation, the applicant and/or property owner shall apply and maintain effective weed control on the permitted site, to prevent the establishment and/or spread of noxious weeds, and to maintain a vegetative cover compatible with surrounding rangeland.
8. The mining operation shall not encroach within 50 feet on each side of the centerline of the Pickney Arroyo, at any given time.
9. A licensed cleaner/pumper shall be used to clean and service the portable toilets.
10. The applicant shall obtain a new access permit for the mine site and shall comply with all requirements prior to any mining activity within the expanded area. The access permit shall be for the current operation (clay and gravel mining) and for a maximum daily vehicle trip count of 40. If the site exceeds the maximum 40 ADT on a regular basis this shall be a violation of the condition and require an amendment to the special use permit.
11. The mining operation shall not encroach within the 300-foot buffer from the right-of-way of Pickney Road.
12. If the applicant plans to blast within 1,000 feet of the County Road system, the applicant shall notify the County Engineer one week prior to the blasting and shall utilize a traffic control plan approved prior to the blasting operation.
13. The applicant shall pay for any applications (labor and material) of dust suppression materials deemed necessary by the Public Works Department. “Necessary” will be determined by an analysis of the amount of traffic generated by this operation and/or dust

**RECORD OF PROCEEDINGS  
PUEBLO COUNTY PLANNING COMMISSION  
MARCH 22, 2011**

complaints generated by this operation. Dust treatment on the designated haul route shall be done under contract between Pueblo County and a private contractor.

14. The applicant shall file with the Department of Planning and Development an annual mining operation and reclamation activities report that addresses compliance with the conditions of this Special Use Permit. Said report shall be submitted by the first day of the anniversary month of the approval date of this Special Use Permit.
15. Upon completion of the project, the applicant shall submit a written request to the Department of Planning and Development to withdraw the special use permit. The request shall include the anticipated date for completion of the reclamation.
16. The applicant shall develop, operate, and manage the mining-related activity according to the rules, regulations, plans, and permits administered by the applicable federal, State, and local agencies. Any violation of a rule, regulation, permit, or plan may result in the scheduling of a Show Cause Hearing to consider revocation of the special use permit.

**DIRECTIVE TO STAFF:** The Department of Planning and Development is directed to conduct an administrative review of the property during the month of July, 2011 and to present a report to the Pueblo County Planning Commission at its July, 2011 meeting. If the use is not established and/or the property is not in full compliance with the Pueblo County Code and/or all of the conditions of approval, the Commission may, at its discretion, direct staff to schedule the permit for a public hearing at the August, 2011 meeting. The Commission, at its discretion, may also direct staff to conduct an administrative review and/or schedule the permit for public hearing at an earlier date, if deemed necessary. **THIS DIRECTIVE TO STAFF IS NOT INTENDED AS A CONDITION OF APPROVAL.**

**REGULAR ITEMS:**

**SPECIAL USE PERMIT NO. 2004-008** - John C. Musso, PJ's, Inc. (Applicant/Owner)  
2641 North I-25

This is an administrative review matter for a special use permit, which allows the sale of manufactured homes in an I-2, Light Industrial Zone District. The manufactured home sales area is located on 3± acres within a 30± acre tract, and is located on the west side of I-25 approximately ¼ mile north of the Eden Interchange. The Planning Commission shall make a determination if this special use shall be deemed abandoned per Title 17, LAND USE, Division 1, ZONING, Chapter 17.140.070 *Establishment of Special Uses: Administrative reviews*, specifically Section D of the Pueblo County Code or allow the use for a specific number of years or be scheduled for a Show Cause Hearing at its April 26, 2011 meeting.

Mr. Jim Pioreschi, Priority Management and Consulting, LLC, 4776 Eagleridge Circle, Suite 150, represented the special use permit. He stated Mr. Musso hasn't done a lot on the property since the special use permit was put into effect in 2004. Mr. Musso has intentions of getting something going. He stated with the economy plus the other project he is working with (i.e., Love's Store), it has taken priority over this. He stated Mr. Musso received a telephone call from an outfit, Factory Direct Homes of Fort Worth, Texas, and they are looking for some land to lease in this area for manufactured home sales. He stated whether it will be Mr. Musso's property, they are not sure. They will continue to follow up with this lead. He requested the special use permit be continued.

