

# COMMISSIONERS PROCEEDINGS 1

## BOARD OF COUNTY COMMISSIONERS

Minutes of Meeting  
November 19, 2020

As reflected in posted agenda:

**The County Will Be Abiding By the Social Distancing Requirements in Public Health Order 20-28 for This Meeting. Due To Limited Space In The Assembly Room, Remote Attendance Is Encouraged. If You Have Any Questions Regarding Attending The Meeting, Please Contact Karla Powell at 970-542-3500.**

**To participate in the Citizen's Comment Period you must connect via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/82989969541> If you cannot connect via Zoom, you may submit written public comment to [bccmorganc@co.morgan.co.us](mailto:bccmorganc@co.morgan.co.us) by email by 3 p.m. on Wednesday November 18, 2020.**

**To participate in Public Hearings you may connect via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/82989969541> or to listen via phone, please dial: 1-312-626-6799, Meeting ID: 829 8996 9541**

**To watch and/or listen to the meeting but not participate, you may do so by connecting via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/82989969541> or to listen via phone, please dial: 1-312-626-6799, Meeting ID: 829 8996 9541**

The Board of Morgan County Commissioners met Thursday, November 19, 2020 at 9:38 a.m. with Chairman Mark Arndt, Commissioner James Zwetzig and Commissioner Jon Becker in attendance. Chairman Arndt asked Morgan County citizen Pete Anderson to lead the meeting in the Pledge of Allegiance.

### PUBLIC HEARING

Chairman Arndt called the hearing to order at 9:39 a.m. in the Assembly Room of the Morgan County Administration Building. Present were Chairman Mark Arndt, Commissioner James Zwetzig, Commissioner Jon Becker, Morgan County Planning Zoning Director Pam Cherry and County Attorney Kathryn Sellars.

#### 1. APPLICANT: Kyle Howard

##### LANDOWNERS: Kyle Howard and Margaret Sebern

**Legal Description:** The property is approximately 42.56 acres located in the SW¼ of the NW¼ and the NW ¼ of the SW1/4 and the NE¼ of the SW¼ all lying south of Highway 34 in Section 30, Township 4 North, Range 60 West of the 6<sup>th</sup> P.M. Morgan County, CO and addressed as 208 Highway 34, Wiggins, CO 80654.

**Request:** A special use permit to open and operate Empire Gun Club (a shooting range) and to teach firearms classes

Ms. Cherry explained that the application was considered by the Planning Commission at their meeting on October 13, 2020 and was unanimously recommended for approval subject to conditions. Planning Commission was interested in the use and posed several questions.

1. The distances and the size of guns to be used – 45 or 9mm and occasional 380, usually handguns with occasional rifles.
2. Has CDOT been contacted about access – CDOT had been contacted to request an access permit, the notice to proceed was received on Friday, November 11, 2020.
3. Signage at the dam and Highway 34 for safety purposes – There is nobody allowed on the top of the dam, signage fronting Highway 34 would be a significant distance and able to be read, not opposed to signage and will notify Bijou when the range is being used.
4. Wind erosion of berm – Applicant will seed with brome and orchard grass to mitigate erosion potential by wind and rain.

Ms. Cherry stated that there was one person present that spoke in favor of the application stating that the applicant has phenomenal measures to address safety concerns.

Ms. Cherry explained that Jill Brunel of Bijou Irrigation spoke in opposition stating that the applicant has been great to work with and has been accommodating to Bijou requests but there are concerns.

Information was shared regarding Bijou Irrigation's attorney, Stuart Corbridge who provided the following: Bijou had approved Howard's plan to move dirt on his property; the email of approval in the packet did not consider the shooting aspect of the operation.

1. Primary concern is the safety concern in shooting towards the dam, towards the south – bullets going in direction of manmade structure which requires maintenance to hold a body of water used for recreation. He suggested moving Range 1 slightly north and west so primary shooting direction is west.
2. Wind erosion- wind reducing the size of the berms and deposit sand on the dam, killing vegetation, creating seepage problems and sliding. Vegetate the berms to reduce potential for wind erosion.
3. Frequency of the Gun Club's Usage – infrequent but if use is allowed by law enforcement intent for low usage may change.
4. Plan to monitor use of the range – limit use and shooting stays in one berm and not shooting in direction of people visiting the reservoir or maintenance occurring.

