

# COMMISSIONERS PROCEEDINGS 1

## BOARD OF COUNTY COMMISSIONERS Minutes of Meeting August 5, 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/81385693470> 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 Tuesday August 4, 2020.

To participate in Public Hearings you may connect via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/81385693470> or to listen via phone, please dial: 1-312-626-6799, Meeting ID: 813 8569 3470

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/81385693470> or to listen via phone, please dial: 1-312-626-6799, Meeting ID: 813 8569 3470.

The Board of Morgan County Commissioners met Wednesday, August 5, 2020 at 9:03 a.m. with Chairman Mark Arndt, Commissioner James Zwetzig and Commissioner Jon Becker in attendance. Also present was County Clerk Susan Bailey, Morgan County Director/Floodplain Administrator Pam Cherry and County Attorney Jeff Parker.

Chairman Arndt asked Commissioner James Zwetzig to lead the meeting in the Pledge of Allegiance.

### ADOPTION OF THE AGENDA

Commissioner Zwetzig made a motion to adopt the agenda as presented, with Commissioner Becker seconding the motion. Motion carried 3-0.

### PUBLIC HEARING

Chairman Arndt called the hearing to order at 9:05 a.m. in the Assembly Room of the Morgan County Administration Building. Present were Chairman Mark Arndt, Commissioner James Zwetzig and Commissioner Jon Becker in attendance. Also present was County Clerk Susan Bailey, Morgan County Director/Floodplain Administrator Pam Cherry and County Attorney Jeff Parker.

#### **1. Charles Greenwood III as applicant**

**Legal Description:** A parcel located in the SW ¼ of Section 2, Township 3 North, Range 58 West of the 6<sup>th</sup> PM, Morgan County, combined Lots 34 and 35 of Block 01 of the Trailside Planned Development, addressed as 16295 County Road R, Fort Morgan, Colorado 80701.

**Reason:** Use by Special Review Application to expand an existing storage facility business

Ms. Cherry explained that the Planning Commission considered this application at their meeting on July 13, 2020 and recommends approval. At the hearing a neighboring landowner expressed objection to the fully phased plan. The letter received from the neighbor is included in your packet as well as the response from the applicant. A revised site plan was submitted on July 30, 2020 and is also included.

#### **Application Overview**

MS. Cherry stated that Charles Greenwood III is the landowner and Epic Design is the applicant's consultant have submitted an application for a Special Use Permit for approval to expand an existing storage facility. The property is zoned Agriculture Production and is 3.55 acres, located in Section 2, Township 3 North, Range 58 West of the 6<sup>th</sup> P.M. Morgan County, Colorado; addressed as 16295 County Road R, Fort Morgan, CO.

Ms. Cherry stated the property is platted as Lots 34 and 35 of the Trailside Planned Development. Pages 1 and 2 of the recorded plat are included in your packets. The plat shows that Lots 34 and 35 have an intended use of ATZ which is defined as Agriculture Trailside zone and lists prohibited uses and does not include storage units or outside storage. Mobile home storage is listed as a prohibited use, however and will continue. Lot 36 to the west of this property is also used as commercial storage. The plan for expansion was submitted to the Trailside HOA and approved.

Ms. Cherry explained the property is a combination of uses including single-family residential. Lots 34 and 35 of the Trailside Planned Development have been combined under a separate application that was completed in May of 2019; that agreement is included in the packet. Setbacks will apply only to the exterior boundary of the two combined lots.

- a. Pursuant to Section 2-165; Within the districts established by these Regulations or amendments that may later be adopted there exist lots, structures, uses of land and structures, and characteristics of use which were lawful before these Regulations were passed or amended, but which would be prohibited, regulated, or restricted under the terms of these Regulations or future amendments. ***It is the intent of these Regulations to permit these non-conformities to continue unless provided otherwise below, until they are removed, but not to encourage their survival. It is further the intent that non-conformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.***

# 2 COMMISSIONERS PROCEEDINGS

- b. 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.
- c. Pursuant to Section 3-175; Parcels smaller than 20 acres does not list commercial storage facilities as a Use by Right, Conditional Use or Use by Special Review.

## **Criteria – Special Use Permits**

Ms. Cherry explained 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 south central 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.

*Encourage infill in existing business and industrial subdivisions. This property has been used for storage for many years. Permitting the expansion of this facility meets the intent of this goal.*

#### 2.II.C

Goal - To encourage development where it is in proximity to the activity centers, compatible with existing land use, and there is access to established public infrastructure.

*There is adjacent Agriculture Production zoning to the west of this property. This property is part of the Trailside Planned Development and included in those plans to continue use as it had always been operating.*

(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.

