

MORGAN COUNTY PLANNING COMMISSION
July 9, 2018 MINUTES

The Morgan County Planning Commission met on Monday, July 9, 2018 at 7:00 p.m. in the Assembly Room of the Morgan County Administration Building. Answering roll call was: Allyn Wind, Pete Krohn, Bob Elrick, Robert Pennington, Dave Musgrave, Mike Erker and Nathan Trout. Also present were Pam Cherry, Planning Administrator; Jody Meyer, Planning Assistant; and Kathryn Sellars, Morgan County Attorney. Joe Ewertz was absent.

The meeting was called to order by Vice Chairman Nathan Trout.

June 11, 2018 Minutes: **It was moved by Robert Pennington and seconded by Bob Elrick to approve the June 11, 2018 minutes as presented. Motion carried 6-0 with Allyn Wind recusing himself as he was not present at the June 11, 2018 meeting.**

June 18 minutes are not finalized as of this meeting.

Agenda: **It was moved by Bob Elrick and seconded by Robert Pennington to approve the agenda as presented. Motion carried 7-0.**

UPDATE ON BCC DECISIONS:

Pam Cherry reviewed the decision that the Board of County Commissioners made on the following applications: Young, BG Land Company, Jensen Minor, OneOK, were all approved and Empire Dairy has been set for first hearing on August 16, 2018 and Moreno Racing was heard and tabled to August 14, 2018.

NEW BUSINESS:

APPLICANT: Green Brothers, Inc. – Rod Havens
OWNER: McAtee Construction Company

Rod Havens (Cheyenne, WY) from McAtee Construction; Dave Rau (Severance, Colo.) from Paragon Consulting Group, Steve O'Brian (Arvada, Colo.) from Environment Inc., and John Pinello from Simon team were present to represent this application.

Pam Cherry presented the file summary as follows:

Application Overview

This application was submitted by Green Brothers, Inc. as applicant and McAtee Construction Company as property owner to amend a Special Use Permit issued pursuant to Resolution 94 BCC 51 that was for the purpose of extracting gravel and auxiliary uses associated with mining and processing. The applicant wants to expand the Special Use permit to 78.89 acres from the current 55.60 acres to allow mining, processing, asphalt production and reclamation. There are two parcels included on this application, 1039-330-00-008 and 1039-330-00-010 that total 78.89 acres in the Agriculture Production Zone

District. The properties are located in Section 33, Township 4 North, Range 57 West of the 6th P.M., Morgan County, Colorado.

Section 3-180(E) states that asphalt and concrete batch plants are a special use; Section 3-180(G) states that mineral resource development and extraction operations and facilities (including quarrying and sand and gravel pit) are also special uses. The parcel has been used for mining and extraction since the late 1950's. A portion of the additional 24.29 acres will be used as a processing site of the material mined on the site and as a recycled material processing area. The plant site is included in the current Mined Land Reclamation Board Permit and is approximately 8.43 acres. This is a portable batch plant that can be moved to other job sites as necessary. At the present time there is active mining occurring in the southern portion of the originally permitted area. The west area that is being added to the Special Use permit includes an area for processing and stockpiling material mined at the site. There is an area of the old mined area that will be filled then used for recycling of concrete and asphalt crushing and processing.

Criteria – Special Use Permits

Amendments to special use permits are governed under Sec. 2-430 of the County's Zoning Regulations. Under that section, amendments to special use permits are subject to the same criteria as the original permit. 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.
- (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.
- (E) The special use proposed has been made compatible with the surrounding uses and adequately buffered as determined by the County.
- (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 regulations, whichever is the strictest.
- (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.
- (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.

Public Comments/Concerns

On June 8, 2018, notifications of this hearing were sent to property owners within 1,320 feet of the subject property. As of the date of this report, June 26, 2018, one inquiry has been received that expressed concern over the expansion due to impacts onto an adjacent property. Pam told the Planning Commission that she had received 2 letters in opposition to this application: one from Nick Erker of Erker Estates Ltd. and one from Steve Glassey who was represented by Kent Lindell. Copies were handed out to the Planning Commission Board.

