

ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA COMMUNICATION FORM

ITEM DATE: September 25 , 2018	ITEM TIME: 2:00pm
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FROM:	Kristy Winsler, Planning
TODAY'S DATE:	September 25, 2018
AGENDA TITLE:	PL-18-167; Tim Borden Special Use Permit

CHECK ONE THAT APPLIES TO YOUR ITEM:	
<input checked="" type="checkbox"/> ACTION ITEM	
<input type="checkbox"/> DIRECTION	
<input type="checkbox"/> INFORMATION	

I. DESCRIBE THE REQUEST OR ISSUE:

Request for a Special Use Permit for a Home Industry.

II. OPTIONS:

Approve with Conditions, Deny or Table the request

III. IMPACTS OF A REGIONAL NATURE OR ON OTHER JURISDICTIONS (IDENTIFY ANY COMMUNICATIONS ON THIS ITEM):

N/A

IV. BACKGROUND INFORMATION:

This application is being processed as a Home Industry for the storage and manufacture of fireworks as incidental to the residential use of the property. Although it is a non-commercial use, the application was processed as a Home Industry because the activity cannot be considered accessory to the residence because it is neither a common or customary use associated with a residence. The activity involves manufacture of an item, even if that item is not for sale.

The applicant has State and Federal permits. The intent of the County review is to not duplicate the purview of those agencies but instead review at a local level potential impacts to public roads, wetlands, wildlife habitat, noise, visual amenities and scenic qualities.

V. LEGAL ISSUES:

N/A

VI. CONFLICTS OR ENVIRONMENTAL ISSUES:

N/A

VII. SUMMARY:

The request was reviewed by the Planning Commission on September 20th where they recommended approval by a vote 6-0. Condition No. 14 was amended to clarify the use, allow flexibility to the applicant and to mitigate a concern regarding noise. Specifically, 14c was amended to include incidental portions of the activity conducted outside. Planning Commission also recommended to

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remove time frames that were requested by the applicant for the activity to be a seasonal/ part-time use. Last, 14d was amended to allow testing or display of fireworks after notification of neighbors and property permitting by local authorities.

For your consideration, a detailed staff packet was provided to you on September 13, 2018. Planning Commission minutes are attached to this communication form for your review that include the amended conditions.

VIII. ATTACHMENTS:
<ul style="list-style-type: none">• Planning Commission Minutes.• Comment Letter

ROUTT COUNTY PLANNING COMMISSION

DRAFT MINUTES

September 20, 2018

The regular meeting of the Routt County Planning Commission was called to order at 6:00 p.m. with the following members present: Acting Chairman Troy Brookshire and Commissioners Geoff Petis, Bill Norris, Roberta Marshall, Andrew Benjamin, and John Merrill. Commissioners Steve Warnke, Brian Arel, Karl Koehler, Paul Hebert and Peter Flint were absent. Planning Director Chad Phillips and Assistant Planning Director Kristy Winser also attended. Sarah Katherman recorded the meeting and prepared the minutes.

PUBLIC COMMENT

There was no public comment.

MINUTES – August 2, 2018

Commissioner Benjamin moved to approve the minutes of the August 2, 2018 Planning Commission meeting, as written. The motion was seconded by Commissioner Merrill. **The motion carried unanimously.**

MINUTES – August 16, 2018

Commissioner Petis moved to approve the minutes of the August 2, 2018 Planning Commission meeting, as written. The motion was seconded by Commissioner Norris. **The motion carried unanimously.**

ACTIVITY: PL-18-167
PETITIONER: Tim Borden
PETITION: Special Use Permit for Home Industry
LOCATION: 3.6 miles north of US 40 on CR 129

Mr. Tim Borden stated that in addition to representing himself, he was also representing two trusts that own the property. The trusts benefit his two adult children. He stated that he had been building fireworks and donating them to the Steamboat Springs Winter Sports Club (SSWSC) for many years. Each year the fireworks have grown in size. He described his desire to build the largest single firework ever. Mr. Borden stated that he had hired an engineer and pyrotechnical expert who visits Steamboat once each year to assist with the construction of the firework. He described the machine that is used to wrap an exercise ball to form the firework, which has an internal fuse. Mr. Borden said that representatives of Guinness Book of World Records would be coming to Steamboat in February for the Winter Carnival to certify the world record. He stated that this event would provide excellent publicity for both Steamboat Springs as a destination and the SSWSC.