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

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

*The addition of a six foot fence will be constructed on the north property line after the Phase 1 building has been erected and retention pond constructed in accordance with the drainage plan. Fencing will also be constructed on the west side of the pond for buffering and safety purposes.*

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

*The project as proposed will include fencing as a buffer to the adjacent residential to the north and on the west side of the retention pond as a buffer and the safety of area residents.*

(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.

(G) The special use proposed is not planned to be developed on a non-conforming parcel.  
*The property was created by Trailside Subdivision and is conforming.*

(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.

(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.

*There is an existing Morgan County Quality Water tap on the property that will be monitored for possible increase to a commercial tap.*

## **Recommendation and conditions**

At this time Ms. Cherry suggested conditions presented to Planning Commission included:

- 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 uses for this property shall comply with the Trailside Planned Development for this property including the prohibitions as listed on the plat:
  - a. Discharge of firearms
  - b. Commercial bulk fuel plats
  - c. Livestock confinement facilities
  - d. Mobile home storage
  - e. Junk, scrap metal, auto wrecking and salvage yards.
- c. A 6' privacy fence shall be constructed on the north and west sides of the retention pond for buffering and safety purposes.

# COMMISSIONERS PROCEEDINGS 3

- d. Grain bins shall be removed.
- e. Retention pond shall be constructed and will include plans for mitigation of odors and pests.

Planning Commission recommends the removal of condition #2: The uses for this property shall comply with the Trailside Planned Development for this property including the prohibitions as listed on the plat:

- a. Discharge of firearms
- b. Commercial bulk fuel plats
- c. Livestock confinement facilities
- d. Mobile home storage
- e. Junk, scrap metal, auto wrecking and salvage yards.

Ms. Cherry explained that the Planning Commission considered this application at their meeting on July 13, 2020 and recommended approval of the application on a vote of 6-0, with one member recusing himself.

Commissioner Becker asked to recuse himself at this time; under the guidelines it could be considered competition due to his personal business. Chairman Arndt then clarified the planning commission asking to remove Condition #2, and the reason why, with Ms. Cherry stating they felt the current recorded plat of the subdivision is not being replaced and the plat in place would be sufficient to cover these conditions.

At this time, Chairman Arndt asked if the applicant had any further information to add at which time the applicant, George Cromwell, address being 17108 County Road 25, Fort Morgan, Colorado, stating his firm, Epic Design represents the applicant, Charles Greenwood and provided a detailed summary of the request before the Board today.

At this time, Chairman Arndt opened the matter for public comment at this time noting there will be a three minute time limit for testimony and if there has been testimony provided in the same context, to state that and not repeat the information. It was noted there was no public testimony in opposition to the application, both online and in person and further noted there was no public testimony in favor of the application, both online and in person.

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

At this time, Chairman Arndt moved into discussion and decision.

Commissioner Zwetzig asked how this property is currently being used, with Ms. Cherry stating it is zoned agricultural production, with storage bins on the property. ATZ, agriculture trailside zoned was confirmed. Commissioner Zwetzig asked about the non-conforming use and the summary that was presented by Ms. Cherry, with County Attorney stating that a special use permit will allow for anything that is not currently permitted. Regardless of a planned development, the Board can approve a permit, with Mr. Parker stating that is correct.

Discussion followed regarding the feedlot that was located in the corner of the property years prior that was Garver's. Laurie Cromwell stated they are not included in the planned development and Commissioner Zwetzig stated it was a matter of a number of non-conforming uses that were platted and accepted. Ms. Garver still has a home based business in the building questioned by Commissioner Zwetzig, with Charlie Greenwood, address, Garver's next door have a house next door and a shop that runs east and west directly to the west of their house, other than that the only other thing on the property are semis and trailers, further indicating it is a personal shop, according to Mr. Greenwood.

Commissioner Zwetzig asked Mr. Greenwood to point out on the map where the location of the shops and buildings are, with Mr. Greenwood explaining the buildings on the property are not used for anything and he wants to use them for warehousing and explained that one is still waiting on electrical. Mr. Greenwood stated everything is set up but the electrician has not done the electrical on 108. Commissioner Zwetzig asked if Garver's were aware of what he was putting the power on the property for with Mr. Greenwood stating yes.

Mr. Greenwood stated he is using the one building for storage, not a shop, with Commissioner Zwetzig asking if the use of a rented building is part of the application. 105 and 108 that exist be used to be rented out for commercial businesses, for warehousing. Commissioner Zwetzig asked if there will be machinery running, with Mr. Greenwood stating not to his knowledge. Commissioner Zwetzig wants to clarify that those types of uses are what is being applied for, with Ms. Cherry stating that is not correct, only the expansion of the storage buildings. Mr. Parker stated his understanding from reading the application is there are storage units, and what does the storage unit involved, with his answer being that is not part of the application, and explained in detail that it would not be like running a business out of these units and stated he would like to know more of what the applicant is wanting to use them for. Mr. Greenwood stated that basically they are there for those who may own a boat, an OHV, a tractor and need to store them, because none of these items can be parked outside in the Trailside subdivision, so these buildings could allow for this type of storage. He stated the buildings are large enough to place an RV with a truck, and allows for individuals to store these larger types of vehicles and equipment.

