

COMMISSIONERS PROCEEDINGS 1

BOARD OF COUNTY COMMISSIONERS Minutes of Meeting October 23, 2018

The Board of Morgan County Commissioners met Tuesday, October 23, 2018 at 9:06 a.m. with Chairman Mark Arndt and Commissioner James Zwetzig in attendance with Commissioner Teague being absent and excused. Chairman Arndt asked Morgan County Attorney Jeff Parker to lead the meeting in the Pledge of Allegiance.

ADOPTION OF THE AGENDA

Commissioner Zwetzig made a motion to adopt the agenda as presented, with Chairman Arndt seconding the motion. Motion carried 2-0.

CONSENT AGENDA

Ratify the Board of County Commissioners approval of meeting minutes dated October 2, 2018
Ratify the Board of County Commissioners approval of meeting minutes dated October 9, 2018
Ratify the Board of County Commissioners approval of Contract 2018 CNT 209, Great Copier Services, Annual Copier Maintenance, Term of Contract October 1, 2018 through September 30, 2019
Ratify Commissioner Laura Teague's electronic signature on the Landfill DMR report for July 1, 2018 through September 30, 2018 sent to the EPA and signed on October 15, 2018
Ratify Chair Mark Arndt's signature on Rising Up 2017-18 Colorado Division of Housing Emergency Solutions Grant Application dated October 16, 2018

Commissioner Zwetzig made a motion to approve items 1-5 on the Consent Agenda as presented, Chairman Arndt seconded the motion and motion carried 2-0.

GENERAL BUSINESS AND ADMINISTRATIVE ITEMS

Consideration of Approval – Employee Reimbursement Schedule Revised October 16, 2018

Morgan County Finance Director, Michelle Covelli, presented to the Board for approval, Employee Reimbursement Schedule, Revised October 16, 2018, effective January 1, 2019. Ms. Covelli stated the only change made to the reimbursement schedule is those amounts for the high cost rate areas.

Commissioner Zwetzig made a motion to approve Employee Reimbursement Schedule Revised October 16, 2018 as presented by Morgan County Finance Director, Michelle Covelli and authorized the Chair to sign. Chairman Arndt seconded the motion. At this time, the motion carried 2-0.

At this time, Chairman Arndt asked Mr. Sagel to provide his report at which time, Morgan County Treasurer and Public Trustee Bob Sagel presented to the Board the Morgan County Treasurer's Report July 2018 through September 2018. Mr. Sagel provided detailed information to the board and summarized the information provided. Commissioner Zwetzig made mention about the report of reserve accounts indicating an increase stating he believes it may result from projects that have been carried over from the previous year noting there is a decrease of \$93,000 in property tax revenues.

Commissioner Zwetzig made a motion to accept Morgan County Treasurer's report as submitted by Treasurer and Public Trustee Bob Sagel. Chairman Arndt seconded the motion and motion carried 2-0.

Congressional Update – Dusty Johnson, Area Representative for Representative Ken Buck's Office

Dusty Johnson, Northeast Area Representative for Congressman Ken Buck presented to the Board an update from Congressman Ken Buck. Ms. Johnson updated the Board regarding several items Representative Buck is been involved with providing current activities and issues. Commissioner Zwetzig asked about Representative Buck signing on regarding the immigration reform act, and Ms. Johnson stated this matter is still in committee at this time, and would not be able to provide the Board with information as to how the final bill will look like at this time.

UNFINISHED BUSINESS

There was no unfinished business.

COUNTY OFFICIAL AND DEPARTMENT HEAD REPORTS

Joe King, Morgan County Ambulance Service Director, provided an update in regards to a recent accident members of his crew were involved in. He stated two of his crew were taken to North Colorado Medical Center, were treated and released and are now home doing well. This accident involved a semi truck and an ambulance. He also stated this year they have had 300 transports from CPMC to other facilities in the State and this is the first accident they have had in a very long time stating the crew acted appropriately; the other driver was cited for the accident. Upon hire the staff is required to partake in an emergency driving course and Commissioner Zwetzig mentioned this training was instrumental in how the ambulance driver handled the collision with Mr. King stating the defensive maneuvers the driver engaged in ultimately saved both of the crew's lives.

2 COMMISSIONERS PROCEEDINGS

Morgan County Clerk and Recorder Susan Bailey provided an update in regards to the upcoming 2018 General Election providing the current party statistical numbers of ballot returns as well as the hours of the Voter Service Polling Centers when they will be available to voters as well as those hours on Election Day and the locations of those VSPC's on Election Day.

Commissioners reviewed the calendar dated October 19, 2018 through October 30, 2018 with no changes.

CITIZEN'S COMMENT

There was no citizen comment provided.

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, and Commissioner James Zwetzig with Commissioner Teague absent and excused. Also present was Morgan County Planning and Zoning Planning Director/Floodplain Administrator Pam Cherry and County Attorney Jeff Parker.

