

COMMISSIONERS PROCEEDINGS 231

BOARD OF COUNTY COMMISSIONERS Minutes of Meeting August 16, 2018

The Board of Morgan County Commissioners met Thursday, August 16, 2018 at 9:31 a.m. with Chairman Mark Arndt, Commissioner James Zwetzig and Commissioner Laura Teague in attendance. Also present was Morgan County Planning and Zoning Planning Director/Floodplain Administrator Pam Cherry and County Attorney Jeff Parker. Chairman Arndt asked all those present for today's hearing to state their name and title.

PUBLIC HEARING

Chairman Arndt called the hearing to order at 9:32 a.m. in the Assembly Room of the Morgan County Administration Building. Present were Chairman Mark Arndt, Commissioner Laura Teague and Commissioner James Zwetzig. Also present was Morgan County Planning and Zoning Planning Director/Floodplain Administrator Pam Cherry and County Attorney Jeff Parker.

Applicant: Tim Naylor/AGPROfessionals
Landowners: Empire Dairy

Legal Description: A parcel of land in the W1/2 SE1/4 of Section 32, Township 4, Range 60 West of the 6th p.m., Morgan County, Colorado; aka 1473 Road S, Wiggins, CO 80654

Reason: To Amend a Special Use Permit granted by Resolution 2008 BCC 35 dated September 30, 2008 nunc pro tunc September 16, 2008.

Chairman Arndt asked Morgan County Planning and Zoning Planning Director/Floodplain Administrator Pam Cherry to present the file at which time Ms. Cherry read aloud the file. (Refer to transcript)

Exhibit 1 – email read written by Bruce Bass was introduced and asked to be entered into the record

At this time, Chairman Arndt asked the applicants for comments. (Refer to transcript)

Exhibit 2- Information provided by the applicant from Kellar Engineering

At this time, Chairman Arndt opened the matter for public comment. (Refer to transcript)

Rena Baessler spoke in opposition to the application. (Refer to transcript)

Exhibit 3 – Information provided by Rena Baessler who outlined the exhibit as to number of animal units reported to the State by Empire Dairy, and additional documents attached

Monica Mika spoke in opposition to the application, stating she is here representing the Baessler's. (Refer to transcript)

Exhibit 4 – Photo of the Public Hearing Notice documenting today's hearing, as provided by Monica Mika

Chuck Miller spoke in regards to the application (Refer to transcript)

Public comment was closed at 11:04 a.m. and the applicant was given the opportunity to speak in regards to the public comments received, at which time, applicant's attorney, Robert James did so. (Refer to transcript)

At this time a motion was made by Commissioner Teague to move into executive session with County Attorney Jeff Parker stating the purpose of the executive session as being to hold a conference with the County Attorney to allow for legal advice as cited in C.R.S. 24-6-402(4)(b). Commissioner Zwetzig seconded the motion and motion carried 3-0. At 11:10 a.m., the Board and County Attorney Jeff Parker left the meeting room to go into executive session.

Commissioner Zwetzig made a motion to come out of executive session, and Commissioner Teague seconded the motion and motion carried 3-0. Chairman Arndt reconvened the meeting at 11:35 a.m.

County Attorney certified that all three Commissioners, Planning Administrator Pam Cherry and himself were present during the executive session, stating that all discussions held were attorney client privileged and no recording of the executive session was retained.

Chairman Arndt asked that it be noted that the applicant accepted moving forward without his attorney present and the meeting reconvened after a brief recess. (Refer to transcript)

At this time, Chairman Arndt moved to discussion and decision. (Refer to transcript)

County Attorney Jeff Parker stated for the record, Mr. James joined the meeting at 11:46 a.m. and the matter continued with discussion and decision (Refer to transcript)

Discussion ensued with Chairman Arndt asking that any action be made in the form of two separate motions (Refer to transcript)

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Commissioner Teague made a motion to approve the applicant's request to change the access to the facility off of County Road S, (Refer to transcript) Chairman Arndt seconded the motion. At this time, further discussion ensued (Refer to transcript). Motion carried 2-1 with Commissioner Zwetzig being the dissenting vote.

County Attorney Jeff Parker requested direction from to prepare the document to memorialize the decision made today which would be considered September 4, 2018. A motion was made by Commissioner Teague directing this action be taken, seconded by Chairman Arndt, and motion passed 2-1 with Commissioner Zwetzig being the dissenting vote. (Refer to transcript)

Being no further business the meeting was then adjourned at 12:50 p.m.

Respectfully Submitted,

Susan L. Bailey
Clerk to the Board
(Minutes ratified September 25, 2018)

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

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

s/Laura D. Teague
Laura D. Teague, Commissioner

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

(SEAL)

ATTEST:

s/ Susan L. Bailey
Susan L. Bailey

Transcript of the Testimony of

MORGAN COUNTY BOARD OF COUNTY COMMISSIONERS HEARING
August 16, 2018

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v
-

Suzanne Reid, RPR, CSR

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MORGAN COUNTY
BOARD OF COUNTY COMMISSIONERS HEARING
August 16, 2018

Morgan County Administration Building
231 Ensign Street
Fort Morgan, CO 80701

Mark Arndt, Chairman of the BOCC
Laura Teague, Commissioner
Jim Zwetzig, Commissioner

Jeff Parker, County Commissioner
Pam Cherry, County Planning Administrator
Connor Woodall, County Intern

Susan Bailey, Clerk
Ranee Aleman, Deputy Clerk

1 record, we have a court reporter recording this today.
2 I'm going to ask her that she feel free to speak up if
3 people are cutting off or she's not getting a good
4 record. So just for the record, you've got to be a
5 little more careful with the court reporter than a tape
6 recorder. Thanks.

7 MR. ARNDT: Pam, would you present the file.

8 MS. CHERRY: Okay. This application is for
9 an amendment to a special use permit that was granted
10 by Resolution 2008 BCC 35, which is included in the
11 packet for your reference.

12 The property is located in Section 32,
13 Township 4 North, Range 60 West of the 6th p.m., Morgan
14 County, Colorado. The address is 1473 County Road S,
15 Wiggins, Colorado. The property is zoned agriculture
16 production and is 283 acres used as a dairy and
17 farmland.

18 The applicant is requesting approval of an
19 amendment to two conditions in the original approval,
20 specifically an amendment to Condition 3.a.iv and
21 deletion of Condition 3.a.vi that currently reads as
22 follows:

23 3.a.iv: Access from the facility to County
24 Road S shall be limited to three county approved
25 driveways between County Road 2 and Highway 144. The

1 P R O C E E D I N G S

2
3 MR. ARNDT: Good morning. The time is
4 9:31 a.m. Today's date is Thursday, August 16, 2018.
5 If we could go around the room and, for the record,
6 please state your name. Let's start with Jeff.

7 MR. PARKER: I'm Jeff Parker. I'm the County
8 Attorney.

9 MS. CHERRY: Pam Cherry, Morgan County
10 Planning Administrator.

11 Connor Woodall, Morgan County Intern.

12 MR. ZWETZIG: Jim Zwetzig, Morgan County
13 Commissioner District 3.

14 MR. ARNDT: Mark Arndt, Morgan County
15 Commissioner.

16 MS. TEAGUE: Laura Teague, Morgan County
17 Commissioner.

18 MS. BAILEY: Susan Bailey, Morgan County
19 Clerk.

20 MS. ALEMAN: Randee Aleman, Deputy Clerk.

21 MR. ARNDT: Will the applicant and landowner
22 please come forward to the -- to the table. The
23 applicant being Tim Naylor, AGPROfessionals; owner
24 being Empire Dairy, Mr. Norm Dinis.

25 MR. PARKER: Commissioner Arndt, just for the

1 remainder of the facility fronting County Road S shall
2 be fenced off to reduce ingress and egress onto County
3 Road S.

4 3.a.vi: The applicant must at their own
5 expense pave County Road S to meet county standards
6 from County Road 2 to Highway 144. This can be done
7 through grants, noting that the applicant will be
8 responsible for applying grants and meeting all
9 requirements. This can be done through a county bid
10 process with applicant responsible for administrative
11 costs. Applicant must notify the County of their plans
12 for financing this project no later than May 1st, 2009.

13 Applicant's requested changes:

14 3.a.iv: Access from the facility to County
15 Road S shall be limited to nine driveways for access to
16 the facility along County Road S between County Road 2
17 and Highway 144.

18 And they're requesting deletion in its
19 entirety of 3.a.vi.

20 The criteria for special use permits:
21 Amendments to special use permits are governed under
22 Section 2-430 of the County and Zoning Regulations.
23 Under that section, amendment of special use permits
24 are subject to the same criteria as the original
25 permit.

<p style="text-align: right;">Page 5</p> <p>1 The following criteria are used by 2 Planning -- are to be used by Planning Commission and 3 the Board of County Commissioners when reviewing an 4 application for a special use permit: 5 (A) The use and its location as proposed are 6 in conformance with the Morgan County Comprehensive 7 Plan. 8 (B) All the application documents are 9 complete and present a fair picture of how uses are to 10 be arranged on the site or within Morgan County. 11 (C) The site plan conforms to the district 12 design standards of these regulations. 13 (D) All on- and off-site impacts have been 14 satisfactorily mitigated either through agreement, 15 public improvements, site plan requirements, or other 16 mitigation measures. 17 (E) The special use proposed has been made 18 compatible with the surrounding uses and adequately 19 buffered as determined by the County. 20 (F) The special use poses only the minimum 21 amount of risk to public health, safety, and welfare as 22 set by federal, state, and county regulations, 23 whichever is the strictest. 24 (G) The special use proposed is not planned 25 to be developed on nonconforming parcel.</p>	<p style="text-align: right;">Page 7</p> <p>1 the three that were originally permitted versus the 2 nine that are constructed and used. 3 Analysis: The use and its location as 4 proposed are in conformance with the Morgan County 5 Comprehensive Plan. The property is located in the 6 northwest planning area as defined by the Morgan County 7 Comprehensive Plan. Areas north of the Wiggins 8 activity center are home to very large dairies and 9 feeding operations. 10 In this area, the Comprehensive Plan will, a, 11 encourage the placement of livestock facilities in 12 areas where very low residential density, b, encourage 13 the preservation of agricultural production land to 14 continuation of this important industry. The quest to 15 amend the conditions will encourage the preservation 16 and continuation of the industry. 17 All application documents are complete and 18 present a clear picture of how uses are to be arranged 19 on the site or within Morgan County. 20 The application was complete and presents a 21 clear picture of the proposed driveway locations on the 22 site. 23 The site plan conforms with the district 24 design standards and regulations. 25 The site plan meets the district design</p>
<p style="text-align: right;">Page 6</p> <p>1 (H) The applicants have adequately documented 2 a public need for the project, all pertinent technical 3 information, and adequate financial resources to 4 implement it and has paid all fees and review costs 5 levied by the County for application processing and 6 review. 7 (I) For any special use requiring a supply of 8 water that the applicant has demonstrated a source of 9 water which is adequate for the proposed use in terms 10 of quantity and reliability, and in the case of human 11 consumption, quantity, quality, and reliability. 12 Public comments and concerns: 13 On May 15th, 2018, notifications of this 14 hearing were sent to property owners within 1,320 feet 15 of the subject property. As of the date of this 16 report, August 8, 2018, one comment has been received 17 that is in support of the proposal. 18 This application requests the amendment of 19 one condition, the number of driveways, and the 20 deletion of another, the paving road of Road S. The 21 terms of these conditions have been a topic of 22 discussion for a number of years. Some of the 23 discussions have included other owners in the area of 24 Empire Dairy. On previous occasions those owners have 25 requested the roadway be paved and accesses limited to</p>	<p style="text-align: right;">Page 8</p> <p>1 standards of the Morgan County zoning regulations 2 pursuant to Section 4-200 attached hereto. 3 All on- and off-site impacts have been 4 satisfactorily mitigated either through agreement, 5 public improvements, site plan requirements, or other 6 mitigation measures. 7 Impacts to surrounding properties have been 8 mitigated and documented in the attached nuisance plan 9 that was approved as part of the 2008 application. 10 Also included in the packet is a paved road 11 policy that was drafted and signed by the county 12 commissioners in 2009. Road S is not a high priority 13 road. 14 Road and Bridge makes no recommendation 15 regarding the surface of the roadway, but has no issue 16 or concerns with the increase in the number of 17 driveways proposed by the applicant. Increasing the 18 number of driveways is also approved. Comments from 19 Road and Bridge are included in the packet. 20 The special use proposed has been made 21 compatible with the surrounding uses and adequately 22 buffered as determined by the County. Buffering from 23 adjacent agricultural uses is not necessary as the use 24 is compatible with other agricultural uses in the area. 25 Having the number of driveways and removing the paving</p>

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1 requirement will not cause incompatibility with
 2 adjacent agricultural uses.
 3 Special use poses only the minimum amount of
 4 risk to public health, safety, and welfare as set by
 5 federal, state, or county regulations whichever is the
 6 strictest. Amending the 2008 resolution to increase
 7 the number of driveways and eliminate the paving
 8 requirement will not increase risk to public health,
 9 safety, or welfare.
 10 The special use proposed does not plan to be
 11 developed on a nonconforming parcel. The proposed
 12 amendment to the special use will not result in
 13 nonconforming parcel.
 14 The applicant has adequately documented a
 15 public need for the project, all pertinent technical
 16 information and adequate financial resources to
 17 implement it, and has paid all fees and review costs
 18 levied by the County for application processing and
 19 review.
 20 The public need for the project demonstrated
 21 with the original application for the special use has
 22 not changed, and the project will not be substantially
 23 changed by the requested amendment to increase the
 24 number of driveways and to eliminate the requirement
 25 for paving to the condition. The applicant has paid

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1 all fees and costs.
 2 For any special use requiring a supply of
 3 water, the applicant has demonstrated a source of water
 4 which is adequate for the proposed use in terms of
 5 quantity and reliability; and in the case of human
 6 consumption, quantity, quality, and reliability. The
 7 requested amendments do not affect the current supply
 8 of water used by the special use on the property.
 9 Therefore, there is no evidence that additional water
 10 is needed as a result of the requested amendment.
 11 Staff comments: There is an attached e-mail
 12 from Public Works Director Bruce Bass regarding they
 13 have no recommendation on the surface -- surface
 14 finishing of County Road S. And the number of
 15 driveways to be permitted, they have no objection to
 16 the nine requested, but did request relocation of the
 17 one closest to 144.
 18 Yeah. I'll have to look at that.
 19 The Planning Commission reviewed this
 20 application at their meeting June 18th and recommended
 21 approval of the amendment on a vote of 4 in favor and 1
 22 opposed subject to two conditions. If Empire goes over
 23 7,000 animal units, the applicant must pave County
 24 Road S. If Empire Dairy is below 7,000 animal units,
 25 the applicant does not have to pave Road S.

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1 I recommend approval of the amendment as
 2 proposed by the applicant.
 3 MR. ZWETZIG: Mr. Chairman, if I could, can I
 4 hand Pam that e-mail so she can read into the record
 5 correctly what Bruce Bass stated?
 6 MR. ARNDT: Yes.
 7 MS. CHERRY: Okay. This is an e-mail from
 8 Bruce Bass dated June 7th, 2018:
 9 Dick Early, Bridge Manager, inspected the
 10 site and based on the current use of the road would
 11 have no issue with up to nine possible driveways total
 12 for access to Empire Dairy. I am attaching
 13 documentation of one previous driveway letter issued by
 14 Road and Bridge for this property. This is the only
 15 access we were able to find documentation on.
 16 Prior to Road and Bridge issuing letters, it
 17 is my understanding that the commissioners issued
 18 approval for driveways. It's possible there were other
 19 preexisting driveways to this property, but Road and
 20 Bridge does not have that documentation. This
 21 preexisting access will be included in the total above.
 22 Road and Bridge currently has requests for
 23 nine driveway accesses to the property. The existing
 24 access mentioned above is included in the new request.
 25 Road and Bridge has not approved any of these requests

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1 at this time. I am attaching the nine requests that
 2 were submitted to us by someone from Empire Dairy on
 3 April 12th, 2018.
 4 Of the nine requests, the only driveway
 5 location Road and Bridge would have an issue with is
 6 Entrance Number 9, the last driveway at the east end of
 7 Road S and just west of Road 2 due to proximity of
 8 intersection of County Road 2. And it looks like there
 9 is a loading chute situated to close enough to County
 10 Road S that would require a truck loading at that
 11 location to be stopped across lanes of traffic.
 12 See attachments. Respectfully, Bruce Bass,
 13 Public Works Director, Morgan County Government,
 14 (970) 542-3560.
 15 MR. ZWETZIG: Thank you.
 16 MR. ARNDT: Any questions of Pam Cherry?
 17 MS. TEAGUE: Not at this time.
 18 MR. ARNDT: Not at this time.
 19 At this time would the applicant please make
 20 sure that you state your name for the record and
 21 present your case.
 22 MR. JAMES: Thank you. I'll begin. My name
 23 is Robert James. I'm the attorney representing Norm
 24 Dinis and Empire Dairy.
 25 Quickly, just to address the last driveway,

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1 Driveway 9, I believe, where it was in proximity with
 2 the loading chute and the road. From speaking with
 3 Empire Dairy, it's -- what they explained is, when that
 4 loading chute is used, the truck that's backed up to it
 5 may block one lane of that road. They would make sure
 6 that they would have somebody there to make sure that
 7 they could route traffic around that location. But
 8 that loading chute has been there for quite a while and
 9 is a concrete structure, I believe, and it's something
 10 they use, but not necessarily all the time. So we are
 11 requesting that that location still be approved.
 12 Empire Dairy will make sure that somebody is there to
 13 route traffic, if necessary.