Mr. Clark asked what kind of extension would Mr. Musso be looking for, noting what would be a reasonable amount of time. Mr. Pioreschi replied it may take as much as year or two. Mr. Raso stated if the Commission is inclined to do this it would be put on a year-to-year review. Mr. Clark stated there are a lot of things changing in the area and to commit that property to another six-year envelope would probably be premature, since the use could probably change in that amount of time. He felt a year-to-year extension would be more reasonable. Mr. Raso stated if the Commission does this then it would be done with "a reservation of your rights so you don't lose any of time periods you had". He stated it has come up for a one-year review every year for the past five years.

Mr. Bruestle asked what is the cost of the County Planning Department to monitor and grant it annual extensions. Ms. Armstrong replied the applicant does not submit any fees for this. What costs the Department is staff time to write the review, to go on-site, to make telephone calls, copies, etc. She stated she wasn't sure how many hours it takes for the preparation of the administrative review. Mr. Bruestle stated this is not the first applicant the Commission has seen who has run into some obstacles and their plan has been delayed and requested additional time. He stated the Commission has sometimes granted additional time in some cases and not in others. He stated his concern lies with there are no financial consequences to

**RECORD OF PROCEEDINGS  
PUEBLO COUNTY PLANNING COMMISSION  
MARCH 22, 2011**

an applicant if the Commission grants them additional time after staff has put time into it. He stated he is not saying he is opposed to such a request from an applicant, but his concern is that it costs the applicant nothing to ask for more time. He stated the County's general fund has to pay for it. Mr. Raso stated staff does the follow up (administrative review) on the special use permit. The fees for the special use permit should be considered in the administrative review. He stated Mr. Headley has advocated before the Board of County Commissioners for a substantial increase in those fees. The Board has not done anything to increase the fees yet because they have been mindful of what is going on in the economy. He stated he would be a little concerned if "we just off-the-cuff set an ad hoc kind of fee on a particular special use permit". He stated if the Planning Commission feels this is a concern, we should be able to tell the Board, who has the authority in setting fees that we need to perhaps work the review fees on special use permits into an increased special use permit. This way it would apply evenly across the board and we are not just singling out one particular applicant. Mr. Bruestle agreed. He stated he understood there may have been some inflation which has taken place that has reduced the effectiveness of the current fees; however, that inflation does not exempt the expenses the County pays for its services and its staff. Mr. Raso responded that is part of the case Mr. Headley made to the Board within this past year on all of our land use fees. Mr. Bruestle stated he was not making an example of this applicant, but he didn't know if it was defensible on the part of a public agency to be not making some consideration about the impact of this kind of situation. Mr. Raso stated it is defensible, noting the Board has a lot of discretion in setting fees. He stated the Board decided not to do it at this time. He stated under some land use statutes, like the 1041 regulations, you can charge by statute fees for reviewing individual proposals. He stated the case has been made for upping the fees, but the Board didn't want to do it.

Mr. VanZandt asked when the last review on the fees was completed. Mr. Raso replied in 2010. He stated staff took the Board a detailed analysis and compared our land use fees on everything with ten other counties and cities. Ms. Armstrong stated the Planning Department's database was also used to get the actual cost (e.g., advertisement and staff time). There was a phenomenal amount spent for each case. She stated this was reduced even more for the proposed fee increase. At one time, there was a fee associated with a yearly review for special use permits that the applicant would pay to bring it back and it included advertisement in the newspaper. She stated this was removed and we now have the administrative review where there is no fee. She stated she wasn't sure why the yearly review fee was removed. She noted the administrative reviews are not advertised, so the Planning Department doesn't have to incur that cost.

Mr. Leverington felt the issue of fees is a policy issue and he failed to understand how the Planning Commission would be involved in a policy issue. Mr. Raso stated the Board of County Commissioners would agree with Mr. Leverington's statement.

Ms. Archuletta asked if the Commission were to deny a continuance and declare abandonment on the special use permit, what would be the ramifications as far as the applicant coming back six months from now with some kind of opportunity to rebuild their company. Mr. Raso replied the ramifications would be the applicant would have to wait one year under the County Code to apply for another special use permit. The applicant would then have to go through the special use permit hearing process. This would be an expense for the County, as well as the applicant. He stated from a landowner's perspective, it's an entitlement that runs with the land until it is revoked or otherwise rescinded by the Planning Commission. He stated when one owns land and has something that goes with it then one doesn't want to give it up. Ms. Archuletta stated that would be her concern. She expressed concern with abandoning the special use permit because if the applicant has an opportunity to bring a business later, this would stifle this opportunity. Mr. Raso stated that things change over time and this is the reason this was placed into the County Code. This has happened with mining permits. You give that mining permit and there is not much going on and the guy doesn't do anything with it for a lot of reasons—the market isn't there, can't find a good operator, etc.—and nothing is done for awhile. He stated there is one case, which he remembers, where a school was built in the area and five new subdivisions with new homes, and the roads were redone, noting the whole picture changed in five years. He stated this is the reason the County Code was written this way. Ms. Archuletta stated he didn't believe the area where this applicant's land was located would change that much in one year's time.

