RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
APRIL 26, 2011

A meeting of the Pueblo County Planning Commission was held on April 26, 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; Ronald Leyba; Shirley Ozzello; and Arnold VanZandt. Member absent was Rob Leverington. 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; Sandra Smith; and Gail Wallingford-Ingo. Ms. Alt, Chair, called the meeting to order at 5:12 p.m.

APPROVAL OF MARCH 22, 2011 MINUTES

Mr. VanZandt motioned to approve the minutes of the March 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 application this month.

(b) Correspondence:

Ms. Armstrong reported staff has distributed two pieces of additional correspondence, which were received or prepared after distribution of the Commission's packet:

- Letter, dated April 15, 2011, Pueblo West Metropolitan District, Public Works, regarding Special Use Permit No. 2010-003 for the Pueblo Christian Academy.

- Updated Administrative Review of Special Use Permit No. 2010-005, dated April 25 2011, noting the applicant has complied with Condition No. 4e, and the review shall be placed on a "complaint basis" only.

Ms. Armstrong requested the Commission take action to make the summarized correspondence a part of the record of this evening's proceedings.

Mr. Bruestle motioned to make the summarized correspondence a part of the record of this evening's proceedings. Mr. VanZandt seconded the motion. Motion carried unanimously.

(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

Ms. Armstrong reported there were no land use cases presented to the Planning Commission last month for recommendation to the Board of County Commissioners; therefore, there is no summary of actions taken by the Board for this evening's agenda.

(f) Administrative Reviews:

Ms. Armstrong reported there were seven administrative reviews:

- **Special Use Permit No. 2001-001**, LaFarge North America, AC&A U.S. West Region - aka LaFarge West, Inc. (Applicant), Mineral Reserves, Inc. (Owner), Sean Frisch, Land Manager (Representative). This is an administrative review of a special use permit for a sand and gravel extraction and processing operation on 45.72± acres in an A-1, Agricultural (minimum 35 acre) Zone District. The property is located south of the Bessemer Ditch, approximately 2.0 miles south of State Highway 50 East, and 0.6 mile east of Cortner Road.

  Ms. Armstrong stated the use has not been established; however, the applicant has indicated plans to commence mining operations as market conditions warrant in the near future. Other than the access and haul route issues that are yet to be resolved, there

are no other outstanding issues associated with this review. Staff is recommending the Planning Commission accept this administrative review, thereby approving the continuance of the permitted use with the original Condition Nos. 1-6 and 8-12 noting Condition No. 7 is being removed and a staff directive to present a review to the Commission at its April 2012 meeting.

- **Special Use Permit No. 2007-003**, David Valdez, District Manager, Colorado City Metropolitan District (Applicant/Representative), Colorado City Metropolitan District (Owner). This is an administrative review of a special use permit, which established at Greenhorn Meadow Park, a public park, recreational facility, and campground including all structures and facilities necessary and appurtenant to their operation and associated uses directly related to site facilities and activities. Greenhorn Meadow Park contains 84.74± acres in an S-1, Public Use Zone District and is located between Colorado State Highway No. 165 and Cibola Drive in the Colorado City area.

  Ms. Armstrong stated the use has not been fully established. The ball field and basketball courts are complete, but the track has not been completed. The District's manager informed staff the District was in the process of securing grant money and a possible bond from School District No. 70. Staff recommends the Commission accept this Administrative Review, thereby approving the continuance of this permitted use with the existing conditions and standard staff directive to present an administrative review at the Commission's April 2012 meeting.

- **Special Use Permit No. 2007-006**, Stonewall Springs Quarry, LLC (Owner/Applicant), LJ Development, Inc., c/o Joe P. Gagliano (Representative), 42500 East State Highway 96. This is an administrative review of a special use permit for natural deposits extraction and processing, a hot mix asphalt plant, stockpiling, crusher and screening plant, concrete batch plant, scale houses, and an office on a 1,030± acre parcel. The application includes a proposal to reclaim 783± surface acres to water storage reservoirs. The site is within an A-1, Agricultural (minimum 35 acre) Zone District and is east and west of Nyberg Road, south of Highway 96 East at the intersection of Highway 96 East and Nyberg Road. The gravel pit was named Stonewall Springs Quarry Gravel Pit.