14 The bigger issue, obviously, is the paving of
 15 the road. And I know that this has been going on for
 16 quite a while, but I would like to just at least point
 17 out and look at the overall intent of this original
 18 resolution and the entire project. The entire project
 19 was based on a proposal from Empire to add a completely
 20 new milking parlor at their location, which would
 21 increase milk production capacity and would also
 22 increase the number of employees by at least 50.

23 Then when they got this approval, it was
 24 anticipated that the impact on Road S based on a
 25 brand-new milk parlor may be significant and that the

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1 paving of the road would be triggered upon the
 2 expansion to include that. There has been fluctuation
 3 with regards to animal units at the dairy. I think the
 4 last thing that was included in packet showed that the
 5 number of animal units was right around 13,000 plus a
 6 little bit. It's been anywhere from 7,000 to 13,000.

7 What was included in that is the fact that
 8 with the existing facilities at that dairy, they have
 9 been maxed out for milk production since 2002. They
 10 can't produce more. Based on the fact that they
 11 can't -- there's only 24 hours in a day, they can only
 12 put a certain number of cows through that milking barn
 13 and those cows produce a finite number of pounds of
 14 milk per day. So they have not increased production,
 15 which means they have not increased the need for
 16 further trucks, for any other traffic. They don't have
 17 any more employees.

18 The issues that were brought forth in 2008 to
 19 get this special use permit that related to the impact
 20 on the road, none of those things have occurred. When
 21 there are fluctuations with regards to animal units, it
 22 may increase the number of feed trucks per day by one
 23 or two. It may increase the number of days in harvest
 24 storage for feed to be packed at the dairy by two or
 25 three days a year. But it's not something that makes a

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1 direct and permanent impact on the road.
 2 The intent in 2008, I think from all parties,
 3 was to make sure all aspects of the possible impacts of
 4 an expansion of that area were covered in the special
 5 use permit. Due to economic and other factors, the
 6 expansion never occurred; therefore, while the number
 7 of animals may go up and down, the milk production
 8 capacity at that dairy has not changed and hasn't
 9 changed since 2002.

10 I think that limiting or eliminating or
 11 conditioning the removal of the proposal based on
 12 animal units is a pretty arbitrary way of addressing
 13 things when there's no impact -- based on the animal
 14 units, there's no impact on what that road goes through
 15 and what kind of traffic is on that road.

16 We're asking that this commission just go
 17 ahead and remove the paving requirement at this point
 18 in time, because obviously, if Empire were to go back
 19 to ask to build a new milking parlor, they would almost
 20 have to start the process again to make sure it's in
 21 compliance with building code presently in place, to
 22 make sure they complied with any other commission --
 23 county ordinances that are in place that have changed
 24 since 2008. They have lost their vesting periods.
 25 That has been gone now for close to five years.

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1 So that's the intent as I read it and as the
 2 dairy looked at it in 2008, trying to make sure that,
 3 as a matter of public policy, they took care of all the
 4 possibilities. The factors that prevented them from
 5 building that milk parlor still exist today. They're
 6 not looking at expanding. They're not looking at
 7 adding a parlor at this point in time.

8 As a housekeeping measure, I would just note
 9 that on page 15 of the minutes that were from Planning
 10 and Zoning, there's a statement, looks like attributed
 11 to Tim Naylor, saying the milking parlor was built but
 12 that employees have been increased. I would tell the
 13 Commission at this point that that milking parlor was
 14 not built. There never has been that expansion. There
 15 have been operational changes at the dairy, including
 16 machinery sheds to protect the machinery. There's
 17 been, I believe, building permits sought to cover
 18 corrals, but there have been no building permits to
 19 expand production.

20 So with that, I'll turn it over to Tim Naylor
 21 to talk about some of the other issues regarding the
 22 road. Thank you.

23 MR. NAYLOR: Good morning, commissioners.
 24 Tim Naylor with AGPROfessionals, 3050 67th Avenue,
 25 Greeley.

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1 I have a document from Kellar Engineering I'd
 2 like to enter into the record, if I may provide that to
 3 Mr. Parker.
 4 MR. ARNDT: Yes. And if you'll also please
 5 state what the document is.
 6 MR. NAYLOR: That would be fine. There
 7 should be eight copies.
 8 MR. PARKER: And I think what I'll do for the
 9 record is keep track of the different exhibits that are
 10 getting added. I think the first new exhibit that was
 11 added was the letter from Bruce Bass. I'm going to try
 12 to keep track of this for everybody. We are going to
 13 call that Exhibit 1.
 14 And then this will be the next exhibit, and
 15 I'm going to call this Exhibit 2. And it's the July
 16 2018 letter from Kellar Engineering admitted by the
 17 applicant, so we have a better record of what's being
 18 admitted.
 19 MR. ARNDT: Okay.
 20 MR. NAYLOR: And I don't know if it would be
 21 appropriate to ask that maybe it be read into the
 22 record. If you would prefer -- or I can recap, if that
 23 would be appropriate.
 24 MR. PARKER: It's up to the commissioners.
 25 MR. ARNDT: I would like to have it read into

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1 the record.
 2 MS. CHERRY: I agree.
 3 MR. PARKER: I got a heck of a sore throat,
 4 so I'm going to pass this on to either your -- or to
 5 Mr. Naylor to read it. Sorry to pass on the hard work.
 6 MS. CHERRY: The letter is dated July 12,
 7 2018, from Kellar Engineering, K-e-l-l-a-r, to
 8 AGPROfessionals, 3050 67th Avenue, Suite 200, Greeley
 9 Colorado 80634, regarding Empire Dairy, County Road S
 10 between State Highway 144 and State Highway 34.
 11 Morgan County paved roads policy, Morgan
 12 County, Colorado has identified certain roads within
 13 the county road system to be high impact roads that
 14 should be maintained as paved roads. These roads are
 15 those that are important to link communities to state
 16 highways to services and to markets. The importance of
 17 paving roads is to provide adequate and safe facilities
 18 for the public while balancing the cost of maintaining
 19 these paved roads. It is important to evaluate the
 20 need and other impacts when deciding to pave a public
 21 roadway. Once paved, the paved roadway surface becomes
 22 a perpetual maintenance cost and responsibility that
 23 continues forever. Therefore, it is important to
 24 review the details associated with paving a stretch of
 25 roadway on a case-by-case basis.

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1 Kellar Engineering, LLC, has reviewed the
 2 requirement to pave County Road S adjacent to Empire
 3 Dairy project site between State Highway 144 and State
 4 Highway 34. State Highway 144 and State Highway 34 are
 5 Colorado Department of Transportation maintained
 6 highways, and County Road S is a county maintained
 7 roadway.
 8 When evaluating the potential traffic impacts
 9 of paving County Road S, it is important to consider
 10 that this will result in increasing traffic to County
 11 Road S. Due to the location and alignment of County
 12 Road S between two state highways, State Highway 144
 13 and State Highway 34, paving County Road S would result
 14 in directing some traffic from a state-maintained
 15 highway to a county road back to a state highway.
 16 This increase in traffic on County Road S
 17 would result in an increased maintenance burden upon
 18 the county for this newly paved roadway.
 19 The increase in traffic on County Road S
 20 would result in increased roadway maintenance dollars
 21 for this stretch of roadway, i.e., chip seals, crack
 22 sealing, edge treatment repair, striping and overlays.
 23 Additionally, as traffic increases,
 24 statistics from the International -- or the Institute
 25 of Transportation Engineers publications demonstrate

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1 that the crash rates also increase.
 2 Therefore, based upon specific circumstances
 3 associated with this situation, Kellar Engineering
 4 recommend not paving County Road S at this time. If
 5 you have questions or need anything further, please do
 6 not hesitate to contact me at (970) 219-1602 or
 7 skellar@kellarengineering.com. That is
 8 k-e-l-l-a-r-e-n-g-i-n-e-e-r-i-n-g-c-o-m. Respectfully,
 9 Sean, S-e-a-n, K. Kellar, K-e-l-l-a-r, Professional
 10 Engineer, P-E, and Professional Transportation -- PTOE.
 11 What is the T-O-E, Tim?
 12 MR. NAYLOR: I think Professional Traffic --
 13 I don't know.
 14 MS. CHERRY: -- PTOE 38650, Kellar
 15 Engineering, LLC, and it's signed by Sean Kellar with
 16 his Colorado registered professional engineer stamp,
 17 dated July 12, 2018.
 18 MR. NAYLOR: Thank you, Ms. Cherry. I
 19 appreciate you reading that into the record.
 20 As indicated by Kellar, Highway 134 directs
 21 traffic to Highway 34 from the south. And Highway 34
 22 is an east-west roadway. County Road S intersects
 23 those two for 1 mile between 144 and Highway 34.
 24 As Mr. Kellar has indicated, redirecting
 25 traffic that's already on a state-maintained highway

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1 onto a county road and back to a state highway is, I
 2 think, is irresponsible. The maintenance of that road
 3 and the traffic that is -- that is directed onto that
 4 would become a burden to the County. Whereas if it
 5 stays on the state highway to the state highway, it
 6 doesn't become a burden.

7 I would also direct you to page 3 of that
 8 document, which is a map. And in that map, we've put
 9 some boxes in there. The one on the far left upper
 10 corner is the intersection of Highway 34 and
 11 Highway 144. And as you can see, that is a full
 12 movement intersection. It is designed to handle the
 13 amount of traffic that is coming off of 144 and onto
 14 34. The other inset is -- to the right is the
 15 intersection at County Road S and Highway 34. That is
 16 a much less significant intersection. It is not
 17 designed to carry higher capacities which would be
 18 directed if this road were paved.

19 Therefore, we request that this road not be
 20 required to be paved. It doesn't meet the criteria of
 21 the paving policy of the county, and it does not
 22 benefit the county in directing traffic. It actually
 23 redirects traffic in an area that we shouldn't be
 24 directing traffic. To move traffic off of the state
 25 highway in front of a facility that does have larger

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1 impacts on the road. Just from the sheer farming
 2 aspect of it, you have slow-moving vehicles that
 3 operate along County Road S. To put a higher speed
 4 vehicle is going to be dangerous.

5 Therefore, we do request and appreciate the
 6 support of Planning staff in our request to remove the
 7 requirement for paving and also to allow for up to nine
 8 driveways.

9 I'd be happy to answer any questions that you
 10 have. That's really our request.

11 MR. ARNDT: Any questions?

12 MS. TEAGUE: I have one. Was the loading
 13 chute on the original site plan?

14 MR. NAYLOR: Yes, ma'am. It's been there
 15 since the inception of the dairy, I believe. Norm can
 16 speak to that. It's always been there.

17 MS. TEAGUE: All right. But it was on the
 18 original site plan map that was approved in --

19 MR. NAYLOR: I believe so, but I'd have to
 20 look back at the map.

21 MS. TEAGUE: Thank you.

22 MR. ARNDT: Okay. The only thing, I guess,
 23 that is more of a comment on this letter. I guess I
 24 would fail to see that -- I fail to see that there
 25 would be an increase of traffic -- just thinking

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1 logistically, will there be an increase of traffic --
 2 somebody going between Highway 144 and then going back
 3 onto 34, logistically, I don't see that happening.

4 Is that what I'm listening to?

5 MR. NAYLOR: We believe it would be because
 6 it's actually a shortcut. You are going a mile north
 7 and then coming back. So people would see that as a
 8 shortcut. They would make that right turn, go across
 9 in front of the dairy, because it does cut off a little
 10 bit of drive time to go -- instead of going to the
 11 highway -- all the way north of 144 and 34 and then
 12 coming back southeast, you go straight east and come --
 13 so it would direct traffic possibly to --

14 MR. ARNDT: Anybody going to the east.

15 MR. NAYLOR: Anybody going to the east would
 16 do that. And -- and anybody going back to the west
 17 would jump off of Highway 34, shoot across in front of
 18 the dairy, and make a left down County Road 1 or
 19 Highway 144. So it does -- it does create a shortcut.
 20 And inherently, if people see a shortcut, they're going
 21 to use it.

22 And if we can -- if we can allow that to be a
 23 dirt road, dirt roads inherently slow traffic down.
 24 People don't drive as fast. They're not going to do 70
 25 miles an hour on a dirt road. If it's paved, we might

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1 as well put a starting gate at the front and just --
 2 people are going to be doing 70 miles an hour down that
 3 road the whole way. It's going to be much more impact
 4 to that section.

5 So I would -- I would -- I do believe that
 6 Mr. Kellar -- he's had 20 years -- he was a traffic
 7 engineer for the City of Loveland and Larimer County,
 8 and now he has a private practice. So he is very
 9 knowledgeable of the traffic situations and how to
 10 mediate those situations. And his professional opinion
 11 is that this traffic should be maintained on the state
 12 highway to -- two state highways rather than directing
 13 it onto a county road.

14 MR. ARNDT: Thank you for your explanation.

15 Any other questions? Do you have anything
 16 else that you wish to --

17 MR. NAYLOR: We're done with our
 18 presentation. We'd be happy to answer any more
 19 questions.

20 MR. ARNDT: I do have a question, and it is
 21 about the fencing in between the nine existing -- the
 22 nine driveways that are being asked for today. What is
 23 the intent -- what type of fencing, because that
 24 portion has not been -- you've not ask for that to be
 25 withdrawn. So what can you tell me, because an

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1 exact -- what is the exact construction of this fencing
 2 going to be?
 3 MR. DINIS: Norm Dinis, Empire Dairy. What
 4 you see is what you get. It's already fenced. The
 5 fencing is there.
 6 MR. ARNDT: So what is on the ground today,
 7 you're asking that that be approved that it met the
 8 approval of the existing permit?
 9 MR. DINIS: Yes.
 10 MR. ARNDT: Any more questions.
 11 MS. TEAGUE: What does the fence look like?
 12 MR. DINIS: T-posts and baling twine.
 13 MR. ARNDT: Do you have any questions on
 14 that?
 15 MR. ZWETZIG: No. It's a public hearing I
 16 want to hear from the public.
 17 MR. ARNDT: Okay. Okay. If you have nothing
 18 else, I'll open it up. I do have a sign up sheet here.
 19 And we'll start with -- is there anybody that would
 20 like to speak in opposition or has questions of the --
 21 that they would like to present?
 22 And I have an opposition on the permit
 23 and so -- we didn't ask whether or not you are in
 24 opposition or support, but we have Rena Baessler, 17223
 25 County Road 2.

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1 It's marked that you wish to speak. Is that
 2 correct?
 3 MS. BAESSLER: Correct.
 4 MR. ARNDT: Please remember we're here to
 5 consider two items: the paving of County Road S,
 6 whether or not that requirement should stay in force or
 7 be lifted; and the expansion of the driveways to a
 8 total number of nine.
 9 MS. BAESSLER: Rena Baessler, 17223 County
 10 Road 2, Wiggins, Colorado. In an effort to keep this
 11 meeting on a timely fashion, I will be restricting my
 12 comments to only the issues addressed in the Planning
 13 Commission meeting. At certain points, I will be
 14 quoting Mr. Dinis and his representatives. If you
 15 would like to hear the audio, I can play that for you
 16 at any time.
 17 Good morning. First and foremost, I would
 18 like to thank Mr. Dinis and his consultants for
 19 attempting to clarify why this permit has been in
 20 violation for ten years. Through the last decade, we
 21 have all witnessed Empire Dairy's apparent
 22 unwillingness to comply with the requests of the County
 23 but were never given a reason why.
 24 Members of the current board have held
 25 meetings with Mr. Dinis and AGPRO representatives.

