

COMMISSIONERS PROCEEDINGS 1

BOARD OF COUNTY COMMISSIONERS

Minutes of Meeting
September 10, 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/83445694959> If you cannot connect via Zoom, you may submit written public comment to bccmorganc@co.morgan.co.us by email by 3 p.m. on Wednesday September 09, 2020.

To participate in Public Hearings you may connect via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/83445694959> or to listen via phone, please dial: 1-312-626-6799, Meeting ID: 834 4569 4959

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/83445694959> or to listen via phone, please dial: 1-312-626-6799, Meeting ID: 834 4569 4959

The Board of Morgan County Commissioners met Thursday, September 10, 2020 at 9:04 a.m. with Chairman Mark Arndt, Commissioner James Zwetzig and Commissioner Jon Becker in attendance. Chairman Arndt asked Commissioner James Zwetzig to lead the meeting in the Pledge of Allegiance.

CITIZEN'S COMMENT

There was no citizen comment provided.

ADOPTION OF THE AGENDA

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

PUBLIC HEARING

Chairman Arndt called the hearing to order at 9:04 a.m. in the Assembly Room of the Morgan County Administration Building. Present were Chairman Mark Arndt, Commissioner James Zwetzig, Commissioner Jon Becker, and Morgan County Planning and Zoning Director Pam Cherry.

Continued from August 5, 2020

1. 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 6th 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

Ms. Cherry explained this application was considered by the Board of County Commissioners at a public hearing on August 5, 2020 and continued to today, September 10, 2020 to provide the applicant opportunity to obtain a letter from his bank on financing of the project. The letter from the bank is included, in addition a letter from Scott Miller of Water Law. She stated she will present the entire File Summary on this project as the report on August 5, inadvertently did not include the Planning Commission recommendation.

Ms. Cherry stated that the Planning Commission considered this application in a public hearing on July 13, 2020 and received a recommendation of approval on a vote of 5-1 with one member recusing himself. In addition, on July 20, 2020 the Board of Adjustment approved a variance request to reduce the setback from a CAFO to an occupied structure from 1,320 feet to 708 feet, approximately 612 feet.

Ms. Cherry explained that the Planning Commission requested that the applicant meet with Bijou to discuss drainage concerns. The applicant's representative met with Bijou. There is a letter in your packets that was prepared by THEngineering documenting the meeting. An email is included in the packet to clarify the use of the term "head" compared to "animal units". It is a like for like exchange; 9,000 head is had been used interchangeably with 9,000 animal units.

Ms. Cherry stated 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 southeast corner of County Road O and County Road 16 in the West ½ of Section 26, Township 3N, Range 58W of the 6th P.M. and south and west of the Bijou Canal, Morgan County, Colorado.

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Ms. Cherry explained 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 stated that the Substitute Water Supply Plan has been submitted to the State Engineer's office for review. The plan will remain in place pending the outcome of Water Court Case #16CW3028. 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 the Property taxes are current.

Ms. Cherry explained the Recommended conditions of approval as follows:

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.
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.

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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.

Ms. Cherry stated the Planning Commission recommended an additional condition:

8. An investigation into an alternate spillway.

Ms. Cherry further stated the Planning Commission considered this application in a public hearing on July 13, 2020 and received a recommendation of approval on a vote of 5-1 with one member recusing himself.

At this time, Chairman Arndt asked Ms. Cherry regarding the request to continue this hearing, with Ms. Cherry stating she received a call from the applicant yesterday asking for a continuance.

Mr. Lamb, the applicant, confirmed the fact that in the matter of the Chairman's health, they felt the hearing would be appropriate to be continued and spoke further of the matter regarding water and explained that in detail.

It was noted that County Attorney, Jeff Parker, was available by telephone, and Chairman Arndt noted there is the request for the continuance and further asked if there was anyone in the audience who would object to the continuance of the hearing of 30 days, with the proposed date of October 15, 2020. After discussion regarding the proposed date, it was noted there was no objection to the consideration of the motion to continue the hearing until October 15, 2020. At this time, Mr. John Rusch, asked the Board about the proposed date, stating that date will work for them.

Commissioner Becker made the motion to accept the request to continue the hearing until October 15, 2020 at 9a.m. the request made by the landowner, and applicant. Commissioner Zwetzig seconded the motion and 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 9:23 a.m.

Respectfully Submitted,
Susan L. Bailey
Clerk to the Board
(Minutes ratified September 22, 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