Commissioner Zwetzig spoke about a storage unit that allowed for the cutting of metal and the noise it creates, with Ms. Cherry clarifying a storage unit is to be used to place items there and that is all. Commissioner Zwetzig asked Mr. Parker to clarify whether or not these buildings could then be used for operations other than storage, with Mr. Parker stating the applicant would have to appear for a special use permit if what he wants to do is more than storage of items, with Commissioner Zwetzig stating the concerns an adjoining landowner had was that of noise and lights. He asked Mr. Greenwood if he has a requirement of what time those can come and go, with Mr. Greenwood stating it is a 24 hour access, and he lives on the premises and rarely, a handful of times within the season, does he see anyone getting things at 9:00 p.m. or later, and does have cameras on his house and it alerts him, and since he purchased the property, he hasn't had anyone past the time late in the evening.

# 4 COMMISSIONERS PROCEEDINGS

Commissioner Zwetzig asked about the fact that a shop could be built and it can be used for Mr. Greenwood's personal use, with Ms. Cherry stating that is correct under this zoning. Commissioner Zwetzig asked if he is subject under the architectural planning for Trailside, with Mr. Greenwood stating yes, and that has all been approved.

Commissioner Zwetzig stated that 105 and 108 are defined as storage buildings, with Mr. Greenwood stating yes, and Commissioner Zwetzig confirmed that no one will be using those buildings for business, with Mr. Greenwood stating that is correct, only a warehouse storage building. Commissioner Zwetzig stated he wants it to be clear that if he would want to use it for a business, he would be required to apply for a special use permit if it is used for anything other than warehouse storage. Mr. Greenwood stated he understood and was in agreement.

Mr. Parker clarified exactly which structure and what use the Board will be approving, with Mr. Parker stating the approval will be for stage 1 on the property explaining the location being on the north end of the property as well as the addition of storage units. Ms. Cherry confirmed that approval will be for the proposed building, phase 1, the 180X50 sized building and the proposed outdoor storage phase 1, directly north which is 40X70 in size, as well as the additional storage units that are currently in existence. Further discussion followed as to exactly what will be considered for approval.

Commissioner Zwetzig spoke about the requirement of a drainage pond and asked Mr. Greenwood to explain the plan. He pointed on the map provided as to where the drainage pond will be located, explaining the lot numbers, and detailed information, confirming this is a requirement of the subdivision. Discussion followed regarding the fencing being placed with Mr. Greenwood stating with the future storage around the building, the fencing was asked to be extended by the Garver's. This expansion is part of the application being considered today as per Ms. Cherry. Mr. Greenwood explained the buildings that are on the property, and how those were built for grain, and the mini storages are only around building #108, and #105 is not part of the application for building around.

Chairman Arndt stated it is important to note for the record that as Mr. Greenwood mentioned to use it for a tortilla warehouse that is not allowable as what is being considered today, with Mr. Greenwood stating he understands that is not allowable. Chairman Arndt asked that in the future, that the building permits indicate a specific detail of when it is complete and in place stating this is very important to know what buildings are active at the time.

George Cromwell stated he would like to address comments received during the Planning Commission meeting, and provided a detailed explanation of those comments as a response. He also addressed the lighting concerns that were noted and this has been taken care of by Mr. Greenwood so it should not be an issue.

Commissioner Zwetzig asked what will be done regarding the lighting, with Mr. Greenwood stating there will be downward lighting, to illuminate the doors, and will not broadcast directly outward.

Commissioner Zwetzig asked if one of the definitions are referenced as storage buildings, with Mr. Parker reviewing the information and stated it can be defined in the resolution as to what is being approved, to state it is for the storage of equipment, not for distribution. Commissioner Zwetzig asked what is being proposed as to the retention pond, with Mr. Greenwood stating it is 90 percent completed, and is working on finishing it, once they are able to remove the grain storage bins, and confirmed it will be in place before the completion of phase 1. There will not be any newly created driveways, they will be using the existing and it is sufficient for using for the purpose they are requesting.

Chairman Arndt asked about the planning commission's recommendation to remove #2, noting what that condition entails, given that is part of the Trailside Planned Development plat, and asked as the Board proceeds with this special use review, that the current existing plat would remain, with Mr. Parker stating it would not hurt to reference that, and stated it would automatically apply, but is clearer to have it noted.