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1 CORA requests have rebuilt. Demands have been made by
 2 the county. Mr. Dinis simply ignores these requests
 3 and conducts his daily business, all the while other
 4 businesses and Morgan County comply with the same
 5 requests ignored by Mr. Dinis. This hardly seems fair
 6 and lacks equal treatment. Why must others comply with
 7 conditions of a permit when Mr. Dinis does not? And
 8 why do they comply if just given time, the request will
 9 go away.
 10 Throughout the last decade, the citizens of
 11 Morgan County and its representatives have witnessed
 12 Mr. Dinis's and AGPRO's attempt to circumvent the
 13 conditions of this permit. The vacation of the road
 14 and this latest and more creative claim of their lack
 15 of expansion are the most current attempts to validate
 16 their noncompliance.
 17 In the June 18th Planning Commission meeting,
 18 Mr. Dinis and AGPRO claim the road hasn't been paved
 19 because of several reasons. At the last Planning
 20 Commission, Tim Naylor of AGPRO was kind enough to
 21 refer to the Morgan County paved road policy adopted in
 22 2009. It was stated that the -- that County Road S is
 23 not a high impact road. Shortly thereafter, Norm
 24 states that the need for the nine driveways is due
 25 to -- I quote -- "a lot of dairy traffic in and out of

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1 the dairy."
 2 Tim Naylor stated that it just didn't make a
 3 whole lot of sense for the County to cover the cost of
 4 maintaining a paved road. He failed to mention that
 5 the policy also states -- and I'm quoting -- "In many
 6 cases a paved road can be less expensive to maintain
 7 over many years than a gravel road that made need daily
 8 or weekly maintenance."
 9 Additionally the policy also states that the
 10 County will consider paving roads that have become
 11 difficult to maintain as gravel roads because of the
 12 volume and high intensity use of the traffic on those
 13 roads. This statement is the exact reason why past
 14 Planning Commission board members required the paving
 15 of the road, along with the need to mitigate dust
 16 created by the intense use of the road.
 17 County Road S has become almost impossible to
 18 maintain due to the dairy's high intensity of use, so
 19 much so that the dairy attempts to maintain the road.
 20 Due to the use of County Road S as a main artery of the
 21 dairy, one can witness Empire Dairy employees routinely
 22 grading and watering down the road in an attempt to
 23 make the road functional and alleviate the dust. At
 24 times the road is rendered impassable to citizens of
 25 Morgan County due to the dairy's efforts to maintain

1 the road. I ask again, is it good practice to allow a
2 private business owner to maintain a county road, and
3 are they bonded and insured to do such.

4 Mr. Robert James, lawyer for Empire Dairy,
5 states that the reason the road is not paved is due to
6 the fact that no expansion has taken place. In fact,
7 he says, due to the expiring of the vesting, Empire
8 can't expand.

9 The dairy has been operating on the
10 assumption that they were in compliance with the 2008
11 permit, based on a letter from 2009. For whatever
12 reason, the dairy has believed proof of their expansion
13 was based on the construction of a milking parlor and
14 the addition of employees. If this information was
15 relevant to the permit, would not the number of
16 employees prior to the expansion be documented
17 somewhere and mention of the construction of the
18 milking parlor as a benchmark of their expansion?

19 Mr. Dinis claims that the road has not been
20 paved due to the dairy's inability to secure funding
21 through a CDBG. Nowhere in the resolution does it
22 state that the paving is only to be done if the CDBG is
23 received.

24 Mr. Dinis says that he has not increased his
25 employee count. Although we actually wouldn't know if

1 news for Empire Dairy, because as stated by Mr. Dinis
2 several times throughout his testimony, no animal units
3 have been added since 2007.

4 Mr. Dinis and his consultants would like you
5 to believe the dairy has not expanded and has not
6 increased its impact on surrounding land owners.
7 Mr. Dinis was asked directly, not once but three times
8 in the Planning Commission meeting, how many animal
9 units he currently had on-site. Mr. Dinis, with his
10 consultants providing counsel, stated multiple times he
11 did not have over 7,000 animal units. And I would be
12 happy to reference all of those in the audio. Better
13 yet, I encourage you to listen to the Planning
14 Commission meeting.

15 Okay. Wait. I forgot something.

16 And I believe I probably do have copies for
17 everybody in the room or close to it.

18 MR. PARKER: I'll let her describe what this
19 is and then --

20 THE CLERK: Could the clerk please have a
21 copy.

22 MR. PARKER: It's basically a number of
23 documents with the first line saying, Empire Dairy
24 Numbers Reported to the State. So we will mark this as
25 Exhibit 3. I'm not differentiating between applicant

1 this is true because we don't know the employee count
2 now or in 2008.

3 Mr. Dinis says that no milking parlor has
4 been built and that no more animal units have been
5 added since 2007; therefore, he hasn't expanded. In
6 fact, Mr. Dinis said -- I quote -- "We would have had
7 to build a parlor to add animal units. We were milking
8 the maximum amount of animals we could in 2007." And
9 Mr. James just said that they're still producing the
10 same amount of milk -- just remember this -- they're
11 still producing the same amount of milk as they did in
12 2002. When asked by Chairman Ewertz why after ten
13 years Empire shouldn't have to pave the road, Mr. Dinis
14 responded -- I'm quoting -- "We did not expand. We
15 came in at the time and asked for expansion. We didn't
16 do it. We added no animal units." All right then.
17 Finally, we are getting some clarification as to why
18 these conditions have not been met in the last decade.

19 Based upon Mr. Dinis and his consultant's
20 testimony, the Planning Commission determined that the
21 permit was based on the increase in animal units, not
22 just the addition of structures and employees. It was
23 determined by the Planning Commission that the addition
24 of the animal units beyond their previously permitted
25 7,000 would constitute an expansion. This is great

1 and the public's exhibits. We're just going to keep
2 track in from numerical order.

3 MS. BAESSLER: Can I continue?

4 MR. ARNDT: The Exhibit 3 that you just
5 handed out, please go through that, and tell us what
6 you have handed out.

7 MS. BAESSLER: You can thumb through this at
8 your leisure. I will be referring to it real quick.
9 All right.

10 So at this point, I'm confused, because
11 information obtained from a simple CORA
12 request reveals that in 2002, Empire Dairy had 6,612
13 animal units; 2007, 9,900 animal units; 2011, 12,148
14 animal units; 2013, 14,282 animal units; 2017, 13,755
15 animal units. And just to refer back, I don't see how
16 they could be producing the same amount of milk now as
17 they did in 2002 as stated by their lawyer.

18 How can this be? You have to ask yourself.
19 Mr. Dinis stated two months ago that they didn't have
20 over 7,000 units on-site. How can they possibly be
21 milking all these cows when his parlor was at its max
22 capacity in 2007 when they had 9,900 units, which was
23 well over their previously permitted 7,000.

24 As a side note, Mr. Dinis writes a check each
25 fiscal year to the Colorado Department of Public Health

1 and Environment. He pays \$0.06 per head based on his
2 reported animal count. How he can deny there being any
3 governmental oversight when asked must have been
4 forgetfulness on his part.

5 When asked if Empire Dairy would share their
6 reported animal counts, Mr. Dinis stated it was a
7 sealed state record, which is a half truth. Although
8 this information is not available through a CORA
9 request, he omitted mentioning that he receives a copy
10 for his own dairy records.

11 This find us in a peculiar predicament. Are
12 we to believe that Empire Dairy has decreased their
13 animal units since 2017, decreasing their herd by 6,755
14 animals? Really? In retrospect, now that the numbers
15 are before us, Empire Dairy hasn't been under 7,000
16 animal units since 2002. The documentation is clear.
17 These numbers don't lie. In fact, these numbers were
18 reported by Mr. Dinis and witnessed by AGPRO at each
19 one of these site visits.

20 I find it very, very concerning that
21 Mr. Dinis and AGPRO were less than honest at the last
22 meeting. Mr. Dinis and AGPRO signed off of each one of
23 these reports and have since 2002. There is a pattern
24 of consistent growth. Certainly they knew the animal
25 count is and has been well over 7,000 for some time.

1 Apparently, at least the last 11 years. Clearly,
2 Empire has expanded. And somehow, without building a
3 new barn or adding additional employees, they are
4 milking more animals, but the production is the same.

5 If you grant this amendment, give everyone
6 else who has made road improvements back their money,
7 in the last ten years. Save the taxpayers money and
8 increase the staff in the planning department, because
9 all you're really doing is collecting money and issuing
10 permits, and no oversight is necessary.

11 The issue of the road has fallen to the
12 wayside. Years from now what will become important
13 will be the character of the man that this whole
14 process has revealed. I can sleep well at night
15 knowing that my integrity and values have remained the
16 same and have not been compromised. My resolve has
17 remained the same. I haven't lied to my peers. I'm
18 not sure if everyone else in this room can say the
19 same. Thanks.

20 MR. ARNDT: Thank you. Any questions.

21 MS. TEAGUE: No.

22 MR. ZWETZIG: Can we get a clarification.
23 She referred to animal units? Is that same definition
24 we used for animal units, because I thought there was a
25 difference in a young calf and a new calf and -- what

1 is our -- I'm looking for the table.

2 MS. BAESSLER: I can clarify that for you. I
3 have the table right here. You will notice that in
4 2002 and I think 2005, the animal units weren't -- it
5 wasn't written out as animal units. It was just
6 animals.

7 And then in -- when they changed their
8 formatting, they went to animal units. And you can see
9 on the more modern looking form, they have animal
10 numbers and then animal units. And a milk-producing
11 cow is 1.4 units. A yearling is .8.

12 MR. ZWETZIG: I found it here. Yearling -- a
13 weaned calf to yearling is .6. A young cow one to two
14 years old is .8.

15 MS. BAESSLER: Correct.

16 MR. ZWETZIG: So your number is animal units?

17 MS. BAESSLER: Those numbers are animal
18 units.

19 MR. ZWETZIG: Animal units or animals?

20 MS. BAESSLER: Animal units. The numbers I
21 gave are animal units. On each of those forms, they
22 break it down into animals and animal units on the top
23 line.

24 MR. ZWETZIG: Okay.

25 MR. JAMES: Can I point one thing out on that

1 form.

2 MR. ARNDT: Yes, please.

3 MR. JAMES: Robert James. Just to take a
4 look at the more modern forms that were referenced. I
5 understand that the County's assessment on animal units
6 has some .6 and .8 kind of things for yearlings and
7 weaned calves. I would just note that on those, calves
8 are still counted at 1.0 on these forms as a full
9 animal unit. And the heifers that are not matured are
10 also 1.0. They made no -- they didn't count them with
11 the decimal point. That's going to increase that
12 number.

13 MR. ZWETZIG: For clarification then, could
14 you also clarify your statement that you milk between
15 7- and 13,000? Is that correct? So are you talking
16 animal units or animals?

17 MR. JAMES: My understanding is you're
18 talking about milking between -- and understand the
19 7,000 total animal units, or the 13,000. The capacity
20 at Empire, from my understanding, is milking 5,000
21 animals is what they can milk. That is the capacity
22 that they can put through those barns. They have -- at
23 the 2017, for example, the 6,038 mature, they're only
24 milking 5,000 of those. Same think for 2013, 2011.
25 It's a 5,000 limit, physical capacity.

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1 I was referring to -- the animal unit number
 2 that I was referring to was the one from CDPHE, which
 3 does not include, as the county figures, the .6 or .8.
 4 It counted them all as one.
 5 MR. ZWETZIG: Thanks for that clarification.
 6 MR. ARNDT: That is correct. When you're
 7 looking at -- I'm looking at the form. And for the
 8 record, dairy heifers, it has them counted as one
 9 animal unit. If you went by the county table, it's a
 10 lesser unit.
 11 MS. BAESSLER: Yes. It's .8. They referred
 12 to it as young stock, so . . .
 13 MR. ARNDT: Yes.
 14 MS. BAESSLER: It's still within the -- you
 15 know, way over the parameters of the stated 7,000.
 16 MR. ARNDT: Thank you. Okay.
 17 Next, I would have Monica Mika.
 18 MS. MIKA: Morning. Monica Mika, Eaton,
 19 Colorado. I'm representing a number of individuals in
 20 relationship to this permit. So I would ask your
 21 indulgence to be able to adequately have the time to
 22 discuss all the issues concerning Darin, Duane, Kolvyn,
 23 Ryder, and the Baessler estate. In an attempt to
 24 expediate our comments, we put them all in one
 25 testimony.

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1 MR. ARNDT: Could you give the last names of
 2 each individual that you're representing.
 3 MS. MIKA: Baesslers.
 4 MR. ARNDT: They're all Baesslers?
 5 MS. MIKA: Yes. While we haven't had the
 6 opportunity to look at the letter from Mr. -- I do have
 7 some comments. And the first comment is neither Tim
 8 nor myself are professional engineers. And it also
 9 appears that your public works director is not. So I
 10 would like to enter that into the record.
 11 You know, it's interesting, because you ask a
 12 consultant a question, and then they write the answer
 13 in a letter. And I would say that the validity of
 14 Mr. Kellar's response would have been, how do you
 15 justify your letter based on -- what were the traffic
 16 counts? So you say that there's going to be traffic
 17 and it's going to go someplace, "based on my review,"
 18 but I didn't see that any traffic counts were entered
 19 to justify Mr. Kellar's response.
 20 Nor did I see that there was an origin and
 21 destination. Usually before an engineer can say where
 22 traffic is going, they go to the field and see where
 23 traffic is currently occurring. I just bring that up
 24 because I think it's somewhat precarious to say an
 25 engineer is telling you. An engineer will tell you

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1 what best practices are. But without the technical
 2 data, we don't know if it really applies to this case
 3 or not.
 4 But -- so I'm going to talk about several
 5 things today. And one of them really is in
 6 relationship to your Planning Commission. And my
 7 comments for this permit will fall under your
 8 Comprehensive Plan. We kind of lost sight of rules and
 9 regulations. They all adhere to the Comprehensive
 10 Plan. Asking someone to direct their comments to
 11 something specific in a land use case is in one thing.
 12 But going back to the intent of why we're here is
 13 another.
 14 So I look at -- I'll talk about the
 15 Comprehensive Plan. And how when your planning staff
 16 makes a recommendation to you, they say -- and I
 17 quote -- "Application documents are complete." They're
 18 complete as if they're in relationship to the
 19 Comprehensive Plan, which says you look at the impact
 20 and the intensity. So my comments are going to address
 21 impact and intensity and conditions of the permit.
 22 It also says -- we also heard today from
 23 Ms. Cherry that on-and-off impacts have been mitigated.
 24 Wow. All on-and-off impacts of this case have been
 25 mitigated when we have conditions that haven't been met

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1 yet?
 2 She also talked about nonconforming parcel.
 3 I'm going to read some language to you a little bit
 4 that talks nonconforming use -- nonconforming use is
 5 the activity that occurs on the parcel -- and why
 6 that's important too.
 7 But let's talk about the amendment process.
 8 And the standards for review for an amendment are the
 9 same as the original permit. You can't say, We're
 10 going to look at this but only look at two things.
 11 That's not what the code says. It says you look at the
 12 original standards. Furthermore, if the original
 13 conditions haven't been met, then how can one ever say
 14 that the permit is in compliance when you have
 15 standards that remain unaddressed.
 16 But fortunately, when Planning Commission
 17 reviewed this case, they looked at this case in its
 18 entirety. And they were clever. They agreed that the
 19 animal units is directly attributable to road impact.
 20 Now, these guys sitting at this table are saying
 21 animals don't impact the road. But they can say that
 22 because none of them are engineers. The intensity and
 23 what happens on the site dictate the trucks coming to
 24 and from the site.
 25 At the recent Planning Commission, Morgan

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1 County staff admitted any reference to your resolution
 2 and declined to say which items were not in compliance
 3 and which items continued to remain unresolved. But
 4 fortunately -- and I'll tell you what those are --
 5 Planning staff, instead, tried to say why the
 6 conditions are no longer germane to this permit. We
 7 even heard that we have an engineer saying the
 8 conditions are no longer germane. That's not what
 9 we're here to discuss. The conditions are in the
 10 permit. Coming back and wishing them away now, that's
 11 not part of the decision-making process.
 12 The other thing to think of is your staff
 13 provided no data, empirical or at all, to justify their
 14 staff recommendations. They accepted information that
 15 was a mere copy of the application they received, in
 16 some cases, ten years ago. They merely agreed with the
 17 applicant who said, yes, we justified these standards.
 18 And it's really unclear whether or not any referral
 19 agencies even reviewed this amendment.
 20 So only after a note to the attorney, who is
 21 always really good about replying, and two months of
 22 waiting for Planning Commission minutes were they
 23 released. And when they were, it was clear that staff
 24 omitted substantial information, to which your Planning
 25 Commission had to add back into the record. I waited

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1 two months to see this only to find out they had to add
 2 the information back that was directly attributable to
 3 the resolution given to the Commission.
 4 Okay. Well, if that wasn't enough -- and I'm
 5 kind of looking at this document here, Colorado
 6 Sunshine Laws, something really good to know. These
 7 are the laws that every jurisdiction is commissioned to
 8 uphold. They say you have to process things in a
 9 certain way. Now, I know people say that's not really
 10 important, but it is important.
 11 To add insult to injury, Mrs. Phyllis
 12 Baessler didn't even receive mail notification of this
 13 meeting. I've been checking. Guess what? Your agenda
 14 wasn't posted in a timely fashion.
 15 And -- we'll do Exhibit 4, I believe. You
 16 can only thumb your nose at rules and regulations for
 17 so long. I took a picture of the sign, your sign,
 18 specifically asked for in your code. It says -- who
 19 wants it?
 20 MR. PARKER: I'll take it.
 21 MS. MIKA: This is your sign. The way you
 22 talk to your citizens. This is on the applicant's
 23 property as a writing. I don't know. Sunshine Law
 24 compliant.
 25 MR. PARKER: I want to make sure we have an