Applicant: Kevin Lamb, Manager Bullseye Holdings, LLC

Landowner: Bullseye Holdings, LLC

Consultant: Travis Hertnecky, THEngineering

Application for a Special Use Permit to operate a livestock truck washing and cleaning facility in the "A" Agriculture Production Zone District. Section 3-180(R) of the Morgan County Zoning Regulations lists cattle truck washing and cleaning as a Use by Special Review; this operation would not be limited to cattle truck washing and, if approved, could washout any livestock trucks, general truck washing will not be permitted. The property is located south and east of the intersection of County Road O and County Road 16 in the N½ of the S½ of Section 26, Township 3N, Range 58W of the 6th P.M. and south and west of the Bijou Canal, Morgan County, Colorado.

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 following information.

Ms. Cherry stated this application is for a Special Use Permit to operate a livestock truck washing and cleaning facility in the "A" Agriculture Production Zone District. Section 3-180(R) of the Morgan County Zoning Regulations lists cattle truck washing and cleaning as a Use by Special Review; this operation would not be limited to cattle truck washing and, if approved, could washout any livestock trucks, general truck washing will not be permitted. The property is located south and east of the intersection of County Road O and County Road 16 in the N½ of the S½ of Section 26, Township 3N, Range 58W of the 6th P.M. and south and west of the Bijou Canal, Morgan County, Colorado.

Ms. Cherry explained that there has been a new survey completed and recorded of the Bullseye owned properties that contain the livestock truck washout footprint to the south parcel which is now 60.76 acres. The application includes a preliminary design report to address general layout, physical and social constraints and operation plans. The existing pond is proposed to remain with the north property, the former feeding operation. A new lagoon is proposed for the livestock truck washout and is located approximately 1,000 feet west of the Bijou canal. Livestock trailers will be cleaned of accumulated manure with high pressure, high volume water hoses. Soaps and/or solvents are not used. The wash water drains into a concrete separation pit. The facility will operate during typical business hours and will be extended to 6:00 a.m. to 9:00 p.m. if necessary, six days a week.

Ms. Cherry stated that THEngineering designed the facility in accordance with Colorado State University, Kansas State University, Texas A&M University, American Society of Agricultural Engineers, the Natural Resources Conservation Service and others to develop the plan which utilizes generally accepted best management practices for livestock washout facilities. In addition, the applicant's engineer consulted with the Colorado Department of Public Health and Environment to determine that a discharge permit is not required. Pursuant to 5CCR 61.14(1)(a)(iv):

The owner of a land application system can demonstrate that:

- (A) The design and operation of the system will result in complete evapotranspiration of the effluent;
- (B) There is adequate storage provided for the effluent during periods of inclement weather or where the ground has been frozen unless the provisions of (A) above, can be met during the entire year; and;
- (C) Any augmentation plan or substitute supply plan for the land application site does not provide a credit for return of the effluent to ground water.

The facility will apply wastewater at a rate less than the evaporation rate and provides seven months storage. Groundwater will be protected using native clay material to provide a discharge rate of less than 1×10^{-6} , or .000001 cm/second. The pond has been relined and has been certified by a Colorado registered engineer, Gerald W. Knudsen #16991. The test period was June 1, 2018 through June 11, 2018 and seepage rates were below what is permitted.

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.

COMMISSIONERS PROCEEDINGS 3

The location is south of the intersection of County Road O and County Road 16; located in the South Central Planning area as defined by the Morgan County Comprehensive Plan 2008. In this area the goal is to preserve and protect existing agriculture uses south of County Road Q. The truck washout is an agriculture use and while not associated with a Concentrated Animal Feeding Operation is a necessary service to support agriculture business in Morgan County.

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

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

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

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

Morgan County Road and Bridge has no objection to the continued use of the present driveway located on Morgan County Road 16.

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

The livestock washout operation is not required to be buffered as all surrounding properties are also zoned Agriculture Production and used for agricultural purposes.

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

Engineering reports and studies have been conducted for the property and submitted to the Colorado Department of Public Health and Environment (CDPHE) as well as the State Engineer's office that have reviewed the applications. The engineering, the property owner's consultant, has worked diligently to bring the property into compliance with State statute. A condition of approval will be recommended is that the property remains in compliance with regulations of all agencies that license this sort of facility. Bullseye Livestock was served with a Notice of Violation and Cease and Desist Order (NOV/CDO IO-180109-1) issued by CDPHE on January 10, 2018. In an e-mail from CDPHE's Andrea Beebout, Environmental Protection Specialist, dated September 5, 2018 stating that all corrective actions have been completed as required by the department.

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

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

A livestock washout operation is needed in Morgan County. This facility will be commercial in nature and will wash livestock trucks for operators that are not associated with Bullseye and deliver cattle to Cargill. Included in your packets are numerous letters of support for this proposal from independent truckers and trucking companies that transport cattle to the Cargill facility.

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

The applicant's consultant has estimated that the operation will use approximately 12.77 acre feet of water per year.

The Town of Wiggins has adopted a Resolution 36-2018 that is for the sale of 72 acres feet of raw water on a yearly basis. The resolution has a contingency that the water purchase is funded by the Colorado Water Conservation Board and payment made to the town by December 31, 2018.

In addition the applicant has provided an agreement to lease augmentation water from the Fort Morgan Water Company, LTD.

The Division of Water Resources has permitted well number 80348-F to not more than 24.27 acre-feet, or the amount covered under a substitute water supply plan until a decree is obtained for a permanent plan for augmentation. Water Court Case #2016CW3028 is currently in review by the state.

