

MORGAN COUNTY PLANNING COMMISSION
October 13, 2020 MINUTES

The Morgan County Planning Commission met on Tuesday, October 13, 2020, at 7:00 p.m. in the Assembly Room of the Morgan County Administration Building. The meeting was called to order by Chairman Nathan Troutd.

Pete Mercer, Mike Bailey, Robert Pennington were present. Nathan Troutd, and Clayton Miller appeared remotely by the Zoom platform. Also present were Pam Cherry, Planning Administrator, and Ahna Raygoza, Planning Clerk. Also present was Karol Kopetsky, Morgan County IT Administrator.

It is noted that this Planning Commission meeting for October 13, 2020 was held in person with an option to attend remotely through the Zoom platform.

Approval of Minutes: September 21, 2020

It was moved by Vice Chairman Robert Pennington and seconded by Clayton Miller to approve the September 21, 2020 minutes as presented. Motion carried 5-0.

Approval of Agenda:

It was moved by Clayton Miller and seconded by Mike Bailey to approve the Agenda as presented. Motion carried 5-0.

Chairman Nathan Troutd read the review process for tonight's meeting.

NEW BUSINESS:

APPLICANTS: Kyle Howard/Empire Gun Club
LANDOWNERS: Kyle Howard and Margaret Sebern

Applicant Kyle Howard, owner of Empire Gun Club, and also Landowner, was in attendance on behalf of the Empire Gun Club Special Use Permit application.

Application Overview

Pam Cherry, Planning Administrator, read her file summary as follows:

Kyle Howard as applicant and Kyle Howard and Margaret Severn as landowners have submitted an application for a special use permit to operate Empire Gun Club (a shooting range) and to teach firearms classes and continue farming on a portion of the property. The property is approximately 42.56 acres located in the SW ¼ of the NW ¼ and the NW ¼ of the SW ¼ and the NE ¼ of the SW ¼ all lying south of Highway 34 in Section 30, Township 4 North, Range 60 West of the 6th P.M. Morgan County CO.

The property is zoned Agriculture Production and a shooting range and firearms training are the proposed uses which are not listed as uses in the Morgan County zoning regulations in the Agriculture Production zone district.

Pursuant to Section 2-325; any use, not designated as a Use by Right, Accessory Use, Conditional Use and Use by Special Review or not otherwise prohibited in a particular zone, may be approved as a Use by Special Review pursuant to the criteria and procedures as established by these Regulations.

The county has regulations that are specific to shooting ranges beginning in Section 4-275 through 4-295 (attached) that address submittal requirements, design standards, safety baffles and occasional events. The Morgan County Sheriff's office was contacted with a complaint about shooting in the area that was reaching the Empire Reservoir trail. After receiving that report Sheriff Martin went to the property and spoke with the owner. There is communication from Sheriff Martin to the complainant included in your packets.

Analysis and Applicable Regulations

Criteria – Special Use Permits

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 northwest planning area.

Chapter 2

2.II.A - Economic Development

Goal – Diversify the economy in Morgan County to broaden business employment opportunities for residents and to further economic growth.

This project will support economic development by offering a location for firearms training.

2.II.C

Goal - The County will encourage the preservation of agriculture production lands in balance with pressure for land use changes to higher intensity development.

This project will not negatively impact the preservation agriculture production property. It is located at the very west edge of the county, adjacent and south of Highway 34, Weld County Empire Reservoir is directly to the west.

Goal – Improve Morgan County’s image by dealing with community design issues in relation to land use.

Surrounding agricultural uses, berms that have been constructed and Empire Reservoir provide natural buffers in the adjacent properties.

(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.

Section 4-280 of the zoning regulations requires a site map with appropriate contour intervals.

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

Regulations require that the Planning Commission determine the minimum land requirements for this application. There has been significant grading on the property to construct berms for safety purposes. The applicant designed the range with an approximately 20’ berm to mitigate noise and for backstop purposes.

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

Offsite impacts are minimized by the backstop construction. CDOT is currently reviewing an application to amend the access permit.

