

COMMISSIONERS PROCEEDINGS 1

BOARD OF COUNTY COMMISSIONERS

Minutes of Meeting

August 24, 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/84405072158> If you cannot connect via Zoom, you may submit written public comment to morgancountybcc@co.morgan.co.us by email by 5 p.m. on Friday August 21, 2020.

To participate in Public Hearings you may connect via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/84405072158> or to listen via phone, please dial: 1-312-626-6799, Meeting ID: 844 0507 2158

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/84405072158> or to listen via phone, please dial: 1-312-626-6799, Meeting ID: 844 0507 2158

The Board of Morgan County Commissioners met Monday, August 24, 2020 at 9:00 a.m. with Chairman Mark Arndt, Commissioner James Zwetzig and Commissioner Becker in attendance as well as County Attorney Kathryn Sellars. Chairman Arndt noted that the Board is reconvening today for the hearing of the Special Use Permit request, and asked Morgan County Planning Administrator Pam Cherry to present the updated information.

PUBLIC HEARING

Chairman Arndt called the hearing to order at 9:00 a.m. in the Assembly Room of the Morgan County Administration Building. Present were Chairman Mark Arndt, Commissioner James Zwetzig, Commissioner Jon Becker, and County Attorney Kathryn Sellars.

Continued from July 28, 2020

1. Dexter Rice - Applicant

Dexter & Beverly J. Rice - Landowners

Legal Description- Lot 1, corrected Replat of Annan and Annan 2 Minor Subdivision located in the W1/2 SW1/4 of Section 4, Township 3 North, Range 56 West of the 6th p.m., Morgan County, Colorado aka 26089 Co Rd R, Brush, CO 80723.

Request - The landowners are requesting this Special Use Permit for storing and processing agricultural products, specifically hemp.

Ms. Cherry explained that this application was considered by the Board of County Commissioners at a public hearing on July 28, 2020 and continued to today, August 24, 2020. At the July meeting the commissioners requested that the applicant provide additional information which is included in the packet.

1. Response from the applicant:
 - a. Intro – Growing to Survive
 - b. Impacts and mitigation
 - c. Metric for facility capacity limitation
 - d. Traffic
 - e. Hours of operation
 - f. Retail operation
 - g. Ventilation
 - h. Greenhouse lighting
 - i. Covenant
 - j. Diagram of semi-truck turn-around

Additionally, the following were provided by the applicant and included in the updated packet:

2. 8-18 email with status of various requests
3. Eben Ezer permission to widen access
4. Lindell permission to widen access
5. Road and Bridge permission to widen access
6. Covenant dated 10-30-97
7. Applicant interpretation of covenant
8. Statement from developer on interpretation of covenant
9. Title work

Ms. Cherry stated that additionally, a Fire/Life Safety Permit was submitted after this summary was prepared, and is included in the packet.

At this time, Chairman Arndt asked if the applicant had any further information to add at which time the applicant Dexter Rice, address being 29274 4th Street, Snyder, CO 80750. Mr. Rice responded to the questions that had been raised feeling they have mitigated the concerns at this time. He further spoke of his concerns providing detailed information as to how he feels it will affect his business venture as well as how the approval of this permit will benefit the county. Mr. Rice responded to the questions that were asked by each Board member regarding the concerns that were expressed by those in opposition.

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Sheriff Martin was then brought forward by zoom to report at which time he responded to the safety concerns raised as to the turnaround of trucks not being onsite, and any other concerns that he may have regarding truck traffic on the roadway. He stated that he has no other issues if the safety precautions are in place, he would have no further concerns.

Commissioner Zwetzig commented in regards to the originator of the covenants as also being Elaine and Ron Prascher, whereas discussion followed regarding the number of individuals who have agreed being more than half. Mr. Rice apologized stating he has attempted to speak with Ms. Prascher but he has had a difficult time in making progress to speak with her about this.

Commissioner Zwetzig further spoke about his being in agreement in limiting the number of acres, stating, however, another special use permit that was approved the Board did limit the capacity of the laboratory, and feels that it could be noted that there would be a condition that limits the additional space for growth, with Mr. Rice stating the extraction space was only requested at 1 percent of the 18 acres, and further discussion ensued whereas Mr. Rice stated the 1 percent does provide a small allowance to grow.

Commissioner Zwetzig made mention of the title commitment and the covenants being recorded in 1991 and another document stating the recording document being 1998; with it being clarified it was recorded at two separate times.