A letter dated September 20, 2018 from the Colorado Division of Water Resources to Frederick Fendel (water attorney for the applicant) approved a Substitute Water Supply Plan for the period of October 1, 2018 through September 30, 2019 until such time that the SWSP is revoked or superseded by decree. There are conditions of approval of the SWSP that will be monitored by the state.

Ms. Cherry stated that the property taxes are current.

Ms. Cherry explained that in a letter dated September 21, 2018 from the Northeast Colorado Health Department states that the onsite wastewater treatment system will be designed for a restroom and hand sink, with approximately

4 COMMISSIONERS PROCEEDINGS

three employees and 4-5 clients. Approval from other state or federal agencies may be required for the septic system.

At this time Ms. Cherry Recommended the following conditions of approval:

1. The facility shall not commence operations until it has received approval from all federal and state agencies with jurisdiction over the operation and all required permits have been issued.
2. The facility shall not commence operations until all improvements set forth in the application have been constructed and are operational.
3. The facility shall operate the Bullseye 3T well, Permit No. 80348-F in compliance with all well permit conditions and the applicable substitute water supply plan and/or permanent augmentation plan as determined by the State.
4. Generally accepted best management practices as recommended by the Natural Resources Conservation Service and established in applicable publications of Colorado State University for land application of manure and waste water shall be followed.
5. Future expansion of the washout facility shall require an amendment to this Special Use permit.
6. The applicant shall remain in compliance with the State of Colorado approved Substitute Water Supply Plan.
7. The applicant shall obtain necessary permits and comply with the requirements and conditions of those permits as determined by other governmental agencies with jurisdiction over this operation.

Ms. Cherry stated that this application was considered by the Planning Commission at their meeting on September 17, 2018. On a 5 in favor, 1 opposed, and one member absent, Planning Commission recommended approval of the Use by Special Review application to permit a livestock truck washout in the Agriculture Production zone district. I also recommend approval of this application subject to the conditions listed.

Chairman Arndt noted for the record, County Attorney Jeff Parker was present for the hearing at which time Mr. Parker noted the Planning Department received exhibits from Bijou Irrigation and asked if the applicant was in receipt of these exhibits. The applicant stated he did receive them at 7 p.m. the evening before the hearing and expressed an objection due to the lateness of the exhibits and the inability to respond. Mr. Parker stated there is nothing in the hearing rules which indicates people cannot present exhibits or information at the hearing, and it would be up to the Board to decide if these exhibits should be entered into the record.

The following documents were read aloud into the record with Mr. Parker providing an exhibit number to each document:

Exhibit 1 – Resolution 2015 BCC 11, A Resolution Granting a Use By Special Review For Establishment of a Livestock Confinement Facility

Exhibit 2 –Letter from Bijou Irrigation System, undated, reading aloud the letter as it started, indicating it is a three page letter

Exhibit 3 – Letter from Bijou Irrigation System, undated, reading aloud the letter as it started, indicating it is a two page letter

Exhibit 4 – Letter from Vranesh and Raisch, LLP, Water Counsel for Bijou Irrigation Company

Exhibit 5 – A document referring to a case related to Bullseye, no case number, but was filed last week

Exhibit 6 – An article from the Fort Morgan Times, headline stating “Lawsuit alleges negligence by King Soopers after E. coli sickens Colorado man

At this time, Commissioner Zwetzig questioned whether or not the documents had been provided to all in the packet for review prior to the hearing. Commissioner Zwetzig provided the documents in question to Mr. Parker for his review. After further discussion, it was determined the letters/information just listed out by Mr. Parker were not included in the packet for prior review. Mr. Parker provided the letters in question to the applicant, with the applicant stating these were the documents received the evening prior to the hearing.

At this time, Chairman Arndt verified the exhibit numbers and their respective exhibits.

The applicant asked if the six page letter is included in this list, at which time Mr. Parker stated the six page letter was not indicated as part of the list as noted by Chairman Arndt.

Chairman Arndt stated this document, not dated, from Bijou Irrigation System, special use permit application, reading aloud the salutation, as Dear Commissioners, being the six page letter, and indicated this to be numbered as Exhibit #7, with further reference to the email received with this letter being received at 3:45 p.m. on 10/22/18.

Stuart Corbridge, Attorney for Vranesh and Raish, introduced himself as representing Bijou Irrigation, indicated the six page letter, being introduced as exhibit number 7, was actually the cover information with the rest of the documents referenced in the letter and is in agreement to keep the exhibits numbers in this fashion. He stated two of the letters were received almost a year ago, regarding the lawsuits, the legal letter was intended as a response regarding ditch easement issues and stated the e-coli information was listed as a reference to the information as well.

COMMISSIONERS PROCEEDINGS 5

At this time, Chairman Arndt indicated the structure of how the hearing would be conducted stating the applicant will present their file, and the matter would then be opened for public comment and through testimony by the applicant, the information may answer questions that others in the audience may have.

Chairman Arndt asked the applicant to introduce themselves and indicate who would be speaking at the hearing. Raymond Laws with Zorn and Richardson, P.C., spoke indicating his address as 626 East Platte Avenue, Fort Morgan, indicating he would be speaking on behalf of the applicant, Bullseye Holdings, LLC. He further mentioned there would be two engineers speaking from THCEngineering, specifically Travis Hertnecky and Erin Kress as well as Rick Vandel speaking in regards to water related issues. He also asked as a procedural matter they would like the ability to comment in regards to the letter marked as Exhibit 7.