  Ms. Armstrong stated the use has not been established. The applicant's representative informed staff that due the state of economy in the construction industry and the drop in housing construction and subdivision development it has made it difficult to profitably sustain a large-scale gravel operation. It was noted that before the mining activity can occur, the applicant must submit a Financial Warranty to the Division of Reclamation, Mining, and Safety for review and approval. The applicant has again requested an extension of the bonding requirement for another 12 months and requests a continuance of the special use permit. Staff recommends the Commission accept his Administrative Review, thereby approving the continuance of this permitted use with the existing conditions and standard staff directive to present an administrative review to the Commission at its April 2012 meeting.

- **Special Use Permit No. 2009-006**, Colorado Interstate Gas (Applicant). This is an administrative review of a special use permit for construction of a 16-inch diameter, natural gas pipeline. The pipeline is part of the Raton 2010 Expansion Project, extending from Las Animas County to El Paso County. The portion of the pipeline within Pueblo County is approximately 50 miles in length. The pipeline is below ground within a 50-foot easement.

  Ms. Armstrong stated the pipeline project has been completed and has been in operation since December 2010. The applicant is in compliance with the five conditions of approval; therefore, staff is recommending the special use permit be placed on a "complaint only" review basis. Staff recommends the Commission accept this Administrative Review, thereby approving the continuance of this permitted use with the existing conditions and a notation indicating it is unnecessary to schedule this special use permit for further review unless the use and/or property does not maintain compliance with the Pueblo County Code and/or a complaint is received and verified that there is a violation of the conditions imposed above.

- **Special Use Permit No. 2009-007**, Pamela J. Houston (Owner/Applicant), 1446 Martin Lane. This is an administrative review of a special use permit for a dog boarding kennel facility on a 2.0± acre parcel in an A-1, Agricultural (minimum 35 acre) Zone District. The property is located approximately 850 feet south of East U.S. Highway 50 on the east side of Martin Lane.

Ms. Armstrong stated the use has not been established. In 2010, the applicant requested a continuance to allow time to design a plan for the facility. Staff has attempted contacting the applicant for a 2011 update and to date has not received a response. Staff is recommending the Commission allow a continuance of the special use permit for a period of 60 days. The additional time will allow staff the opportunity to mail a certified letter to the applicant requesting an update. Staff shall then present an update to the Commission at its June 28, 2011 meeting.

- **Special Use Permit No. 2010-003**, Pueblo Christian Academy (Applicant), Sunset Park Christian Church - dba Wild West Cowboy Church (Owner), Joy Cress (Representative), 1401 South McCulloch Boulevard. This is an administrative review of a special use permit which allows a private school in an A-2, Agricultural (minimum 5 acre) Zone District. The property for the school contains 6.17 acres, which is a part of Parcel A, Subdivision Variance No. 111. The property is located on the south side of U.S. Highway No. 50 West, on the north side of McCulloch Boulevard, west of South Lone Cowboy Drive in Pueblo West.

  Ms. Armstrong stated the school site currently contains eight modular buildings and the multi-purpose building has not yet been built. Staff received a letter from the Pueblo West Metropolitan District, Public Works Department, which was part of late correspondence. The letter was an update to Mr. Mike Healy's previous letter. Progress is being made toward the Metropolitan District's requirements on drainage and school enrollment counts for traffic impacts. Allowing the special use permit to continue for another year will allow Pueblo Christian Academy to continue to work with the Pueblo West Metropolitan District's Public Works Department. Staff recommends the Planning Commission accept this Administrative Review, thereby approving the continuance of this permitted use with the existing conditions of approval and the Directive to Staff to present an administrative review at the Planning Commission's April 2012 meeting.

- **Special Use Permit No. 2010-005**, Aaron S. Hackerott, Alta Fuels, LLC (Applicant), Blue Ribbon Storage, Inc. (Owner), 1739 East Platteville Boulevard. This is an administrative review of a special use permit, which allows "bulk storage of gasoline and diesel" in an I-2, Light Industrial Zone District. The property contains 30.27 acres, and is located at the northeast corner of the intersection of Platteville Boulevard and States Avenue in the north part of Pueblo West.

  Ms. Armstrong stated the applicant is in compliance with all of the conditions of approval per the updated memorandum from staff and received by the Commission. Staff recommends the Planning Commission accept this Administrative Review, thereby approving the continuance of this permitted use with the existing conditions of approval and notation indicating it is unnecessary to schedule this special use permit for further review unless the use and/or property do not maintain compliance with the Pueblo County Code and/or a complaint is received and verified that there is a violation of the conditions of approval as imposed, and/or if a review is specifically requested by the Planning Commission.