There was no opposition to Special Use Permit No. 2004-008.

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

Mr. Griego motioned to approve Special Use Permit No. 2004-008 with the following conditions:



**RECORD OF PROCEEDINGS  
PUEBLO COUNTY PLANNING COMMISSION  
MARCH 22, 2011**

1. No storage of "trade-in" or used manufactured/mobile homes will be permitted on the property.
2. Parking Plan No. 1999-026 shall remain in effect for the manufactured home sales site. If the site is altered by moving the sales building, a new parking plan must be submitted.
3. Any changes to the Site Development Plan for this Special Use Permit (to be revised by the applicant and approved by staff) shall be subject for review by the Pueblo County Department of Planning and Development and, as appropriate, referred to the Planning Commission for consideration and action.
4. No Uses-by-Review other than those specified in the application and findings, and approved by the Planning Commission, i.e., manufactured home sales, shall be permitted under this Special Use Permit unless the permit is amended.

**DIRECTIVE TO STAFF:** The Department of Planning and Development is directed to conduct an administrative review of the property during the month of March, 2012 and to present a report to the Pueblo County Planning Commission at its March, 2012 meeting. If the use is not established and/or the property is not in full compliance with the Pueblo County Code and/or all of the conditions of approval, the Commission may, at its discretion, direct staff to schedule the permit for a public hearing at the April, 2012 meeting. The Commission, at its discretion, may also direct staff to conduct an administrative review and/or schedule the permit for public hearing at an earlier date, if deemed necessary. **THIS DIRECTIVE TO STAFF IS NOT INTENDED AS A CONDITION OF APPROVAL.**

Mr. Bruestle seconded the motion. Motion carried unanimously.

**SPECIAL USE PERMIT NO. 2007-015 -** Robert C. Norris (Original Applicant/Landowner)  
**SHOW CAUSE HEARING** BJ Ranches, LLC (Current Landowner)  
c/o Timothy C. Cutforth (Representative)  
7180 Overton Road

This is a Show Cause Hearing initiated by Pueblo County to consider revocation of a special use permit that allowed the establishment of six (6) 200-foot lattice type guyed towers and related accessory buildings and operation equipment on a 60± acre leased parcel of land in northern Pueblo County in an A-1, Agricultural (minimum 35 acre) Zone District. The specific proposed use of the towers is for the operation of two (2) radio broadcast facilities (KCEG 780 kHz-Pueblo and KJME 890 kHz-Fountain). The leased tower site is located immediately south of the Pueblo County/EI Paso County line on the east side of Overton Road and south of North County Line Road. The special use permit was originally approved on January 22, 2008 with six (6) conditions of approval and a directive to staff.

This hearing will allow the applicant an opportunity to provide evidence to the Pueblo County Planning Commission as to why Special Use Permit No. 2007-015 should not be revoked for failure to maintain valid permits and to comply with the conditions of approval placed upon it.

Mr. Timothy Cutforth, 965 South Irving Street, Denver, Colorado, represented the special use permit. He entered into the record Petitioner's Exhibit 1, which showed the different permits. He stated he had let the Pueblo County building permits get away from him and didn't realize that this had happened. He stated it took several trips to Pueblo to get them reinstated. He stated the Federal Communications Commission (FCC) permit has been a long delay. He stated the FCC rules call for them to respond when he files for license within ten days. He filed this additional information on July 2008 and the next time he heard from them was October 2009 when they said they would let him gather some additional information and file it. He stated normally they issue program tests, which allows the transmitter to be run to test conditions. Measurements are taken while running in a test mode. It did not happen this time; FCC went over a year before their first response to him. After he filed that, the next response was February 18, 2011 when FCC asked for a complete replacement license application. He stated FCC called him and said they would not allow him to do the original kind, but a new kind which was introduced. FCC gave him thirty days and he got it done in 25 days. He stated he included the cover letter in Exhibit 1. The top of the page lists the status, noting the FCC lists it "as having been received for filing". He stated it also consisted of a second filing, which is called a "Modification of Construction Permit" so that it met the standards for that new kind of proof. He stated both were filed before the 22<sup>nd</sup> and have been accepted as "full process with the FCC". He stated he could not tell the Commission how fast the FCC would move on it this time, but they said if they need additional measurements they'll issue a program test authority and ask him to go get them. He noted this is what normally should have been done in 2008. He stated he fully expected FCC to ask him to go out and make some additional measurements under the original kind of proof of performance, which is what has been used for the last 60 years in radio,