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

Distance and berm construction sufficiently buffer and mitigate impact to surrounding uses. Neighbor notifications were sent to all properties, whether in Weld or Morgan County, within one mile of the property boundary.

(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.

The Health Department has approved the use of portable toilets on the property and bringing in bottled water.

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

The parcel is conforming.

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

There is a need for firearms training in Morgan County. An existing range in the county may close at any time. This range would provide for redundancy to existing facilities.

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

The water supply for the shooting range associated uses will be bottled and brought in. There is an existing well permit #236199 that is permitted for irrigating one acre of landscape, household and fire suppression uses.

Recommendation and conditions

Suggested conditions if Planning Commission recommends approval to the County Commissioners:

1. The applicant shall obtain necessary permits and comply with the requirements and conditions of those permits as determined by other governmental agencies with jurisdiction over this operation.
2. The portable toilets will be brought onsite prior to beginning operations, the pump agreement to be supplied to the Health Department.
3. Submit a site plan that shows contours of the site, the relief/protection provided by the constructed berms.
4. Re-permit and transfer ownership of the existing well through the State Engineer's office.

Applicant Kyle Howard, owner of Empire Gun Club, and also Landowner, presented this Special Use Permit application. Kyle Howard said he is native to Colorado and is an entrepreneur and enjoys photography and teaching. His father taught him firearms basics when he was young. He explained his motivation for starting a firearms course was the shooting at the church in Texas last year where two people were killed. He recognized a gap in education. New gun ownership has gone up but the education on gun safety has not. There are people with permits and guns who have never shot a gun before. He has taken basic handgun courses and will be taking basic rifle courses as well.

Howard currently provides armed security at Flat Irons Church. He was teaching courses at other ranges. He was looking for a place he could go shoot and bring his friends to practice shooting and get away from the city. He was one of four people who made an offer on this property. The property owner heard what Howard wanted to do with the property should he buy it and he chose to accept Howard's offer for that reason. After purchasing the property they contacted Jill at the Bijou about the reservoir and an engineer came to meet with them at the property. They said it looks good, as long as you are not in the ditch.

It became harder to work with other ranges, as an outside instructor and Howard reported it is distracting trying to provide instruction in indoor ranges where it is loud, and people are in close quarters.

He was alerted to the Special Use permit process with the complaint at the Sheriff's office. He had mistakenly checked the City of Fort Morgan website and not Morgan County.

Howard showed various photos and views of the property, aerial shots, and views from the shooter's vantage point. Howard explained that the land has caretakers, a couple of his friends who live there and take care of the property. They live in the home to the left of the shop. The shop is to the left of the berms and that is big enough to handle two classes of 5-10 students each.

Range 1 is closest to the shop and visible from Hwy 34. Range 2 is on the far right, off into the trees.

Range 1, the average shooting position is 400' from the Highway in the exact opposite direction and is 8500', or 1.6 miles, to the next structure on the opposite side of the lake and not within direct line of sight it is off to the left-hand side. There is also a campground 2.3 miles away to the right hand side but if you drew a straight line the only obstruction is 3.3 miles away and it is I-76.

From Range 2 you are 560' off of the Highway, then the next structure is a campground 3,500-4,000' away. An RV storage park is over there as well. The nearest house is 1.6 miles away then 2 miles to the next obstruction.

Howard gave comparisons to the Morgan County Gun Club. They have 7-8 homes within 3,500 feet down range. Howard has implemented a down range distance that is the same, double, or more than that of Morgan County Gun Club.

Howard stated that "One of the requests that Bijou had, obviously looking out for the people at Empire Reservoir during boating season, was 'Can you shoot west, the whole time?'" They kind of compromised that when it is not boating season they could shoot south, and when it is boating season, they would shoot west at all times. Howard said that Bijou seemed okay with that agreement. That is why one side of the berm is bigger than the other, so that they could shoot one direction during boating season and the other direction when it is not boating season.

Howard explained that the natural grade was not disturbed. They tried to keep the same grade, just pushing the dirt.