Analysis

The use and its location as proposed are in conformance with the Morgan County Comprehensive Plan.

The property is located in the north central planning area as defined by the Morgan County Comprehensive Plan. In this area of Morgan County there are pockets of commercial and industrial uses. A goal for this area is to “Encourage commercial and light industrial development in the immediate vicinity of the airport”. Additionally, “Encourage the preservation of agricultural production land to ensure continuation of this important industry.”

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.

The application is complete and presents a clear picture of how the uses are to be arranged on the expanded site of 78.89 acres.

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

The Site Plan meets the district design standards of the Morgan County Zoning Regulations pursuant to Sections 3-620 through 3-710.

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

Impacts to surrounding properties will be minimal. There are five gravel pits in the immediate area and have been there for many years. Three of these are currently operated under State Mined Land Use Permits. Increases in traffic are not anticipated with the expansion in mined area or the addition of a portable asphalt batch plant.

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

Buffering from adjacent agricultural uses is not necessary as many of the surrounding uses are also mining and compatible.

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

Amending Resolution 94 BCC 51 will not change the risk to public health safety and welfare. The use has been in existence for many years without known adverse impacts.

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

The proposed amendment to a special use will not result in a non-conforming parcel.

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.

The public need for the project can be demonstrated by the statement by the applicant that the amendment to add mined area and a batch plant is to provide asphalt for two current Morgan County projects and others in the future. The applicant has paid all fees and costs.

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 requested amendments do not affect the current supply of water used by the special use on the property. Therefore, there is no evidence that additional water is needed as a result of the requested amendments.

Staff Comments

None received as of June 26, 2018.

Recommendation

Pam Cherry's recommendation to the Planning Commission is to recommend approval of this application to the Board of County Commissioners subject to one condition:

1. 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.

Dave Rau made comment to one of the letters in opposition that stated the use is inconsistent with the land uses in the Comprehensive Plan. If the weather is too cold, they cannot keep running the plant. Morgan County needs this plant which will cut down on traffic throughout the county. He noted there was an old batch plant there in 1998. How long the batch plant would run depends on the demand. They have not heard of any complaints. There are no chemicals used for this product, only tar and aggregate. The batch plant machinery is about 40 ft. tall and it is painted to look nice. Dave Rau said the plant is State regulated; they have air permits and storm water plans.

Steve O'Brian talked about the mined land permitting and mentioned they are bonded and have to make sure the land is reclaimed. The Department of Mining and Reclamation and Safety oversees processing every 3-4 years and there was discussion on the State's duty in this plant.

PUBLIC TESTIMONY IS OPEN:

Those in favor of the application: None

Those in opposition to this application:

1. Nick Erker of Erker Estates, Fort Morgan, CO, was concerned with the asphalt batch plant. He is in favor of the mining portion however. He was not contacted by the applicants prior to submitting the application. The historic use has been mining. A batch plant would increase traffic. There is no hardship because it was not there before. He was concerned about mitigation plans for the batch plant and said this was not a proper location for this facility. (see attached letter)

Mike Bailey, Planning Commission, wondered where the Erker property was located and aerial maps were shown to the board.

Nick Erker talked about road issues. Erkers and McAtee share a road access on the north boundary and there is an access easement for Erkers use. He said the batch plant is an industrial use and does not fit here.

Dave Rau said the traffic would stay the same whether they were hauling out aggregate or hauling out asphalt. Tar is the only thing coming in which is 5% by content of asphalt that would be leaving the site.

Nick Erker suggested they mitigate and pave Barlow road aka Co Rd 20 and have discussions with the neighbors.

2. Kent Lindell of Colorado Land Co. was present to represent the Glassey Family Farm Estate and Trust. They are strongly opposed to this application. Their concerns were with the expansion: warm water slew with live water is a rare component; with expansion there is increased evaporation – this will compromise the value of land and Kent noted the water table is very shallow in this area; does not want resins, oil resins to bleed over onto Glassey parcel; and they think the batch plant is inconsistent with the zoning.

Dave Rau questioned increased evaporation dealing with this application. He explained the notification was through the County regarding this application. Steve O'Brian mentioned safety guards they had to put in regarding an Edward Gill Ditch. They have to jump over the ditch to process and he did not think impacts would have any affect.