Ms. Sellars was then asked to respond regarding the covenants, and how the Board should handle the fact that those covenants, private, landowner conditions are in place, and how that affects the Board's opinion regarding the special use permit as that is not relevant to the decision being made. She stated this has been removed from the zoning regulations and that should not be taken into consideration. She further stated she would respectfully disagree with the opinions he has received, but it is not up to the County to evaluate, because of the different interpretations that could be taken and the County should not take into consideration the covenants whether or not they are in affect or not.

Further discussion followed regarding the truck traffic and the safety of the county roads, with Commissioner Becker explaining a situation on August 13, 2020, where he was heading into Brush, and a semi was turning into the property with flashers on, and neither traffic was slowing down and expressed his concern about the safety of those on this roadway, and the importance that there is a turnaround for semis onsite and expressed his concern about the size of his property to do this appropriately. Mr. Rice stated the option is there, and can provide the necessary space to ensure the trucks on the property and making the turn around to ensure safety on the roadway. He stated he will widen the driveway and will be sure this is taken care of.

Commissioner Zwetzig asked Sheriff Martin the question about whether or not the Sheriff has the authority to ticket those who may be parked in the roadway, with Sheriff Martin stating they could be ticketed but would rather it be handled with a warning the first time and encourage them to be off the road, and turn around on the property, as they do not want to start handing out tickets for parking on the roadway if they do not have to. Sheriff Martin stated he agrees it is a safety concern and has witnessed it himself given he lives in close proximity to the location of concern. Commissioner Zwetzig stated that when Commissioner Becker witnessed this situation and reported it, it became even more concerning. Sheriff Martin feels Mr. Rice can make it a requirement that these trucks make the turnaround onsite, with Ms. Sellars confirming this could be made a condition of the special use permit. Mr. Rice stated he could refuse and they would have to come onto the property to conduct business.

Commissioner Zwetzig further spoke about his being in agreement in limiting the number of acres, stating, however, another special use permit that was approved, they did limit the capacity of the laboratory, and feels that it could be noted that there would be a condition that limits the additional space for growth, with Mr. Rice stating the extraction space was only requested at 1 percent of the 18 acres, with further discussion ensued that Mr. Rice stating the 1 percent does give them a little room to grow. He explained in detail the size of the facility in question, the special use building which encompasses all four functions, bottling, extraction, office space and production. A detailed summary was provided as to what the building is used for as to size and location of each process. Mr. Rice stated his calculation for the maximum area including the outside space would be 7,842 square feet, showing they are at 2,028 square feet at this time. Commissioner Zwetzig asked how many employees it would take to run a larger facility, with Mr. Rice stating it would obviously increase, but would not anticipate more than twice, to three times in total employees over full long term, stating 25 employees would be a cap, as questioned by Commissioner Zwetzig. It was noted that four out of five have signed a letter of support, within the community locale of the proposed business.

At this time, Sheriff Martin asked how big the building is at this time, with Mr. Rice stating the dimensions being approximately 4,400 square feet, originally 54X72 with an addition of 10X40 at a later date. It was discussed that if they add much more to the building, the turnaround will be difficult. He also asked about the safety certificate issued by the Division of Fire Safety, if it allows for this expansion, with Mr. Rice stating yes, the tanks and storage was all included in the request for the plan, and if the building would be modified, they would have to submit it to the Division of Fire Safety for approval and stated they will be inspecting their facility annually.

Chairman Arndt spoke further about the fact that in a previous matter, the building was designated as to what the lab area was, and the fact that the size of the lab will be what is allowable for production, and the importance of how the Board will approve this permit, to know and clarify what percentage of the existing building will be used for the lab, and what will be used for storage, and asked to see a true site plan for this. He states there is nothing that would guarantee the neighbors that this would not be a 54x72 lab, and believes that this is needs to be looked at and further spoke about the fact that the area is quite residential. Chairman Arndt would like to see that the lab is restricted to a certain amount of space, with Mr. Rice stating they have requested 1 percent of the 18 acres. Commissioner Becker stated he does not know who would police this to say the lab has been expanded beyond what was proposed. Further discussion followed with Commissioner Zwetzig stating at the time he was conducting business as a

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processing facility that he knew he should have applied for a special use permit, with Mr. Rice stating he has always been in communication with the County. Ms. Cherry stated that is fair to say, but understands that the previous administrator may have told him other information, but when she became administrator, he was contacted. Commissioner Zwetzig stated that he feels he did comply with what he was told and Mr. Rice confirmed that he did obtain a building permit as required for the building in place and further stated they have done their very best to comply.