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

Ms. Archuletta motioned to accept the administrative reviews as read into the record and make the Commission's comments a part of the record of this evening's proceedings. Mr. Griego 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 were three items on this evening's Consent Agenda. She explained the items listed under the "Consent Items" are those cases for 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 an item removed from the Consent Items to be scheduled for full public hearing, noting if an item is removed from the Consent Items, then it is automatically placed at the end of the Regular Items. If there are no items removed, the action is a single motion and second to approve the items under the Consent Items. Ms. Armstrong summarized the three Consent Agenda Items. She asked if there was anyone present who wished to have any of the items just

summarized removed from the Consent Items and placed under the Regular Items. No one requested items be removed from the Consent Agenda.

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

CONSENT ITEMS:

Mr. Griego moved to approve the three Consent Items listed below with the Conditions of Approval and/or Comments following each item. Mr. Bruestle seconded the motion. The motion carried unanimously.

- **Special Use Permit No. 2011-004**, Ecumenical Church of Pueblo West (Applicant/Owner), Mr. J. Walter Frazier (Representative), 434 South Conquistador Avenue. The applicant is requesting a special use permit to allow the establishment of a *Child Care Center* (with a maximum capacity of 135 children) within the existing building and facilities of the Ecumenical Church of Pueblo West. The property is in the S-1 Zone District and is located at the northwest corner of the intersection of South Spaulding Avenue and South Conquistador Avenue in Pueblo West.

  Ms. Armstrong stated the intent of this special use permit is to replace the previously issued Special Use Permit No. 2008-025, which permitted the establishment of an Educational Institution (Private School) for pre-school through Grade 5. In July 2010, the Pueblo West Christian Academy that operated the private school relocated its operation and is no longer associated with the applicant or the day care/pre-school curriculum. The operation of the child care/pre-school has been conducted from the existing building and facilities since 1979. A new Permanent Child Care License was issued to the applicant on November 1, 2010 by the State of Colorado, Department of Human Services, Division of Child Care. Staff is recommending the Commission approve this special use permit with three conditions of approval and a staff directive to present a review to the Commission at its April 2012 meeting.

Conditions:

1. The child care and preschool classes shall be limited to those identified on the owner/applicant's *Attachment "A"* as submitted on March 15, 2011 and incorporated within the staff memorandum dated April 18, 2011 as Exhibit 2. At no time shall more than 90 children be present at any given time with the maximum student enrollment being limited to 135 children.

   Any expansion which causes the maximum number of allowable children to increase shall require the submission of a new special use permit application for review and consideration.

2. The applicant shall operate the facility within the parameters established by the **PERMANENT CHILD CARE LICENSE** issued by the State of Colorado, Department of Human Services, Division of Child Care. The license shall be maintained and kept current with a copy provided to the Department of Planning and Development upon each renewal.

3. The land owner shall submit, to the Department of Planning and Development, a letter requesting **rescission** of Special Use Permit No. 2008-025 no later than May 18, 2011.

DIRECTIVE TO STAFF: The Department of Planning and Development is directed to conduct an administrative review of the property during the month of April 2012 and to present a report to the Pueblo County Planning Commission at its April 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 May 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.**

- **Butcher's Bluff Subdivision Preliminary Plan No. 2011-001**, Judy L. Butcher (Owner), James H. and Judy L. Butcher (Applicants), Rex Graber (Representative), 1 Judy's Dream Lane. The applicants request preliminary plan approval to subdivide a 36-acre parcel into two lots and two parcels. Lot 1 is 6.6150 acres in area and contains a residence; Lot 2 is 2.6028 acres in area and is vacant; Parcel A is 22.1591 acres in area; and Parcel B is 4.7829 acres in area. Both Parcels have conservation easements and are reserved for private open space with no building sites allowed. The existing well, allowed to serve three residences, is on Lot 1 and will serve potable water to Lot 2. Access is by private roads (60-foot wide private easements)--Stoneridge Drive and Judy's Dream Lane. The property is

within an A-4, Agricultural (minimum 1/2 acre) Zone District and is located west of the end of McCarthy Boulevard in the Stonemoor Hills area.

