

# COMMISSIONERS PROCEEDINGS 1

## BOARD OF COUNTY COMMISSIONERS Minutes of Meeting September 20, 2018

The Board of Morgan County Commissioners met Thursday, September 20, 2018 at 9:34 a.m. with Chairman Mark Arndt, Commissioner James Zwetzig and Commissioner Laura Teague in attendance along with County Attorney Kathryn Sellers. Chairman Arndt asked Morgan County citizen Jon Becker to lead in the pledge of allegiance.

### **ADOPTION OF THE AGENDA**

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

### **PUBLIC HEARING**

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

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 Sections 1-125, 1-255, 1-285, 1-520, 1-625 and 1-850 of the Morgan County Zoning Regulations are hereby repealed in their entirety.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 Sections 4-705 through 4-730 are hereby repealed in their entirety and reenacted.

Kathryn Sellars, County Attorney, presented the information to the Board explaining there have been two changes due to changes in law, one being from 2012 and summarized those changes. Ms. Sellars stated due to these law changes, it required the County to make some amendments to the zoning regulations. Ms. Sellars then summarized the change in state law and summarized that change which required a change in the zoning regulations. Ms. Sellars stated this is really an update to the terminology to the zoning regulations to meet these changes in law.

Ms. Sellars stated these changes were brought to the Planning Commission and she was further approached by Jon Becker with Viaero Wireless who had some concerns, who has assisted her with making some changes and redlined the updates to meet the requirements.

Discussion followed whereas Commissioner Zwetzig and Commissioner Teague asked several questions that they would like an answer when the power point presentation is provided by Mr. Becker.

At this time, Jon Becker, representing Viaero Wireless, 1224 West Platte Avenue, Fort Morgan, Colorado, approached the podium to present information by power point. Mr. Becker provided detailed information regarding the types of towers as outlined in the presentation. Mr. Becker stated that the Board could see easily additional 20-30 tower units in Morgan County in the near future given changes in the technology.

Mr. Becker explained how they handle the way data is being transmitted using both the towers and using fiber networks stating Viaero has the largest trunk line between Denver and Omaha. Net neutrality was discussed and explained regarding the amount of streaming and data that is being transmitted through cell phones further providing an overall review of how the system works and what it offers to the public. Mr. Becker stated 5G will affect the amount of megs of speed that is available to the public stating that the services will be available to north of Snyder, as asked by Commissioner Zwetzig.

Discussion ensued regarding the issue of fiber being placed in the County Right of Ways with Commissioner Zwetzig asking if there should be regulations in place, with Mr. Becker stating he does not believe it should be regulated explaining his reasons. Ms. Sellars stated there are provisions in the regulations regarding this issue and it has been addressed as to co-locations.

Commissioner Teague clarified that the number of days to review is 60 days which was discussed and confirmed by Ms. Sellars. Mr. Becker stated Viaero would like to be connected to the County and provide fiber to the County to be able to provide free internet to each building.

Mr. Becker informed the Board that the Federal Government is considering the same thing on a nationwide basis as what the State of Colorado just passed legislatively.

The following information was provided in the form of written documentation to the board by Pam Cherry, Planning Administrator, explaining the purpose of this amendment. The purpose of this amendment is to bring Morgan County Zoning Regulations related to Commercial Mobile Radio Systems into compliance with the Federal Communications Corporation Section 6409(a) (Middle Class Tax Relief and Job Creation Act of 2012 or Spectrum Act) and Colorado House Bill 17-1193 signed into law in April 2017 and took effect in July 2017.

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

### **The Spectrum Act Section 6409(a):**

It limits a local government's ability to regulate land use practices for certain telecommunications facilities. The section requires that a local government shall approve requests for modification of existing towers or base stations that don't substantially change the dimension of the facility. This could include colocation of new equipment,

## 2 COMMISSIONERS PROCEEDINGS

removal of equipment or replacement of equipment. The Act provides lengthy clarification of the terms base station, tower and substantial change (see draft regulations Section 4-710 definitions).

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

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

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

### **HB-17-1193 – Small Wireless Service Infrastructure:**

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

HB 17-1193 expands the definition of small cell facility to include micro wireless facilities; neither definition currently appears in the Morgan County Zoning Regulations. These definitions are included in the draft of the proposed regulations. The bill further requires an expedited 90-day permitting process for broadband facilities for location or collocation of a small cell facility or a small cell network or replacement/modification. Siting, Mounting, placement, construction and operations of a small cell facility or network is a use by right in any zone district. Access to right-of-way includes the right to construct, maintain and operate lines of communication, switches and small cell facilities and small cell networks and obtain a permanent right-of-way for these facilities. This right extend to a telecommunications provide to locate small cell facilities and networks on light poles, light standards, traffic signals and utility poles when owned by the government entity.

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

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

Commissioner Zwetzig asked Ms. Sellars if she was in agreement with the redlined changes that have been presented and she stated she is fine with those changes at this time.