**RECORD OF PROCEEDINGS  
PUEBLO COUNTY PLANNING COMMISSION  
MARCH 22, 2011**

and FCC never did that. They made him start over. FCC has not sent a notice on the second station; it was filed in September 2008. He stated he expects to receive a notice on that once FCC is done looking at what he sent on the first one. He stated he is already starting to prepare the same paperwork.

Chair Alt asked if Exhibit 1 was for the one station, KJME. Mr. Cutforth replied yes, noting FCC has not sent him an additional request of any kind. There has been no communication on the second station, KCEG, since the November filing in 2009. He stated there has been approximately \$35,000 in legal bills trying to find out from FCC what is needed. The FCC is slower than he has ever seen. Chair Alt asked if, at the present time, the FCC has not granted all of the permits he has requested. Mr. Cutforth replied yes, noting he has filed for license and FCC hasn't finished processing or dismissing the license applications. He stated the last letter from FCC was dated February 14<sup>th</sup>, and on the next Monday a representative from the FCC staff telephoned and told him what to do. He stated the new application wasn't even authorized in 2008 when he filed the other one, noting it was offered as a possibility until 2009. One of the details didn't fit the rules so he couldn't file it as part of the 2009 filing, noting it didn't qualify. After he finished on October 30, 2009, FCC published some clarification that would have allowed him to file. He stated he thought FCC would go ahead with the old, original proof of performance and FCC chose to do the opposite. He stated the one station now is done under the new application. He stated FCC has been treating these two stations like they were "joined at the hip". He stated he filed the first application for this in January 2000, and he stated he is still working at getting these stations on the air. Mr. Raso asked if it was usual to put the towers up before getting the full license. Mr. Cutforth replied yes. He stated the towers are put up and tests are run and the license is filed. He stated FCC then comes back in 20-30 days and gives the okay to start at 500 watts and after giving the following measurements you can turn it up. FCC did not do it this way, and he got a new kind of treatment.

Chair Alt asked if he was BJ Ranches, LLC. Mr. Cutforth responded no. Chair Alt asked if he was the representative. Mr. Cutforth replied yes. Chair Alt asked if Mr. Norris is no longer involved. Mr. Cutforth answered he has not seen the paperwork which describes BJ Ranches, LLC, but he believes it is a reorganization of the family holdings to make the transition cleaner. He stated Mr. Norris is in his upper 80s so he has got to be considering his longevity as an issue. He stated the licenses are in his personal name, Timothy C. Cutforth, and he was the one who filed for the stations, built the towers, put in the transmitters, buried the wires, etc. Chair Alt questioned if the storage of all the vehicles is gone. Mr. Cutforth replied yes. He stated the vehicle was moved behind the building because he started it and drove it to the Pinon Truck Stop to fill it up and it was not in service. He stated he was able to dump the holding tank and get back. The next day when he tried to start it up, it was out of gas and it couldn't be driven. He made another trip somewhere and got gas. The vehicle is currently at Jerry's RV Storage in Fountain. Chair Alt asked if it is off the property. Mr. Cutforth replied yes, noting the towers and transmitter building are the only things on the property now.

Mr. Clark stated it seemed like this application process has been extended because of FCC situations. Mr. Cutforth replied yes. Mr. Clark stated there have been other radio stations opened recently and he doesn't believe their application process has been extended this many years. Mr. Cutforth felt FCC is making an example out of him. He stated he has worked in this industry since 1979 and has never had something "strung out like this" in all those years.