Butcher's Bluff Subdivision Preliminary Plan No. 2011-001 was heard in conjunction with Butcher's Bluff Subdivision Final Plat No. 2011-001.

See text under Butcher's Bluff Subdivision Final Plat No. 2011-001.

Comments:

1. The proposed subdivision complies with the development standards of the A-4, Agricultural (minimum 1/2 acre) Zone District.

2. Lots 1 and 2 do not comply with the intent of and recommendations made by the Pueblo Regional Development Plan pertaining to the "Special Study Area"; Lots 1 and 2 in part comply with and in part do not comply with the Development Plan pertaining to "Country Residential". Parcels A and B comply with the Development Plan pertaining to "Suburban Residential".

Conditions:

1. The preliminary plan title and subtitle information as required by the Pueblo County Code, Title 16, Subdivisions shall be placed on the Preliminary Plan.

2. Stoneridge Drive (PRIVATE) and Canyon View Drive (PRIVATE), in the appropriate locations, shall be placed on the Preliminary Plan.

3. Judy's Lane shall be corrected to Judy's Dream Lane (PRIVATE).

4. Lot 1, Lot 2, Parcel A, and Parcel B identification shall be placed on the Preliminary Plan.

5. The Conservation Easements in their entirety shall be individually delineated on Parcel A and Parcel B and with dashed lines on the adjoining west properties of Stoneridge Canyon Bluffs with the recording information, acreage, and Conservation Easement Parcel letter for each Easement.

6. The following language shall be placed on Parcel A and Parcel B: "Reserved For Private Open Space With No Building Sites Allowed".

7. Butcher's Bluff Preliminary Plan shall be modified to include all technical wording and corrections as requested by the Department of Planning and Development and the Department of Public Works, including but not limited to the depiction of any easements (public or private), plat notes, etc.

8. The .pdf file of the final version of the Preliminary Plan shall be submitted to the Department of Planning and Development when the applicants' representative submits the mylar of Butcher's Bluff Final Plat for recording.

- **Butcher's Bluff Subdivision Final Plat No. 2011-001**, Judy L. Butcher (Owner), James H. and Judy L. Butcher (Applicants), Rex Graber (Representative), 1 Judy's Dream Lane. The applicants request final plat approval to subdivide a 36-acre parcel into two lots and two parcels. Lot 1 is 6.6150 acres in area and contains a residence; Lot 2 is 2.6028 acres in area and is vacant; Parcel A is 22.1591 acres in area; and Parcel B is 4.7829 acres in area. Both Parcels A and B have conservation easements and are reserved for private open space with no building sites allowed. The existing well, allowed to serve three residences, is on Lot 1 and will serve potable water to Lot 2. Access is by private roads (60-foot wide private easements)--Stoneridge Drive and Judy's Dream Lane. The property is within an A-4, Agricultural (minimum 1/2 acre) Zone District and is located west of the end of McCarthy Boulevard in the Stonemoor Hills area.

  Butcher's Bluff Subdivision Final Plat No. 2011-001 was heard in conjunction with Butcher's Bluff Subdivision Preliminary Plan No. 2011-001.

  Ms. Armstrong stated staff recommends the Commission forward a recommendation of approval to the Board of County Commissioners of the preliminary plan with two comments and eight conditions pertaining to revisions of the plan and a submittal of a finalized .pdf file and approval of the final plat with three comments and eleven conditions pertaining to GPS compliance, notes on the plat, revisions, and also a finalized .pdf file.

RECORD OF PROCEEDINGS
PUEBLO COUNTY PLANNING COMMISSION
APRIL 26, 2011

Comments:

1. The final plat conforms in all major respects to Butcher's Bluff Preliminary Plan.

2. The proposed subdivision complies with the development standards of the A-4, Agricultural (minimum 1/2 acre) Zone District.

3. Lots 1 and 2 do not comply with the intent of and recommendations made by the Pueblo Regional Development Plan pertaining to the "Special Study Area"; Lots 1 and 2 in part comply with and in part do not comply with the Development Plan pertaining to "Country Residential". Parcels A and B comply with the Development Plan pertaining to "Suburban Residential".

Conditions:

1. The Final Plat shall comply with Section 16.68.010, Global Positioning System (GPS) in the Pueblo County Code.

2. Stoneridge Drive (PRIVATE) and Canyon View Drive (PRIVATE), in the appropriate locations, shall be placed on the Final Plat.