Commissioner Zwetzig asked if this condition is placed as a requirement, if that requires the Commissioners to "police" the matter, with Mr. Parker providing the response that it is already noted in the plat, and it would only be stating it for the record to be as clear as possible. Mr. Parker stated if it is in the permit, the County is expected to follow the requirements of the permit, so there is always the obligation.

Commissioner Zwetzig made a motion to approve a Use by Special Review Application to expand an existing storage facility business for Charles Greenwood III. A parcel located in the SW ¼ of Section 2, Township 3 North, Range 58 West of the of the 6<sup>th</sup> PM, Morgan County, combined Lots 34 and 35 of Block 01 of the Trailside Planned Development, addressed as 16295 County Road R, Fort Morgan, Colorado 80701 with the conditions that #2 with the revisions, uses of the property shall comply with the Trailside Planned Development, #3 be required as identified as building #108 with fencing being required once the expansion is completed and the grain bins are removed, and retention pond built as designed, as well as any additional lighting on the west side be approved by the Planning and Zoning Department, as non-intrusive lighting. Chairman Arndt seconded the motion and at this time, the motion carried 2-0.

Commissioner Becker returned to the meeting at which time a brief recess was taken, and the board then reconvened at 10:04 a.m.

## **2. Erin Kress and Travis Hertneky/THEngineering, LLC – Applicant**

**Bullseye Holdings, LLC/Kevin Lamb**- Landowner

**Legal Description**- Located in the W ½, and South and West of the Bijou Canal, Section 26, T3N, R 58W of the 6<sup>th</sup> PM, Morgan County, aka 16098 County Rd O, Fort Morgan, CO 80701

**Reason**- Use by Special Review Application to operate and re-establish a Confined Animal Feeding Operation for no more than 9000 head pursuant to Section 3-180 (O) and Appendix B Table 3 of the Morgan County Zoning Regulations

# COMMISSIONERS PROCEEDINGS 5

Ms. Cherry explained that this application is for a Special Use Permit to operate a Confined Animal Feeding Operation in the "A" Agriculture Production Zone District. Section 3-180(O) of the Morgan County Zoning Regulations lists livestock confinement operations in excess of the allowed animal unit densities ... as a Use by Special Review; this operation proposes a maximum of 9,000 head which exceeds permitted numbers of 4 animal units per acre, this property is 90.87 acres and would be permitted 363 animal units. The property is located on the southwest corner of County Road O and County Road 16 in the West ½ of Section 26, Township 3N, Range 58W of the 6<sup>th</sup> P.M. and south and west of the Bijou Canal, Morgan County, Colorado.

Ms. Cherry stated that this application is to re-establish a confined animal feeding operation of no more than 9,000 head. The facility began operations prior to 1989 (see historic imagery in packet). The facility currently has livestock on it and does not exceed the use by right permitted number. Sections in the Design Report will be presented by the applicant and/or consultant at the public hearings. These sections contain specific information on regulations and potential impacts related to:

1. Regulation Applicability (Colorado and Morgan County)
2. Hydrology and Hydraulics (A system of ponds and diversions to protect adjacent properties – Bijou Ditch)
3. Manure Management (combination of methods proposed)
4. Traffic (tables on anticipated vehicle trips in appendix)
5. Nuisance Management (pests, air quality and noise)
6. Appendices (aerial maps, topo, soils map, floodplain map, pond size spread sheet, pond stage storage curves, pond line certifications, hydrology, manure generation calculation traffic, O&G wells, emergency action plan)

Ms. Cherry explained 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 location is south of the intersection of County Road O and County Road 16; located in the South Central Planning area as defined by the Morgan County Comprehensive Plan 2008. In this area the goal is to preserve and protect existing agriculture uses south of County Road Q. A feeding operation is an agriculture use.*

*Agriculture is a highly valued resource in Morgan County. Conservation of agricultural resources and land is paramount, and such land and resources must be protected from adverse impacts resulting from uncontrolled and undirected business, commercial, industrial and residential uses.*

- (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.

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

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

*All adjoining properties are also zoned Agriculture Production and one property is also a feeding operation.*

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

*Buffering is not required as adjacent land uses are compatible..*

- (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.

*Engineering reports and studies have been conducted for the property and submitted to the Colorado Department of Public Health and Environment (CDPHE) as well as the State Engineer's office for review.*

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

- (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 are a number of feeding operations in the county that support the local economy.*

- (I) For any Use by Special Review 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 State of Colorado Division of Water Resources response to request for comment is attached. The Division of Water Resources has permitted well number 80348-F to not more than 24.27 acre-feet, or the amount covered under a substitute water supply plan that was approved on October 15, 2019 based on 1,000 head per month for a one year period that ends on September 30, 2020 until a decree is obtained for a permanent plan for augmentation. Water Court Case #2016CW3028 is currently in review by the state.*

Ms. Cherry stated that property taxes are current and recommended the following conditions of approval:

1. The facility shall not commence operations until it has received approval from all agencies with jurisdiction over the operation and all required permits have been issued.