An average class would be 5-10 people, and his only day off is Sunday so if he teaches a class, it would be on a Sunday. The shooters would never be behind the shop, they would be around the berm edge. The average shooting portion of the class is 2-3 hours until people are tired. This was never intended to be a drive-in service range. The insurance is too expensive and he would have to keep staff all the time. He wants to have a safe, quiet place for approved, safe, instructors to come and teach their classes. Howard stated that probably 85-95% of his classes will be at the 7-10 yard line. Monday thru Thursday he doesn't plan on really having any classes due to work schedules. Friday, Saturdays and Sundays were really the only days they plan on having things, and it would usually be one instructor with one class and a few hours of shooting. It would not be sun-up to sun-down.

Howard said what he would like to do in the future is bring in much more vetted instructors, people with more life scenario experience than him, to provide classes to other people. He recognized that Morgan County Gun Club potentially may shut down in the future. If Commissioners saw fit he is not opposed to making it a more public space to replace that. He had never planned on it, he had planned on a lower risk, smaller scale for the neighbors, but if the Commissioners think it would help, he is open to that. He would just need to upgrade the infrastructure for that. He offered the space to the Sheriff's office any time they need if his range provides something they need. They also offer time to the Flat Irons Church security as needed.

Howard explained from 20 yards you can barely see the dam above the corner berm. Berms are 20-25' high. They have settled a little bit. Howard showed vantage point from 10 yard line and explained you would have to make a drastic mistake, if not intentional, in order to miss the berm.

Howard's dad is planning on farming the open field with winter wheat or alfalfa between the Highway and the berms, as well as on the south side. Right now it is just weeds but Howard hopes the crop will make things look nicer. The grade is 2-4% towards the seepage canal.

The berm is at least 20' high and the dam is significantly taller as a second backup. The NRA said he didn't need a backstop since the dam is sufficient height. He asked what it would be if the dam were not there and they said 10-12' so he doubled it. The berm will provide sound and potential bullet loss over the top. The primary berm is 15 yards in depth and about 20 feet high. The western berm is big enough for about five to seven students. He tries to limit classes to five students per instructor. If more than five, another instructor would be needed. Bijou requested a maintenance access between the berm and the seepage canal which Howard did. Howard said that if they grow and need more room to expand in the future they could do an additional berm to the right of the Range two but did not see a need for the third berm at this time. Howard's property line extends over the dam and 20 feet into the beach, at least 250 feet from the average shooting position to the dam. Howard demonstrated from the 10 yard line you would have to shoot at an angle of more than 75 degrees, and make a crucial mistake to miss the berm. There is also a natural berm to somewhat protect the highway. On the primary range you can back up to 100 yards but it was intended for 25 yards or less. To access the western berm there is a rickety bridge which he has received permission from Bijou to replace with a proper culvert to walk over. Range 2 was primarily created with the intention of shooting west with option of shooting south. His initial intent was to put up points of concealment and be able to move around obstacles personally. Howard explained you can only learn so much shooting straight ahead on a flat range. There is a short dog leg on the west side, an instructor can be there teaching a one-on-one class there and be safe.

The only way you can access that berm by car is if you enter the property through a side road on the opposite side of the property. Howard feels that the Sheriff was impressed by the set up.

Howard explained that from the usual water line at the beach, you are unable to see the shop, the berms, or the house. One would have to come up and over the berm to see it. When shooting it is almost at a downward angle because the slope is about five degrees.

Troutd asked for clarification on distances and size of guns used on the range.

Howard responded that it would be primarily handguns either 45 or 9mil, with the occasional 380, but it is usually handguns with the occasional rifles. Howard stated that his particular course does all shooting at five to seven yards. The qualification they have to pass for Flat Irons is the Colorado Post Handgun Qualification and that is what all law enforcement officers have to shoot to pass. There is one exercise that is from 25 yards, two at 20 yards, one at 15 yards, and everything else is between 1-10 yards. FBI statistics show that 90% of defensive shooting happens within three yard range so that is where they practice. Even further shooting is going to be within 25 yard range.