He then outlined the application, stating his client meets all nine required criteria and read through them in detail, as acknowledged by the Planning Administrator. He indicated this truck wash is necessary and is in conformance of supporting agriculture in Morgan County. At this time, Mr. Laws reviewed each section of the special permit application providing a response as the applicant meeting the requirements.

At this time, Travis Hertnecky spoke, introducing himself as an engineer from THCEngineering, 8605 17th Street, Drive, Greeley, Colorado. He spoke in regards to the fact that once it was brought to the attention of Mr. Lamb that he needed a special use permit, his firm was contacted and they have implemented a plan where they have now placed a separate pond for the truck wash on its own parcel, indicating the reasons. He also spoke about the access from County Road 16, south of County Road O, on its dedicated parcel. Mr. Hertnecky indicated they will be washing out primarily livestock trucks and other agricultural trucks which would not include washing out acids or other like materials as they are not set up for this.

Mr. Hertnecky provided an overview of how the business would operate indicating it will consist of trucks coming in and personnel washing out trucks using high pressure hoses noting they have configured the business to wash an average of ten trucks per day.

Mr. Hertnecky further explained how the ponds have been designed to handle the flow from the truck wash activities which will include new water, the accumulated manure from those truck as well as storm water itself so that has been calculated for the design as well stating it is designed for a 25 year, 24 hour storm event, which is a common design standard for this type of facility. On top of that they do have additional three board levels in place explaining that in detail. He stated this is mostly the main design portion of the application.

Discussion followed regarding the 25 year, 24 hour storm event design as well as the parcel being two separate parcels and whether or not each parcel has its own dedicated utilities. Mr. Lamb, the applicant stated at this time, it does not but they have no issue in doing so, and have had discussions with MCREA to make each parcel separate. Mr. Lamb stated they also share the water between the two parcels.

The hearing continued with further discussions regarding the water supply for the truck washing facility and compliance with state regulations surrounding a substitute supply plan as well as whether or not the property is deeded or not. Mr. Lamb indicated the property deed had not been recorded as of yet. Commissioner Zwetzg asked that the applicant provide information to the Board to ensure the deed will cover both parcels mentioning there had been concerns by Ms. Kosman regarding an easement on the property and further stated he would like to see the actual well agreement. Mr. Lamb confirmed that the well is 100 percent owned by Bullseye Holdings. In order to determine the actual location of the well, Mr. Lamb responded to Chairman Arndt's question, that "this was not the Eisenach parcel" with Chairman Arndt noting the Eisenach parcel is north of this location.

At this time, Chairman Arndt opened the matter for public comment in opposition to this application. Chairman Arndt noted he did receive a voice mail from Doty Farms Trucking in support of a truck washing facility in Morgan County.

At this time, the following individuals spoke in opposition to the application providing comments as to why they opposed. Stuart Corbridge, Attorney specializing in water rights, speaking in opposition on behalf of Bijou Irrigation; Denise Wagner, Bijou Irrigation; Mike Groves, President of the Bijou Irrigation Company, stated he lives in the area; Pete Anderson, Bijou Irrigation Director, address being 20738 County Road N, Fort Morgan, John Rusch, landowner, address being 14267 County Road 17, Fort Morgan; Henry Unger, landowner, address being 15236 County Road 18, Fort Morgan; Roger Schaeffer, landowner, address being 13077 County Road 17, Fort Morgan; Austin Kosman, stating he owns the farm the well is located indicating he lives on County Road 15, Fort Morgan and Roger Schaefer, landowner, address being 13077 County Road 17, Fort Morgan.

At this time, the following exhibits were named and included as part of the hearing:

- Exhibit 8 – Preliminary Injunction (Court Case Number 2017CV30092)
- Exhibit 9 – Bijou Irrigation System letter to Commissioners, undated, three page letter
- Exhibit 10 – Two photos from Bijou Irrigation Systems dated June 2010
- Exhibit 11 – Two photos from Bijou Irrigation Systems, undated
- Exhibit 12 – One photo form Bijou Irrigation Systems, undated
- Exhibit 13 – One photo from Bijou Irrigation Systems, Rain, May 2015, 3T- Bullseye Kevin Lamb
- Exhibit 14 – One photo from Bijou Irrigation Systems, 3T Pics Rain Damage May 2015
- Exhibit 15 – One photo from Bijou Irrigation Systems, undated
- Exhibit 16 – One photo from Bijou Irrigation Systems, undated
- Exhibit 17 – One photo from Bijou Irrigation Systems, undated
- Exhibit 18 – One photo from Bijou Irrigation Systems, undated
- Exhibit 19 – One photo from Bijou Irrigation Systems, undated

6 COMMISSIONERS PROCEEDINGS

Discussion followed with Commissioner Zwetzig asking about the well's location, whether it is north or south of the ditch, with Mr. Kosman stating the actual location being on the south side of the ditch in the corner of the field. Mr. Kosman pointed out on the actual map shown by power point the location of the well and the actual easement. Mr. Lamb explained where the pipeline is located and where it actually runs. He stated there used to be an electrical easement, explaining there is a separate line buried to Mr. Kosman's pivot point. Chairman Arndt noted for the record they are looking at the earth image of the Kosman Farm, parcel number being 122723000006 as read aloud by County Attorney Mr. Parker.