# 6 COMMISSIONERS PROCEEDINGS

2. The facility shall not commence operations until all improvements set forth in the application have been constructed and are operational.
3. The facility shall operate the Bullseye 3T well, Permit No. 80348-F in compliance with all well permit conditions and the applicable substitute water supply plan and/or permanent augmentation plan as determined by the State.
4. Generally accepted best management practices as recommended by the Natural Resources Conservation Service and established in applicable publications of Colorado State University for land application of manure and waste water shall be followed.
5. Any increase to the 9,000 head as proposed by this application shall require an amendment to this permit
6. 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.
7. Bijou Irrigation shall be granted access to the Bijou ditch for the purpose of inspection and maintenance of the irrigation ditch.

Chairman Arndt asked about Letter I, asking Ms. Cherry to clarify the temporary use as being for 1,000 head per month with Ms. Cherry stating the applicant has applied for an extension of the 9/30/20 deadline, and she has not heard any follow up information regarding this question as of yet. At this time, she cannot provide information that there is any permanent water supply for 9000 head, not 1000 head as stated in letter I asking if there has been any further correspondence for 9000 head versus the 1000 head indicated.

At this time, Chairman Arndt asked if the applicant, Travis Hertnecky, P.O. Box 33748, Greeley, CO 80634, presented stating that they had appeared last year discussing a truck washout, and is here now regarding the permit for the feedlot. He provided historical information regarding the establishment of the feed yard. He stated there were previous discussions when they presented about the truck washout, and believed it was a grandfathered right, and it was determined that was vacated, and this is how they are trying to fortify the use of the historic feed yard. He stated the primary access is located along County Road O and 16, using the existing facilities for confinement up to 9000 head, not proposing any new corrals, building will be maintained, but nothing significant and out of the ordinary. The facility will be of CAFO size and it will be registered with CDPHE. He further provided the data about the storm event details. He stated they are trying to fix some deficiencies with most being related to the storm water and controls. He then provided information regarding the proposed additions using a power point presentation. Ponds 1-4 were described in detail.

Mr. Hertnecky then summarized Wastewater Generation in detail explaining it will be land applied to neighboring farm ground. He stated the pasture ground is not the primary ground to apply wastewater, it is based on a backup for emergency situations, speaking of 40 acres of pasture ground that is available, that will be applied at agronomic rates to not exceed nutrient loading from all sources, stating this is not technically part of this permit, land application of the feedlot, it is associated there that it may be used to and apply at some point.

Solid manure generation was then discussed in detail, where it will be gifted to area farmers, at the amount of approximately 14,290 tons per year.

Feed purchased from area farmers in the amount of approximately 61,000 tons per year which will be a contribution to the area agricultural economy and it will be transported on the main entrance on County Road 16, by 13 trucks per day, 11 cars per day, with this being an average.

He spoke further about concerns of neighbors, with pest control being one, with a plan in place to mow grass and weeds, ensure proper pen drainage, frequent manure removal and clean up of other materials. Dust and odor mitigation was discussed with several plans of actions being presented and detailed.

Mr. Hertnecky then discussed the emergency spillway, in regards to the issue brought forward from Bijou Irrigation, this was completed, and he provided an overview of how the ponds are operated and how the feeding operations are handled. The diagram shown on the presentation indicated the working volume, the 25 year 24 hour storm volume, with an emergency spillway designated, and the difference between 100 year and 25 year storm volume. He explained how this will work in detail meeting the requirements of a 25 year storm stating the plan exceeds the requirements. He stated they are not proposing to discharge, the emergency spillway is a safety device, if the pond should run over, this will allow it to be stopped and avoid anything running down stream causing any further issues.

At this time, the map was reviewed in detail of the ponds, with Mr. Hertnecky stating that due to discussions with Bijou and the Planning Commission, it was asked if there was an alternative regarding the spillway, with Mr. Hertnecky providing an explanation of what they have done to look into an alternate process. He stated they were able to move it off to the side that will provide an additional buffer, stating once again, this is a safety measure, if it would run over; they have a place for it. He stated he feels they have tried to accommodate and respond to the concerns the best they could.