Pennington asked if CDOT had done anything with their easement.

Howard responded that with the traffic estimation he sent to CDOT he jokingly put that the traffic he expects is that of the average Thanksgiving dinner with a family. He said he was told it would take 4-6 weeks to hear back so he was hopeful he would hear back soon.

Howard was asked if he had considered signage at the dam and the side of Highway 34 for safety.

Howard first stated that no one is allowed to walk on the dam, even himself, as the owner.

Howard said he is not opposed to posting signage. He said he thinks the majority of owners know they are not allowed to walk around the dam because it is purely a member's only reservoir. Howard also stated that it is all rocks at the dam so it would be risky for someone boating to attempt to pull up to the dock. He is "all for" posting signage at the top. He also added that for maintenance guys, he will have signage at both sides of the top. He will also send out texts to Bijou informing them when the range is hot so they are aware. He said that as far as posting a sign on the highway, someone would have to get close to read the sign.

Howard was asked to address the blowing sand and indications in how the berms would react to the weather. He referred to the weekend prior to the meeting which brought very high winds.

Howard responded that the berms are very well packed however they do expect a little more settling which is why they built them as high as they did. They have not settled as much as they expected, even with 80mph wind the weekend prior. If the wind does shift them there is plenty of dirt there to rebuild and push it back up.

Vegetation was brought up as a solution. Howard explained that due to the cold, there is a little vegetation on the left of the berm but not very much at this point. Once there is more vegetation it will help prevent erosion of the berms.

PUBLIC COMMENT:

Favor: Bruce Howard, of 8969 Hwy 52 Wiggins, has been a resident of Morgan County for 7-8 years and spoke in favor of this application. Bruce Howard stated that he has been employed as a fire fighter and paramedic for 25+ years. He has done work with the Arapahoe County Sheriff's Department and taken the active shooter training scenarios. He was on duty during the Aurora Theatre shooting. He stated, looking to his own background in safety, "the measures the applicant (Kyle Howard) has taken are pretty phenomenal."

Against: Jill Brunel stated that Kyle Howard has been great to work with and accommodating to their requests. She added that at the most recent board meeting there were a few concerns brought up and that Bijou's Water Attorney, Stuart Corbridge from Boulder, CO (attending the meeting via phone) was going to speak on their behalf.

Corbridge reiterated Brunel's comment about Howard having worked well with them, and expressed the board's appreciation for that. He stated that he was not really there in an attorney capacity per se, but to just make a few points for them. He noted that Bijou's approval had been in regards to Howard's plan to move dirt on his property

and that the email of approval in the packets did not have anything to do with the shooting aspect, just the moving dirt aspect and its effect on the dam.

Corbridge stated that upon reviewing the proposal they had the following three concerns:

1. Primary concern is the safety concern in shooting towards the dam, towards the south:

Notwithstanding the measures Howard has taken, Corbridge expressed the concern for bullets going in the direction of a man made structure, which needs to be maintained, holding a body of water used for recreation. He questioned why, with a little bit of work, the eastern shooting area, referred to as Range 1, couldn't be relocated slightly to the north and west so the primary shooting direction is the west. Corbridge stated that that would provide everyone with a little more safety and lessen the risk of an accident that everyone hopes doesn't happen, but is a potential. He asked the Planning Commission and Planning and Zoning Department to consider that.

2. Wind erosion-

They are also worried about the wind moving or reducing the size of the berms, depositing the sand on the dam, killing vegetation, and creating seepage problems and sliding. They suggested the berms need to be vegetated or covered with an erosion prevention material.

3. Frequency of the Gun Club's Usage-

Corbridge referred to Howard's comments throughout the meeting saying that the shooting range would not be used very often but then later on he also issued a welcome to law enforcement, other instructors, and possibly to the public in the future.

4. What is the plan for monitoring to:

- A. Ensure it is only limited use

- B. Ensure that shooting is staying in one berm, in the same location and they are not shooting at times people are in the reservoir or when maintenance is going on.