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1 exhibit number on this one. This will be Exhibit 4,
 2 and it's a photo of the public hearing notice. I'll
 3 pass it to the commissioners so they can see it.
 4 MS. MIKA: So can I continue?
 5 If you're troubled with open meetings and
 6 open record laws, that may be one thing, but what about
 7 looking to see what your own Comprehensive Plan says.
 8 In Chapter 10, it states, "The zoning of subdivision
 9 regulations and permitting process resulting from these
 10 regulations shall be maintained such that they are
 11 easily understood and permits can be processed without
 12 the aid of consultants."
 13 What a lofty goal! I think we've missed the
 14 mark. Staff, on numerous occasions when I've asked,
 15 declined to answer a simple question. They declined to
 16 be able to provide interpretation of your code. Not
 17 that I asked them to make specific decision-making, but
 18 I said, "What's in your code?" And you know what they
 19 say? "That's a CORA request." So we fill out a paper,
 20 and we have to ask if somebody will give us the answer
 21 to the rules that they're empowered to enforce. We've
 22 been left with constant CORA requests to direct our
 23 attention to the county attorney.
 24 We have to ask, based on this, are others in
 25 Morgan County declined the basic civility when trying

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1 to find answers to interpretations of your own code, or
 2 have the Baesslers been singled out and treated without
 3 the same protection of others? That seems to be the
 4 thread in my questions to you today.
 5 When your staff declines to answer the basic
 6 questions -- why is this case not moving to violation
 7 even when they either agree the standards haven't been
 8 met or, more troubling, are unable to provide any
 9 documentation to show that there has been compliance.
 10 They -- are they not the custodians of this
 11 information?
 12 Okay. So the confusion continues. So we
 13 deal with that in this case. But then, why did your
 14 staff never mention the unresolved issue of vesting
 15 rights. We've heard now your county attorney, at least
 16 on two occasions in the CORA have said the vesting is
 17 no longer applicable to the site. We've heard the
 18 attorney for the applicant say "vesting." But
 19 why isn't this a red flag? Everybody talks about it,
 20 but nobody takes any formal action to say, There's no
 21 vesting, and what does that mean?
 22 So here we are. I've looked for the "look
 23 the other way" rule in your code, and I can't find it
 24 anywhere. If it was there, I'd be, okay, makes sense.
 25 We're following the code, even if the rule is bad.

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1 As stated in one of the multiple CORA
 2 requests, the county attorney has said vesting is
 3 expired. So why is there no distinction or discussion
 4 on what to do now? Shouldn't this be a red flag to
 5 anybody else who has ever had a vesting complaint? And
 6 how does this fall under equal protection of the law.
 7 That's what this comes down to. How many other permits
 8 in Morgan have lost their vesting? The County knows it
 9 and yet turns the other way. Has this not been
 10 enforced? Why is the County -- why are you taking a
 11 risk of inconsistency in your land use process,
 12 condoning some willy-nilly land use process, and now
 13 look the other way when so much is at risk for local
 14 governments who don't fail to meet equal protection?
 15 How many -- the law seems clear. And this is
 16 the thing. The dairy agreed to do things, both on and
 17 off the site, within an agreed time frame in order to
 18 have more animals on their property than they have a
 19 property to have. If they stayed within the number of
 20 animal units they had on their property, we wouldn't be
 21 here. This is about fundamental rights. The reality
 22 is that if you keep them on there, we wouldn't be here.
 23 And furthermore, if they weren't using a
 24 county road for a feed bunk, we wouldn't be so
 25 concerned about what's going -- I know you don't like

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1 that. We wouldn't be so concerned about what's going
 2 on. Have you driven down the road while they're
 3 feeding? You wait. They talk about, well, we can
 4 drive around. No. You wait, because it's that close
 5 to the road.
 6 Not only does the County not enforce this,
 7 but you allow applicants to come again before you with
 8 yet another creative way to allow you to not enforce
 9 your regulations. A lot of switch and bait.
 10 As shown before, several commissioners have
 11 met with the applicant and have honestly tried. You've
 12 asked him for follow-up. You even sat through a road
 13 vacation. And now this.
 14 Now we're here to hear that accesses don't
 15 matter onto a road. They're trying to convince you and
 16 marginalize the importance of safety on a county road.
 17 You marginalize the importance of safety on this county
 18 road, you should do it for all roads. All roads
 19 deserve to be made safe. Isn't that a fundamental
 20 expectation and understanding? It makes you wonder
 21 what type of dangers and damage this lack of road
 22 enforcement has caused now on the traveling public for
 23 last ten years.
 24 This all points to one thing. And I know
 25 it's not really becoming. There is either not the

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1 wherewithal politically to enforce these conditions or
 2 something else is going on. While many, perhaps your
 3 own staff, would like to wish this case away, it's gone
 4 on too long. It can't be. This is now about
 5 principle. This is now about following what one says.
 6 It's about equal protection. And it's about damages,
 7 damages that result when a local government does not
 8 equally treat people the same way. And it leaves
 9 people questioning the impacts.
 10 Your citizens are looking to you to enforce
 11 what was agreed, whether it be animal units, road
 12 access, or site amenities. The applicant wants to make
 13 you believe nobody cares about this case, that the
 14 conditions were imposed without cause, that you had
 15 lost your mind ten years ago, and that you employed all
 16 these conditions that were erroneous and difficult.
 17 Believe it or not, we, the Baesslers, say the
 18 constitution of Colorado and the citizens of Morgan do
 19 care, and they expect this case to be taken to
 20 violation.
 21 Other groups, such as this great one,
 22 Colorado independent Ethics Commission Handbook, they
 23 care about what you do. They care about equal
 24 protection. They care about damages caused by
 25 unenforcement of land use cases. Specifically, the

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1 people of Colorado have declared -- and this is from
 2 Colorado Constitution staff -- that in order to ensure
 3 propriety and to preserve public confidence, they must
 4 have the benefit of specific standards to guide their
 5 conduct -- their, being yours -- and a penalty
 6 mechanism to enforce your standards.
 7 Well, I don't get it. You have these already
 8 in place. Here is an easy example. Chapter 6 of your
 9 own code. Morgan County commissioners, your staff,
 10 their authorized representatives, in regards -- and
 11 this is specifically pertaining to the erection,
 12 construction, alteration, placement, occupancy, or use
 13 of any building being constructed or land occurring in
 14 Morgan -- anything that happens, they can enforce.
 15 Specifically, 6-105 says, It's unlawful to
 16 erect, construct, reconstruct -- that could be a
 17 building permit -- alter -- could be a building
 18 permit -- maintain or use any building or structure or
 19 to use any land in violation of any regulation in
 20 and/or provisions of these codes and/or amended.
 21 That's pretty damaging. You can't do anything with the
 22 use if you have -- if they are in these regulations.
 23 6-105. I didn't make this. I'm just wondering why
 24 nobody is looking at it.
 25 So we continue on. And mind you, standards

1 do matter. The dairy has a huge impact on others and
2 their abilities to have and -- their ability to have
3 the dairy rests in their ability to balance and
4 mitigate their impact. That is what land use is about.
5 If you're merely going to issue permits and not follow
6 up, it's probably in the best interest of the county
7 not to have a planning department at all.

8 The problem occurs when the dairy tries to
9 make you think 7,000 cows don't impact anyone. Now,
10 when I say cows, it could be animal units. We're all
11 asking about, do we look at animal units or do we look
12 at cows? Your resolution talks about units. It didn't
13 talk about cows. It specifically said units. These
14 are all your documents pertaining to this case. I'm
15 not making them up.

16 So when asked, Why is this so difficult to
17 get a straight answer, the dairy consultants have been
18 creative. I'll give them that much. They have made a
19 lot of money trying to confuse the issues with
20 roadways, special meetings with commissioners, in
21 getting you to believe your standards are not
22 responsible and the dairy has no off-site impact.

23 Well, I say what professional engineer would
24 agree that 13 accesses in 1 mile makes sense and is
25 safe? Let alone, forget to tell you that the dairy was

1 permitted originally for only two accesses. That's
2 what the record shows. Originally two were proposed.
3 Mr. Dinis negotiated for a third one. So when we talk
4 about we're going to add some more. We're adding ten
5 more accesses. The ones that they're currently using
6 are illegal. Everybody knows they're illegal. And yet
7 no one does anything. We say, well, go ahead, hasn't
8 caused a problem yet. That's not land use. That's
9 dangerous interpretation of codes.

10 When staff makes a recommendation to add
11 illegal ones, they decline to mention that the original
12 permit only has three. Interesting. There was even no
13 discussion in the original information -- and now there
14 has been some entered -- as to why no one followed up.
15 Why didn't anybody enforce? Why would you bother to
16 tell them they only have three, when within ten years,
17 knowing that they only have three, legal, and they're
18 using ten, now you're giving them one more? I don't
19 know.

20 And, you know, another road issue that
21 continues to come up and somewhat -- interestingly
22 enough, could have been addressed by the applicant by
23 working with Mr. Kellar. Here's the deal, the other
24 road involved, County Road 2, we all forget that the
25 road impacts to the dairy impacts two roads, one of

1 which is County Road 2. This is a big deal. And
2 looking at the validity, while maybe annoying, is
3 important.

4 You know, AGPRO and applicant stumbled -- I
5 would say if you haven't read the tape, you should. I
6 mean listen to it. They stumble several times when
7 asked the number of animal units. This is the same
8 type of question you can ask any person, what's your
9 shoe size? You shouldn't have to stop and think if
10 you're saying the truth.

11 And did they not think that there's all kinds
12 of information that validates the number of animal
13 units? It doesn't matter if it's 13,000, 15,000. You
14 now have a resolution in front of you from your
15 Planning Commission that says if they exceed 7,000 --
16 you don't have to validate which of those numbers; you
17 have to say, do I believe? 7,001.

18 That's the resolution before you. It's not
19 rocket science, you guys. If we limit the number of
20 accesses on roadways, we ensure safety. This is based
21 on sound engineering, best evidence practices, not
22 whether or not someone thinks they're going or not
23 going to use the county road. Here's the thing, who
24 cares if once the road's paved, people use it? Isn't
25 that why you have a county road, so people can use it?

1 Unless you think it's your own road, then that's
2 another thing. But if the most damaging thing is their
3 new PE said someone might use the road, okay, use it.

4 The dairy's -- the dairy's creating problems
5 because the information that they're giving you is
6 inconsistent. Hmm. Well, let me tell you what the
7 unresolved conditions are. You can dispute them.
8 There are three of them, three of them in your case.

9 Condition 3.iii, the applicant and their
10 successor in interest shall be required at the
11 applicant's expense to provide dust mitigation -- we
12 never even talked about that. Dust mitigation? -- or
13 pave County Road 2 if the base traffic count of
14 250 vehicles per week is exceeded by 30 permits
15 attributed to the dairy. Here is the thing, no one
16 talks about this. And if staff was acting responsible
17 and treating all citizens with equal protection, then
18 why can't they provide any traffic counts for the last
19 ten years?

20 So let's do simple math. Let's see. If they
21 were following the rules and the dairy was doing what
22 they were supposed to and they are compatible with the
23 Comprehensive Plan, then there would be something like
24 520 reports that show the impacts on this road. Well,
25 none of it is available.

1 MR. JAMES: Can we get some clarification
 2 whether we're talking about Road 2 or Road S.
 3 MS. MIKA: Would you like the resolution?
 4 MR. JAMES: No. I would like to know if
 5 we're talking about Road 2 or Road S because this
 6 hearing is about Road S.
 7 MS. MIKA: No. This hearing is about
 8 compliance with the Comprehensive Plan.
 9 MR. ARNDT: At this time you are reading the
 10 resolution and --
 11 MS. MIKA: Road 2.
 12 MR. ARNDT: -- the speaker is speaking about
 13 item 3.ii, which is County Road 2. But we are talking
 14 about the requirements of County Road S.
 15 MS. MIKA: But once your planning staff said
 16 that this is in compliance with your Comprehensive
 17 Plan, your Comprehensive Plan says that the regulations
 18 have to be compatible with the Comprehensive Plan.
 19 Therefore the case in its entirety should be reviewed.
 20 Additionally, your Planning Commission also
 21 responded in the same manner when they took testimony
 22 beyond and had discussion outside of scope of limiting
 23 it to two elements.
 24 I'm happy to continue or not.
 25 MR. ARNDT: And please note that we do have

1 the resolution in front of us, and we are reading 3.ii.
 2 MS. MIKA: Okay. Then I won't read anymore.
 3 I'll read the response.
 4 So 520 reports, none are available. How much
 5 money has the County allowed the applicant not to spend
 6 because they didn't require this? I would wonder if
 7 this could be considered a gift of nonexpensed funds.
 8 We don't know -- I don't think the County intended
 9 intentionally gifted the cost savings of not enforcing
 10 this rule to the dairy, but we don't know because
 11 there's no evidence either way.
 12 So the next element that's not in adherence
 13 is 3.iv: Access from a county facility on County Road
 14 S is limited to three. In the staff recommendation
 15 there's no mention of the three approved accesses.
 16 I've stated that several times. I think that's
 17 concerning. Nor is there technical justification of
 18 the recommendation, merely just support of the need for
 19 additional.
 20 How can the County ensure the safety of this
 21 roadway with all of these road cuts? Is there a direct
 22 relationship between traffic counts on this road,
 23 counts on County Road 2, and the need for dust
 24 abatement? We don't even know. But I have to ask,
 25 have the public and surrounding property owners been

1 damaged because the issue of fair and healthy air has
 2 been ignored for ten years.
 3 The next element that the Baesslers don't
 4 find is in compliance is iv, County Road S done through
 5 grants, noting that the applicant will be responsible
 6 for applying for grants and meeting all requirements.
 7 There is nothing that ties the road improvements to the
 8 intensity on the site, number of animal units, the
 9 employees, number of barns, or anything. Your own
 10 language says "must." "Must" is used. If this would
 11 have been a negotiable standard, it would have been
 12 written as such. You should look and see what your
 13 definition of "must" says.
 14 MR. ARNDT: For clarification, you said "iv,"
 15 and I believe that you're quoting "vi."
 16 MS. MIKA: Oh.
 17 MR. ARNDT: 3.vi.
 18 MR. PARKER: Just as a note, this is actually
 19 subsection (a), so it's 3(a)vi, just for the record.
 20 MR. ARNDT: Thank you.
 21 MS. MIKA: Okay. So the next one, I'll just
 22 read. I think it's vii. In the event sprinklers are
 23 used to dewater ponds a low sprinkler system with no
 24 end guns must be utilized. When asked if this has been
 25 done, there's no response. The mitigation of runoff

1 and odor control is a big deal. The standard was
 2 clearly included to lessen the impact of the County on
 3 surrounding neighbors. To ignore this goes against
 4 engineering recommendations for best management
 5 practices, again, which is in direct contradiction to
 6 your Comprehensive Plan.
 7 There is no evidence in the record showing
 8 that the standard is no longer required. Instead, it's
 9 merely ignored, not addressed, leaving one again to
 10 raise the question, how many others have been allowed
 11 not to meet the standard when it's been imposed on a
 12 permit? Why isn't clear air considered a priority for
 13 everyone?
 14 The County's lack of enforcement may likely
 15 damage the neighbor's common enjoyment of the property
 16 and their responsible -- reasonable expectations of
 17 clean odor-free air. Heck, several neighbors in this
 18 area have outdoor businesses, and maybe -- how do we
 19 know? Do their customers and family not suffer from
 20 stinky air? These are big questions. And after ten
 21 years of noncompliance, we need to start talking about
 22 damages.
 23 MR. ARNDT: Can I ask, are you speaking on
 24 behalf of those people, and are they present?
 25 MS. MIKA: I'm using that as part of

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1 compatibility. For the record, the County has not
 2 followed, nor does it have evidence to show that these
 3 standards have been met. I would love to think there's
 4 evidence to show that they've been met.
 5 Really, it comes down to a violation of
 6 public trust and equal protection and what has resulted
 7 because of lack of this. How can anyone trust a
 8 government who doesn't stand behind its own processes
 9 and looks the other way for ten years? We try to make
 10 this permit about one thing. It's a permit. It's
 11 about multiple components.
 12 Although C.R.S. Title 24 doesn't use the
 13 phrase "conflict of interest," Section 1 does state,
 14 The public should have respect for and confidence in
 15 public employees who should avoid conduct that is in
 16 violation of public trust and/or creates a justifiable
 17 impression among members of the public that such trust
 18 is being violated. That's applicable to elected
 19 officials. The way this case has been processed
 20 clearly doesn't show a lot of trust in the affairs. We
 21 have evidence to show, interesting, some Sunshine
 22 compliance.
 23 Well, let's get down to -- in closing,
 24 recently representatives for the applicant stated
 25 publicly there's been no off-site issues on the site

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1 since 2009 and state that the county record supports
 2 this. The reality is, so you know, your own staff
 3 stated that they don't have the records, nor were
 4 citizen complaints tracked in a reliable fashion. I
 5 was given a form if I wanted to make an assertion or
 6 comment.
 7 Fortunately, though, citizens have kept their
 8 own records of the issues related to the site and have
 9 sought multiple CORA requests to support ongoing
 10 concern.
 11 As commissioners, you've seen it prudent to
 12 meet with the applicant on several occasions, as
 13 reflected in CORA, and have agreed, at least in
 14 meetings, your conditions haven't been met. Doesn't
 15 matter if 17 conditions haven't been met or one
 16 condition hasn't been met. The case is in violation to
 17 your standards.
 18 You paid county funds to applicants to
 19 maintain the road. On numerous occasions directed them
 20 to come into compliance. Several of you have even
 21 really tried and participated in meetings where you've
 22 met with the applicant and representatives and
 23 discussed creative ways to resolve this, one of which
 24 included the selling of all the Baesslers' land, which
 25 I'm not sure is exactly what they would be in favor of.