Chairman Arndt asked the applicants to address his concerns about the water supply plan, the fact that it is approved for 1000 head at this time and being proposed for 9000 head, as to a permanent water supply plan. Mr. Lamb stated they have been in contact with local area farmers for water, as well as the City of Fort Morgan and the Town of Wiggins, stating they are getting a little traction for success with one of these entities, and knows they cannot pump water unless they are approved and obtain a permit, and have the ability to pump for the 9000 head, explaining how the requirement will allow for. Chairman Arndt asked about a financial commitment letter being part of the file that there are enough assets to complete a project of this size, asking Ms. Cherry about this data. Mr. Hertnecky stated that one of the concerns about not having enough funding to complete a project, since this was an existing facility, they did not feel there needed to be a financial commitment, and it was determined between him and Ms. Cherry.

Commissioner Zwetzig asked to clarify what the request is for, with Ms. Cherry stating it is to re-establish a CAFO for 9000 head, and it was discussed and clarified that it will be for 9000 animal units, with Mr. Hertnecky stating he

# COMMISSIONERS PROCEEDINGS 7

was asking for 9000 animal units. Ms. Cherry stated where it gets different is for bulls, explaining what that would entail.

Commissioner Zwetzig asked about clarifying whether or not this is joint ownership with the truck washout, and Mr. Hertnecky stated it is under common ownership. Commissioner Zwetzig stated he believes it needs to be used as common ownership, explaining there is a difference, with Mr. Hertnecky stating the intent of this is that it is very likely in the future it could result in two separate owners, the washout could be sold to another owner.

Chairman Arndt asked if the properties should be sold to different owners, and the fact they are proposing that land application of the 40 acres of pasture, would be a part of the truck wash, how this would be handled. Mr. Hertnecky stated they understand this and wanted everyone to know what is going on, and if it is sold to another party in the future, it would be taken care of.

At this time, Chairman Arndt opened the matter for public comment at this time. Chairman Arndt stated there is a three minute time limit to public testimony explaining the process that will be followed and asked those who wished to speak in opposition to come forward.

At this time, Stewart Cobridge, 53030 Spine Road, Boulder, CO 80301, legal counsel for Bijou Irrigation District, John Rusch, 14267 County Road 17, Fort Morgan, CO 80701, landowner and representative of Bijou Irrigation District, David Stewart, 748 Whaler's Way, Suite 210, Fort Collins, CO, environmental engineer working for Bijou Irrigation District, Pete Anderson, landowner, 20738 County Road N, Fort Morgan, CO 80701, Harry Unger, landowner, 15263 County Road 18, Fort Morgan, CO 80701 all spoke in opposition of the application providing their specific reasons for opposition in detail. Gary Teague, landowner, 15366 County Road O, Fort Morgan, CO 80701, also spoke during the opposition period of the hearing but expressed both opposition and support providing his reasons for each.

At this time, Chairman Arndt asked if there was anyone who was attending remotely if they wished to speak in opposition with it being reported there was not.

Chairman Arndt asked Mr. John Rusch to again approach the podium at which time he did, with Chairman Arndt stating it has been discussed that this is a new application, not to re-establish the feed yard and further asked the question about the slides which were shown regarding the storm events in 2015 and asked what he believed would happen if there was a feedlot there at that time, as to where the water would go, with Mr. Rusch explaining what he believed would happen and if the feedlot is permitted, eventually, there will be another guarantee of contaminating the water running down the canal. Dave Stewart made one other comment, in regards to the run off, with cattle there the ground will be harder and causes the runoff to be bigger than normal, and that should be part of the discussion how to capture the water.

At this time, Travis Hertnecky spoke in regards to the comments made in opposition, speaking about Mr. Rusch not supporting the 9000 animal units, and explained his response to that, stating the ideal scenario. He stated they have a facility and the precedence of other feedlots around that are effectively managing their wastewater with 15 pivots in place. He stated what it comes down to is managing the capturing of the runoff. He further spoke about the difference between the 25 and 100 year storm event, explaining what they did when they were permitted for the truck wash. He stated that they have now been hit with the 7 inch storm event, which is significantly higher than the 100 year event. He explained further what they have worked on in the past regarding conveying water under the canal, and what they have done to mitigate the seven inch storm concerns. He stated he was concerned at the time as that being precedence setting and expressed concerns when someone comes into Morgan County what the requirements will be. He stated it is a concern given it is directly adjacent to Bijou Irrigation Canal, but it is not the only one, stating he knows of five that are adjacent in the county. He stated in Weld County, there are 17 adjacent to a water canal, and provided what their proposal is at this time to mitigate the concerns expressed, believing that Bijou is important, and do not want to affect their water quality, he feels they are exceeding the 100 storm event and the 7 inch is not an incremental step, it is leaps and bounds above that standard.

He stated the other main item was the lining of the ponds, stating the ponds have been tested and retested and both indicate they meet the seepage requirements. He believes they meet the state requirements and do not see the need to retest and retest until they see a failure feeling two tests is sufficient.