At this time, Chairman Arndt opened the matter for public comment at which time there was no public comment other than the presentation provided by Jon Becker representing Viero Wireless.

At this time, a motion was made by Commissioner Teague to approve the proposed amendments to the Morgan County Zoning Regulations regarding Commercial Mobile radio Service (CMRS) as outlined in Sections 1-125, 1-255, 1-285, 1-520, 1-625 and 1-850 of the Morgan County Zoning Regulations are hereby repealed in their entirety.

Sections 4-705 through 4-730 are hereby repealed in their entirety and reenacted. Commissioner Teague authorized and directed the preparation of the resolution outlining this information at the next meeting scheduled for September 25, 2018. At this time, Commissioner Zwetzig seconded the motion and the motion carried 3-0.

**Legal Description: A parcel of land in the E1/2NE1/4 of Section 20, Township 3 North, Range 60 West of the 6<sup>th</sup> p.m., Morgan County, Colorado, lying north of the Railroad Right of Way**

**Reason: Special Use Permit for a temporary pipe handling and storage yard.**

**Applicant: H-2 Enterprises, LLC**

**Landowner: Neb Brothers, a General Partnership**

Commissioner Teague placed a telephone call to the gentleman representing this matter, the special use permit application submitted by H-2 Enterprises, LLC. Matt Baumgartner, 1680 Colorado Parkway, Eaton, Colorado, 80615, was contacted by phone and was available for the hearing by conference call.

# COMMISSIONERS PROCEEDINGS 3

Chairman Arndt opened the hearing announcing the application of H-2 Enterprises, LLC, and asked Morgan County Planning and Zoning Planning Director/Floodplain Administrator Pam Cherry to present the file at which time Ms. Cherry read aloud the following information.

Ms. Cherry stated that H2 Enterprises, LLC is the applicant and Neb Brothers as property owner have submitted this application for a Use by Special Review Permit to operate a temporary pipe storage, handling and transfer facility in the "A" Agriculture Production Zone District on approximately 19 acres of the 149 acre parcel. The property is located in E½ of the NE¼ of Section 20, Township 3 North, Range 60W of the 6<sup>th</sup> P.M., south of the intersection of Morgan County Road P and Morgan County Road 2, Morgan County, Colorado.

Ms. Cherry explained that a temporary pipe storage, handling and transfer facility is not listed as a Use-By-Right, Conditional Use or a Use by Special Review in the Agriculture Production Zone District in the Morgan County Zoning Regulations. Pursuant to Section 2-325 of the Morgan County Zoning Regulations any use, not designated as a Use by Right, Accessory Use, Conditional Use, Use by Special Review or not otherwise prohibited in a particular zone, may be approved as Use by Special Review pursuant to the criteria and procedure as established by these Regulations.

Ms. Cherry stated that H2 has stored approximately 734,000 linear feet of pipe for portions of the Colorado pipeline that started to be moved onto the parcel in July, 2018. The next phase, anticipated to be complete in December, 2018, is to move the pipeline off the property to the pipeline alignment. Hours of operation will be 7 a.m. until 7 p.m. and are H2 imposed through agreements with property owners in the area. The pipe is being supplied to OneOK for the natural gas liquids pipeline that was heard by the Planning Commission on June 18, 2018 and then approved by the Board of County Commissioners on August 3, 2018. Export of the pipe has begun and will continue until late 2018.

Ms. Cherry explained that upon completion of the project the Neb parcel will be restored and returned to Agricultural use according to an agreement between H2 and Neb Brothers and a requirement of the state issued Stormwater Management Plan.

Ms. Cherry stated that conservation of agricultural resources and land is paramount and such land and resources must be protected from adverse impacts resulting from uncontrolled and undirected business, commercial, industrial and residential uses.

Ms. Cherry explained the following criteria are to be used by the Planning Commission and the Board of County Commissioners when reviewing an application for a Special Use Permit.

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

*The property is located in the Southwest planning area, south of the intersection of Morgan County Road P and Morgan County Road 2.*

*There is a county wide goal to diversify the economy in Morgan County to broaden business employment opportunities for residents and to further economic growth.*

*The southwest planning area goal is to encourage the preservation of agricultural lands production land to ensure continuation of this important industry.*

*In this area the goal is to preserve and protect existing agriculture uses south of County Road Q.*

- (B) All the application documents are complete and present a clear picture of how uses are to be arranged on the site or within Morgan County.

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

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

*H2 has worked with property owners in the area to mitigate impacts. Morgan County Road and Bridge is allowing for dust mitigation on County Road 2, adjacent to the project.*

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

*The use will be temporary and this permit if granted shall expire December 31, 2018 or upon completion of the project*

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

*H2 has worked with impacted property owners to reach agreement on the utilization of the Neb Brothers property for the storage, handling and transfer of the pipe to be used in the OneOK pipeline. The use is temporary and the permit will expire the end of 2018.*

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

# 4 COMMISSIONERS PROCEEDINGS

- (H) The applicant has adequately documented a public need for the project, all pertinent technical information, and adequate financial resources to implement it, and has paid all fees and review costs levied by the County for application processing and review.