Kent Lindell (see attached letter) said if this application was approved, Glassey asked about interruption of wildlife and would request a wildlife study be done. They would like to monitor the inflow of water in the ditch onto the Glassey farm. This is a valuable asset with the water and the wildlife. Steve O'Brian said that was a maintenance issue. Dave Rau said they were 1300 ft. away and a study is not needed. Kent Lindell said a second opinion would be good to have.

3. Ron Greene, Fort Morgan, CO is owner of the campgrounds across the road from the applicant's parcel. His main concern was traffic and dust and thought paving of the road would be good. He asked what fueled the batch plant and was told propane. Dave Rau stated that an air permit cannot discern whose dust it is.

PUBLIC TESTIMONY CLOSED.

Bob Elrick asked the applicant where the asphalt comes from now. Dave Rau said it comes from Greeley, Sterling and I-76 Denver.

PUBLIC TESTIMONY IS REOPENED

John Pinello from Simon, Cheyenne, WY said there used to be an asphalt plant on Dorn Ready Mix. Prices were discussed. He said they can make 300 ton an hour at capacity. When asked about dust, would they be opposed to using water trucks. Rob Havens said they have used water logs before and could do the same on this application. Rob Havens said other people besides themselves use Barlow Road.

Nick Erker said the City of Fort Morgan uses this road also. But he stated the applicant is the one asking for an amended Special Use permit.

It was moved by Robert Pennington and seconded by Bob Elrick to approve this Amended Special Use Permit for Green Brothers, Inc. as applicant and McAtee Construction Company as landowner to expand the original Special Use Permit #94 BCC 51 to 78.89 acres from the current 55.60 acres to allow mining, processing, asphalt production and reclamation, and send it on to the Morgan County Board of Commissioners with the following condition:

- 1. 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.**
- 2. Applicant shall be responsible for dust mitigation of Barlow Road and access to their pit.**

Motion carried 5-2 with Nathan Troudt and Allyn Wind having the dissenting votes.

Morgan County Zoning Regulation Amendments

Proposed Amendments to the Morgan County Zoning Regulations regarding Commercial Mobile Radio Service (CMRS), as described below.

A RESOLUTION AMENDING VARIOUS SECTIONS MORGAN COUNTY ZONING REGULATIONS CONCERNING WIRELESS SERVICE FACILITIES

Pam Cherry read her File Summary as follows:

This resolution will completely repeal definitions in sections 1-125, 1-255, 1-285, 1-520, 1-625 and 1-850 of the Morgan County Zoning Regulations. Sections 4-705 through 4-730 will be repealed and replaced. The current regulations as well as the draft of the proposed amendment are included in your packets.

The purpose of this amendment is to bring Morgan County Zoning Regulations related to Commercial Mobile Radio Systems into compliance with the Federal Communications Corporation Section 6409(a) (Middle Class Tax Relief and Job Creation Act of 2012 or Spectrum Act) and Colorado House Bill 17-1193 signed into law in April 2017 and took effect in July 2017.

The Telecommunications Act of 1996 gave local governments authority in the placement, construction and modification of wireless service facilities. The Spectrum Act governs local government's review of land use application for wireless telecommunication tower and base stations. House Bill 17-1193 provides procedural requirements and regulations for installation of "small cell facilities" which are often in the public right-of-way.

The Spectrum Act Section 6409(a):

limits a local government's ability to regulate land use practices for certain telecommunications facilities. The section requires that a local government shall approve requests for modification of existing towers or

base stations that don't substantially change the dimension of the facility. This could include collocation of new equipment, removal of equipment or replacement of equipment. The Act provides lengthy clarification of the terms base station, tower and substantial change (see draft regulations Section 4-710 definitions).

Section 6409(a) imposes rules on the review of applications for modification to existing base stations and towers. Documentation requirements for these land use applications are limited to what is necessary to determine whether the modification is a substantial change the dimensions of an eligible facility. The local government is limited to a sixty day review period, a thirty day limitation to determine whether the application is complete, if not complete, then the sixty day clock begins again. If a local government fails to approve or deny an application within the sixty days the application is deemed granted with notification of the local government by the applicant.