He stated they want to fortify the area again, build the area to what needs to mitigate the issues and strengthen the areas of concern. He feels there needs to be a reasonable design standard they can design to but plan for the worst case as well.

Commissioner Zwetzig asked about the earth and berm, building into the bunk, what their thoughts are. Mr. Hertnecky stated the bunk gets very tight to the ditch, and the only option they have would be to raise the road up to be as high as the bunk and that becomes problematic for operations, so he wants to take the earth there and tie it into the bunk. He stated that area will flow to the corrals to the south as it is now, explaining what they intend to do.

Mr. Lamb spoke stating that no one wants a spill into the Bijou, stating he understands the concerns that have been expressed, and the leak that occurred in 2017, and explained the lagoon was tested subsequent to the issue that occurred and that is when it passed. He would like to know where the rain gauge is located in the area. He spoke in reference to Mr. Unger's concern about seepage from the pond, stating it is coming from the Bijou ditch, not his lagoon stating the safest part of it is his lagoon. He further spoke about the proposed application, stating they are wanting to go in and make agreed improvements stating the Commissioners asked him to meet with Bijou and try to come to an agreement and the 100 year charge was agreed upon, and now with this request, they are asking for additional stipulations, and that is the second bite of the apple. He asked that the board look at the application realistically and review what their request was of him to make Bijou happy and now they are not happy.

# 8 COMMISSIONERS PROCEEDINGS

Chairman Arndt again asked if there is anyone wishing to speak in favor both from the audience and online and it being noted there was no one online or in the audience.

At this time, Chairman Arndt closed the public comment portion and moved into discussion and decision.

Chairman Arndt asked the question, part of the criteria is to know there is water for the number of animal units being proposed, and does not feel there is adequate permanent supply of water at this time. He asked if any of the ponds in question will be used by the truck wash, with Mr. Hertnecky stating no. Chairman Arndt asked about the water, and the fact the truck wash is consuming water, and now adding 9000 animal units, where would the water supply be. Mr. Hertnecky stated they do have a recorded agreement that would indicate where the water is coming from for the truck wash, and as far as the water use on the feedlot, there is not adequate water guaranteed on the feedlot for the proposed 9000 animal units but explained the process and what they have in place to obtain the permanent water supply.

Mr. Lamb asked to address the water supply, stating it is difficult to state they have spent a half a million dollars on water when there is not an approval of the request. He stated it was very clear that it was the State's job for the truck wash, and knows they cannot pump the well if it is not state approved. He feels the water pumping is very transparent and does not see this as an issue and if the approval for this request is made, the water will be there shortly.

Chairman Arndt stated that in the past the ability to ensure water is available for the number of animal units, and agrees that everything has changed, maybe mistakes were made, but permits were not even required 60 years ago, but today is different, and water is vital and that has to be looked at. He also spoke about them wanting to use the bunk as part of the dam that says to him there is not enough room for 9000 animal units, given the information they have shared.

Commissioner Becker spoke stating there are a lot of feelings on both sides of this, and agreed when the washout was approved and dealing with water, and have no problem with approving this with the requirement there will be adequate water. He also spoke about the placement of this feedlot, and understands it, and further spoke about the bar that was set, and has the same problem that Chairman Arndt has, is the facility large enough for this many animal units, if it literally makes sense, is 9000 animal units too large for this size of the facility, should it be lowered to allow for the size of the area in question.

Mr. Lamb spoke further about his feelings about the area and the proposed number of animal units. Mr. Hertnecky stated there is a couple hundred feet of bunk, and explained why they are looking at it the way they are. If the bunk was a deal breaker, he thinks they could come up with a continuous earth and berm. He stated he believed it was a viable option but are in agreement to look at something else if they ended to.

Chairman Arndt then asked about the financial commitment, with Ms. Cherry stating she was not able to find the letter. Mr. Lamb stated that he did provide it, and further asked if the matter could be tabled to give them time to work further with the Bijou Irrigation Company. Chairman Arndt stated he could ask for the matter to be tabled and it could be either accepted or denied by the board.

Discussion followed regarding the financial aspect and the fact they could obtain the money for the water once the permit is approved. Mr. Hertnecky stated that in checking with staff, it was noted by Ms. Cherry the financial commitment was not necessary given there was not going to be major changes or improvements made.

Chairman Arndt stated he thinks there needs to be something in the file to ensure the financial commitment is there. Mr. Lamb stated the condition of water is going to take a longer period of time, and would ask that the permit be ranted with the condition that the feedlot not be built until the water is adequately in place, stating he would ask that the water be predicated prior to the build out of the feed yard. Chairman Arndt stated he is not satisfied that knowing something was once there, and is not completely satisfied with the existing lagoons and the creation does warrant more than what the state standards are explaining his reasons, and does feel there needs to be discussions with Bijou and feels that there needs to be something done differently with the design before he can feel safe in saying this is okay.