Mr. Borden stated that he also purchases and stores the fireworks used by the City for its 4th of July celebration. He said that he purchases the fireworks directly from China and is reimbursed by the City following the show. He has several years' worth on hand at this time. Mr. Borden said that he has made an investment in the mortars and other equipment needed to put on fireworks

displays, and loans it to the City for the show. He emphasized that he does not profit from either this activity or the donation to the SSWSC for the Winter Carnival. He stated that there are no fireworks sold, and expressed concern that the activity is categorized as a Home Industry.

Mr. Borden said that manufacture of the SSWSC firework takes place over a 2 – 5 week period. He added that once he has broken the world record, he has no intention of building anything larger. He said that at the current size the firework is pushing the limit of what is physically possible with the existing technology. Mr. Borden described the launch site, which is within the City limits. The mortar was put in place this summer for the February 9th launch. Mr. Borden said that he had the support of all of his neighbors and had not heard of any complaints. He said that his operation is inspected every three years by the Department of Alcohol, Firearms and Tobacco (ATF), which issues a permit. He said that he is also licensed by the State of Colorado, and is subject to routine inspections from the Steamboat Springs Rural Fire Department and the Routt County Sheriff. He stated that he was unaware that a County permit was needed for this activity.

Commissioner Merrill asked what was involved in the construction of the device. Mr. Borden said that the device consists only of the wrapped ball. Commissioner Benjamin asked about the amount of explosives and fireworks that are stored on site. Mr. Borden estimated that approximately one ton of fireworks for the City shows are stored at his site. Commissioner Norris asked about liability insurance. Mr. Borden reviewed the policies that cover liability for the fireworks. He noted that his insurance does not cover the show, which is conducted off-site. He stated that the under the proposed permit, Routt County would be added as an additional insured for the manufacture and storage site.

Ms. Winser stated that the application is for a Home Industry for a non-commercial use. She described the proposed permit boundary, which includes two parcels. The fireworks storage and construction take place on the parcel on the west side of CR 129. Ms. Winser said that no fireworks are detonated or tested on site, and only occasionally are there volunteers on site. The noise and traffic generated by the use are expected to be low. The use takes place seasonally and there are no full-time employees. Volunteers and a sub-contractor assist with the construction over the period of several weeks. Ms. Winser stated that the site is routinely inspected by state and federal agencies. She said that because the firework construction is not an agricultural use, the applicant is working with the Building Department to have the structures in which the activity takes place inspected as part of the change of use.

Ms. Winser reviewed the suggested conditions of approval (COAs). She noted that some elements of COA #14 may need to be amended, as a portion of the manufacturing process does occur outside.

Mr. Phillips stated that the application is being processed as a Home Industry because that seemed to be best fit on the use chart. All activities that take place in the County must have a "home" on the use chart. Mr. Phillips stated that the use cannot be considered accessory to the residence because it is neither a common or customary use association with a residence. He offered that the activity involves manufacture of an item, even if that item is not for sale.

Commissioner Brookshire asked why the permit boundary encompasses both parcels. Ms. Winser stated that because the Home Industry use must accompany a residence, and there is not residence on the western parcel, both parcels are included in the permit boundary.

In response to a question from Commissioner Petis, Ms. Winser stated that the time period allowed under COA #14 was extended to allow some additional leeway for the construction of the firework. Mr. Phillips stated that the COA could be amended to allow for the year-round storage of fireworks and related materials.