At this time, Chairman Arndt closed the public portion of the hearing reserving the right to call on those as necessary.

Lengthy discussion followed by all regarding the concerns expressed by those in opposition and a brief recess was then taken, and the hearing reconvened at 12:26 p.m.

Mr. Laws asked to allow the applicant to speak in regards to the questions posed during this morning's meeting. At this time, Kevin Lamb, applicant, spoke commenting in regards to some case law that was mentioned by those representing Bijou Irrigation District, and their intent was never to cause any issues for the Bijou Irrigation District, and explained he has hired counsel to be sure that rights were not violated. He stated he has asked them in regards to the easement they have in place, the way he would characterize it, they have the right to move water down their ditch and he stated he respects that right and stated it is absolutely not a problem to discuss any issues they may have. He further commented about the rights he has to his property and one being they should not be able to impede his business, stating he is doing everything he knows how to mitigate their concerns and is uncomfortable with them owning the ditch with them telling him being 1000 feet away he cannot operate. He commented about the fact that Ms. Wagner stated that they would not meet with him, and he is happy to meet with one board member and that board member can report to the board. He expressed concerns about a bill he received and the fact that he did speak with his attorney and he was told that it was an act of God and is not sure what he has done wrong. All he wants to do is operate a truck wash out, and the number of trucks being washed, being, 3,120 per year, explaining the low months and the high months. He commented about the testimony about times when trucks were lined up and Mr. Lamb stated he can count on one hand when trucks were lined up waiting. He stated he has had a couple of hearings, with planning and zoning and this is his first time in this arena. He was told the first time, there would be a problem regarding flies, he reached out to the gentleman at his place of business, and it was indicated to him that he was not speaking about him; they were talking about Teague and the solid waste facility. Then the next issue was water, and at the first hearing, a gentleman testified the other lagoon was causing irreparable damage to his crops and this bothered him, the last thing he wants to be is a bad neighbor and they did things to rectify this. He stated he used to own this property and knows what historically used to happen on this ground, explaining the "old lagoon" and they do have a certification and he stated he was told that it was his lagoon leaking, and Mr. Lamb stated it could be Bijou, and immediately recertified his lagoon, and stated the crops were damaged this year stating it cannot be due to his business, and has historical evidence from the past regarding the area in question.

Mr. Lamb stated they have addressed the 25 year 24 hour flood issue, and addressed the 100 year flood whereas it was testified there was 1/8 inch difference, and spoke about the difference over this footprint of ground if there would be the 7 inch rain event. He stated if they need to figure out a way to handle this, they will as they want to be a good neighbor in the neighborhood. He stated it was testified by Mr. Rusch that REA could not split out the power and he does not see that as an issue as they have been in negotiations regarding this and it can be done. He stated what he is proposing is a needed truck washout for the County and if there is something not quite right, they want to resolve it.

Chairman Arndt went back to the fact that this is two separate parcels, has the survey been prepared or deed been recorded to consider this two different parcels with discussion indicating that portion has not been done. He stated it is difficult for him to make a decision not knowing whether or not it is one parcel or two parcels since this information has not been filed. Legally, he has the ability to make it two different parcels, but feels the applicant has the County in limbo here, with Mr. Lamb stating that could be a condition of the approval and would have it filed this afternoon, a deed could be filed.

Mr. Parker stated they have allowed in the past special use permits on portions of property so he stated he is not sure that is required, and further commented the Board will actually define on the approval the actual area of allowance. Mr. Lamb was asked to address how they apply the effluent water, with Mr. Lamb stating he wanted to use what he calls a hose reel, and they did some work with NRCS, stating that same soil structure was propose indicating that the Teague's were applying it with semi-trucks feeling they are doing what they need to do to be the least evasive.

Commissioner Zwetzig made mention about the easement number of the well, and stated this has been printed out and asked that it be entered as an exhibit. At this time, Mr. Parker stated Exhibit 20 will be the Grant of Easement Document, #880898. Mr. Lamb stated there is a main storage facility on the north parcel, and then to the south there is a four inch PVC line that goes on private property down to it. Commissioner Zwetzig asked about the permit, as he noticed in there was an additional use permit added in her request where the well was permitted to be used and Mr. Laws referred this question to the water attorney.

Ms. Cherry stated to review Condition C, number 5 in the board's packet, with the applicant's water attorney stating the current permit covers all uses that had been associated with the feedlot and they have had some debate in water court cases with Bijou about whether or not incidental truck washing is the same thing as a standalone truck washing operation and his position as well as the State's position has been any one of those uses would be as stated in their water use, and will be very clear this will be referred to as a standalone truck washing facility. Further discussion followed with Mr. Vandel stating the State Engineer stated they were not quite clear, to deal with it so they are dealing with it and it is in process at this time and to answer Chairman Arndt's question, it depends on whether or

COMMISSIONERS PROCEEDINGS 7

not Bijou agrees, it gets done the next day, if they should object, then it could take up to 35 days. Before they apply, they are required to confer with Bijou, and anticipate having an answer within the 35 days if it is contested.