Under the current zoning regulations, Section 1-520 (Freestanding CMRS Facility), Section 1-625 (Micro Cell or Repeater CMRS Facility) and Section 1-850 (Structure, Roof or Building Face Mounted CMRS Facility) would fit within the definition of a telecommunications tower or base station under Section 6409(a).

The review process of 4-175(A) CMRS facilities are permitted as conditional or special review uses (depending on the zone district) subject to restrictions and requirement including setbacks and height restrictions, the number and dimensions of antenna on the facility. Limitations on setbacks and heights are likely to conflict with an expansion to the height of an existing tower or base station without a substantial change. Morgan County's conditional use and use by special review procedures may require information and documentation that is no longer permissible under Section 6409(a). The County may enforce existing Zoning Regulation for new CMRS facilities.

HB-17-1193 – Small Wireless Service Infrastructure:

amends permitting procedures for telecommunication services, specifically “small cell facilities often may be most effectively deployed within the public right-of-way” and that “access to local government structures is essential to the construction and maintenance of wireless service facilities or broadband facilities”.

HB 17-1193 expands the definition of small cell facility to include micro wireless facilities; neither definition currently appears in the Morgan County Zoning Regulations. These definitions are included in the draft of the proposed regulations. The bill further requires an expedited 90-day permitting process for broadband facilities for location or collocation of a small cell facility or a small cell network or replacement/modification. Siting, Mounting, placement, construction and operations of a small cell facility or network is a use by right in any zone district.

Access to right-of-way includes the right to construct, maintain and operate lines of communication, switches and small cell facilities and small cell networks and obtain a permanent right-of-way for these facilities. This right extends to a telecommunications provider to locate small cell facilities and networks on light poles, light standards, traffic signals and utility poles when owned by the government entity.

Local governments may regulate small cell facilities when they fail to comply with applicable law, upon notice and an opportunity to cure the noncompliance. The local government is not permitted to impose fees or require an application or permit for installation, placement, operation, maintenance or replacement of micro wireless facilities that are suspended on cable operator-owned cables strung between existing utility poles. Local government may require a single-use right-of-way permit for installation placement, operation, maintenance or replacement of micro wireless facilities if working in the travel lanes,

pavement is disturbed, limited access rights-of-way, or precautions are necessary to protect public infrastructure or its operation.

Broadband providers are given the power to contract with private property owners to obtain right-of-way for construction, maintenance and operation of a facility. Local government may not request or receive payment from broadband provider in excess of amount determined to be reasonable and fair as determined by the FCC formulas.

Pam recommended that the Planning Commission refer a recommendation of approval to the Board of County Commissioners.

Kathryn Sellars, County Attorney, reviewed these amendments with the Planning Commission. She said these amendments will bring our regulations into compliance with the Federal Communications Corporation and Colorado House Bill 17-1193. She noted that the new regulations will allow small cell towers as a Use by Right in the Morgan County Zoning Regulations.

Jon Becker, representing Viaero, is a sponsor of this “Bill”. He noted that a small cell is an entity of itself, a structure of its own. He was here to ask the Planning Commission to table this review hearing on Amendments for the CMRS facility. He hopes to make these amendments much clearer for everybody and he wants to add a few more definitions such as broadband and small wireless facilities. He is asking for more time to complete this and he was not aware of this meeting in time to make corrections.

PUBLIC COMMENTS OPEN

Those in favor: none

Those opposed: none

PUBLIC TESTIMONY CLOSED

It was moved Mike Bailey and seconded by Bob Elrick to TABLE the proposed Amendments to the Morgan County Zoning Regulations regarding Commercial Mobile Radio Service (CMRS), as described below:

- 1. Sections 1-125, 1-255, 1-285, 1-520, 1-625 and 1-850 of the Morgan County Zoning Regulations are hereby repealed in their entirety.**
- 2. Sections 4-705 through 4-730 are hereby repealed in their entirety and reenacted.**

until their next meeting scheduled for August 13, 2018 at 7:00 P.M. Motion carried 7-0.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Jody Meyer, Planning Assistant