Mr. Rice responded to the question about how much hemp would be processed in a 7000 square foot building, with stating that would be down the road and it would be approximately 800 acres. Commissioner Zwetzig further spoke about the expansion issues, asking Mr. Rice if he would be need additional electrical needs, with Mr. Rice stating they are close to Xcel Energy, and there would be no issue. Mr. Rice confirmed that he would not attempt to grow their own hemp, and believes in farming, regenerative farming, places effort in organic farming, and his maximum was 5 percent, including all that for storage, etc, and the rest would be for farming. Commissioner Zwetzig asked Mr. Rice if he was in agreement that he may not always be the owner of the property and how this could affect the neighbors, with Mr. Rice stating he understands.

Further discussion followed that the as built plans needing to be a part of this permit application, and the fact it needs to indicate what is being proposed, and the fact that will limit the size of the lab, and then the land use size needing to be addressed if it can handle the expansion of the business, and cautioned him that the covenants could come back to him as a civil matter, with Mr. Rice stating he does understand. Chairman Arndt stated he is big on the part that there is something in the file that states the maximum this business will get and how it will affect the community if it should get to the maximum size.

Commissioner Becker stated that the building at the current time is 4400 square feet, and feels the easiest to say is if the permit is approved, the buildings could not be expanded any further, with Mr. Rice stating it sounds like the Board is not wanting to allow any growth. Commissioner Becker asked if the current building in place would allow the future growth, with Mr. Rice stating he does not believe so, it would allow for what is being done now. Mr. Rice stated he believes it would be possible to expand the building at a small amount to allow for the truck turnaround, or a new building be built. Commissioner Zwetzig stated the Board is only talking about what is proper for the land where it is located and what is appropriate for the surrounding area, they are not trying to tell him that they do not want to see him be successful, the limit is only for land use, not for business purposes.

Mr. Rice stated he is grateful to have the Board consider this application, would like to have some space to expand, and wants to continue to operate the way they are, rather than not being able to operate, and will accept what the Board feels is possible.

At this time, Chairman Arndt asked if there was anyone online to speak from the public, with Ms. Kopetzky stating Laura Teague was the only one online and was asked if she wished to speak with Ms. Teague stating she had no comment.

Commissioner Zwetzig asked the four industries he understands come from hemp, with it being fiber, oils, and seed with Mr. Rice explaining what he foresees in the future as what the potential of that being in the United States, stating he sees that they all have huge potential. He spoke about the grain and the fiber being extremely important and spoke about its efficiency comparable to other products.

Chairman Arndt asked if County Attorney Sellars had any comments, with Ms. Sellars stating she had no comments.

At this time, Chairman Arndt closed the public comment portion indicating there were no further comments.

Commissioner Zwetzig asked Ms. Sellars about the comments made by Chairman Arndt asking to have an as built plan be in place and what the Board should do regarding this matter, with Ms. Sellars stating the Board would need to continue the hearing to allow for this. Chairman Arndt asked if there was a diagram submitted as to the layout of the facility at this time, with Mr. Rice stating he believed he had done so, with the Board stating they do not have anything in the packet indicating the layout.

Mr. Rice stated the fire safety plan did not show the entire building, and Commissioner Zwetzig stated that it is possible to obtain this and procedurally there would need to be the time to have this submitted. Chairman Arndt agreed this is important in his mind and agrees that where the proposal is for location, it is pretty restricted and the fact the area is pretty much residential, so he would like to see something like an as built plan, in the future, the information is on file that serves a fact as to what was approved and allowed at the time of his application for the special use permit.

Commissioner Becker stated he does not need that piece, and believes that if he limits himself to that size of the building, and the size of the lab, and that does limit expansion, and if they limit him to the current footprint, and stated he would not be asking for much more, and feels that he has provided the response necessary to make him feel comfortable with the application. Commissioner Becker stated that if Mr. Rice is going to provide plans for a lab, he would be putting in place for expansion for future use, using the same footprint, hopeful the building allows for expansion. Mr. Rice stated that is where he is getting caught in between due to different uses and explained how that would affect the four spaces he has mentioned. So, asked if all four functions would need to be in place indefinitely, with Commissioner Becker stating that would be part of the submitted as built plan. Chairman Arndt stated he believes there needs to be something in place for him to have on file that would indicate what is currently in place and what his request for expansion will be, and the Board could then review his proposed plan.

