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ROBERT C. "BOB" BALINK El Paso County, CO
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RESOLUTION NO. 09-201 - Amended

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

APPROVE RENEWAL OF A VARIANCE OF USE FOR A CONTRACTOR'S EQUIPMENT YARD AND MODIFY THE ALLOWED USES TO INCLUDE ACCESSORY RETAIL SALES (VA-08-010)-BSK INVESTMENTS, LLC

WHEREAS, BSK Investments, LLC, did file a petition with the Development Services Division of El Paso County for approval of a Variance of Use within the RR-5 (Residential Rural) Zone District to renew a previously approved Variance to allow a contractor's equipment yard where such is not permitted; and

WHEREAS, a public hearing was held by the El Paso County Planning Commission on April 21, 2009, upon which date the Planning Commission did by formal resolution recommend approval of the subject Use Variance petition with conditions and notations; and

WHEREAS, a public hearing was held by this Board on May 14, 2009; and

WHEREAS, based on the evidence, testimony, exhibits, study of the master plan for the unincorporated area of the county, recommendations of the El Paso County Planning Commission, comments of the El Paso County Development Services Division, comments of public officials and agencies, and comments from all interested parties, this Board finds as follows:

1. That proper posting, publication and public notice were provided as required by law for the hearings before the Planning Commission and the Board of County Commissioners.
2. That the hearings before the Planning Commission and Board of County Commissioners were extensive and complete, that all pertinent facts, matters and issues were submitted, and that all interested parties were heard at those hearings.
3. That the proposed variance of use conforms to Chapter 5, Use and Dimensional Standards, Section 5.3.4, Variance of Use, of the El Paso County Zoning Resolutions.
4. That the proposed use is compatible with the surrounding area, harmonious with the character of the neighborhood, not detrimental to the surrounding area, not detrimental to the future development of the area, and not detrimental to the health, safety, or welfare of the inhabitants of the area and the County.

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5. That the proposed use will be able to meet air, water, odor or noise standards established by County, State or Federal regulations during construction and upon completion of the project.
6. That the proposed use will not adversely affect property values in the immediate area.
7. That the proposed use will comply with all requirements of the Land Development Code and all County, State, and Federal regulations except those portions varied by this action.
8. That the proposed use will not adversely affect wildlife or wetlands.
9. That the applicant has addressed all off-site impacts.
10. That the site plan for the proposed variance of use will provide for adequate parking, traffic circulation, open space, fencing, screening, and landscaping.
11. That sewer, water, storm water drainage, fire protection, police protection, and road will be available and adequate to serve the needs of the proposed Variance of Use as designed and proposed.
12. That the strict application of any of the provisions of the Land Development Code would result in peculiar and exceptional practical difficulties or undue hardship on either the owner or the contract purchaser of the property.
13. That the proposed land use does permit the use of any area containing a commercial mineral deposit in a manner which would interfere with the present or future extraction of such deposit by an extractor.
14. That for the above-stated and other reasons, the proposed variance of use is in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.

NOW, THEREFORE, BE IT RESOLVED the Board of County Commissioners of El Paso County, Colorado, hereby approves the request by BSK Investments, LLC, to renew a Variance of Use to allow a contractor's equipment yard within the RR-5 (Residential Rural) Zone District where such is not a permitted use for the unincorporated area of El Paso County as described in Exhibit A, which is attached hereto and incorporated by reference;

BE IT FURTHER RESOLVED the following conditions and notations shall be placed upon this approval:

CONDITIONS:

1. Approval is limited to the renewal of the previously approved Variance of Use for a contractor's office and equipment yard and accessory retail uses to include, the sales of agricultural related equipment including compact tractors under 10,000 lbs gross vehicle weight (GVW) and attachments; and contractors supplies such as straw bales, logs, and silt fence supplies related to the erosion and re-vegetation business, as depicted in the applicant's letter of intent and site drawings.
2. The Variance of Use shall be granted for a period of ten (10) years from the date of the El Paso County Board of County Commissioners' action. Applicant and staff will review the retail portion of the business in five (5) years and any Commissioner may request a full hearing at that time.
3. This Variance of Use approval shall be deemed abandoned, and of no further force and effect, if the primary intended use and/or activity has not been substantially implemented upon the approved site within one (1) year of the Board of County Commissioners' Variance of Use approval, or if implemented, has been discontinued for a period of one (1) year. For the purpose of this condition, this Variance of Use shall be deemed discontinued if the primary intended use has not been actively and regularly conducted on the approved site.
4. Storage of junk or inoperable and unregistered vehicles is prohibited.
5. The parking of vehicles or equipment along Utah Lane is prohibited.
6. Retail sales must be incidental to the principal use for which the variance is granted. Retail sales display shall not be marketed to passer-by traffic along the Woodmen Road corridor. Outdoor display area shall be screened from adjacent properties. Hours of operation for the retail portion will be 7:30 a.m. to 5:00 p.m., Monday through Friday.