Commissioner Zwetzig asked to discuss the "bar that was so called set", with the bar being for a truck wash that said there was no CAFO there, and that bar was not set as if the CAFO was going to happen and recalls that discussion. Mr. Hertnecky stated the conversations were all part of the truck wash out, and the discussions with Bijou address both the feedlot and the truck wash, and that is where the bar spoken about is coming from, not the hearing about the truck wash. Commissioner Zwetzig asked what the number of animal units per acre in a setting like this normally is, with Mr. Hertnecky stating the number of animal units is a loaded question, because it depends on how it is managed and set up, further stating ten years ago, he would have stated a lot less, and explained why, and thinks that is ever changing, and sees that things are going a bit bigger, more square footage due to animal welfare in the future. He stated that physically handling 9000 animal units, does not concern him too much.

Mr. Lamb stated it was on record that they would be filing this application, and it would be filed within one year, stating it was transparent they would be filing this application request.

Stuart Cobridge for the purposes of the record, pointed out the letters the Board has in their packet, that the letters sent to Mr. Lamb were considered more of a settlement for agreeing on the washout. At the time of the letter, they did not have the details of a feedlot SUP, and knows that the 100 year storm event was tied to a more global event regarding the washout, and in his opinion, is considered more of a settlement agreement that should not be tied to this. He further stated his concerns, and wanted it clear to cast Bijou in a negative light that they are here asking for additional requirements. Commissioner Zwetzig pointed out that it appeared Mr. Teague was in favor of the CAFO. Mr. Cobridge stated the options are fewer head, or a bigger lagoon where it is all going to.



# COMMISSIONERS PROCEEDINGS 9

Commissioner Zwetzig asked when the truck wash was approved, there was the agreement to some access and closure and were those properly addressed. Ms. Cherry stated she could not answer that, and Commissioner Zwetzig asked Mr. Lamb if it was properly closed, with Mr. Lamb stating absolutely. Discussion followed regarding those being proposed now and if the road and bridge had approved, with Ms. Cherry stating they have been. Mr. Lamb explained that the road and bridge has asked them to move the existing to move to the south and they are in agreement to this. Mr. Hertnecky stated the area to the south will be made the main access and they are in agreement with the stipulation set forth by the road and bridge department.

Chairman Arndt reviewed the items that still need addressed as being the financial information, the bar needs to be higher regarding the ponds, and the applicant does have the ability to request the continuation of this hearing if he would desire to work further on the issues expressed.

Mr. Lamb stated he would like to request 30 days to reach out to those individuals who spoke here today, stating they will listen to their input and wants to co-exist, and did express his concerns about the financial situation regarding the purchase of water, feeling that is putting the cart before the horse, and would like to have this be a condition of approval, with Chairman Arndt stating he would need to put together a specific plan together and propose to the Board to show the board how much water it will take before the animal units can be in approved to be in placement. It was clarified that there will need to be adequate water for 9000 animal units and further stated this is his opinion as to what he will want to see.

Commissioner Zwetzig asked about a letter in the file and how they would address the letter from Mr. Kramer, CDPHE, who provided information that is very helpful. Mr. Hertnecky reviewed the actual letter, and stated most of the items he was on the same page with. It was asked about a violation that has not been resolved and the cease and desist, with Mr. Hertnecky responding that they are talking about a cease and desist violation, that occurred in 2017, and the storm water that did come off an area, as he presented on the map provided during the meeting. He further explained how this ended up in a violation order, which was agreed upon and closed out and a payment schedule was put in place. Mr. Lamb stated the volume of the spill was less than 50 gallons, and the violation resulted in a fine of \$5000.00, and Mr. Hertnecky stated the last CAFO violation he has experienced resulted in a fine of \$250,000 which demonstrates the severity of this incident questioned. He stated he would be happy to prepare answers to the comments in the letter.

Discussion followed regarding the possibility of the applicant asking for the hearing to be continued and the public comment being allowed during the continuation of the hearing. Mr. Parker stated

Mr. Lamb stated that Bullseye would like to request a continuance until September 10, 2020 to give them time to discuss the matter further with Bijou.

Commissioner Becker made a motion to continue the hearing until September 10, 2020 at 9:00 am. To allow the applicant to meet further with Bijou Irrigation Company and noted public comment can be reopened. Commissioner Zwetzig seconded the motion and motion carried 3-0.

Being no further business the meeting was then adjourned at 12:27 p.m.

Respectfully Submitted,  
Susan L. Bailey  
Clerk to the Board  
(Minutes ratified August 25, 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

(SEAL)

ATTEST:

\_\_\_\_\_  
s/ Susan L. Bailey  
Susan L. Bailey