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## Application Overview

Ms. Cherry stated explained Kyle Howard as applicant and Kyle Howard and Margaret Sebern as landowners have submitted an application for a special use permit to operate Empire Gun Club (a shooting range) and to teach firearms classes and continue farming on a portion of the property. The property is approximately 42.56 acres located in the SW¼ of the NW¼ and the NW ¼ of the SW1/4 and the NE¼ of the SW¼ all lying south of Highway 34 in Section 30, Township 4 North, Range 60 West of the 6<sup>th</sup> P.M. Morgan County, CO.

Ms. Cherry stated that the property is zoned Agriculture Production and a shooting range and firearms training are the proposed uses which are not listed as uses in the Morgan County zoning regulations in the Agriculture Production zone district.

- a. Pursuant to Section 2-325; any use, not designated as a Use by Right, Accessory Use, Conditional Use and Use by Special Review or not otherwise prohibited in a particular zone, may be approved as a Use by Special Review pursuant to the criteria and procedures as established by these Regulations.

Ms. Cherry explained the county has regulations that are specific to shooting ranges beginning in Section 4-275 through 4-295 (attached) that address submittal requirements, design standards, safety baffles and occasional events. The Morgan County Sheriff's office was contacted with a complaint about shooting in the area that was reaching the Empire Reservoir trail. After receiving that report Sheriff Martin went to the property and spoke with the owner. There is communication from Sheriff Martin to the complainant included in your packets.

## Analysis and Applicable Regulations

### Criteria – Special Use Permits

The following criteria are to be used by the Planning Commission and the Board of County Commissioners when reviewing an application for a Special Use Permit.

- (A) The use and its location as proposed are in conformance with the Morgan County Comprehensive Plan. The property is located in the northwest planning area.

#### Chapter 2

#### 2.II.A - Economic Development

Goal – Diversify the economy in Morgan County to broaden business employment opportunities for residents and to further economic growth.

*This project will support economic development by offering a location for firearms training.*

#### 2.II.C

Goal - The County will encourage the preservation of agriculture production lands in balance with pressure for land use changes to higher intensity development.

*This project will not negatively impact the preservation agriculture production property. It is located at the very west edge of the county, adjacent and south of Highway 34, Weld County Empire Reservoir is directly to the west.*

Goal – Improve Morgan County's image by dealing with community design issues in relation to land use.

*Surrounding agricultural uses, berms that have been constructed and Empire Reservoir provide natural buffers in the adjacent properties.*

- (B) All the application documents are complete and present a clear picture of how uses are to be arranged on the site or within Morgan County.

*Section 4-280 of the zoning regulations requires a site map with appropriate contour intervals.*

- (C) The Site Plan conforms to the district design standards of these Regulations.

*Regulations require that the Planning Commission determine the minimum land requirements for this application. There has been significant grading on the property to construct berms for safety purposes. The applicant designed the range with an approximately 20' berm to mitigate noise and for backstop purposes.*

- (D) All on and off-site impacts have been satisfactorily mitigated either through agreement, public improvements, site plan requirements or other mitigation measures.

*Offsite impacts are minimized by the backstop construction. CDOT is currently reviewing an application to amend the access permit and has reviewed and amended the access permit.*

- (E) The special use proposed has been made compatible with the surrounding uses and adequately buffered as determined by the County.

*Distance and berm construction sufficiently buffer and mitigate impact to surrounding uses. Neighbor notifications were sent to all properties, whether in Weld or Morgan County, within one mile of the property boundary.*

- (F) The special use poses only the minimum amount of risk to the public health, safety and welfare as set by federal, state or county regulation, whichever is the strictest.

*The Health Department has approved the use of portable toilets on the property and bringing in bottled water.*

- (G) The special use proposed is not planned to be developed on a non-conforming parcel.

*The parcel is conforming.*

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(H) The applicant has adequately documented a public need for the project, all pertinent technical information, and adequate financial resources to implement it, and has paid all fees and review costs levied by the County for application processing and review.

*There is a need for firearms training in Morgan County. An existing range in the county may close at any time. This range would provide for redundancy to existing facilities.*

(I) For any special use requiring a supply of water that the applicant has demonstrated a source of water which is adequate for the proposed use in terms of quantity and reliability and in the case of human consumption, quantity, quality, and reliability.

*The water supply for the shooting range associated uses will be bottled and brought in. There is an existing well permit #236199 that is permitted for irrigating one acre of landscape, household and fire suppression uses.*

## **Recommendation and conditions**

At this time Ms. Cherry read aloud the suggested conditions for approval of this permit:

- a. The applicant shall obtain necessary permits and comply with the requirements and conditions of those permits as determined by other governmental agencies with jurisdiction over this operation.
- b. The portable toilets will be brought onsite prior to beginning operations, the pump agreement to be supplied to the Health Department.
- c. Submit a site plan that shows contours of the site, the relief/protection provided by the constructed berms. (Pam stated this condition may have changed given the relief that will be demonstrated during the hearing today)
- d. Re-permit and transfer ownership of the existing well through the State Engineer's office.