Public Comment

Mr. Pete Wither stated his support for the application and noted the increased popularity of the Winter Carnival since the fireworks show was added. He offered that Mr. Borden's involvement in the fireworks shows has really benefited the City, the County and SSWSC. He noted that the operation is regulated by the state and federal governments, and has the support of the neighbors.

Mr. Jamie Jenny asked why a County Permit is necessary for the use. He asked if someone would need a permit to produce small archery targets for donation to the Boys' & Girls' Club. Mr. Phillips stated that the permit is required due to the scope and scale of the activity, and the potential for off-site impacts. Mr. Jenny said that Mr. Borden's activity is entirely for the betterment of the community and that it is wrong to discourage such generous benefactors by forcing them to go through an unnecessary process. Mr. Phillips noted that the County had waived the permit fees for this application.

Mr. Jim Spillane stated that Mr. Borden has the support of the Spillane family. He said that his son had been actively involved with the construction of the fireworks as a volunteer. He said that he had never heard any complaints about the activity, which could not be more professionally conducted.

Mr. Rich Lowe stated his support for the petition. He noted that the activity is regulated and licensed by state and federal agencies, and is inspected by the local Sheriff's office and fire department. He suggested that there was no need for additional permitting at the County level.

Ms. Shannon Lukens of Steamboat Radio said that the radio station's social media sites had exploded with activity following the posting of a short video about the attempt to build the world's largest firework. She said that the project had generated significant interest in and publicity for Steamboat Springs and the Winter Carnival.

Mr. Charlie McArthur of Native Excavating said that they had worked closely with Mr. Borden on the fireworks shows. He stated his support for the petition and suggested that it was inappropriate to discourage benefactors from contributing to the community.

Mr. Brad Hoefler, a neighbor of the operation, stated that the neighborhood is a nice, quiet place to live and that Mr. Borden is an excellent neighbor. He said that he had also worked for the Borden's occasionally, and had always found his property and facilities to be very well kept. He stated his support for the petition.

Mr. Paul Ferguson, the closest neighbor to the fireworks installation and launch site, stated his strong support for the activity. He said that there was no need to burden the donation that Mr. Borden provides, and noted that Mr. Borden has been instrumental in ensuring that Steamboat Springs had a fireworks display. He said that there are small un-permitted cottage industries throughout Routt County, and offered that Mr. Borden's contribution was a big boon to the local economy.

Ms. Bethany Aurin, 1976 Winter Carnival Queen, indicated the location of her property and riding arena on a site plan. She said that she had been unaware of the activity until she was informed by the County. She said that while local fireworks shows have been a big asset to the community, she did have some concerns about fireworks being launched from the Borden property. She cited incidents in which horses in the neighborhood were injured due to fireworks shows that had been held without any advance warning to the neighbors. Ms. Aurin said that she was glad to learn that no further testing or launching of fireworks would be allowed from the site. She said that while she is in support of the application, she would appreciate better communication with the neighbors.

Mr. Borden stated that last summer the City had approached him and asked him to assist with getting additional people licensed to launch fireworks for the City display. He said that he had allowed this training to be held on his property. The training was conducted in the middle of the afternoon, and the fire department had been informed in advance. Mr. Borden said that the training was fully licensed. He apologized for any distress the training or other displays had caused. He noted that at previous displays the Sheriff had been on site. He said that if such activities were to occur in the future, he would want to make certain that the neighbors were notified.

Commissioner Benjamin asked about the blast range of the fireworks. Mr. Borden said that the City determined the launch site. He presented a slide indicating the fall-out range of the launched firework, but noted that the potential area of impact would be different if an accident were to occur at the construction site on his property. He said that the ATF licenses the manufacture of fireworks based the radius of influence on the ground. He stated that his site meets all the requirements. Commissioner Benjamin offered that County permitting for this activity was appropriate. He acknowledged the need to balance federal oversight with the local control, but added that the County must be concerned with the potential impact on the neighbors. Mr. Borden said that he assumed the ATF had these issues covered.