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1 But nonetheless, there have been attempts.
 2 The Baesslers are growing weary of the
 3 County's excuse to not address issues of noncompliance
 4 in this case. It's alarming that County staff
 5 continues to hold the conditions of the permit to not
 6 be worthy of their time to follow up. You need a form
 7 to follow up. And it's professionals feel empowered to
 8 continue to look the other way.
 9 It doesn't matter what the applicant thought
 10 the County would or would not do with a grant to help
 11 him pay for the dairy impact. He agreed to it. He
 12 agreed to this, and he had the opportunity not to.
 13 It doesn't matter that the -- that the
 14 applicant most recently offered to pay a small portion
 15 of the road. It's not resolved. Which, by the way,
 16 we've requested to see that information and we weren't
 17 able to get it.
 18 It doesn't matter that a decade ago, County
 19 staff described the staff compliance for the site by
 20 using the word "contemporaneously." What does that
 21 even mean? It's not in the resolution.
 22 It doesn't matter that the applicant wants
 23 the permit to say all conditions go into effect once an
 24 expansion has occurred. That would be awesome. That's
 25 not what the permit said. That may have been the

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1 discussion pertaining to the permit, but that's not
 2 what your resolution says. Nor does your resolution
 3 describe expansion. For the first time ever, the
 4 Planning Commission under this resolution is giving you
 5 guidance and recommendation from your peer group what
 6 expansion is and what's the benchmark. 7,000 units.
 7 It's pretty clear.
 8 What does matter is this process has gone on
 9 far too long and is in direct violation of the equal
 10 protection clause.
 11 What does matter, you have an applicant and
 12 its consultants are less than apparent, the number of
 13 animal units and other activities on the site. If they
 14 can't tell you this, what else going on?
 15 What does matter is that this case has been
 16 allowed to linger and falter while others have been
 17 held to different standards.
 18 It does matter whether or not there can be
 19 trust in local officials who hold one person to a set
 20 of standards while clearly enforcing another for
 21 others. Whether you grant access onto a county road,
 22 whether you accept the rationale to require road
 23 pavements and the number of animal units, all of that
 24 is clutter. You have a permit that continues to remain
 25 in noncompliance to your standard with no apparent plan

1 for resolution.

2 You also have a recent Planning Commission --
3 interesting take -- where they asked Mr. Dinis multiple
4 times to work with them, to state how many animal units
5 he had, and he declined three times. One time,
6 interestingly enough, questioning the authority of the
7 Planning Commission member to even ask the question to
8 begin with. It's pretty clear that waiting for
9 Mr. Dinis to take responsibility and work with you to
10 resolve these issues isn't going to happen. Time's up.
11 He won't even tell you number the animal units and
12 mocks your authority. You see that sign? The sign
13 with tape coming off. Mocking authority. Great
14 example.

15 MR. ARNDT: Please can you --

16 MS. MIKA: I'm almost finished. I'm wrapping
17 it up. I'm representing multiple people who have some
18 pretty passionate things to say. It's not my sign. I
19 didn't allow a sign to be on my property and it erode
20 before you can even read it.

21 Allowing these standards to falter is seen as
22 in direction violation to your duties as commissioners.
23 I know many of you take this to heart. We hope you
24 find it within your stamina to do the right thing and
25 send this case the violation immediately. District

1 court, somewhere, where somebody will have the
2 fortitude to follow up.

3 Figure out once and for all the justifiable
4 numbers of animal units. Assess a monetary penalty.
5 You have it in your code. Why don't you use it?
6 Assess a monetary penalty until a plan to resolve the
7 outstanding issues to be resolved. By allowing this
8 case to go unresolved for so long has obviously
9 marginalized you in the eyes of Mr. Dinis and his
10 consultants, thinking they can give you assertions,
11 nonevidence-supported justification. Do better for
12 Morgan. Show them that you treat them like everyone
13 else and believe that equal protection under the law is
14 something that you hold in the high esteem.

15 I'm happy to answer any questions. I'd be
16 happy to enter any information into the record that was
17 stated based on CORA justification if you would like.

18 MR. ARNDT: Any questions? Mr. Zwetzig? Ms.
19 Teague?

20 No questions. Thank you.

21 MS. MIKA: Thank you.

22 MR. ARNDT: Next I have Chuck Miller.

23 MR. MILLER: Chuck Miller, 26060 Morgan
24 County Road S, Brush, Colorado, lifetime resident of
25 Morgan County. It does not appear that paving the road

1 or not paving the road and allowing or disallowing nine
2 driveways clearly fixes what the true problem is. It
3 is apparent that the rule of your order today is on two
4 topics, and I think we should move forward with a
5 decision on the two topics that are at hand today and
6 look into the future, because I don't believe the
7 decision one way or the other fixes the problem.

8 As a lifetime member of this community, I
9 hate to see problems like this. It's clearly divided
10 communities and divided neighbors, and I think everyone
11 is at fault.

12 Thank you.

13 MR. ARNDT: Any statement -- is that your
14 only statement, or would you like to say whether or not
15 you're in favor of the -- or opposed to what is being
16 proposed?

17 MR. MILLER: I don't believe that's necessary
18 or required. Thank you.

19 MR. ARNDT: Okay. Is there anyone else that
20 did not put that they wish -- I don't want to deny
21 anyone of that fact.

22 Go ahead.

23 MR. MILLER: Excuse me. Commissioner
24 Zwetzig, is there something you'd like to say with your
25 body language?

1 MR. ZWETZIG: All I was commenting on is if
2 you want to make comments, they should be to one side
3 or the other.

4 MR. MILLER: Well, did you not understand my
5 comments?

6 MR. ZWETZIG: Well, obviously not.
7 (Interruption in proceedings.)

8 MR. ARNDT: Thank you. I've asked the
9 question if there is anybody else that wishes to speak
10 that did not mark it.

11 At this time we will close public comment, go
12 on to discussion. And I'll give the applicant time to
13 address any statements that were made that you would
14 like to have clarification to the Board.

15 MR. JAMES: Thank you. I would just like to
16 point out -- this is Robert James speaking again.

17 I believe the process is working and is
18 exactly what it's supposed to be. There was an
19 original resolution in 2008 that, since then,
20 apparently has been the subject of quite a bit of
21 discussion and quite a bit of disagreement. The dairy
22 has been operating under the 2008 special use permit
23 and has continually asserted its position with regards
24 to the requirements. It understood at the time.
25 That's been reinforced on one hand by the planning

1 administrator in 2009. It's been questioned since then
2 in other cases with regards to either commissioners or
3 the planning department meeting the last time we were
4 here.

5 In order to get clarification, the dairy is
6 coming to the Commission and saying, there is this
7 issue with the special use permit. This is how we look
8 at it and what we're saying. And what we're asking to
9 fix it is to make it very clear that the paving
10 requirement is not there because the expansion is not
11 going to occur, as we understood what the expansion was
12 going to be.

13 In addition, the nine driveways, which have
14 been approved by your own road and bridge department,
15 which I believe fall into the -- their guidelines of
16 how much space in between each driveway on any county
17 road. That falls within those guidelines and is
18 acceptable to Road and Bridge. A professional engineer
19 has given comments on whether or not this road should
20 be paved.

21 These are all resources we're trying to get
22 and, you know, present to the Board. And to hear
23 someone basically say that the process isn't working, I
24 don't agree. I think the process is exactly what we're
25 supposed to be doing here today. I am thankful that

1 was -- you're asking for nine driveway accesses --

2 MR. JAMES: Correct.

3 MR. ARNDT: -- onto County Road S, but yet
4 the number of 13 was used many times throughout --

5 MR. JAMES: I have no idea where that came
6 from. The nine accesses have been designated by map,
7 GPS coordinates, and set forth to Road and Bridge and
8 inspected by Road and Bridge.

9 MR. ARNDT: The nine accesses are the
10 historic driveways that are all in that nine number?

11 MR. JAMES: Yes. That's the grand total.
12 There are no additional. There's no adding three or
13 four, whatever it is nine. I believe the barrier
14 system that's up in place right now illustrates those
15 nine, and that's what Road and Bridge inspected.

16 MR. ARNDT: So for clarification for the
17 record, we are talking about nine driveway accesses
18 that are being asked for. Those include historical,
19 from day one that the dairy opened.

20 MR. JAMES: Yes. That's correct.

21 MR. ARNDT: Thank you.

22 MR. PARKER: For clarification, if that was
23 approved, we could basically reference an exhibit
24 showing where those are located, so it's clear on the
25 resolution?

1 this commission is sitting here and listening to
2 everybody and is looking to solve a problem that, yes,
3 has been around ten years. We are under the impression
4 and belief at this point that under the understanding
5 in 2008, that was reinforced in 2009, the expansion
6 that was contemplated was not done. And because of
7 that, we're asking that this been clarified by removing
8 the paving provision for County Road S out of the
9 specific use permit and also to grant the expansion of
10 number of entranced from three to nine as is set forth
11 in the application.

12 So I don't think there's anything other
13 than -- I don't believe we have anything else. I can
14 double-check with everybody here.

15 And what Mr. Miller said kind of does rings
16 true. It has separated -- this has really divided
17 neighbors, and it has. I would note that the Planning
18 Department has said on the record, and I believe
19 there's other items in the packet that this commission
20 has, Empire Dairy is an exemplary operator in this
21 county. They try to do it right, and they really do.
22 So I would just ask the Commission to grant the request
23 that we've made to make sure that this is put to bed
24 today.

25 MR. ARNDT: There was testimony that it

1 MR. JAMES: I believe that's in the packet.

2 MR. PARKER: Right. I just want to make sure
3 we actually wouldn't have any confusion.

4 MR. JAMES: In addition to the map, there's
5 also a page that lists the GPS coordinates.

6 MR. NAYLOR: The applications were also
7 submitted.

8 MR. ZWETZIG: Just -- if we're talking about
9 the number of those accesses and the comment that was
10 read in to the record about number nine, has it been
11 corrected on the map?

12 MS. CHERRY: You're talking about the
13 concrete road issue; correct?

14 MR. ZWETZIG: Correct. So you don't have the
15 Road and Bridge's blessing on Number 9. I think that's
16 my point.

17 MR. JAMES: Well, they say they have an issue
18 with the entrance to Number 9 due to the possibility
19 that a truck loading would be stopped across the lanes
20 of traffic. I'm referencing Exhibit 1, the e-mail.
21 And the only thing I can say is to alleviate that, if
22 that's satisfactory, whenever someone is using that
23 particular load-out chute, they would provide traffic
24 control to make sure that traffic got around that one
25 lane that was blocked. To my understanding, it would

1 only block one lane of traffic.
 2 MR. ARNDT: Okay. Any more questions?
 3 No questions.
 4 MR. ZWETZIG: Well, concerning their
 5 rebuttal?
 6 MR. ARNDT: Yeah.
 7 MR. ZWETZIG: No. No questions.
 8 MR. ARNDT: Do you have anything else to add?
 9 MR. JAMES: No. Thank you very much.
 10 MR. ARNDT: At this time if there's no
 11 further discussion or questions, I would have a request
 12 that the -- I would appreciate or entertain a motion to
 13 go into executive session with the attorney to
 14 discuss -- I do have -- I want to discuss the existing
 15 permit, the existing 2008 resolution. I have
 16 questions. Is that possible?
 17 MR. PARKER: You can go into executive
 18 session for purely legal advice.
 19 MR. ARNDT: That's what I'm asking.
 20 MR. PARKER: Right. I wanted to have you
 21 finish your question before I weighed in there.
 22 Just to be clear, you can't go into executive
 23 session to discuss the merits or anything else. It can
 24 only be to ask me, as the county attorney, legal
 25 questions. I want to make sure that I stick to that in

1 executive session and certify that. You can do that,
 2 yes.
 3 MR. ARNDT: If the Board wishes.
 4 MS. TEAGUE: I would move to go into
 5 executive for discussion of legal matters only as --
 6 can you state the --
 7 MR. PARKER: Yeah. It would be pursuant to
 8 C.R.S. 24-6-402 from section -- I'm going to get this
 9 right. I don't want any issues here. I want to say
 10 4(b), but I don't want to make the mistake. One second
 11 here. I should know this after doing this 5,000 times
 12 in the last 15 years.
 13 Yeah. Basically to hold a conference with
 14 the county's attorney to seek legal advice on specific
 15 legal questions pursuant to C.R.S. 24-6-402-4(b). That
 16 would be the motion.
 17 MS. TEAGUE: So moved.
 18 MR. ZWETZIG: Second.
 19 MR. ARNDT: Move to second.
 20 MR. ZWETZIG: I do have a discussion. Do we
 21 need to take a bathroom break before that.
 22 MR. ARNDT: Okay. That will be granted also.
 23 MR. ZWETZIG: Thank you.
 24 MR. ARNDT: Any other further discussion?
 25 Hearing none. All those in favor say aye.

1 Motion carries 3-0.
 2 That will give you a little bit of time to
 3 catch up.
 4 (Whereupon, executive session was held from
 5 11:12 a.m. to 11:35 a.m.)
 6 MR. ARNDT: First item would be a motion to
 7 come out of executive session.
 8 MR. ZWETZIG: So moved.
 9 MS. TEAGUE: Second.
 10 MR. ARNDT: Moved and seconded.
 11 Is there discussion?
 12 Hearing none. All in favor, say aye.
 13 Motion carried. The Board is now out of
 14 executive session and has reconvened.
 15 Do you have any comments, Mr. Parker --
 16 MR. PARKER: Yeah. I'll just certify that
 17 the attendees in the executive session were the three
 18 commissioners, myself, and Planning Director Cherry.
 19 The entire conversation was attorney-client privilege,
 20 and that is why there was no recording kept of the
 21 attorney-client privilege discussion.
 22 I also note that the attorney for the
 23 applicant seems to be on a phone call with the Court.
 24 I recommend we should wait until he's back to continue.
 25 I assume he's coming back pretty soon.

1 MR. ARNDT: Is that all right with the Board?
 2 MR. ZWETZIG: Good advice.
 3 MR. PARKER: I prefer not to continue with
 4 the hearing without counsel for the other side present.
 5 (Discussion was held off the record.)
 6 MR. ARNDT: Please let it note for the record
 7 that the applicant has accepted moving forward without
 8 the attorney being present in the room.
 9 MR. PARKER: And the hearing was basically
 10 not to -- the attorney's failure to be here is his own
 11 decision. Hopefully he'll come back quickly.
 12 MR. ARNDT: Any questions from the Board?
 13 Mr. Zwetzig.
 14 MR. ZWETZIG: Chairman, I'm going to go
 15 through the way I made my notes as presentations were
 16 made. In the director's presentation of the
 17 application, I think we've clarified Road and Bridge's
 18 stance on the accesses. That's probably not necessary.
 19 I have in here that it should be noted they
 20 made no recommendations on paving. They didn't say
 21 that road needed paved or didn't say it did not need
 22 paved. That wasn't what was reflected in that
 23 conversation. According to these e-mails, they chose
 24 to be neutral and not make a decision either way.
 25 MR. PARKER: Just for the record, Mr. James

1 is back in the hearing.

2 MR. JAMES: I apologize.

3 MR. ZWETZIG: And then I guess it might have
4 been gone past yours. No. It was before that. There
5 was a comment that the road -- I made a comment that I
6 agree that -- and maybe subsequent comments were made.
7 I agree that the road has become part of the operation
8 when you have a truck that partially blocks the road
9 when you're in operation and you are using that road as
10 part of your operation.

11 So -- and I made a note here that -- and this
12 is the way I worded it: I can't imagination any
13 situation where any part of a road would be allowed to
14 be blocked. And then I move from that.

15 I have a question that I wrote at that time.
16 I wanted to know what the animal units were, the number
17 was that was permitted prior to the 2008 resolution
18 that increased it to 20,000. Do we know what that
19 number is?

