

COMMISSIONERS PROCEEDINGS 1

MEETING OF THE BOARD OF COUNTY COMMISSIONERS
Minutes of Meeting
August 13, 2024

As reflected in posted agenda:

To participate in the Citizen's Comment Period you must connect via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/88049897458> If you cannot connect via Zoom, you may submit written public comment to morgancountybcc@co.morgan.co.us by email by 4 p.m. on Monday August 12, 2024.

To participate in Public Hearings you may connect via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/88049897458> listen via phone, please dial: 1-312-626-6799, Meeting ID: 880 4989 7458

To watch and/or listen to the meeting but not participate, you may do so by connecting via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/88049897458> or to listen via phone, please dial: 1-312-626-6799, Meeting ID: 880 4989 7458

The Board of Morgan County Commissioners met Tuesday, August 13, 2024 at 9:01 a.m. Chairman Mark Arndt, Jon Becker, and Commissioner Gordon Westhoff were in attendance. Chairman Arndt asked Pete Wagner to lead the meeting in the Pledge of Allegiance.

CITIZEN'S COMMENT

There was no citizen comment provided.

CONSENT AGENDA

1. Ratify Chairman Mark Arndt's signature on Morgan County Public Trustee Report for July 2024.
2. Ratify the Board of County Commissioners approval of **Contract 2024 CNT 094 Jacobs Engineering Group, Inc.**, Term of Contract August 1, 2024 through July 31, 2025.
3. Ratify the Board of County Commissioners approval of meeting minutes dated August 6, 2024.

At this time, Commissioner Westhoff made a motion to approve items 1- 3 as presented; Commissioner Becker seconded the motion. The motion carried 3-0.

UNFINISHED BUSINESS

There was no unfinished business.

GENERAL BUSINESS AND ADMINISTRATIVE ITEMS

Consideration of Approval – Resolution 2024 BCC 34, A Resolution granting a three-lot minor subdivision, known as R&T Beauprez minor subdivision.

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

RESOLUTION 2024 BCC 34

**A RESOLUTION GRANTING A THREE-LOT MINOR SUBDIVISION, KNOWN AS R&T BEAUPREZ
MINOR SUBDIVISION, LOCATED IN THE NW¼ OF SECTION 36, TOWNSHIP 4 NORTH, RANGE 60
WEST OF THE 6TH OF P.M.
MORGAN COUNTY, COLORADO**

WHEREAS, Fort Morgan Farms, LLC (the "Owner") owns property located in the NW¼ of Section 36, Township 4 North, Range 60 West of the 6th P.M., Morgan County, Colorado, (the "Property");

WHEREAS, Ralph L., Tammy and Donna Beauprez (the "Applicants") applied for a three-lot minor subdivision pursuant to the County's Subdivision Regulations ("Application");

WHEREAS, on May 13, 2024, the Morgan County Planning Commission held a duly noticed public hearing on the Application;

WHEREAS, during the public hearing, the Planning Commission received testimony and evidence from the Applicants, Morgan County staff, and the public and recommended approval;

WHEREAS, on June 4, 2024, the Board of County Commissioners ("Board") held a duly noticed public hearing on the Application;

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WHEREAS, during the public hearing, the Board received testimony and evidence from the Applicants, Morgan County staff, and the public; and

WHEREAS, the Board desires to approve the Application.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MORGAN COUNTY, COLORADO:

1. FINDINGS OF FACT

The Board, having reviewed the application, all information provided and testimony heard, finds that:

- A. The application documents are complete and represent how the subdivision will be laid out including infrastructure, easements and access.
- B. The subdivision is in conformance with the Morgan County Comprehensive Plan and there is access to established public infrastructure.
- C. The subdivision is compatible with surrounding land uses.

2. APPROVAL

The Board hereby approves the R&T Beauprez Minor Subdivision, located in the NW¼ of Section 36, Township 4 North, Range 60 West of the 6th P.M., Morgan County, Colorado.