Chairman Brookshire asked if COA #14, which says that no testing or display would occur on site would need to be altered to address the possibility of future training. He also suggested that some mitigation should be included regarding the potential impact on livestock. Ms. Winser stated that the statement regarding no testing or display came directly from the narrative, and that staff was unaware of any plans for future training. Mr. Borden said that the training had been at the request of the City. He said that he had supplied the fireworks and location, and had paid for the permit. Chairman Brookshire said that if there is potential for future trainings, there should be a provision for it in the permit.

Seeing no further comment, Chairman Brookshire closed public comment.

Mr. Phillips said that training could be incorporated into the permit, and that a provision could be included in COA #14 that would require notification to the neighbors. Ms. Winser noted that an

amendment should also be added to allow for year-round storage. There was a discussion of whether to specify the time period needed allowed for the manufacture of the firework.

Chairman Brookshire announced that this item would be considered by the Board of County Commissioners on October 2nd, and stated that the County appreciates all that Mr. Borden has done for the community.

MOTION

Commissioner Petis moved to recommend approval of the Special Permit for Home Industry with the findings of fact that the proposal, with the following conditions, meets the applicable guidelines of the Routt County Master Plan and is in compliance with Sections 4, 5, 6 and 8.17 of the Routt County Zoning Regulations. This approval is subject to the following conditions:

General Conditions:

1. The SUP is contingent upon compliance with the applicable provisions of the Routt County Zoning Regulations including but not limited to Sections 5, 6, and 8.17.
2. Any complaints or concerns that may arise from this operation may be cause for review of the SUP, at any time, and amendment or addition of conditions, or revocation of the permit if necessary.
3. In the event that Routt County commences an action to enforce or interpret this SUP, the substantially prevailing party shall be entitled to recover its costs in such action including, without limitation, attorney fees.
4. No junk, trash, or inoperative vehicles shall be stored on the property.
5. This approval is contingent upon the acquisition of and compliance with any required federal, state and local permits. The operation shall comply with all federal, state and local laws. Copies of permits or letters of approval shall be submitted to the Routt County Planning Department prior to the commencement of operations.
6. Fuel, flammable materials, or hazardous materials shall be kept in a safe area and shall be stored in accordance with state and local environmental requirements.
7. All exterior lighting shall be downcast and opaquely shielded.
8. All trash shall be stored either inside a garage or inside Interagency Grizzly Bear Committee (IGBC) certified receptacles
9. Prior to the issuance of the permit, the Permittee shall provide evidence of liability insurance in the amount of no less than \$1,000,000 per occurrence. Routt County shall be named as an additional insured on the policy. Permittee shall notify Routt County Planning Department of any claims made against the policy. Certificate of liability insurance shall include all permit numbers associated with the activity.
10. Accessory structures/uses associated with this permit may be administratively approved by the Planning Director, without notice.
11. The permit shall not be issued until all fees have been paid in full. Failure to pay fees may result in revocation of this permit. Permits/Approvals that require an ongoing review will

be assessed an Annual Fee. Additional fees for mitigation monitoring will be charged on an hourly basis for staff time required to review and/or implement conditions of approval.

12. Transfer of this SUP may occur only after a statement has been filed with the Planning Director by the transferee guaranteeing that they will comply with the terms and conditions of the permit. If transferee is not the landowner of the permitted area, transferee shall submit written consent for the transfer by the landowner. Failure to receive approval for the transfer shall constitute sufficient cause for revocation of the permit if the subject property is transferred. Bonds, insurance certificates or other security required in the permit shall also be filed with the Planning Director by the transferee to assure the work will be completed as specified. Any proposal to change the terms and conditions of a permit shall require a new permit.
13. The Permittee shall prevent the spread of weeds to surrounding lands, and comply with the Colorado Noxious Weed Act as amended in 2013 and Routt County noxious weed management plan.