20 MR. PARKER: I believe it was 7,000. Let me
21 see if I can pull up the initial resolution. Sorry.

22 MR. ZWETZIG: That's kind of -- I don't even
23 know that that's pertinent. It's a question in my
24 mind.

25 MR. PARKER: The resolution we're dealing

1 MR. ZWETZIG: So those 5,000 are at 1.4. So
2 that number is what? 7,000. Isn't it ironic that we
3 keep hitting the same numbers. 7,000.

4 Did we make an assumption, then, that was
5 7,000 prior to the 20- we have now?

6 MR. PARKER: I'm looking at the notes. It
7 does say that the initial permit was for 7,000 animal
8 units.

9 MR. ZWETZIG: So you were at 7,000 in 2008 by
10 permit, animal units, so that allowed the 5,000 milking
11 cows.

12 MR. NAYLOR: Can I make a distinction?

13 MR. ZWETZIG: Sure.

14 MR. NAYLOR: You know, when we talk about the
15 dairy with 5,000 milking cows, you also have the
16 support stock, the background, the calves coming up,
17 the heifers coming up, and then you have the milk cow
18 herd. The 5,000 that are milking is 7,000 animal
19 units, but we also have those additional animals.

20 MR. ZWETZIG: And in Morgan County we permit
21 animal units. We don't designate them as milking,
22 yearlings, we don't designate. We designate animal
23 unit number. And our animal unit number is in a table
24 in our regulations.

25 MR. NAYLOR: Right.

1 with, 2008 BCC 35, increased it to 20,000.

2 MR. ZWETZIG: So regardless of what it was
3 prior to that, the 2008 permit is 20,000, and that's
4 not being changed. So whatever action is taken today,
5 20,000 is the animal unit number that's permitted.

6 MR. PARKER: Under the 2008 permit, that's
7 right.

8 MR. ZWETZIG: Even with this proposed
9 amendment?

10 MR. PARKER: Correct.

11 MR. ZWETZIG: And then I think we got a
12 little bit of clarification. I'm glad you came back,
13 Mr. James. During your components you said that -- and
14 I'm going to -- I'll ask you how you worded it. I
15 heard you say 7,000 to 13,000 numerous times. You were
16 referring to?

17 MR. JAMES: The CDPHE animal unit measure
18 that was provided -- I think it was provided by the
19 Baesslers later on. They have the document. That's
20 what I was referring to.

21 MR. ZWETZIG: You were saying that the parlor
22 requirements for production only allow you to milk up
23 to 5,000.

24 MR. JAMES: That's my understanding. 5,000
25 is the physical maximum on the existing parlors.

1 MR. ZWETZIG: So before and now, we're at
2 7,000. Is that -- there wasn't an increase in animal
3 units in 2008?

4 MR. JAMES: I think we have the list that was
5 put on here. And we have to go through and do the math
6 according to the County's designations. Because those
7 with the state designations are different.

8 Like, for example, they have heifers at a
9 full 1.0 and calves at a full 1.0.

10 MR. ZWETZIG: And then we have -- maybe I'm
11 wrong. I'm going to skip up then to the Baessler
12 presentation and the piece of paper we got.

13 MR. PARKER: Exhibit 3.

14 MR. ZWETZIG: Exhibit 3. And can you tell me
15 how many animal units that is according to Morgan
16 County code?

17 MR. DINIS: Norm Dinis, Empire Dairy. If I
18 may ask where this is going --

19 MR. ZWETZIG: You don't have to ask that. I
20 need to know.

21 MR. DINIS: I can say we are well under the
22 20,000 permitted.

23 MR. ZWETZIG: It's a permitted number.

24 MR. DINIS: We are well under the 20,000.

25 MR. ZWETZIG: Okay. So are you above the

1 7,000 that was permitted for in 2008.
 2 MR. DINIS: I can't recall right now. I'd
 3 have to get that.
 4 MR. ZWETZIG: So if we have the numbers that
 5 were presented to us, can you look at those and tell me
 6 if you're under or above? We have an exhibit,
 7 Exhibit 3. And I understand if you don't want to make
 8 that comment.
 9 MR. DINIS: I'm not clear on the question.
 10 MR. ZWETZIG: Exhibit 3, if you look at
 11 Exhibit 3 -- do you have Exhibit 3, Mr. James?
 12 MR. JAMES: It's sitting in Ms. Cherry's
 13 office where I just left it.
 14 MR. PARKER: I have a copy.
 15 MR. JAMES: Thank you.
 16 MR. ZWETZIG: In 2007, we were under a 7,000
 17 animal unit permit. And in 2008, that increased to
 18 20-. Was there an increase in animal units, which was
 19 allowed under the 2008 permit?
 20 MR. JAMES: Looking at the numbers from CDPHE
 21 and going back -- I don't have 2008 or 2009 or 2010.
 22 But from 2007 to 2011, there was an increase according
 23 to the state inspection.
 24 MR. ZWETZIG: Thank you.
 25 Okay. And you don't expect an anticipated

1 ability to -- at this time you're not anticipating
 2 increasing production by any other --
 3 MR. JAMES: No. The only thing that
 4 increases production without increasing the milk parlor
 5 is through technological advancement, which is not a
 6 huge thing at this point. I think they're pretty maxed
 7 out with what I understand from talking to Mr. Dinis.
 8 MR. ZWETZIG: Secondly, you agree that you
 9 could have up to 20,000 animal units under the 2008
 10 permit?
 11 MR. JAMES: That's what it says, yes.
 12 MR. ZWETZIG: The existing permit?
 13 MR. JAMES: Yes.
 14 MR. ZWETZIG: And, Mr. Naylor, and I was a
 15 little unsure what the benefit of that traffic study
 16 was. But I see what you're talking about. Let me
 17 clarify. You're coming down County Road 2, and it's a
 18 shortcut to take S over to -- to go east on 34. Is
 19 that what you were trying to say?
 20 MR. NAYLOR: Yes. County Road 1 --
 21 MR. ZWETZIG: Oh, 1.
 22 MR. NAYLOR: -- is Highway 144.
 23 MR. ZWETZIG: Right.
 24 MR. NAYLOR: And if you continue to
 25 Highway 34 on --

1 MR. ZWETZIG: It's a longer route.
 2 MR. NAYLOR: -- 144, it's a longer route. So
 3 if you turn -- and one of the reasons we didn't do a
 4 full traffic impact study on that is that at this time
 5 Morgan County doesn't have triggers to warrant paving.
 6 The policy they have is based on impact, high-impact
 7 roads, not if you exceed this amount of traffic, then
 8 you are warranted to pave the road.
 9 MR. ZWETZIG: I understand that part.
 10 MR. NAYLOR: So a traffic study wasn't
 11 warranted.
 12 MR. ZWETZIG: I understand. I wanted to
 13 clarify. It could potentially increase traffic on
 14 County Road S.
 15 MR. NAYLOR: That is exactly right.
 16 MR. ZWETZIG: So to do that, we'd have to
 17 know too what the traffic is on County Road 1,
 18 Highway 144.
 19 MR. NAYLOR: Well, if we took a random number
 20 of 100 vehicles on Highway 1 and assumed a percentage
 21 of those would turn, that would increase that -- that
 22 number. We have to know --
 23 MR. ZWETZIG: But there's --
 24 MR. NAYLOR: -- absolutely how many are
 25 already turning on County Road S.

1 MR. ZWETZIG: Well, we'd have to know how
 2 many potentially could turn to know the impact.
 3 MR. NAYLOR: But based on scientific
 4 information or the engineering information, the
 5 engineer assumes that paving that would increase that
 6 number, whatever that number is.
 7 MR. ZWETZIG: Even if it's five cars.
 8 MR. NAYLOR: Even if it's five cars.
 9 MR. ZWETZIG: Okay.
 10 I think it's appropriate to have a discussion
 11 in this meeting about the vested rights. They came up
 12 a number of times in Ms. Baessler's comments. The
 13 expansion -- so right now -- and I want a legal opinion
 14 on this. Right now, they're permitted for 20,000
 15 animal units.
 16 MR. PARKER: That's correct.
 17 MR. ZWETZIG: Can they expand the 20,000
 18 units? They haven't lost that right?
 19 MR. PARKER: Under the current provision yes.
 20 The short answer on how vested rights work is that
 21 vested rights -- basically, the period of vested rights
 22 limits the County's ability to legislatively change
 23 zoning regulations that would negatively impact what
 24 was approved under the permit.
 25 MR. ZWETZIG: Which we haven't done.

1 MR. PARKER: Right. So when the vested
2 rights period ends, the County could enact new zoning
3 regulations that could somehow negatively impact the
4 permitted use or even prevent it. Vested rights period
5 doesn't meet that the special use permit approval goes
6 away. That continues. What was approved by the
7 special use permit remains in effect despite the end of
8 the vested rights period.

9 MR. ZWETZIG: Okay. Thanks for the
10 clarification.

11 MR. PARKER: You're welcome.

12 MR. ZWETZIG: Part of what I'm reading now,
13 Ms. Baessler's comment about the access, the number of
14 accesses, and the ability to block the road, so to
15 speak, for the operation of the facility. And
16 I -- again, I can't see us approving that in a new
17 permit for somebody in the future.

18 And you did -- Ms. Baessler made a comment
19 that the resolution before us is to do the 7,000.
20 That's really not true. The resolution before us is to
21 eliminate the two requested provisions with a
22 recommendation from the Planning and Zoning that we
23 place a limit on the animal unit, or a trigger for
24 animal units.

25 MR. PARKER: That's correct.

1 MR. ZWETZIG: So that's a recommendation.
2 Again, I don't know how you go out and
3 measure dust mitigation. And I guess I'd ask the
4 applicant. Do you feel like you've met the 2008
5 resolution requirement in dust mitigation.

6 MR. JAMES: The one thing I can say about
7 that is I think in their presentation -- I don't know
8 if it was a Ms. Baessler or the other person stating
9 that some of the things the dairy went out and was
10 doing on the roads was spraying water on the roads,
11 which is dust mitigation. They seemed to have a
12 problem with doing that.

13 I believe that the dairy does do dust
14 mitigation. They spray the roads to make sure that
15 stays down. And I'll let Mr. Naylor address that.

16 MR. DINIS: I have a question. Norm Dinis,
17 Empire Dairy. What is the County's stand on dust
18 mitigation?

19 MR. ZWETZIG: The resolution's -- I'll give
20 you the resolution's requirement. I got nuisance, and
21 I've got odor. Where is dust?

22 MR. PARKER: I can --

23 MR. ZWETZIG: We don't want you to do it.

24 MR. PARKER: I can do a short one.

25 It says, The applicant and their successors

1 in interest shall be required at the applicant's
2 expense to provide dust mitigation or pave County
3 Road 2 from County Road S to frontage road if the base
4 traffic count of 250 vehicles per week is exceeded by
5 30 percent attributed to the dairy. Dust mitigation or
6 paving shall be at the discretion of the Board of
7 County Commissioners.

8 MR. ZWETZIG: What is our discretion? Do we
9 walk out there and say, Is there dust here too much?
10 It seems pretty arbitrary.

11 MR. PARKER: There's not a lot of standard in
12 there.

13 MR. ZWETZIG: I agree.

14 MR. JAMES: I think Mr. Naylor can explain.
15 There is at least a dust mitigation plan or a nuisance
16 plan that was approved for this.

17 MR. NAYLOR: We do have a nuisance management
18 plan that was part of the 2008 application and provided
19 again to -- as part of this application, it addresses
20 on-site mitigation of dust; you know, how the County
21 handles dust mitigation on -- you know, would they
22 required mag chloride as a dust mitigation for a road
23 at a certain point versus paving. Again, that's a
24 question that the County would have to address. But we
25 do have a dust mitigation nuisance management plan for

1 on-site nuisance.

2 MR. ZWETZIG: We actually have it in written
3 Number 2. It says we may add additional measures to
4 control these items, which nuisance is included,
5 insects, rodents, odor, and dust.

6 MR. NAYLOR: And those are all included in
7 the nuisance --

8 MR. ZWETZIG: There's an industry standard.

9 MR. NAYLOR: Yes.

10 MR. ZWETZIG: Odor is -- it's unbelievable to
11 me that you can control odor at a dairy or feed lot.
12 What do you do to control odor. Tell them --

13 MR. DINIS: Norm Dinis, Empire Dairy. We
14 meet -- well, some of the odor standards in regards to
15 dewatering the facility, it's a CSU standard. And it
16 requires a certain drop on the sprinkler and also,
17 like, the size of the drop of the actual -- the liquid.
18 We meet all those standards.

19 MR. ZWETZIG: And there was a comment that no
20 end guns would be used. Do you use end guns?

21 MR. DINIS: When we are applying effluent, no
22 end guns are used.

23 MR. ZWETZIG: Okay. There was a mention
24 about numerous complaints that we don't organize or we
25 don't file or don't keep record of. And do we have --

1 what would be a numerous number of complaints from a
2 dairy?

3 MR. PARKER: I don't have an answer for that.

4 MS. CHERRY: I can tell you. I'm not aware
5 of any written complaints that have been submitted on
6 the Empire Dairy.

7 MR. ZWETZIG: Okay. So in your closing,
8 Mr. James, you said that this is clarifying the special
9 use permit. I agree that it's clarifying, but it's
10 also saying that maybe we're operating under the 7,000
11 animal units. But it doesn't change the permitted
12 number of 20,000. And at 20,000, if 7,000 is causing
13 nuisances and odors and dust, 20,000 certainly is going
14 to cause more. More trucks, more vehicles. It has to.
15 You got to get feed in there and milk out. So the
16 number of animal use up to 20,000 would definitely do
17 all those things.

18 MR. NAYLOR: There would be an opportunity
19 for those potential nuisances to happen. But again, we
20 have a nuisance management plan, and it's based off of
21 best management practices. And as Director Cherry has
22 indicated, even with the animal numbers that, we
23 have -- we have not -- the County has not received any
24 nuisance complaints on any of those items. So we
25 believe that -- you know, that they're operating

1 Mr. Chairman, I hope. But you know I never
2 completely say I don't have any more.

3 Oh, before I do that -- see, I've already got
4 one -- the permit right now also required some
5 vegetation and some tree planting. You didn't request
6 that that be eliminated.

7 MR. DINIS: Norm Dinis, Empire Dairy. We did
8 not request it be eliminated because it's already in
9 place.

10 MR. ZWETZIG: The requirement for the trees.

11 MR. DINIS: Yes.

12 MR. ZWETZIG: Let's review what that was.

13 MS. CHERRY: And we have verified that.

14 MR. ZWETZIG: You agree that the trees --

15 MS. CHERRY: Yeah.

16 MR. ZWETZIG: Okay. That's all we need to
17 do, then.

18 Oh, you said one comment had been received in
19 support of the proposal. Is it an adjoining landowner?
20 Is it a business? Who was it?

21 MS. TEAGUE: There is one positive comment
22 and Kent Kingsbury? Is that what that is.

23 MR. ZWETZIG: This was on May 15th
24 notification of the hearing on this date. We received
25 one comment. Is he an adjoining landowner?

1 appropriately and that any issues are negligible
2 because there haven't been any written complaints.

3 MR. ZWETZIG: Well, you're aware that we
4 recently permitted a dairy. I'm not sure what the size
5 was, if it was 20,000 or 15,000. And we limited the
6 number of accesses to way more than nine, and we
7 required a payment to help pave the road. So when you
8 get to that 20,000, we made clear comments that that is
9 time to do something.

10 MR. NAYLOR: That dairy that you're speaking
11 of, I believe, is on County Road 24. Based on the
12 paving requirements or the paving policy, that County
13 Road 24 does direct traffic to -- high-impact traffic
14 to a highway from the north down to the south. So it
15 does meet the policy for paving. It was also part of a
16 previous application that they would pay a portion of
17 that paving. I think they paid \$164,000 to -- of the
18 paving. So they weren't required to pay the full --
19 the full funding for that paving. And again, we
20 believe that that does -- that dairy and the road that
21 it's operating on do meet the high-impact definition.

22 MR. ZWETZIG: I just wanted your opinion.

23 MR. NAYLOR: No. That's --

24 MR. ZWETZIG: So going back to the minutes on
25 Planning and Zoning -- that's my last thing,

1 MS. CHERRY: I'm not sure if he's adjoining
2 landowner or not.

3 MR. ZWETZIG: What's his name?

4 MS. CHERRY: Kingsbury.

5 MR. ZWETZIG: Well, Kingsbury is an adjoining
6 landowner.

7 MR. ARNDT: Go ahead, Mr. Dinis.

8 MR. DINIS: Norm Dinis, Empire Dairy. Kent
9 Kingsbury is an adjoining landowner.

10 MR. ZWETZIG: Is he the one that made the
11 comment?

12 MR. DINIS: Yes.

13 MR. ZWETZIG: All right. Okay for right now.

14 MR. ARNDT: Commissioner Teague?

15 MS. TEAGUE: I don't have anything.

16 MR. ARNDT: I do have a question.

17 When we were talking about the nine
18 accesses -- and I can tell that with the discussion on
19 Driveway Number 9, the one I believe that is down at
20 the end, where in order to use the loading chute, that
21 you would be out in the lane.