3. The "Declaration of Covenants, Conditions and Restrictions of Butcher's Bluff shall be recorded concurrently with the Final Plat.

4. Butcher's Bluff Lot Owners Agreement For The Joint Use Of Well shall be recorded concurrently with the Final Plat.

5. The Conservation Easements in their entirety shall be individually delineated on Parcel A and Parcel B and with dashed lines on the adjoining west properties of Stoneridge Canyon Bluffs with the recording information, acreage, and Conservation Easement Parcel letter for each Easement.

6. The following language shall be placed within Parcel A and Parcel B on Sheet 2 of 2 of the Final Plat: "Reserved For Private Open Space With No Building Sites Allowed".

7. On Lot 2, a minimum setback of 25 feet from the vertical escarpment be established along the northerly portion of Lot 2 and designated as a "No Build Area".

8. The note on the Final Plat for Research Of Rights-Of-Way & Easements shall be revised to reflect the most current title work and to identify items in Schedule B – Section 2 Exceptions as follows:

   "This plat was prepared with a Commitment for Title Insurance prepared by Stewart Title Guaranty Company, Order No. 943397-C1, dated March 25, 2011. Information contained within the Commitment for Title Insurance is hereby incorporated as if reproduced in full.

   Schedule B – Section 2 Exceptions:

   - Any and all existing roads, highways, ditches, canals, reservoirs, wells, railroad tracks, pipelines, water lines, power lines, telephone lines, and any and all unrecorded rights-of-way or easements therefore.
   - An Easement for utility purposes as granted to Paul C. Jamieson, Jr. and Wilbert H. Ruenheck by Harry Norman and Helen Norman recorded October 26, 1984 in Book 2217 at Page 881.
   - Dedication as contained in Deed recorded October 26, 1984 in Book 2217 at Page 881 for a 60-foot easement over a portion of the herein described property and is to run with the land.
   - Use and maintenance of 60-foot wide easement for road purposes for ingress and egress and for utilities, as shown on survey plat recorded November 13, 2002 at Reception No. 1469348 and Road Ratification Agreement thereto recorded November 25, 2003 as Reception No. 1538441.
   - All matters shown on Survey Plat recorded November 13, 2002 at Reception No. 1469348.
   - Conservation Easement recorded December 5, 2003 as Reception No. 1540114.
   - Conservation Easement recorded August 30, 2004 as Reception No. 1582444.

- Conservation Easement recorded January 24, 2005 as Reception No. 1603857.
- The effect, if any, of Assessments that may be levied by the Pueblo Conservancy District, per Notice of an Order Approving the Amended Official Plan for the Pueblo Conservancy District, recorded August 1, 2007 at Reception No. 1736292.
- Deed of Conservation Easement recorded August 3, 2007 as Reception No. 1736606."

9. The following notes shall be placed on the Final Plat:

Wastewater Disposal Systems

Engineered Designed Individual Sewage Disposal System may be required.

Covenants, Conditions, and Restrictions

Declaration of Covenants, Conditions and Restrictions of Butcher's Bluff is recorded at Reception No. _____ at the Office of the Pueblo County Clerk and Recorder.

Well Rights/Restrictions

1) The owners of Lot 1 and Lot 2 shall each be entitled to the irrigation of not more than one-half acre of home lawns and garden, and the water of domestic animals.

2) The existing well on Lot 1 (Well Permit No. 245556) shall not exceed a pumping rate of 15 Gallons Per Minute (G.P.M.).

Well Agreement

The well located on Lot 1 shall be the potable water supply for Lot 2. Butcher's Bluff Lot Owners Agreement For The Joint Use Of Well is recorded at Reception No. _____ at the Office of the Pueblo County Clerk and Recorder.

Geological/Soil Testing

1) Lot specific subsurface investigations and geotechnical testing shall be conducted prior to development of the property.

2) Site-specific slope stability analysis should be performed once an exact building site has been chosen.

Geological Suitability Report Recommendations

1) During grading, any structural fill must be constructed, compacted, and tested under the direction of a registered professional engineer.

2) All building foundation systems should be designed at the direction of a registered professional engineer. This foundation will most likely need to be deeply founded to avoid detrimental differential movement.

3) Cut slopes should be graded no steeper than 1½ to 1.

4) At the conclusion of fine grading, exterior ground surfaces should slope away from exterior walls or footings at a minimum of 10" in the first 10 feet.