Chairman Arndt asked the question to Bijou Irrigation District about seepage stating there is a bit of confusion about the seepage and where it is coming from. Ms. Wagner stated lagoon water that topped over their ponds entered their ditch and for the record are talking about the old lagoons. Chairman Arndt also asked about the seepage discussed in regards to Mr. Unger's property, asking again if this is the old lagoon being questioned, with Ms. Wagner stating that Mr. Unger's property has always had some seep, whether it be from the Bijou ditch or the feedlot, and explained when the old lagoon was clear full, there was considerably more seepage that caused crop damage than what she has experienced in the 15 years she has worked for the ditch company. She stated there is some seep from the ditch canal, but stated there was additional seepage from the old pond.

Commissioner Zwetzig asked about the comment made regarding the pond being recertified, with Mr. Hertnecky stating, it was retested this summer with water in it to measure the actual seepage out of the pond which it was determined to be less than 30 second per inch which is industry standards. Chairman Arndt noted those ponds are not part of the site plans for this facility. Mr. Laws stated they do have a copy of the certification. Mr. Hertnecky clarified the information in the document stating the actual square footage of the pond was determined and that is how the actual seepage was determined.

Chairman Arndt asked Mr. Hertnecky the question about the ten trucks per day and at some point, but if it is now thrown into 3100 trucks per year and they all come in the month of October, what that does to the design. He stated in looking at the design they could take 2500 trucks per year if they should all happen that way, and commented in regards to the concerns expressed by the neighbors as to there not being anyone to monitor and regulate the numbers, he proposed the 3100 trucks per year. Chairman Arndt question as to how this is being computed, with Mr. Hertnecky explaining when he designed this, he put in ten trucks per day, six days a week, 365 days a year, for simplifying easy math, there is seven month storage, so using that seven month data, they would take the seven months of trucks before they would have to land apply again. So truly the ten trucks per day, it could be 100 trucks on Tuesday and maybe not for another four days, not realistic, but possible. Mr. Hertnecky explained how they calculated the average number of trucks, he stated that was a number he used and if the Board would like to discuss different numbers, he believes they are open to discuss. Chairman Arndt made mention of the ten trucks per day, stating he gets more than that on his road in an hour and now that changes things and that would be a consideration that needs to be thought about.

Mr. Lamb stated all he can tell the Board is what historically happened at this site, stating there were three times they did close to 30, and that was rare. Chairman Arndt asked in going to back to water use, if there are more trucks in October, how is that being reported. Mr. Lamb stated the limit is calculated annually, but it is reported monthly. Chairman Arndt asked what the number of trucks that can be washed based on availability. Mr. Hertnecky stated they started from the other end, looking at how many trucks would be washed per day and worked towards how much water it will take to do so. The applicant's water attorney stated the plan will cover both parcels, explaining water is not going to limit the number of trucks.

Discussion followed with how the water will be specified, with the water attorney stating if the water is used at the feedlot, and there are other water used for the truck wash, how will that be determined. Mr. Laws stated they are looking at that as somewhat like a well agreement, with Mr. Parker stating they would be required to comply with their water decree as one of the recommended conditions.

The applicant's water attorney stated to quantify it, limit it to state at least 15 acre feet dedicated to the truck wash.

Commissioner Zwetzig asked about the emergency action plan and finds it interesting that the Bijou is not being notified in the case of a pond break, asking if the emergency plan is correct. Mr. Hertnecky stated any omission of Bijou is not intentional, stating they would be in agreement to include the Bijou Irrigation Company.

Commissioner Zwetzig stated it is a paved road from County Road O, and a gravel road at County Road 16, and if they will be putting ten trucks daily on this gravel road, an the comments made they were going to gift the manure, that will increase the number of trucks, did anyone ask about the road impact for County Road 16. Ms. Cherry stated there is an email from Road and Bridge stating they have no objection to the access on County Road 16. Commissioner Zwetzig stated that he does have concerns about the amount of traffic and the increase of traffic on the gravel road and the additional use will have an impact. Commissioner Zwetzig believes this would be an appropriate instance to have a road impact study completed as the Board required in a previous hearing, explaining this is a daily event and the amount of traffic will be greater. Chairman Arndt stated this is different than silage and the impact is there, but this road is somewhat different feeling it is not an improved road, is there a reason the road should be widened some given the amount of truck traffic that will be on this road with this proposed project feeling he needs more clarification as to this information as well as more clarification to the well and water information wanting to have the appropriate information for future boards to have the ability to see what was considered and have some sort of ground rules.

Commissioner Zwetzig asked about the information in the planning commission hearing, three employees working in three wash bay areas, Mr. Lamb stated the average situation is about one hour to clean the truck. Commissioner Zwetzig stated in doing the math, he gets 24 trucks per day. Mr. Lamb stated what their plan of action was to get the truck in and out of there and if it takes two employees to wash a truck and get the truck in and out of there, that does not mean they will be washing a truck by each employee in each bay. Discussion followed with how many trucks are being washed in Yuma, with Mr. Lamb stating he does not know, but the most that has been washed at this facility was 31.