PUBLIC COMMENT CLOSED

Kyle Howard responded to Bijou's concern about shooting to the south and said they plan on staying in close contact with Jill, or best contact, when boating season is in effect. He said when boating season is open, everything will get moved over and the shooting will be to the west. They will stay in contact with Jill to know when that is in effect. He said since it is a private reservoir so no one should be there when it is closed to boating season.

He said he spoke about it with the maintenance guys and engineer from Bijou and the dam is made of the same material as the berms. He said the previous Sunday they had 80mph winds and the wind was picking up sand and dropping it back gently on the ground. He stated that though he is not an engineer, he doesn't know how that amount of dirt can damage a dam made of the same material. Howard did not have any objections to investigation erosion prevention, since it will save him money. Every time he has to bring out equipment to mitigate erosion it costs him money so he is amenable to anything he can do to mitigate that.

Troutd-commented that obviously the range has been created well, as inferred by reading the Sheriff's letter in the packet. He asked the applicant if the Sheriff seemed to have thought that it was the safest range he had seen in a while.

Howard responded that he did not want to speculate on that or put words in the Sheriff's mouth but that did seem to be the general impression.

Howard addressed another concern from Bijou about limiting traffic. He said right now everything goes through him. It is him and a handful of other instructors. They require new instructors to come out, show what they are going to teach, make sure they are being safe prior to them teaching. He said he does not foresee people wanting to come out Wednesday morning when work is in full swing, and said most classes are three-six hours. Most of his leads are coming out of Denver area. That is an hour drive and if people get off work at 5:00 and get out there at 6:00, you don't have very much daylight left. Other instructors may have that option. Most classes will be kept to Friday, Saturday, Sunday, and he foresees middle of the week classes being a very rare occasion.

As far as the sheriffs' office, his parents were in the military, and if the police want to use it, it betters the police, so it is a reasonable request.

Howard was asked about a gate at the entrance to the property and asked about people entering the property

Howard reported they have 15 cameras on the property and he watches it closely so that no one can get close to Range 1 or Range 2 without him being aware. The cameras have night vision and some of them have audio.

Howard assured him that there is a gate across the driveway to the property and it will be shut and locked when no one is there. His standard operating procedure is the gates open when people arrive and gates shut once everyone is there. That way there is no assumption it is a drive-in range. He had not planned on posting signage. However, he is not opposed to posting signage that it is not a public range, whatever makes people feel more safe or comfortable.

Howard was asked if the NRA had any requirements regarding safety guidelines.

Howard responded that besides posting basic safety rules, it is basically at the discretion of the owner.

A confirmation from the NRA regarding the berm height was requested.

Howard said they recommended 10-12' berm. 90% shooting would be done at 25 yards or less, the NRA told him they didn't think he needed a berm and could just take advantage of the natural backstop-the dam. Howard stated he would double the recommended height and still use a berm because he knew bullets would affect the dam and vegetation.

Pennington asked Pam Cherry for clarification on whether there is an existing well on the property. Cherry answered affirmatively and confirmed it needs to be re-permitted but it is an existing well.

CLOSE OF HEARING PORTION

It was moved by Robert Pennington and seconded by Mike Bailey to approve this application with the conditions stated in Pam Cherry's File Summary;

1. The applicant shall obtain necessary permits and comply with the requirements and conditions of those permits as determined by other governmental agencies with jurisdiction over this operation.
2. The portable toilets will be brought onsite prior to beginning operations, the pump agreement to be supplied to the Health Department.
3. Submit a site plan that shows contours of the site, the relief/protection provided by the constructed berms.
4. Re-permit and transfer ownership of the existing well through the State Engineer's office.

Nathan Troudt proposed amending the proposed motion by adding the following condition which motion was carried 6-0, moved by Nathan Troudt and seconded by Mike Bailey.

5. Submit an erosion control plan for maintenance of the berms.

Vote on Motion carried 6-0.

It was moved by Vice Chairman Robert Pennington to adjourn this meeting and seconded by Mike Bailey. Motion carried 6-0.

Respectfully submitted
Ahna Raygoza
Planning Clerk