5) Completed structures should be equipped with eaves, troughs, and downspouts which expel onto concrete splash blocks and carry across any backfill.

6) If compacted fill is placed over existing areas of artificial fill, it is recommended that the latter deposits first be removed to firm native soil, replaced, and compacted.

7) The sub-surface soils conditions of the residential building site must be carefully investigated so as to avoid areas of previously unidentified artificial fill, expansive soils, unstable bedrock, and/or ground water.

8) These soils contain an appreciable amount of alkali so any concrete structures would necessarily need to be produced from alkali resistant cement.

10. Butcher's Bluff Final Plat shall be modified to include all technical wording and corrections as requested by the Department of Planning and Development and the Department of Public Works, including but not limited to the depiction of any easements (public or private), plat notes, etc.

11. When the mylar of Butcher's Bluff Final Plat ready for recording is submitted to the Department of Planning and Development, the .pdf and .dwg files of the final version of Final Plat shall also be submitted to the Department of Planning and Development.

REGULAR ITEMS:

a) SPECIAL USE PERMIT NO. 2010-009 – **AMENDMENT**

NE Colorado Cellular, Inc. (Applicant), dba Viaero Wireless c/o Richard D. Bailey (Representative)
Lawrence E. Fillmore (Owner)
A portion of Section 32, Township 20 South, Range 61 West of the 6th P.M.

The applicant requests that Condition No. 2c, as imposed by the Pueblo County Planning Commission through the approval of Special Use Permit No. 2010-009 on July 27, 2010, be removed. The condition required a specific access easement be drafted, agreed to, and signed by all affected parties. It appears through the review of a survey plat submitted by the applicant that not all of the land utilized for the access easement is owned by one (1) party; it is the applicant's contention that should there be a property line dispute then the dispute should be handled as a private matter and not be made subject to the use of the land for access to a newly designated one (1) acre leased tower site which is intended to support a lattice-type telecommunications tower with an overall height of 200 feet and related accessory buildings and support facilities on a one (1) acre leased parcel of land in an A-1, Agricultural (minimum 35 acre) Zone District. The leased parcel is encompassed within the southwest corner of a 160± acre parcel that is located northeasterly of North Baker Avenue (as it dead-ends), approximately ½-¾ of a mile north of the Town of Boone.

Mr. Richard Bailey, 32 Cooper Court, Fort Morgan, Colorado, represented the special use permit. He noted that the landowner, Mr. Fillmore, as well as the Site Acquisition Director for Viaero Wireless were present. He stated he believes that Mr. Fillmore is the owner of the driveway. According to Mr. Fillmore, the fence line was placed prior to the 1950s. He stated he didn't believe there would be a dispute over the access; however, if a dispute arises it will be handled at that time and in the proper manner. Mr. Raso stated the reason he would advocate this amendment is that the access is only for the private use of the company that will be building the tower. He stated the special use permit hasn't created a separate, additional, or saleable parcel of land. There will be no right of public access and it will take Pueblo County out of the middle of what could be a title dispute, noting it would have to be decided by District Court. He stated imposing the condition to the special use permit is not related to any purpose Pueblo County would have in protecting the public. He stated he would presume if the owner or applicant can't get to the site, the tower would not be built. Mr. Clark stated in his review of the amendment he didn't see any adverse impact to the health, safety, or welfare of the general public. He felt it was more of a private matter and something Pueblo County should be avoiding. Mr. Raso stated that with other special use permits access is important because rights to the public are implicated. He stated for this particular site, the only access needed would be for the people that are going to build the tower. He felt no public purpose would be served by requiring proof of access. Mr. Clark stated this was a leased piece of property and not a subdivision creating a new piece of property; therefore, it wasn't creating a land-locked parcel because it's a leased portion of a larger parcel. Mr. Raso concurred.