At this time, Chairman Arndt asked if the applicant had any further information to add at which time the applicant stated their name as being Kyle Howard, whose address is 208 US Highway 34, Wiggins, who provided his background in the community and the efforts he has made to bring this proposal forward. Mr. Howard presented a slide show presentation that provided an overall summary of the proposed project which included safety measures, an overview of the area being permitted and those matters that have been questioned by Bijou Irrigation Company and others as concerns being addressed. He spoke about a letter received from the closest neighbor to the south outlining their concerns about the concerns of possibly trespassing and noise. Mr. Howard stated he is not opposed to signage being placed to indicate the shooting range is in place for anyone who may be on the opposite side of the dam to be aware. He spoke about the hours of operation he proposes, and indicated he will be using suppressors to control the noise issues.

Commissioner Becker asked about the use times of the range, and that being likely to happen, but there is nothing to lock that schedule down in the application, with Mr. Howard stating he has not given that much thought, but does not intend to shoot after dark, and if that should occur, he has notified the Morgan County Sheriff's Department to ensure that they were aware. He stated that there would be no shooting before sun up or after sun down.

Commissioner Becker also asked about the larger caliber being shot with Mr. Howard explaining they have used standard AR's with suppressors, explaining what would be used, and it would be within 25 feet. Discussion followed regarding the size of caliber, and the fact that being away from the berm, and the fact the lake is in the area is of concern. Commissioner Becker also spoke about the flag system that was mentioned, and asked if the communication system has been worked out, wanting to ensure good communication and if that has been worked out with Bijou Irrigation. Mr. Howard stated it has been mentioned and they are willing to do so.

Commissioner Becker asked about the presentation and the statement made about the irresponsibility of turning away from the dam, and shooting towards the highway, and the concern he has about the dam and the lakefront being of concern. Mr. Howard stated he has been issued an insurance policy and umbrella liability insurance policy in the amount of 2 million dollars, and instructors would be required to provide their own insurance.

Commissioner Zwetzig asked about the operation of boating on the lake, with Mr. Howard stating he has been told that occurs between April through October, and during this time, they will be shooting in the westward direction as that is a mutual agreement they came up with. Mr. Howard stated if there are no boats on the lake, the southerly direction is probably the safest direction. Commissioner Zwetzig spoke about defining the permitted area and asked what is being considered as the permitted area. Mr. Howard indicated there is a white rectangular area that defines what they are requesting to be permitted. Ms. Cherry stated that a surveyor is preparing a survey to indicate the permitted area.

Mr. Howard presented on the screen the area in question as per Commissioner Becker's questions, with boating to the west being allowed in the cove. Mr. Howard demonstrated on the map presented where boating can occur and does not personally believe there would be any issues with the gun range being in place, explaining his reasons. Discussion followed regarding the Morgan County Gun Range being within 3500 feet of the nearest residence, and Commissioner Zwetzig wanting to hold any new permits to be held at a higher standard given the safety of the matter. Concerns were expressed about the boating areas in the various areas, with Mr. Howard pointing out the direction of fire and the fact that the area of campers would be out of the area of sight. The owner he spoke with Betty Lee, to the southeast of him, has been spoken to. It was questioned if the landowners were all notified, with Ms. Cherry stating all landowners were notified within one mile of the permitted area, with the only one making comment was Ms. Lee.

Commissioner Zwetzig asked if Mr. Howard was to sell the property would he be acceptable to this permit being allowed only for him owning the property, with Mr. Howard stating he does not see any issue with that.

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Further comment followed regarding the Bijou Irrigation Company, with Mr. Howard again commenting about the design of the berms and the gun range and stated he will vegetate the berms and could begin seeding immediately, and does have the sufficient water supply to do so. He also plans to install a snow fence or wind break on the west side to alleviate any issues there.

The larger the caliber, the shorter it goes into the berm, explaining how deep the various calibers will penetrate into the sand was then explained by Mr. Howard in response to Commissioner Zwetzig's questions. A slide show was presented to indicate the penetration of the ammunition. Distance ammunition could travel could be over a mile if it would be a straight shot into the air over the berm, with Mr. Howard stating they will go to a different facility to train on shooting for hunting purposes, the longer range shooting.