Specific Conditions:

14. The Special Use Permit is limited to the uses and facilities presented in the approved project plan. Any additional uses or facilities must be applied for in a new or amended application. The use is limited to:
 - a. Non-commercial firework manufacturing and storage
 - b. No outdoor storage associated with the Home Industry
 - c. All activity related to the use shall be conducted inside, with the exception of transportation, baking and training
 - d. Hours of operation are 8am – 6pm during the construction phase
 - e. No testing or display of fireworks on the property without prior notification of neighbors and property permitting by local authorities.
15. The Special Use Permit (SUP) is valid for the life of the use provided it is acted upon within one year of approval. The SUP shall be deemed to have automatically lapsed if the uses permitted herein are discontinued for a period of one (1) year.
16. Any required permits from the Building Department shall be obtained and any inspections completed before operations commence.

Commissioner Marshall seconded the motion.

The motion carried 6 – 0 with the Chair voting yes.

ADMINISTRATOR'S REPORT

Mr. Phillips stated that the Board had not made many decisions regarding Planning Commission recommendations since the last Planning Commission meeting. He said that the Board had approved the Calistro lot consolidation and had agreed with Planning Commission that it was

appropriate to waive the fee-in-lieu of public sites. He offered similar applications would probably be processed accordingly in the future.

Mr. Phillips stated that next meeting, to be held on October 2, 2018, would be the approval hearing of the previously discussed housekeeping amendments. The regular meeting scheduled for October 18, 2018 has been cancelled.

In response to a question from Commissioner Marshall, Ms. Winser said that the policy prohibiting multiple driveways to a single property was due to crossings of County Roads that cause a safety hazard. She said that the Board had waived this requirement based on the recommendation of the Planning Commission. She added that requests of this type will be reviewed on a case-by-case basis.

Regarding waiving the fees on non-profit applications, Mr. Phillips said that the decision was up to him. He said that although Mr. Borden is not a 501(c)3, the use benefits the SSWSC, which is a non-profit, so the fees were waived with the approval of the Board.

Mr. Phillips announced that Jill Ferguson had resigned from the department and had moved to California. The Planner I position has been advertised and has received good response.

There was a discussion of the resurrection of the nightly rentals discussion. Chairman Brookshire offered that local property managers had expressed concern regarding the County's policy, although there has been little indication of significant concern on the part of residents. He also noted the high level of community buy-in for the current regulations.

Mr. Phillips said that the Board would like to schedule a joint work session, probably in January.

There was discussion of whether to host another round of Planning "road shows" at various locations around the County. Mr. Phillips offered that it was a goal of his to increase public participation in long-range planning issues. There was general agreement that nightly rentals may still be a topic of contention that could draw in a lot of people.

The meeting was adjourned at 7:45 p.m.



September 14, 2018

Routt County Planning Commission and County Commissioners
Kristy Winser
P.O. Box 773749
Steamboat Springs, CO 80477

To the Routt County Board of County Commissioners:

This letter is in support of the fireworks contributions made by Tim Borden, to the Routt County community. We are so fortunate to be the recipient of Mr. Borden's love for fireworks, since he shares them with everyone in Routt County and the Yampa Valley. When doing that, he is very safe and aware of his surroundings. I have been to the shop and buildings off Elk River Road where the fireworks are created and he is very conscious and aware with everything he does. It is remote and metal. It is very safe. He also has all of the permits and training that is necessary to do his hobby, which he so generously shares with all of us.

This is an immense asset to the Steamboat Springs community, and to all of Northwest Colorado. People love it, just as much as he loves doing it. Whenever I add something about the fireworks and Mr. Borden on Social Media (for Steamboat Radio), it receives hundreds of thousands of views and shares. People plan their trips to the Steamboat Springs area around his fireworks. We are planning the Steamboat Wranglers hockey game around it on Feb. 9 so people don't miss it. People absolutely love it and I would hope the BOCC can appreciate and continue to support this asset to our community.

Respectfully,


Shannon Lukens
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