Mr. VanZandt asked if it was started in 2000. Mr. Cutforth replied the FCC operates a window system. There was a window in the year 2000 and everybody in the U.S. had to decide where they wanted a radio station and file for it. In January 2000, he filed for five and ended up with three—these two plus one in Wyoming. By time the FCC issued permits to build them, it was in the middle of 2005. During that period of time, the sites he had picked had all been sold a couple of times. He stated he was going to use State land north of the County line. There was a 400' tower on the land, and the State reclassified it as "heritage trust" and said "no use that isn't already there can be there". He stated although in the year 2000 there was a 400' tower there, the State said you can't put a tower. He had to start over and ended up at the T-Cross Ranch. All that paperwork changed just in time for the three-year permit to run out. He had the towers built and equipment setting in place, and he filed for license. He stated it is not an easy process.

Chair Alt asked if KCEG is an actual station. Mr. Cutforth replied this is not the studio, but is the transmitter. He stated the building wasn't built with a studio in mind, although it could temporarily house one for a day or two. He noted this will be a local station.

Ms. Armstrong stated a lot of the issues are pending Federal Aviation Administration (FAA) approval. She stated there are four items which staff requires prior to requesting zoning authorization for building permit for the construction of the towers. She stated the building permit has expired and his contractor is supposed to be getting that renewed. Mr. Cutforth

**RECORD OF PROCEEDINGS  
PUEBLO COUNTY PLANNING COMMISSION  
MARCH 22, 2011**

replied it has been renewed and is included in Exhibit 1. Ms. Armstrong asked when it was renewed. Mr. Cutforth answered it was after February 22<sup>nd</sup>. Ms. Armstrong stated then this information was not provided to staff in order to show that compliance was made. Mr. Cutforth replied it was done on March 11, 2011. He stated he was letting the FCC take precedence. Ms. Armstrong asked if the "Engineered Certification-Stamped and Signed" has been submitted to staff. Mr. Cutforth replied yes, noting it was part of the original permit grant and it is still on file. The towers and buildings haven't changed. Ms. Armstrong asked about "the as-builts". Mr. Cutforth responded he did have an as-built survey done, but the way the FCC structures their licensing, he can't modify during this part of the permit the numbers on the FCC's paperwork. FCC has an antenna structure department, a licensing department, and a construction permit department, but they don't talk to each other. It has to be done in a particular order so as not to cause more problems with the FCC. As far as the safety of the towers, the FAA would not require even study of these towers under 200 feet tall at that location with as far as it is from an airport. However, because of considerable staff action talking to the FAA, he was required to register all of them and light one of them. He stated the rule of thumb is more than eight miles from an airport and less than 200 feet, FAA doesn't consider it to be of any interest.

There was no opposition to the Show Cause Hearing for Special Use Permit No. 2007-015.

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

Chair Alt informed the Planning Commission in the staff review under Exhibit 7, there were suggested conditions of approval on the special use permit to either: (1) rescind, (2) retain for a limited time, or (3) retain for a year.

Mr. Leverington motioned to retain Special Use Permit No. 2007-015 with the existing conditions of approval and a new Staff Directive that requires a yearly review in March of every calendar year until the proposed use is established and in full compliance with the conditions of approval. Ms. Archuletta seconded the motion. Discussion occurred.

Mr. Leyba stated he favors staff recommendation No. 2, noting it gives staff a little more flexibility.

After discussion, the motion was denied by a 4 to 5 vote, with Mr. Bruestle, Mr. Griego, Mr. Leyba, Ms. Ozzello, and Chair Alt opposing the motion.

Mr. Bruestle motioned to approve Special Use Permit No. 2007-015 with the following modified conditions:

1. The applicant's representative shall provide written documentation every three (3) months that illustrates all of the permits (i.e., building, FCC construction, etc.) necessary for the continuation and subsequent completion of the project are current and valid.
2. The approval of Special Use Permit No. 2007-015 shall be for six (6) telecommunications towers each with an overall height not to exceed 198 feet (excluding any attached lightning rod or top mounted beacon marker) and related accessory buildings and support facilities on the north one-half of a 54.41± acre leased parcel of land located within the NW¼ of Section 6, Township 18 South, Range 64 West of the 6<sup>th</sup> P.M. lying east of Overton Road.
3. Pursuant to the determination issued by the Federal Aviation Administration (FAA) that one (1) of the towers be marked and/or lighted, the Department of Planning and Development would prefer the lighting on the tower be limited to red obstruction lighting **only** (i.e., **red** flashing beacons (L-864) and **red** obstruction lights (L-810)) for nighttime notification as outlined in the *Federal Aviation Administration (Obstruction Marking & Lighting Advisory Circular (AC 70-7460-1K))*.