*A temporary storage location for the pipe is necessary as part of the preparation for construction of the pipeline.*

- (I) For any Use by Special Review requiring a supply of water that the applicant has demonstrated a source of water which is adequate for the proposed use in terms of quantity and reliability and in the case of human consumption, quantity, quality, and reliability.

*A supply of water is not required for this temporary use.*

Ms. Cherry explained the recommended conditions of approval:

1. The permit is for a pipe storage, handling and transfer facility on 19 acres of the 149 acre Neb Brothers property.
2. The property shall be reclaimed according to the Stormwater Management Plan permit and agreement with the property owner, Neb Brothers. The permit is issued on a temporary basis only which shall expire on December 31, 2018.

Ms. Cherry stated that the Planning Commission considered this Use by Special Review at their meeting on September 17, 2018 and unanimously recommended approval for a pipe storage, handling and transfer facility subject to the above conditions.

At this time, Ms. Cherry recommended the approval of this application.

At this time, Chairman Arndt asked the applicants if they would like to speak at which time, he announced his name as being Matt Baumgartner, 1608 Colorado Parkway, Eaton, Colorado. At this time, the applicant stated the only thing he wanted to add was to thank the Board and the Planning Commission members for hearing the application and they want to be open to the fact that they should have applied for the permit prior to commencing the project. Commissioner Teague thanked Mr. Baumgartner for cooperating with the process.

At this time, Chairman Arndt opened the matter for public comment with there being none and at this time public comment was closed.

At this time, Chairman Arndt moved to discussion and decision with no further discussion.

Commissioner Zwetzig asked to clarify that there was no negative or opposition to this application, with Ms. Cherry stating she has not received any calls or any opposition.

Commissioner Teague asked about the road maintenance, specifically placing Magnesium Chloride in front of the residences this will affect, and explained the Board will be approaching them in regards to an agreement that they will need to review that will indemnify the County for any ongoing work and it would be in the form of a road maintenance plan. Mr. Baumgartner stated they are committed to working with all parties involved and if the plan is presented and within reason, they are fully supportive and in agreement to signing the agreement and also stated they are open to helping to maintain the integrity of the road as per the request of the Planning Commission to add another layer of Magnesium Chloride to the road.

Commissioner Arndt asked about the established date, with Mr. Baumgartner stated that Ms. Cherry had asked him to provide an updated schedule about two weeks ago, and stated that the December 31<sup>st</sup> deadline given weather reasons that could be of a concern. Chairman Arndt stated it is important to not have an unrealistic date specific and have to start this process over again and asked Mr. Baumgartner for a realistic date, with Mr. Baumgartner stating a 100 percent safe date would be end of February 2019 and that would be the time where the pipe would be removed from the property and they would then have the time to reclaim the property back as agreed with the Neb Brothers and that would take approximately two weeks. Commissioner Teague inquired about the agreements with the Neb Brothers and what it states. Exhibit D was then reviewed which Commissioner Teague stated it does not recognize a certain specific date in the agreement, it only states the landowner agrees to not object to the above reference special use permit application so long as H2 Enterprises conforms to the term of this agreement and other requirements associated with the special use permit adopted by Morgan County. Commissioner Teague asked Mr. Baumgartner in regards to the term limit with the landowners at which time Mr. Baumgartner stated they entered into a lease agreement in early April and the term is for 24 months.

Chairman Arndt clarified that the date specific would move from December 31, 2018 to March 1, 2019 with Mr. Baumgartner stating with the Board being in agreement with this date, he would appreciate that being moved to that date for completion.

At this time, no further discussion or questions ensued and a motion was made by Commissioner Zwetzig to approve the application for Special Use Permit for a temporary pipe handling and storage yard, in the E1/2NE1/4 of Section 20, Township 3 North, Range 60 West of the 6<sup>th</sup> p.m., Morgan County, Colorado, lying north of the Railroad Right of Way for a period not to exceed March 1<sup>st</sup> 2019 with the condition that the applicant complete a road maintenance agreement which will be provided by the County and authorized the preparation of the appropriate resolution to be approved at a later date. Commissioner Teague seconded the motion.

# COMMISSIONERS PROCEEDINGS 5

Ms. Sellars clarified the applicant can continue with the project and it is the responsibility of the County to provide the road maintenance agreement to the applicant. Chairman Arndt noted that these hearings were properly posted and published as required. At this time, the motion carried 3-0.

Being no further business the meeting was then adjourned at 11:05 a.m.

Respectfully Submitted,  
Susan L. Bailey  
Clerk to the Board

**(Minutes ratified October 9, 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