Commissioner Zwetzig asked if the neighbor who wrote the letter is in favor of this project, with Ms. Cherry stating there is a letter in the board's packet that does indicate support.

Chairman Arndt asked if Mr. Howard would be required to provide a list of ammunition he would be restricted to, what would that be. Mr. Howard stated 9mm, 380 or .45 calibers, as far as rifles go, Mr. Howard mentioned those calibers. As far as super high power, he would use those for target shooting or hunting and the long range shooting would be done at Pawnee.

Commissioner Zwetzig asked if a landowner would have to request a permit to have a personal gun range, with Ms. Cherry stating there is not a permit required.

Commissioner Becker asked if he will allow full auto weapons on this range, with Mr. Howard stating that will not be allowed.

Chairman Arndt asked can the permit be tied to the operator landowner and not the land, so the permit is not transferrable, if the property is sold, the permit would no longer exist. Ms. Sellars stated that is possible and Mr. Howard stated he understands that. Chairman Arndt stated in order for him to approve the permit that would have to be a condition, with Mr. Howard stating that would be no problem.

Chairman Arndt asked if there was anyone in the audience present who wished to make public comment in opposition or in favor of the application, first asking if there was anyone online in favor of the application.

Tom Kane, address being 10756 Timothys Drive, Conifer, CO, stating he owns White Cap Marketing, spoke in favor of the application.

Cindy Staugt, 9774 Kipling Street, Westminster, CO, stating she is an instructor as well, and spoke in favor of the application.

Chairman Arndt asked if there is anyone present who wished to speak in opposition or in favor, with Mr. Pete Anderson, who stated he is representing Bijou Irrigation, his personal address being 20738 County Road N, Fort Morgan, spoke explaining a letter the Board had in their packet which addresses a couple of the concerns they have. Mr. Anderson asked who the caretaker is, with Mr. Howard explaining who the tenants are naming those individuals. Mr. Anderson feels that the person obtaining and being granted this permit should be the owner of the property and not those living at the location (renters). He further stressed that he believes the permit should sunset when the property ownership transfers, not if it transfers, but when it transfers.

Commissioner Zwetzig asked about the comment that had been made by the applicant regarding the property notice and communication was in place and satisfied, with Mr. Anderson stating they do have the reservoir rented for hunting season, and there are people who will be camping there during the off season of boating season. Mr. Anderson stated he has not spoken directly with the applicant; it was Matt, Rusty and Jill who the applicant has spoken with. Mr. Howard stated there are security cameras and a locked gate on the property and he has access to the surveillance at all times.

Commissioner Zwetzig asked about the allowance of hunting around the area and it being allowed by Bijou Irrigation, the fact that Mr. Howard's qualifications allow for a great amount of safety. Mr. Anderson agreed with this statement.

Discussion followed regarding whether or not those who may be a part of the "club" that was discussed had to be notified, with Ms. Cherry stating she would not have any idea of knowing who those individuals may be who own leases in the area discussed. Ms. Sellars stated only the landowners have to be notified. Commissioner Zwetzig asked if the dairy had been notified expressing concerns about the noise and the affect it could have, with Ms. Cherry stating they were notified.

At this time, Chairman Arndt asked if there was anyone online who wished to speak in opposition of this application with it being noted there was no one online who wished to speak.

At this time, Chairman Arndt asked Morgan County Sheriff Dave Martin to provide comments at which time Sheriff Martin stated he agrees with many of the comments made this morning stating he believes Mr. Howard has done a good job at ensuring safety for this gun range and does have concerns as expressed by some of the information regarding the different calibers, fully automatic and muzzle rise, that may be used and the location of the dam and reservoir. Discussion followed regarding the fully automatic and muzzle rise that can occur and the safety issues it can create, and the fact when someone shoots just once, the safety factors it presents or does not present. Sheriff Martin also spoke about the concern that had been reported, from Marcus Case, and indicated he has had email conversations with Mr. Case since going out there, and has not had any further conversations since. He stated he has not had any personal contact with Mr. Case.

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Pete Anderson was asked to speak in regards to the trail that had been mentioned, stating he has no knowledge of any trail, and the fact that there is no one allowed on the surface of the dam, it is not open to the public, no one is allowed to walk on the dam, and action could be taken. Sheriff Martin stated regardless whether or not this is a permitted range or a private range, the shooter is ultimately responsible for the ammunition that is shot.

At this time, Chairman Arndt closed the public comment portion.