Mr. Lawrence Fillmore, 1916 Boone Road, Boone, Colorado spoke in favor of the special use permit. He stated he was the landowner. He stated the access wouldn't be used just by the people building the cell tower. He stated the access is also a right-of-way that is used by the Town of Boone's Water District. He noted that his family also uses the right-of-way for access to the ranch. Mr. Raso clarified that the only use the Planning Commission has jurisdiction over is the tower. Chair Alt questioned his use of the access. Mr. Fillmore replied it is used several times throughout the day by the Town of Boone and his family when it's necessary to gain access to that portion of his ranch. Mr. Bruestle asked if there was a gate at the access. Mr. Fillmore replied yes and a cattle guard, which he dug in 1959. Mr. Bruestle asked if it was a locked gate. Mr. Fillmore replied no. Mr. Clark stated it was mentioned the access was used by others, which is not the point of this evening's meeting, but historical use opens up other legal matters, like prescriptive rights and adverse possession, noting that would fall under a private matter that does not involve the Planning Commission. He stated that may be an avenue that needs to be pursued out of this session.

Ms. Victoria Luna, 801 Baker Avenue, Boone, Colorado, spoke in opposition to the special use permit. She questioned why the condition needed to be removed at this time. Mr. Raso replied Condition No. 2c was placed on Special Use Permit No. 2010-009 as a requirement for the applicant to show legal access to the property. Because there is a dispute of whose land the access is on, the applicant has asked for an amendment due to the fact the public will not require access to said tower site. He stated it was a private tower site and he presumed the only people permitted on the property would be the landowner and the tower company in order to service the tower. In terms of putting the access requirement as a condition, the question arises as to whether it should have been included in the first place. He questioned what interest will it vindicate or protect. In the applicant's view, there is no public interest to access the leased parcel of land. He stated if the landowner, the tower company, or anyone else claims title to the land, if there is a dispute, then the only entity that can solve it is the District Court. Pueblo County doesn't have any authority to settle title disputes to real property. Ms. Luna stated it was a condition originally and by removing it as a condition it involves more people. Mr. Raso questioned how so. Ms. Luna stated there is dispute and understands it needs to be handled separately. She questioned how the Planning Commission defines "welfare" of the general public. She referred to the Notation on Page Three of Staff's Review. Chair Alt stated she could answer her question on welfare. She stated the Commission would be concerned with welfare if someone were building something on a road where there would be a huge amount of traffic when school busses would be going at the same time. This would be one of the issues they take into consideration. Ms. Luna stated people's emotions are involved and that's their welfare. She was concerned that removing Condition No. 2c would open it up for other companies to access the property. She wanted it to be decided once and for all, noting she didn't want there to be a "bad neighbor" attitude. Mr. Raso stated the Planning Commission is unable to resolve to the extent that there is a title dispute over the roadway, noting it's unclear to him if there really is a dispute. He stated the decision to allow the tower has already been addressed. Ms. Luna stated she was concerned about the access issue, and felt the Commission didn't care about removing the condition and the applicant could do whatever. Mr. Raso replied what he cares about as legal advisor to the Commission is to note that the Commission can do nothing to resolve a title dispute. He noted that Pueblo County owns no land in the area. He would not advise that Pueblo County become a part of a title dispute between private parties. Ms. Luna stated it was mentioned in Staff's review under the background that the access issue was recognized on October 21, 2010 and on March 9, 2011, indicating it was something Staff was aware of. Mr. Bruestle questioned the requirements placed on such requests. He concluded as a County entity that the requirement is probably not needed. He questioned if this was a decision based on this one particular request or if it was something that would affect future applications. Mr. Raso replied this would have no precedence. He stated for the majority of the special use permits that are reviewed, access is an issue because the general public also requires the use of the right-of-way.

Mr. Fernando Montez, 605 North Baker Avenue, Boone, Colorado, spoke in opposition to the special use permit. He stated there is a property dispute. He stated the section corner is in the ground and he was being told it should be 65 feet more to the south. He stated it interferes with all of the landowners if it's not right. He stated the access needs to be resolved before the tower company can be allowed to build. Chair Alt stated she would agree with him, but noted that the Commission has no jurisdiction to resolve the matter. It would have to be resolved in a court of law. Mr. Montez questioned what the Commission was going to decide. Mr. Raso replied the decision would be to remove as a requirement or condition of the special use permit that legal access or an access easement be shown to the County. The granting of a special use permit does not give anyone permission to enter on private property. If someone is on somebody else's land where they don't have the right to be, then that's a matter for the landowner to resolve. He stated the County or the Commission can't resolve title disputes to real property. Mr. Montez questioned if it's amended, would the applicant will be able to put up the tower. Mr. Raso replied if the applicant needs to cross your land to access the tower, you as the landowner can prevent that. The fact that the applicant was given a special use permit means nothing. Mr. Clark stated whether the condition is present or not, the landowner is in control of allowing access. He stated the direction being taken is to remove the County from any exposure to a private dispute. Mr. Montez stated that we, the landowners, have to figure it out before the tower can be built. Chair Alt stated that was exactly what needs to happen. Mr. Montez asked if the permit to build would be based on what the landowners say, or would they just be given a permit. Chair Alt replied it would have to be decided in a court of law, but felt that if the tower company could not get access to the tower for maintenance, the tower would not be built. Mr. Bruestle stated it appears that the tower could only be built if no one objects. Mr. Raso replied it would be left to a variety of legal remedies to express those objections. Mr. Bruestle questioned if any of the people in opposition have taken any legal, formal action to object. Mr. Montez stated he hasn't, but wasn't sure about the other two.