Mr. Rice asked if the Board would feel comfortable in allowing the office space, and other space as a built out space on the property to allow for more lab space, with Chairman Arndt stating he believes it is already a tight space and Mr. Rice stated they do have the ability to use other space for storage, and office space, with Chairman Arndt stating he would like to see that as an as built documentation. Commissioner Zwetzig confirmed that the bottling is part of

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the special use permit and spoke about the fact that Mr. Rice has taken the retail part out expressing his appreciation of that fact.

Discussion followed regarding the as built drawings as to the reasons for these being requested as well as what both Chairman Arndt and Commissioner Zwetzig would like to see before a decision can be made regarding the application for special use.

Commissioner Zwetzig made the motion to continue the matter for Wednesday, September 9, 2020 at 9:00 a.m. with the provision the applicant will provide a detailed drawing as it is built currently and what may be requested noting that public comment has been closed. Commissioner Becker seconded the motion and at this time, the motion carried 3-0.

ADJOURNMENT AND RECOVENE AS THE MORGAN COUNTY BOARD OF EQUALIZATION

AGENDA MORGAN COUNTY BOARD OF EQUALIZATION

At this time, Chairman Arndt stated the Board will be convening as the Board of Equalization in the matter of the consideration and approval of a settlement agreement with Wal-Mart regarding 2018 and 2019 Personal Property Tax Assessment Appeals noting that all three Commissioners are in attendance as well as Morgan County Assessor Tim Amen and County Attorney Kathryn Sellars (who appeared remotely).

CONSIDERATION AND APPROVAL OF SETTLEMENT AGREEMENT WITH WAL-MART REGARDING 2018 AND 2019 PERSONAL PROPERTY TAX ASSESSMENT APPEALS

Morgan County Assessor, Tim Amen presented to the board a settlement agreement with Wal-Mart Stores and the Morgan County Board of Equalization of the State of Colorado noting Karina Graulus was present as the Senior Appraiser. He summarized the file as to what occurred regarding the appeal process for both 2018 and 2019. Mr. Amen indicated that the information provided by Wal-Mart Stores, and the fact the information provided did result in a bit different calculations, using the listing of equipment, properly applying the correct tables, the evaluation came up different, thus the taxes came up differently. He further stated that due to this discovery, a Settlement Agreement was prepared which indicated the actual value and assessed value for both 2018 and 2019 and the refund amount for the 2018 tax year as \$4,025.00 and the refund for the 2019 tax year as \$5,182.00. Ms. Graulus further spoke explaining how they handle these types of situations, explaining the detailed list of equipment and the findings of what was reported through the District Court was correct and the adjustments were then made. Assessor Amen stated if the reporting would have been correct from the beginning, the County would not have gone this far with the matter.

Commissioner Zwetzig asked about the actual value being so different between 2018 and 2019, with Ms. Graulus explaining it was due to the equipment changing, and the fact there was newer equipment installed in 2019.

Mr. Amen, in response to Commissioner's question, stated he cannot speak for the other Counties who currently have cases filed with Ms. Sellars stating there is only one other county who has gone all the way to the court of appeals at the State level and further provided information as to what she is aware of as to the status of other county appeals and Wal-Mart stores. Ms. Sellars stated she will be filing a dismissal with both the BAA and the District Court, and they cannot come back and file any further claims, given this is a settlement agreement. Mr. Amen stated that Wal-Mart believes the tables in 2018 were not correct and explained the process they have used in regards to this settlement agreement.

Commissioner Becker made a motion to approve the settlement agreement with Wal-Mart Stores, Inc. as outlined by Assessor Tim Amen and authorized the chairman to sign. Commissioner Zwetzig seconded the motion and motion carried 3-0.

Commissioner Zwetzig complimented the Assessor's office as to the work they do and the accuracy of their work.

At this time, Chairman Arndt adjourned as the Board of Equalization and reconvened as the Board of Commissioners, and then adjourned the meeting at 10:34 a.m.

Respectfully Submitted,

Susan L. Bailey
Clerk to the Board
(Minutes ratified September 8, 2020)

THE BOARD OF COUNTY COMMISSIONERS MORGAN COUNTY, COLORADO

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

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

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

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(SEAL)

ATTEST:

s/ Susan L. Bailey

Susan L. Bailey