7. No subsequent enlargement, expansion, or modification of the use shall be allowed unless the proposal is reevaluated and goes through the public hearing process in accordance with the requirements of the Land Development Code.

NOTATIONS:

1. The Board of County Commissioners may consider revocation and/or suspension if zoning regulations and/or Variance of Use conditions/standards are being violated, preceded by notice and public hearing.
2. If the Variance of Use is discontinued or abandoned for two (2) years or longer, the Variance of Use shall be deemed abandoned and of no further force and effect.
3. Variance of Use requests not forwarded to the Board of County Commissioners for consideration within 180 days of Planning Commission shall be deemed withdrawn and shall have to be resubmitted in their entirety.

AND BE IT FURTHER RESOLVED the record and recommendations of the El Paso County Planning Commission be adopted.

DONE THIS ^{May} 14th day of ~~June~~ 2009, at Colorado Springs, Colorado.

ATTEST:

By: Robert C. Behm
County Clerk & Recorder

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: [Signature]
Chairman

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EXHIBIT A, PAGE 1

LEGAL DESCRIPTION

PARCEL A:

THAT PART OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 8; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8 A DISTANCE OF 535.14 FEET; THENCE ANGLE LEFT NORTHERLY AND PARALLEL TO THE WEST LINE OF SAID QUARTER SECTION A DISTANCE OF 230 FEET FOR THE TRUE POINT OF BEGINNING OF TRACT TO BE DESCRIBED THEREBY; THENCE CONTINUE NORTHERLY AND PARALLEL TO THE WEST LINE OF SAID QUARTER SECTION A DISTANCE OF 230 FEET; THENCE ANGLE LEFT AND PARALLEL TO THE SOUTH LINE OF SAID QUARTER SECTION A DISTANCE OF 535.14 FEET, MORE OR LESS, TO THE WEST LINE OF SAID QUARTER SECTION A DISTANCE OF 230 FEET; THENCE ANGLE LEFT EASTERLY AND PARALLEL TO THE SOUTH LINE OF SAID QUARTER SECTION A DISTANCE OF 535.14 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, EXCEPTING HOWEVER, THE EASTERLY 15 FEET OF THE ABOVE DESCRIBED LAND.

AND

THAT PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF SAID SECTION 8; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID QUARTER SECTION A DISTANCE OF 414.2 FEET; THENCE ANGLE RIGHT NORTHERLY AND PARALLEL TO THE EAST LINE OF SAID QUARTER SECTION A DISTANCE OF 230 FEET; THENCE ANGLE RIGHT EASTERLY AND PARALLEL TO THE SOUTH LINE OF SAID QUARTER SECTION A DISTANCE OF 414.2 FEET, MORE OR LESS, TO THE EAST LINE OF SAID QUARTER SECTION A DISTANCE OF 230 FEET; THENCE ANGLE RIGHT WESTERLY AND PARALLEL TO THE SOUTH LINE OF SAID QUARTER SECTION A DISTANCE OF 414.2 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

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EXHIBIT A, PAGE 2

PARCEL B:

THAT ENTIRE PORTION OF THE ROADWAY KNOWN AS UTAH LANE RUNNING ALONG THE ENTIRE EASTERLY EDGE OF THE PARCEL OF LAND DESCRIBED IN PARCEL A ABOVE AND EXTENDING SEVEN AND ONE HALF FEET TO THE MIDDLE OF SAID ROADWAY, SUBJECT NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS FOR UTILITIES.

PARCEL C:

A NON-EXCLUSIVE RIGHT OF WAY AND EASEMENT FOR INGRESS AND EGRESS OVER A STRIP OF LAND 30 FEET WIDE IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE 6TH P.M., DESCRIBED AS "PARCEL A" IN THAT DEED FROM EARL L. HALE AND DAISY M. HALE RECORDED APRIL 28, 1976 IN BOOK 2825 AT PAGE 320.