Mr. Bailey rebutted the testimony. Chair Alt stated she believes the Commission understands where he stands in this issue and hopes that he understands that the Commission cannot resolve the issues involving the land dispute or access. Mr. Bailey thanked the Commission.

Mr. Clark motioned to approve the amendment to Special Use Permit No. 2010-009 with the following conditions, Directive to Staff, and Notation:

1. The approval of Special Use Permit No. 2010-009 shall be for a lattice-type telecommunications tower with an overall height of 180 feet (**excluding** any attached lightning rod and/or lighting fixtures) and related accessory buildings and support facilities on a one (1) acre leased parcel of land.

   The facility **shall not** in any manner exceed an overall height of 200 feet which is the maximum height permitted pursuant to Aeronautical Study No. 2010-ANM-1091-OE issued on June 14, 2010 by the Federal Aviation Administration (FAA).

2. **Prior to requesting zoning authorization for a building permit for the construction of the tower**:

   a) The drawings submitted in support of the special use permit application shall be modified to include all corrections and/or technical wording as requested by the Department of Planning and Development. Upon being granted final approval, a copy of the final drawings shall be stamped and signed by the surveyor or engineer in charge of the project and shall be submitted to the Department of Planning and Development in the appropriate digital formats (i.e., .dwg and/or .pdf) and in hard copy.

   b) The applicant shall complete the *ZONING AUTHORIZATION (SIGN-OFF) FOR BUILDING PERMIT* form provided by the Department of Planning and Development and submit it with the final, stamped and signed drawings as referenced above.

3. Upon completion of the installation of the tower and **prior to operation**, the applicant shall:

   a) enclose the area surrounding improvements within the boundary of the leased tower site with a minimum 6-foot high security-type fencing (i.e., chain-link, privacy). Upon completion, the fencing shall be maintained to insure access to the tower and related accessory buildings and support facilities is secure;

   b) submit to the Department of Planning and Development final AS-BUILT drawings for the leased parcel (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 the tower and will need to be submitted in the appropriate digital formats (i.e., .dwg and/or .pdf) and in hard copy.

   c) file with the Federal Aviation Administration (FAA) Form 7460-2 *Notice of Actual Construction and Alteration* for the tower. 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 receipt by the applicant.

4. Improvements to the site covered by Special Use Permit No. 2010-009 shall be governed by the final as-built drawings. The placement of additional antennae and/or dish receivers upon the tower and/or the construction of additional equipment structures at the base of the tower will be permitted without an amendment request, provided the antenna attachment does not cause the tower to exceed the 180-foot height limitation, the construction/ placement of all other improvements are within the 1.0 acre leased area, and Condition No. 3a is adhered to.

5. **The facility shall be available for co-location.** Subject to review and analyses, the approved tower 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 April, 2012 and to present a report to the Pueblo County Planning Commission at its April, 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 May 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**.

NOTATION: The Pueblo County Code does not specifically require that all special use permits document a legal right of access to and from the land which is the subject of a special use permit application. The Planning Commission may, in a given instance, require proof of legal access where the same is in the best interest of the safety and welfare of the general public. The approval of this amendment to remove Condition No. 2c does not reflect, and should not be construed or interpreted to reflect, Pueblo County's agreement or concurrence with the applicant's view that it has legal access to the tower site.

Mr. Griego seconded the motion. The motion passed unanimously.

ADJOURNMENT

There being no further business before the Planning Commission, the meeting was adjourned at 6:10 p.m.

Respectfully submitted,

Joan Armstrong

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Joan Armstrong, Senior Planner
Department of Planning and Development

SMS