22 Could you address that? And it may not even
23 be the frequency. I question whether or not that -- is
24 that a practice that we would want to implement
25 countywide? And I know that there are -- I can think

1 of several different facilities, old-time facilities,
2 that do back off of state highways and actually have to
3 have somebody there flagging when something is being
4 loaded out.

5 But can you -- can you tell us why we should
6 grant that, why you are requesting it, and why you
7 should be granted the ability to use that access in
8 particular?

9 MR. DINIS: Norm Dinis, Empire Dairy. The
10 Number 9 access not only has a chute but it's also an
11 access to a feed lane. It's one big access. I think
12 when the guys looked at it, they saw the chute. But
13 it's -- on the map it shows it also accesses a feed
14 lane. That -- the only time that it would ever block
15 traffic is if we were to use a semi. We at the dairy
16 personally don't use a semi at that chute. The times
17 that there are semis using the chute are neighbors that
18 borrow that chute.

19 MR. ARNDT: So it's not really an active part
20 of the dairy.

21 MR. DINIS: No. As Mr. Arndt knows, it's
22 where my dad loads his Mexican cattle.

23 MR. ZWETZIG: Mr. Chairman, can I ask you
24 to -- the permitted area is on this map that shows up
25 north of the highway. So if you were to go to 20,000,

1 MR. DINIS: Yes. This is where we currently
2 store organic nutrients. And this would have been the
3 three defined accesses for the expanded part.

4 MR. ZWETZIG: Okay. Thank you.

5 Commissioner Teague and I often have
6 discussions about lines that show permitted area. Is
7 that -- the permitted area is where we measure our
8 1,320 feet.

9 MR. JAMES: Is that something that needs to
10 be submitted now to the record?

11 MR. ZWETZIG: It's part of the file.

12 MR. PARKER: This is Jeff Parker, County
13 Attorney. I've been marking exhibits, items that are
14 being introduced that weren't part of the original
15 packet. So for this -- this instance, we are referring
16 to -- I believe it was an entitled "Empire Dairy
17 Existing Site Plan." And it was by AGPRO.

18 MS. CHERRY: Can you read the date in the
19 corner there?

20 MR. PARKER: You're trying to test my -- I
21 cannot see that.

22 MR. WOODALL: April 1, 2018.

23 MR. PARKER: April 1, 2018. Young eyes.

24 So I wasn't planning on marking special
25 exhibit that were already in the packet. That's a good

1 you would probably be north of that?

2 MR. JAMES: Take a look.

3 MR. ZWETZIG: I believe this comes from the
4 2008 resolution. Is this your --

5 MR. DINIS: The capital -- (inaudible.)

6 (Interruption by the court reporter.)

7 MR. ZWETZIG: So where would you put 20,000
8 within that capital area?

9 MR. DINIS: (Inaudible.)

10 MS. CHERRY: Make sure to speak so she can
11 hear you.

12 MR. ZWETZIG: The new parlor, he pointed,
13 would be somewhere in the southwest area.

14 MR. DINIS: Yes.

15 MR. ZWETZIG: It's noted on there. So where
16 would the 20,000 animal units be?

17 MR. DINIS: So this is essentially the
18 existing facility (indicating). This is a stormwater
19 pond that's already been put in place. Parlor and
20 additional barns (indicating).

21 MR. ZWETZIG: But those don't exist right
22 now.

23 MR. DINIS: No.

24 MR. ZWETZIG: But you do have room right here
25 for 20,000 head.

1 question.

2 MR. JAMES: I just wanted to clarify what was
3 being referred to.

4 MR. NAYLOR: I would believe that that was
5 the site plan that showed the accesses that were
6 proposed.

7 MR. ARNDT: And it is labeled as U-1.

8 MR. PARKER: Empire Dairy Road and County Use
9 by Special Review, and we're looking at Sheet U-1.

10 MR. JAMES: Thank you.

11 MS. TEAGUE: Can I get a clarification on
12 what accesses are currently approved? The numbers?

13 MR. JAMES: Do you know if there was any of
14 the nine that would be --

15 MR. DINIS: Two.

16 MR. JAMES: Which ones?

17 MR. NAYLOR: I couldn't tell you off the top
18 of my head which accesses there -- you know, obviously,
19 the main entrance. And there was -- I think they were
20 laid out almost across -- in three separate locations.
21 But the one that's -- the far east one is the main
22 access to the parlor. You can explain.

23 MS. TEAGUE: Entrance 7 is the main access?

24 MR. DINIS: Yes. It gets complicated. Norm
25 Dinis, Empire Dairy. The original facility had one

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1 approved access. Then we purchased the property east
 2 of us. They would have had an access to their property
 3 and one to their house. Then we purchased the property
 4 to the west of us and expanded. And they would have
 5 three approved accesses, I'm assuming. A field road
 6 access that would be grandfathered in theoretically.
 7 So if we went back to previous owners, I
 8 suppose we could say that there were five original
 9 permitted accesses.
 10 MR. ZWETZIG: Well, there were five existing
 11 accesses. There were three permitted in the
 12 resolution.
 13 (Private discussion.)
 14 MR. JAMES: What we were discussing, I don't
 15 think the three original ones -- I'm not sure they went
 16 through the formal Road and Bridge designation of which
 17 ones they were under. They might have. I don't know
 18 which of the nine were approved.
 19 MR. ARNDT: So before us right now, we're
 20 requesting nine accesses off of County Road S, not 10,
 21 not 13. We're not going to talk about what was there
 22 20 years ago, they're included in the nine.
 23 MR. JAMES: Correct.
 24 MR. ARNDT: The fencing. I asked the
 25 question about the fencing. I'm going to admit that I

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1 had a little bit of heartburn with the answer. I do
 2 think that if we're going to clarify this thing for the
 3 next 50 years that it needs to be clear what fencing
 4 is. And twine and T-posts don't cut fencing, in my
 5 mind.
 6 And one of my questions is going to be to the
 7 attorney. There is a state statute for livestock
 8 fencing, a minimum standard of T-posts have to be so
 9 far apart, for wire, barbed wire. You can exceed that
 10 standard if you want to make it all steel fencing. In
 11 my mind, you can do it better than that. But there
 12 needs to be a minimum standard that, from now on,
 13 everybody knows upfront that this is what it is.
 14 And can you tell me what the statute is for
 15 legal --
 16 MR. PARKER: No, I can't, actually. I didn't
 17 look it up after you mentioned that to me. I don't
 18 know if I -- I can try and find it while we're talking
 19 here.
 20 MR. ARNDT: That's my comment.
 21 MR. JAMES: If I may respond a little bit
 22 regarding why the fence is arranged the way it is,
 23 whether it's T-posts and twine or T-post and wire or
 24 whatever it is. Because of the construction of the
 25 road where you have runoff on and off. You have things

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1 where trucks may -- if you have inexperienced drivers,
 2 if they cut it too close or do something like that and
 3 take out a section of fence, we're trying to make it to
 4 a point where it's easily replaceable. If erosion
 5 wears away one of the posts and knocks out part of the
 6 fence, you want to go out and put it back up very
 7 quickly.
 8 If it's a substantial type of fence -- if
 9 there were actually animals held in on it or something
 10 like that, that would be a little bit different. But
 11 this is more of a designation.
 12 So if it's something where you feel
 13 comfortable with a more permanent thing, I ask you to
 14 keep in mind that we want to make sure that we can
 15 respond to posts being taken out, things being -- you
 16 know, falling over, erosion, things like that in a
 17 fairly quick manner. And understand that we're not
 18 trying to fence in anything. Every animal has already
 19 got a fence inside. It's more just the designation of
 20 those nine entrances.
 21 So I understand the concern of making it more
 22 permanent. I'm just trying to say this is the reason
 23 why it's the way it is and -- however the Commission
 24 wants to address that.
 25 MR. ARNDT: Well, I think we're here today

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1 because there are so many things that are unclear. And
 2 today is -- if your request is approved, there needs to
 3 be something for the future going forward that says
 4 this is what we all agree to and this is what we want
 5 happening. That is one of my concerns. And the
 6 comment, "What you see is what you get," didn't quite
 7 cut it, to be honest with you.
 8 MR. DINIS: I understand that.
 9 MR. PARKER: We -- actually, Connor did find
 10 it. He found it faster than the attorney could because
 11 I can't get a connection. He beat me anyways.
 12 It is C.R.S. 35-46-101(1), and it defines a
 13 "lawful fence" as a well-constructed three barbed wire
 14 fence with substantial posts set at a distance of
 15 approximately 20 feet apart and sufficient to turn
 16 ordinary horses and cattle, with all gates equally as
 17 good as the fence.
 18 So that is the statute. Thanks.
 19 MR. ARNDT: Thank you.
 20 And I do believe that we're talking about two
 21 different motions here. One -- you can look at the
 22 driveway accesses as one motion or you can deny them
 23 both. In my mind, I'm considering this as two
 24 different issues. One is the driveway access, and the
 25 next is whether or not the pavement should be stricken

1 from the permit.
 2 So I'll go to the pavement issue. And when
 3 we -- if we try to go back in history, that's pretty
 4 hard. To say that the animal units in 2002 when it was
 5 not required to be paved, or 2007, whatever numbers or
 6 whatever years we are going back to. What was that
 7 base number? At that time the County didn't think it
 8 had to be paved. What number throws it in to having to
 9 be paved?
 10 That is what I'm wondering in my mind. Is it
 11 the 20,000 that you're talking about? Is it the 7,000
 12 that the Planning Commission put on? What number does
 13 that?
 14 When we talk about old permits, in my mind,
 15 I'm also thinking of Road 24. That was called a
 16 collector road or main arterial road. It has a
 17 different standard. It was highly used in the public.
 18 This road -- and the word "vacation" has come up
 19 through the hearing process that -- that we've gone
 20 through the process before. I'm weighing in my mind,
 21 was there -- how much public came in and asked that
 22 this road be saved?
 23 We determined that one individual had stake
 24 in that road, and that person was here and strongly, in
 25 my mind, presented their cases that that road was

1 necessary to them. So the vacation of the road
 2 probably wasn't a good idea.
 3 But what it did prove, through that hearing,
 4 was that there was no public outcry that would have
 5 abandoned the road, vacated the road. Nobody came in
 6 and talked about the condition of the road, "I use that
 7 road all the time," except for one party. The one
 8 party, I think that they stated their case that the
 9 road -- the access was necessary to them.
 10 So as I'm looking at that and trying to
 11 compare Road 24 -- you brought up 24. They are two
 12 totally different structures, two different roads.
 13 This road is primarily used by the dairy, probably
 14 75 percent of -- well, 75 percent of the property is
 15 owned by the dairy that borders the road. And I would
 16 say that 98 percent of the traffic is the dairy's. And
 17 that number is probably quite shy.
 18 So is it public good, is it in the best
 19 interest of the taxpayers to have a hard surface road,
 20 which is, quite frankly, almost a private road? That's
 21 what I'm trying to weigh in my mind, whether or not the
 22 taxpayers should take care of an oiled road for one
 23 individual.
 24 MR. ZWETZIG: Can I ask a question on that?
 25 MR. ARNDT: Yes.

1 MR. ZWETZIG: So at what number is the public
 2 served? Is it 1? Is it 100? What's the number?
 3 MR. ARNDT: I'm trying to weigh it in my
 4 mind.
 5 MR. ZWETZIG: Okay.
 6 MR. ARNDT: And that's more of a statement
 7 than a question right now, but -- and it's a question
 8 to the Board. At what point do you say pavement is
 9 necessary? And where in our criteria do we have that
 10 number? And at what point do we become -- and I -- I'm
 11 not trying to throw out legal terms, but at what point
 12 do you -- I always use the words "arbitrary and
 13 capricious" when we put these restrictions on. If we
 14 don't have good regulations that are set out and we
 15 just make decisions -- I think somebody said
 16 "willy-nilly" in their testimony -- is the County
 17 somewhat at fault for all this too? We're trying to
 18 clear things up here that are ten years old. And
 19 Mr. Miller is right. Ten years is a long time.
 20 So those are the things that are all going
 21 through my mind.
 22 MS. TEAGUE: And I agree. I think part of
 23 the trigger is -- the trigger has to be, if you're
 24 maintaining a road for the general public, what is a
 25 primary road? And a primary road that's 1 mile long

1 and serves two parties is not a primary road, in my
 2 opinion.
 3 And the other thing is, you know, Morgan
 4 County right now, we're just starting to reach the -- I
 5 mean, we're realizing that we're having growth now that
 6 is in our interest to develop impact fee schedules and
 7 develop calculations on how to help build the
 8 infrastructure of our county. But frankly, we are not
 9 as sophisticated as the county to our west. We don't
 10 have \$11 billion in assessed revenue or valuation. And
 11 we're just now getting to that.
 12 And in 2008, we didn't have a road standard.
 13 In 2009, we built a road standard when we got the CDBG
 14 grant to go on Road 19. There was no standard at the
 15 time.
 16 And you know, I believe that when you put a
 17 cost to an applicant, it's got to be based on
 18 proportionate level of the impact on a priority road as
 19 county policy. So, you know, I really question whether
 20 this is a road that the taxpayers should have to
 21 maintain. And in the vacation trial, I thought it was
 22 a road that was vacatable because it was serving two
 23 parties and public would be served by vacation. So
 24 that's my comments about the road.
 25 The entrances, you know, I think the

1 entrances are -- I think that the point, you can't have
2 a cattle truck blocking a lane of traffic on a road. I
3 think that needs to be taken care of.

4 The other entrances, we have difficulty here
5 because it is a historical dairy that has used a lot of
6 entrances in and out. It serves the site plan well to
7 have more entrances, you know. But I don't have a
8 picture of the original site plan so that's a little
9 bit difficult for me.

10 But those would just be my comments.

11 MR. ZWETZIG: I think I'd like to clarify. I
12 think it's stated that we didn't have a 2008 standard.
13 We don't know if we did or not. I think we did have a
14 standard because we went out and built roads during
15 that time. We were building to some specification.
16 And the one I always heard was whatever the state
17 highway department posted as to whatever a paved road
18 should be.

19 So I -- I don't think it should be on the
20 record that Morgan County did not have a standard. I
21 think we maybe don't know what it was in 2008. But I
22 think there was some -- maybe it was just referred to,
23 but I've often heard out of Road and Bridge that, Oh,
24 we always use the highway standard. And that's a
25 published standard that's available.

1 fact -- and it's arbitrary based on the fact that I
2 already have a 20,000-head permit. There are no
3 triggers. There are no numbers.

4 MR. ZWETZIG: And I disagree with you because
5 there was a statement in the resolution that says
6 you'll pave it. And what they're saying is you'll pave
7 it at 7,000 animal units.

8 MR. DINIS: And if I may also, please, what
9 would the County's role be in paving?

10 MR. ZWETZIG: Tell me what you're asking.

11 MR. DINIS: What specifically does paving --
12 you're asking me what --

13 MR. ZWETZIG: Well, we talked about a
14 standard. And we actually will have an engineered
15 statement of what a paved road is. It will be -- is it
16 24-foot wide?

17 MR. ARNDT: The standards are being developed
18 today but are not in effect today. We don't have a --

19 MR. ZWETZIG: Right. But he's asking what we
20 would expect if he's to go out and pave. Would 1
21 inch of asphalt on the dirt qualify?

22 MR. PARKER: I can jump. This is County
23 Attorney Jeff Parker. I think what we have to do,
24 based upon what the County has right now, is it has to
25 be done to reasonable engineering standards based upon

1 You understand what the Planning and Zoning
2 recommendation is that you pave the road at 7,000
3 animal units. What would you say would happen if we
4 would take their recommendation -- the citizen task
5 force or the Planning and Zoning Commission that we've
6 assembled, and we would take their recommendation and
7 approve to do that? What would you say would happen
8 tomorrow at the dairy?

9 MR. DINIS: Well, if I may ask, aren't we
10 operating currently under a 20,000 animal unit permit?

11 MR. ZWETZIG: You have a 20,000 animal unit
12 permit right now.

13 MR. DINIS: Okay.

14 MR. ZWETZIG: They have suggested that to
15 approve these two changes, that we put a trigger in
16 there, which is probably the same they had back then,
17 unenforceable and not applicable. I'm saying, what do
18 you think it does to you that at 7,000 animal units,
19 you have to pave the road?

20 MR. DINIS: So you're asking me to reduce the
21 size of my farm?

22 MR. ZWETZIG: No. I'm asking you, if I use
23 the Planning and Zoning recommendation.

24 MR. DINIS: I just feel that the Planning and
25 Zoning recommendation was irrelevant based on the

1 the anticipated use of the road. And whether you refer
2 to CDOT or an engineer, you basically have to have
3 somebody answer that question. I don't think the
4 commissioners can say it's got to be 2 inches or
5 something here today.