8 COMMISSIONERS PROCEEDINGS

Chairman Arndt stated he feels it is difficult to discuss what is limited as to the number of trucks per day, wanting to ensure it is not 100 trucks per day, and if it was told to him that 30 trucks is the maximum, then that is what should be looked at, stating neighbors can count and there needs to be some type of limit to the number of trucks per day to be granted for this permit. He stated it is not designed for just ten trucks per day, it is designed using the seven month storage plan, and that is how the annual numbers were designed.

Mr. Laws stated in answering Commissioner Zwetzig's question, when these trucks are being washed, they will be empty, so clearly the impact would be less, with Commissioner Zwetzig stating with those trucks hauling the manure away, those will be fully loaded so there will be an impact.

Commissioner Zwetzig asked about the question that she had as well as the planning commission, about the expansion, with Ms. Cherry stating it is a fact and if there is expansion, they would need to amend their special use permit. Commissioner Zwetzig asked who would police this matter with Ms. Cherry stating the road and bridge department would be using their traffic counter. Commissioner Zwetzig asked about Condition #6, with Mr. Parker stating the augmentation decree could be what would be needed to comply and also stated that Condition #3 does take care of this so #6 could be repetitive. Commissioner Zwetzig would prefer that Condition #6 be removed and #3 be what covers this information with Mr. Parker stating that would cover it.

Commissioner Zwetzig asked if lighting would be shining in the neighbor's homes after dark, with Mr. Lamb stating there is only one home in the impact area, and that is the northeast corner of County Road 16 and County Road O which would be half of a mile distance.

Commissioner Zwetzig stated he does have a concern with odor feeling that when it is placed in a sprayer he feels that can create an odor issue. He stated he understands the importance of ag and the necessity. Mr. Lamb stated from what he knows from farming, he believes the hose reel is the best application solution, the big gun is the best solution, maybe possibly lower the pressure so it does not mist, and those are part of what is expected to and is willing to do so.

Pete Anderson stated that he believes Commissioner Zwetzig would remember they were attempting to place effluent through sprinklers from what came from Quail Ridge and that was put a stop to, due to the Commissioners being concerned about that, and he does not see any difference in this scenario feeling the impact will be there. Chairman Arndt stated he does believe the proximity to houses is of concern, with Mr. Anderson stating they were on sprinkler corners. Chairman Arndt asked what the closest house will be to this proposed project with Mr. Lamb stating it would be approximately a half of a mile with the distance to Mr. Schaefer's house being a half or more mile from the closest point as indicated on the power point map.

Commissioner Zwetzig asked if there is a bathroom facility for employees, with Ms. Cherry stating Mr. Lamb has made contact with Mel Bustos with the Northeast Colorado Health Department and Mr. Lamb stated he is proposing a self-contained structure that would be a bathroom facility, which would be a semi-permanent structure. He stated that at some of the Ritchie Brother auctions they have a facility that is fully insulated and wired, and he will be putting a septic system in place. Discussions followed as to where will the truck driver go when they wash the truck, with Mr. Lamb stating he is hopeful they stay in their truck.

Commissioner Zwetzig made mention of the fact that Mr. Lamb started this operation and continued to operate after he was notified that he had not followed regulations, and the County has now had to incur attorney costs and time spent to resolve this issue. Mr. Lamb stated that he believed they had a grandfathered right, given there was another truck washing facility, and were guided by their attorney to be able to do so, but in hindsight he wishes he had not done so.

Chairman Arndt stated on the engineering side, he is not comfortable with the 25 year storm rate, probably to get his approval; it will take the 100 year storm rate with Mr. Hertnecky stating he believes the 25 year is more than practical but would speak to Mr. Lamb and agree to the 100 year storm rate. Chairman Arndt stated he believes given the topography of this land in question will require more safety considerations and this would be something he would want to require before he would feel comfortable in approving the matter.

Chairman Arndt asked if the well would be metered, with Mr. Lamb stating it is metered and the water attorney stated it is required to be metered.

Commissioner Zwetzig asked if Mr. Lamb knew who the half owner is in regards to the mineral rights with Mr. Lamb stating he does not know who that is. Commissioner Zwetzig asked about the testimony regarding the existing lagoon being on the feedlot, is it a spillway or an over flow or backup and if this is not part of this permit, that should be retracted and some other plan be put in place.

Mr. Hertnecky stated that it be retained that a 100 year storm plan be in place and an emergency spillway be in place on the property in regards to the special use permit.

Mr. Rusch spoke stating after what he just heard, is the property being split into two different parcels and has a concern about a spillway that should be a part of this project and this can create mischief on multiple levels stating his biggest concern is to split these two properties to be sure there is one entity and one person responsible for this matter.

Chairman Arndt stated the spillway is a concern, if owner A has the lot full of cattle, and all of a sudden owner A is taking a spill from that lagoon, who takes it in the end, stating he believes it will be the Bijou. So he stated it is hard for him to understand if there is the emergency spillway and have to be sure there is a plan that can control any topping over.

COMMISSIONERS PROCEEDINGS 9

Mr. Stuart Corbridge, stated in listening to the discussion, there were statements made that reconfirmed the need for a limit to how many trucks are being allowed to be washed, without some oversight of limits, there needs to be a plan to keep track of the number of trucks that are being washed, feeling the Board understands this, but wants to be sure there is something there for people to be accountable.