Appendix 1: **Specifications for Obstruction Lighting Equipment Classification.** (NOTE: The specific painting and lighting requirements as outlined and imposed within this condition are intended to match the requirement as identified in that November 28, 2007 Aeronautical Study No. 2007-ANM-3792-OE from the Federal Aviation Administration.)

**Any variation from the above lighting requirement, more specifically the installation of white strobe lighting, will require an amendment to this special use permit be filed prior to the installation of any new lighting upon the tower.** The applicant and representative acknowledge and understand that any such request for an amendment must proceed to a public hearing before the Pueblo County Planning Commission and that the same may or may not be approved in accordance with the standards set forth for special use permits in the Pueblo County Code.



**RECORD OF PROCEEDINGS  
PUEBLO COUNTY PLANNING COMMISSION  
MARCH 22, 2011**

4. Upon completion of the installation of the towers and **prior to operation**, the applicant and/or representative shall:
  - a) adequately fence each of the 24-foot by 24-foot tower enclosures encompassing the proposed improvements with a minimum of 6-foot high wooden or chain-link fencing;
  - b) submit to the Department of Planning and Development final AS-BUILT drawings for the leased parcel and each tower enclosure stamped and signed by the surveyor or engineer in charge of the project. The drawings will need to include the final AS-BUILT GPS coordinates of each of the towers and will need to be submitted in the appropriate digital formats (i.e., .dwg and/or .pdf) and in hard copy; and
  - c) file with the Federal Aviation Administration (FAA) Form 7460-2 *Notice of Actual Construction and Alteration* for the towers. A copy of the submission information and the subsequent determination/response by the FAA shall be provided to the Department of Planning and Development within thirty (30) days of submission and receipt by the applicant and/or representative.
5. Improvements to the site covered by Special Use Permit No. 2007-015 shall be governed by the final as-built drawings. The placement of additional antennae and/or dish receivers upon the towers and/or the construction of additional equipment structures at the base of the towers will be permitted without an amendment request, provided the antenna attachment does not cause the towers to exceed the 198-foot height limitation and the construction/placement of all other improvements are within the 24-foot by 24-foot tower enclosure.
6. **All of the approved towers shall be available for co-location.** Subject to review and analyses, all of the approved towers shall be made available to all qualified requests, at fair and reasonable compensation, for co-locating additional functionally equivalent service providers.

Co-location requests from additional service providers shall be directed to the tower owner for co-location upon this facility. Said requests shall be in writing, complete with all technical specifications for the proposed antenna facilities, supports, mounts, and coaxial cable in order for the tower owner to perform the necessary analyses.

Any denial for co-location by the tower owner upon these towers for other service providers shall be in writing and include a statement of justification. Said statement shall be forwarded to the Department of Planning and Development within thirty (30) days of such denial.

In addition, the Department of Planning and Development shall be advised in writing of all approved co-location requests. The Department has specific submittal requirements that need to be adhered to prior to granting zoning authorization for the placement of the additional antennas and/or dish receivers upon the tower and the establishment of additional equipment/storage buildings within the leased area.

**DIRECTIVE TO STAFF:** The Department of Planning and Development is directed to conduct an administrative review of the property during the month of March 2012 and to present a report to the Pueblo County Planning Commission at its March 2012 public meeting. If the use is not established and/or the property is not in full compliance with the Pueblo County Code and/or all of the conditions of approval, the Commission may, at its discretion, direct staff to schedule the permit for a public hearing at the April 2012 public meeting. The Commission, at its discretion, may also direct staff to conduct an administrative review and/or schedule the permit for public hearing at an earlier date, if deemed necessary. **THIS DIRECTIVE TO STAFF IS NOT INTENDED AS A CONDITION OF APPROVAL.**

Ms. Ozzello seconded the motion. Motion carried by an 8 to 1 vote, with Mr. Leverington opposing the motion.

**OTHER BUSINESS**

Mr. VanZandt stated he would like to commend staff for doing a nice job on the minutes for the February 22, 2011 meeting. Chair Alt stated the Commission appreciated staff's work.

**RECORD OF PROCEEDINGS  
PUEBLO COUNTY PLANNING COMMISSION  
MARCH 22, 2011**

**ADJOURNMENT**

There being no further business before the Planning Commission, the meeting was adjourned at 5:53 p.m.

Respectfully submitted,



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Joan Armstrong, Senior Planner  
Department of Planning and Development

LRS