6 MR. DINIS: Norm Dinis, Empire Dairy. My
7 only point was that we would have to partner up with
8 the County. The County would, in my opinion, have
9 financial responsibility. You'd build the road up, I'm
10 assuming, and we would finish the rest.

11 MR. ZWETZIG: It's not part of the current
12 situation. The recommendation from the Planning and
13 Zoning is just to put it in a resolution that says at
14 7,000, you pave the road.

15 MR. JAMES: I think that what Mr. Dinis said
16 was appropriate, that that is pretty arbitrary with
17 no -- I don't think Planning and Zoning looked at it
18 and said based on any evidence that number triggers
19 whatever nuisance cannot be mitigated anymore, whatever
20 traffic cannot be mitigated, anything like that. It's
21 kind of a number they pulled out. I don't think that
22 that would be something that necessarily we would have
23 to just sit and, I guess, look at. We would have to
24 look at all the options at that point in time.

25 MR. ZWETZIG: Are there days you are at 7,001

1 animal?
 2 MR. JAMES: I think the issue is. We've made
 3 the statement already. If he's milking at full
 4 capacity, just the milk cows are 7,000 animal units.
 5 MR. ZWETZIG: Never 7,001?
 6 MR. JAMES: As Mr. Naylor said, there are
 7 support animals on the site.
 8 MR. ZWETZIG: I understand. But the
 9 recommendation is that at 7,000 animal units, you'll
 10 pave the road. That's the recommendation. All I'm
 11 trying to figure out is how you think what the Planning
 12 and Zoning commission is recommending.
 13 MR. JAMES: I think it's a number that is
 14 arbitrary and without any support. I know they picked
 15 it out because that's what everything came up with --
 16 that was the original permit back in 1998, 2002.
 17 MR. PARKER: Pre-2008.
 18 MR. JAMES: Pre-2008 that was the number. I
 19 believe they tried the link that with the -- okay,
 20 we're going to come up with a trigger that should have
 21 been in there in 2008. It wasn't in there in 2008
 22 because the increase in animals is going to have a
 23 different impact based on how many animals you have.
 24 What I'm saying is, you asked the question
 25 what would happen tomorrow at the dairy. We'd have to

1 MR. ARNDT: Okay.
 2 MR. ZWETZIG: And I don't think that's really
 3 dissimilar to what the original Board of County
 4 Commissioners put on. I guess our problem and fact
 5 will be that there won't be any ability for enforcement
 6 of that.
 7 MR. ARNDT: Willingness.
 8 MR. NAYLOR: Well, I was just going to
 9 comment that, you know, if -- if that were the case and
 10 we accept the Planning Commission's 7,000, that that
 11 sets precedence for what happens in the county for any
 12 feed lot or dairy that at 7,000 animal units, you have
 13 to pave the road. I don't believe that's a standard
 14 that the County wants to -- I mean, if you're going to
 15 make standards, they should be based on engineered
 16 traffic design and standards, not based on animal
 17 units.
 18 And so that seems like an arbitrary -- again,
 19 it seems like an arbitrary number. If you're going to
 20 set a standard for when it's paved, it should be based
 21 off of traffic, not animal numbers.
 22 MR. JAMES: And if I may, just one thing, I
 23 think I see that you're looking at trying to say
 24 there's a trigger and how do we enforce, things like
 25 that. What I'm saying is there is a 20,000 animal unit

1 look at all options. You're literally saying the only
 2 animals you can have on that piece of property are ones
 3 you're milking. You can't have support animals. You
 4 can't have any calves. You can't have any --
 5 MR. ZWETZIG: Or you can pave the road. You
 6 can still have up to 20,000. It just requires you to
 7 pave.
 8 MR. JAMES: I think that's the crux of the
 9 entire issue.
 10 MR. ZWETZIG: Correct.
 11 (Private discussion.)
 12 MR. ARNDT: I guess I would like to make the
 13 statement -- or question, as you're discussing that,
 14 Jim, Commission Zwetzig, how do you draw the line at
 15 that number that 6,999 is okay for a dirt road, but
 16 7,000 -- I mean when we talk about the Planning
 17 Commission's recommendation -- but 7,000 throws us into
 18 a new category. What science -- what did we base it
 19 on? Did we base it on traffic counts? What did we
 20 base our decision on?
 21 MR. ZWETZIG: I'm not going to try to tell
 22 you what the Planning Commission's thoughts were. I
 23 can tell you that they were thinking, the permit's not
 24 changing. 20,000 animal units. So when you get 7,000,
 25 we want it paved. That's what they were saying.

1 limit in there right now. But there's also the
 2 nuisance mitigation requirement that's in the permit.
 3 If you take out the paving requirement and
 4 for some reason that road becomes impassable, that road
 5 has some issues that are impacting it, I believe that's
 6 under the nuisance impact as well. You could come back
 7 and have that type of enforcement and have that guard
 8 against it. It's not abdicating all responsibility and
 9 saying we can't enforce anything in this with regards
 10 to making sure the road is passable, maintained, dust
 11 is mitigated.
 12 You have all those things without saying
 13 we're going to pick a number basically out of the air
 14 and say you pave at this number. If it gets to a
 15 certain number of animals and that has an impact on the
 16 road, under the permit, there's the mitigation aspect
 17 that can be taken. That would be the correct, I think,
 18 method to enforce or to ask for some change regarding
 19 the condition or maintenance of the road.
 20 MR. ZWETZIG: Well, you know, part of it is
 21 I'm not allowed to be at the Planning and Zoning
 22 Commission meetings. I'm just looking at their
 23 recommendation that says at 7,000, pave it.
 24 MR. DINIS: Norm Dinis, Empire Dairy. I
 25 think really all we're asking right now is to strike

1 any and all language regarding paving.
 2 MR. ZWETZIG: I understand what you're doing.
 3 I'm just telling you what Planning and Zoning -- and
 4 what your thoughts of it were.
 5 MR. DINIS: In my opinion, it's irrelevant.
 6 MR. ARNDT: Any questions?
 7 No further questions.
 8 Attorneys? Any statements.
 9 MR. PARKER: No. Just answering legal
 10 questions. I don't provide policy advice.
 11 MR. ARNDT: Now that the Board is done, do
 12 you have closing statements you'd like to make as an
 13 applicant?
 14 MR. JAMES: I don't believe so.
 15 MR. ARNDT: Thank you. At this time a motion
 16 would be in order. I do think that for a matter of
 17 clarity that each -- you can either -- you can take
 18 them both, but I think it should be two requests.
 19 There are two different items in the permit. And I
 20 think it would be best to have separate motions on
 21 both -- on each item.
 22 MR. PARKER: That would be fine from a legal
 23 perspective. I ask for clarification, does the
 24 applicant have an objection to doing it that way?
 25 MR. JAMES: I don't believe so, no.

1 to approve it or not -- I'd like to make sure we have a
 2 reference to an exhibit that shows which driveways or
 3 access ways are approved.
 4 My understanding would be that you would be
 5 looking to eliminate what's marked as Access Number 9.
 6 MS. TEAGUE: That's correct. It would
 7 eliminate Access 9. I would also add to my motion that
 8 legal fencing is a requirement of the permit and should
 9 designate these accesses to the dairy.
 10 MR. PARKER: To clarify, what do you mean by
 11 "legal fencing."
 12 MS. TEAGUE: As read by the statute, the
 13 barrier to livestock.
 14 MR. PARKER: Okay. And that would be
 15 section -- I think we looked this up -- C.R.S.
 16 35-46-101.
 17 MS. CHERRY: (1).
 18 MR. PARKER: Subsection (1). It would be
 19 what's defined as legal livestock fencing.
 20 MR. NAYLOR: And would that be the minimum
 21 standard?
 22 MS. TEAGUE: That would be the minimum
 23 standard.
 24 MR. ARNDT: Is there a second?
 25 It's been moved and now a second to allow

1 MR. DINIS: No.
 2 MR. ZWETZIG: Do you have a preference which
 3 one we do first, Mr. Chairman?
 4 MR. ARNDT: Let's go in order.
 5 MR. ZWETZIG: The first one would be
 6 request -- I don't remember which is first.
 7 MR. PARKER: First one is the access.
 8 Planning department report requested change
 9 the in Section 3.a.iv. The requested change would be
 10 to read: Access from the facility onto County Road S
 11 shall be limited to nine driveways for access to the
 12 facility along County Road S between County Road 2 and
 13 Highway 144.
 14 That's the request.
 15 MR. ARNDT: Okay. So the driveways will be
 16 the first one to be looked into. And it is 3.a.iv.
 17 MS. TEAGUE: Mr. Chairman, I move that we
 18 approve the applicant's request to change the access to
 19 the facility off of County Road S, to limit it to -- I
 20 actually would request eight County-Approved driveways
 21 between County Road 2 and 144 and eliminate any
 22 driveway that would require dairy operations on the
 23 county road.
 24 MR. PARKER: Just to -- just to make sure we
 25 have this -- if we do get an approval -- I'm not saying

1 eight accesses as designed and shown on Sheet U-1,
 2 Empire Dairy Existing Site Plan. This is part of the
 3 file. And the motion is to grant Entrance 1, 2, 3, 4,
 4 5, 6, 7, 8, and to deny access on Entrance 9.
 5 MR. JAMES: And, Mr. Parker, I don't know if
 6 there is any way I can make one quick statement
 7 regarding that.
 8 MR. PARKER: Did we get a second on the
 9 motion yet?
 10 MR. ARNDT: I did second.
 11 MR. PARKER: Okay. The Commission can
 12 entertain a comment, if they like, or they can still
 13 debate after the second.
 14 MR. ARNDT: Go ahead.
 15 MR. JAMES: On that particular Number 9, my
 16 understanding is it's the only access to that feed
 17 road. But if the Commission could approve it with the
 18 understanding that there would be no semi usage at that
 19 chute. There would be no sticking out into traffic at
 20 all. It's used for access to that feed road. They
 21 wouldn't use semis at the chute. They use smaller
 22 trucks so they don't impact the road.
 23 MR. DINIS: We would abandon the chute.
 24 MR. ARNDT: Any discussion.
 25 MR. PARKER: We need an amendment by the

1 original motion maker, Commissioner Teague.

2 MS. TEAGUE: And the feed alley can't be
3 accessed from the dairy?

4 MR. DINIS: Norm Dinis, Empire Dairy. Yes,
5 for the same reasons that all the other accesses, we
6 need that access to swing trucks, semis. We just need
7 the width to get in there.

8 MS. TEAGUE: I would like a better estimation
9 from the Road and Bridge department if I change my
10 motion so that it's not impeding traffic.

11 MR. ARNDT: You'd have to have some better --

12 MS. TEAGUE: Yeah. I request that we table
13 that portion of --

14 MR. ZWETZIG: If I could, Commissioner
15 Teague, the e-mail didn't even refer to the fact that 9
16 was because of blocking. They just thought it was too
17 close to the intersection.

18 MS. TEAGUE: Right.

19 MR. ZWETZIG: Due to its proximity to the
20 intersection of County Road 2. They did state that it
21 looks like there's a loading chute situated close
22 enough to County Road S that would require a truck
23 loading at that location be stopped across lanes of
24 traffic.

25 So not only the truck stopped at the

1 be done through grants, noting that the applicant will
2 be responsible for applying for grants and meeting all
3 requirements. This can be done through a county bid
4 process this applicant -- with applicant responsible
5 for administrative cost. Applicant must notify the
6 County of their plans for financing this project no
7 later than May 1, 2009.

8 And the request is for that to be stricken in
9 it's entirety.

10 MS. TEAGUE: Mr. Chairman, I move that we
11 accept the applicant's request and eliminate that
12 condition on the permit. The Commission -- the
13 condition to be eliminated is Section 3.a.vi and any
14 reference to paving of Road S.

15 MR. ARNDT: Is there a second?

16 Second.

17 Discussion on that motion.

18 And I think Commission Zwetzig has brought up
19 good points too. The 20,000 -- it's permitted for
20 20,000, and so it doesn't matter whether we get to
21 19,999, it's all fine. That's what we're saying in
22 this motion. The road requirement is being pulled.

23 And I -- this is discussion -- clarification
24 in my own mind how I feel about it. Without those
25 standards in our county policy, it is so hard to try to

1 location, on the county road. So I think we know what
2 their statement it. Not only is the truck blocking,
3 but the distance to the intersection.

4 MS. TEAGUE: Uh-huh.

5 MR. ARNDT: At this time your motion stands?

6 MS. TEAGUE: Yes.

7 MR. ARNDT: My second is going to stand.

8 Discussion of the motion.

9 Hearing none, all those in favor say aye.

10 Motion carries.

11 Any opposed?

12 MR. ZWETZIG: Aye.

13 MR. ARNDT: Motion carries.

14 MR. PARKER: Just to be clear, did we get a
15 three vote in favor?

16 MR. ZWETZIG: No.

17 MR. PARKER: One opposed, two in favor. All
18 right. I just want to make sure I understood.

19 MR. ARNDT: Commission Zwetzig voted against.

20 MR. PARKER: Thank you.

21 MR. ARNDT: Okay. The next consideration is
22 the request to delete Section 3.a.vi, The applicant
23 must at their own expense pave County Road S to meet
24 county standards from County Road 2 to Highway 144.

25 I'll read the complete statement. This can

1 pull an arbitrary number, whether it be 15,000, 12,000,
2 I can't pull that number out. I have to use this as an
3 individual road. And does it -- is it a main arterial
4 road? The answer is no, I don't see it as main
5 arterial road.

6 I don't see the -- that it's in the best
7 interest of Morgan County and its citizen to pave this
8 road at this time for this operation, even at 20,000.
9 I don't see where the good is to pave the road. So
10 that is why I'm seconding the motion.

11 Discussion -- any other discussion?

12 MR. ZWETZIG: Just a comment to that. The
13 whole purpose of having conditional uses and special
14 uses is so that you can look at individual situations
15 and adjust them for a property. So what you do at Deer
16 Valley isn't the same as what you do at Empire Dairy.
17 And that's -- otherwise, we just have a regulation that
18 a -- allows in this situation, you can have 10,000 if
19 you have a paved road. You can have 20,000 if you have
20 a super highway.

21 I think the whole purpose of special uses and
22 conditional uses, in my mind, is that you can make
23 those decisions. And they're not that arbitrary, in my
24 mind. We know that additional traffic is going to
25 happen with higher numbers.

1 MR. ARNDT: Okay. Any other comments or
 2 discussion?
 3 MS. TEAGUE: No.
 4 MR. ARNDT: Hearing none, all in favor say
 5 aye.
 6 MS. TEAGUE: Aye.
 7 MR. ARNDT: Opposed?
 8 MR. ZWETZIG: Aye.
 9 MR. ARNDT: Note that the motion carried two
 10 in favor, Mr. Zwetzig voting no.
 11 Is there any other business?
 12 MR. PARKER: I actually recommend that I
 13 be -- staff and myself be directed to draft a
 14 resolution memorializing your decision and request a
 15 subsequent meeting for your review and approval.
 16 MR. ARNDT: To be signed nunc pro tunc.
 17 MS. TEAGUE: Mr. Chairman, I move that we
 18 direct staff to design and construct a resolution
 19 outlining this decision to consider, likely, in two
 20 weeks, probably at our public meeting. I'll set that
 21 date.
 22 What date is that, Susan? On August 28th.
 23 Commissioner Arndt will not be there that
 24 date. On September 4th, we will consider the
 25 resolution.

1 REPORTER'S CERTIFICATE
 2 STATE OF COLORADO)
) ss.
 3 CITY AND COUNTY OF DENVER)
 4 I, SUZANNE REID, Registered Professional
 5 Reporter, Certified Shorthand Reporter and Notary
 6 Public, State of Colorado, do hereby certify that the
 7 said proceedings were taken in machine shorthand by me
 8 via digital recording and was thereafter reduced to
 9 typewritten form, consisting of 119 pages herein; that
 10 the foregoing is a true transcript of the questions
 11 asked, testimony given, and proceedings had. I further
 12 certify that I am not employed by, related to, nor of
 13 counsel for any of the parties herein, nor otherwise
 14 interested in the outcome of this litigation.
 15 IN WITNESS WHEREOF, I have affixed my
 16 signature and seal this 5th day of September, 2018.
 17 My commission expires August 13, 2020.
 18
 19 _____
 20 Suzanne Reid
 21 Registered Professional Reporter
 22 Certified Shorthand Reporter
 23
 24
 25

1 MR. PARKER: I heard a motion. Did somebody
 2 second?
 3 MR. ARNDT: Is there a second to prepare the
 4 resolution.
 5 Second.
 6 All those in favor say aye.
 7 Motion carried.
 8 MR. PARKER: Thank you.
 9 WHEREUPON, the within proceedings were
 10 concluded.
 11 * * * * *
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A				
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