Mr. Lamb stated this project is designed to do what is allowed as a maximum and as far as spilling over into the other one, he does not know the answer to that, but maybe it is something that is constructed as a spillway between in case of that happening.

Chairman Arndt asked if both parcels are tied to this special use permit, asking County Attorney Parker if the Board has the ability to say that is part of that site plan. Mr. Parker replied stating they are the ones making the application, so the Board can tell the applicant they want the parcels tied together or not, but it is the applicant's application to decide what property is subject to the permit. Mr. Parker further stated he would like to comment first of all what he is hearing is they are going to look back at doing the 100 year design based solely on the current property of the application, not rely on the spillway, but there is the opportunity to have the spillway if there was a larger event. He further commented with the Board's concern of if there is cattle on the property and the applicant is using the lagoon, they will not be able to place cattle on that lot and use that lagoon until they obtain another permit, if they are relying on the lagoon in the northern lot for the CAFO and it is partly used for this southern lot truck wash they will be considering that at the time of the northern lot CAFO application.

Mr. Laws stated his client disagrees with the County in regards to the CAFO, believing they are grandfathered in. Mr. Lamb stated it is to their advantage to have a special use permit on the feedlot, but can only handle one at a time.

Mr. Cherry stated there has been the discussion to apply for a special use permit on the CAFO in the future.

Mr., Schaefer made the comment based on what Mr. Laws said, they feel it is still open to a feedlot that is one big reason this needs to be kept together or otherwise that lagoon will be full and then there is a problem with the 100 year flood event, if there is not one person responsible that creates a problem.

Commissioner Zwetzig stated he has two concerns, the first being the traffic impact and the second being he does not believe they have addressed the issues with Bijou and the landowners. He stated he has heard from Mr. Lamb that he is willing to discuss the issues and would want to hear more and give more opportunity for that to be sure the Board is doing their job in protecting the safety and the rights of the citizens. He stated he believes it is an opportune time for them to all get together again to discuss. He suggested there be a 30 day period of time to allow them to meet and discuss the issues and asked the Planning Administrator to request a road impact study in regards to the traffic impact.

Chairman Arndt stated he agrees, he believes the parties need to try and get together and work through the issues before the Board can make a decision. Chairman Arndt asked about the land application and if there are any other requirements that need to be addressed. Commissioner Zwetzig stated he is not sure about the height of the reel and the application being off site is a better solution and expressed his concern about the land application feeling they need to come up with a better idea for that.

Commissioner Zwetzig asked the procedural question if they can continue without public comment, with Mr. Parker stating the hearing can be continued for a date certain and still allow for public comment at that time.

County Attorney, Jeff Parker, then reviewed those concerns which were addressed during the hearing listing the following potential conditions or issues that need to be addressed:

- #1 Maintaining easement rights from the well site to subject property including over any portion of the separate parcels;
- #2 Whether or not some kind of maximum for the number of trucks per day, week, month or year basis;
- #3 Effluent application, type of application, the buffer from the ditch, the area being applied to, day and hours of application, notification to Bijou and adjacent landowners, possible limits of amount being applied onsite versus taking it off site;
- #4 Whether or not to impose some kind of response if the parcels are separated, as to the use of water use per parcel;
- #5 Reserving a minimum amount of water for the truck washout, having 15 feet acres of water is a safe number;
- #6 Design of retention pond size, 25 or 100 years
- #7 Restriction of the actual improvements on the side of the ditch, current regulations is 35 feet
- #8 Separate utilities, if parcels are separated, utilities be separated
- #9 Operational conditions, addressing limits on chemicals and hours of operations
- #10 Record keeping, ask the applicant to keep records as to maintaining compliance, for example, the number of trucks
- #11 Request a traffic study to address the impact of traffic on the road
- #12 Final design plan to be submitted prior to construction

Chairman Arndt stated he does not like shared well agreements realizing there are problems and if there is one, they need to be sure it is solid and there are no issues. He stated it is not only the acre feet that is to come out of this well, but the utilities need to be addressed, good solid agreement needs to be in place.

Mr. Parker suggested the applicant address that at the next meeting, with Mr. Laws stating he would be happy to discuss this with the County's counsel as to how much water would be used on both boundaries and parcels as well as any other important items for a solid well agreement.

10 COMMISSIONERS PROCEEDINGS

Commissioner Zwetzig also asked the applicant to get the conversation with Morgan County Rural Electric Association (MCREA) documented as to his information and plan for electrical utilities.

After lengthy discussion amongst all parties involved, a motion was made by Commissioner Zwetzig to continue the public hearing until Tuesday, December 4, 2018 at 9:30 a.m. with Chairman Arndt seconding the motion. It is being continued with the information to be brought forward in regards to the suggestions made above and anything pertaining to the list of items, public comment will be accepted. At this time, the motion carried 2-0.

Being no further business the meeting was then adjourned at 1:56 p.m.

Respectfully Submitted,

Susan L. Bailey
Clerk to the Board

(Minutes ratified November 13, 2018)

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

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

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

(SEAL)

ATTEST:

s/ Susan L. Bailey
Susan L. Bailey