At this time, Chairman Arndt moved into discussion and decision. Commissioner Zwetzig asked if Ms. Sellars has a terminology for limiting the permit with Ms. Sellars stating this permit shall be personable to the owner of this property and shall terminate upon the sale or conveyance of the property to another owner with an additional condition that the owner of the property must maintain and be the operator of the range.

Commissioner Zwetzig also asked that the terms be included in the resolution regarding those matters that are agreeable between Bijou Irrigation and Mr. Howard, with Ms. Sellars stating the board can have the condition the applicant needs to have the agreement with Bijou as to when he will be shooting west, south, etc., a general condition subject to the agreement between the applicant and Bijou.

Chairman Arndt noted the question about hours of operation, stating there at times are restrictions on hours of operations, with Mr. Howard stating normal range of hours is sun up to sun down, and certainly does not have any intention of running classes after dark. He stated he can set hours of operations and feels he has a great working relationship with Bijou and others as necessary and is happy to disclose the times they will be shooting. Commissioner Becker stated that with a personal gun range, they can shoot whenever they want, so to make it required to set hours, is a struggle for him. Discussion followed regarding making this condition with it being stated to require it be sun up to sun down would alleviate the neighbor's issues, with Mr. Howard stating he does not have intentions of installing lights, and explained what his intentions are as night shooting would have to be suppressed fire.

Sheriff Martin made a comment they currently have an agreement to use the Morgan County Gun Club and there is the prohibition against having a night shoot and it is troublesome for them to find a location to do night shooting, and if this could ever be a possibility to conduct a night shoot at this range, by placing a time restraint, that would prevent this from happening. Discussion followed regarding the issue with neighbors being notified if there would be night shooting, and the notification of the event, with Sheriff Martin stating they do this once per year, and they do typically notify those in the area. Commissioner Zwetzig made note that the resolution not be approved until the correct language is in place and the agreement with Bijou Irrigation is in place.

Chairman Arndt asked for the point of clarification in order to direct the County Attorney to draft the appropriate language, does the attorney feel comfortable after hearing all the concerns today, with Ms. Sellars asking about a survey that has been done, with Mr. Howard and Ms. Cherry stating they have spoken with the surveyor, as to what type of survey will be done, and it should be a meets and bounds survey to show the portion of the property that will be used for the range. Ms. Sellars asked about the notification of night shooting, and asked for clarification of what is meant by that comment, with Commissioner Becker stating his belief as being adjoining landowners, given it is suppressed fire in law enforcement shooting and personal shooting.

Commissioner Becker stated he believes the only limitation as to the weapons being fired should be that of no fully automatic weapons being allowed. It was clarified that this would not limit the property owner.

It was also clarified that the berm must be vegetated, with Commissioner Zwetzig asking if it could be indicated to keep the berms from blowing sand in a reasonable manner.

Ms. Sellars asked about the conditions that were made by the Planning Commission, naming each of those, asking about the re-permitting of the well, and Ms. Cherry stated that is a state requirement. The Board agreed to remove #4 of those conditions.

Commissioner Becker asked the question about the driveway for CDOT, and what is the issue, with Mr. Howard stating the access is by a highway, and they have to notify CDOT, they are not making a change to the driveway.

Ms. Sellars made the suggestion the Board table the matter and allow her to draft a resolution that can be brought back in front of the Board for review and action. Discussion followed as to how this would occur and what the requirements would be.

Commissioner Becker made a motion to table the matter until Tuesday, November 24, 2020 at 9:00 a.m. to allow the County Attorney to draft a resolution that can be brought for the Board to review and take action on the resolution. Chairman Arndt made a point of clarification that this will only be to review the resolution and this will not be for public comment, and it is for action on what is presented by the County Attorney. The motion was seconded by Commissioner Zwetzig and the motion carried 3-0.

Chairman Arndt asked if there was any further business to bring before the Board, and upon hearing none, the meeting was adjourned at 11:28 a.m.

Respectfully Submitted,  
Susan L. Bailey  
Clerk to the Board  
(Minutes ratified December 8, 2020)

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**THE BOARD OF COUNTY COMMISSIONERS  
MORGAN COUNTY, COLORADO**

\_\_\_\_\_  
s/Mark A. Arndt  
Mark A. Arndt, Chairman

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s/ Jon J. Becker  
Jon J. Becker, Commissioner

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s/James P. Zwetzig  
James P. Zwetzig, Commissioner

(SEAL)

**ATTEST:**

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s/ Susan L. Bailey  
Susan L. Bailey