DATED this 13th day of August, 2024, *nunc pro tunc* June 4, 2024.

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

Mark A. Arndt, Chairman

s/ Jon J. Becker
Jon J. Becker, Commissioner

s/ Gordon H. Westhoff
Gordon H. Westhoff, Commissioner

(SEAL)

ATTEST:

s/ Kevin Strauch
Kevin Strauch

Nicole Hay, Morgan County Planning and Zoning Administrator presented to the Board for approval Resolution 2024 BCC 34, a Resolution granting a three-lot minor subdivision, known as R&T Beauprez minor subdivision. Ms. Hay stated that On May 13, 2024, the Planning Commission held a public hearing on an application submitted by Tammy and Ralph Beauprez for a 3-lot Minor Subdivision to be known as R&T Beauprez Minor Subdivision, located in the NW1/4 of Section 36, Township 4 North, Range 60 West of the 6th PM, Morgan County, Colorado. The Planning Commission recommended approval on a vote of 5 in favor and 0 opposed. On June 4, 2024, the Board of County Commissioners considered the application and approved it on a vote of 3-0. Resolution 2024 BCC 34 reflects the outcome of that hearing.

Commissioner Becker made a motion to approve Resolution 2024 BCC 34 a Resolution granting a three-lot minor subdivision, known as R&T Beauprez minor subdivision. Commissioner Westhoff seconded the motion and motion carried 3-0.

Consideration of Approval – Resolution 2024 BCC 35, A Resolution amending the Morgan County zoning regulations concerning tiny homes and tiny houses.

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

RESOLUTION NO. 2024 BCC 35

A RESOLUTION AMENDING THE MORGAN COUNTY ZONING REGULATIONS CONCERNING TINY HOMES AND TINY HOUSES

WHEREAS, the County desires to amend the Morgan County Zoning Regulations to address definitions regarding tiny times and tiny houses;

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WHEREAS, on July 8, 2024, the Planning Commission held a duly noticed public hearing on the proposed amendments and recommended approval of the amendments with further revisions;

WHEREAS, on August 6, 2024, the Board of County Commissioners held a duly noticed public hearing on the proposed amendments;

WHEREAS, the Board of County Commissioners has complied with all relevant provisions for amending the Morgan County Zoning Regulations; and

WHEREAS, after considering public testimony received and the recommendation of the Planning Commission, the Board of County Commissioners finds these amendments to be in the best interest of the citizens of Morgan County.

NOW THEREFORE BE IT RESOLVED by the Morgan County Board of County Commissioners as follows:

Section 1. Section 1-577 of the Morgan County Zoning Regulations is revised by the addition of a section to read as follows:

1-577 Loft: A floor level located more than 30 inches above the main floor, open to the main floor on one or more sides with a ceiling height of less than 6 feet 8 inches and used as a living or sleeping space.

Section 2. Section 1-867 of the Morgan County Zoning Regulations is revised by the addition of a section to read as follows:

1-867 Tiny Home: A structure that is permanently constructed on a vehicle chassis; designed for human occupancy; includes electrical, mechanical, or plumbing services that are fabricated, formed, or assembled at a location other than the site of the completed home; is not self-propelled; and has a square footage of not more than four hundred (400) square feet.

Section 3. Section 1-870 of the Morgan County Zoning Regulations is revised by the addition of a section to read as follows:

1-870 Tiny House: A dwelling that is 400 square feet or less in floor excluding lofts; constructed on a permanent foundation; designed for permanent occupancy, and built in compliance with the adopted building codes.

Section 4. Section 1-750 of the Morgan County Zoning Regulations is amended to read as follows:

1-750 Recreational Vehicle (RV): A vehicle which is designed primarily for recreational use, camping, or other seasonal use or as temporary living quarters, office, or storage and is designed to be self-propelled, towable, or capable of being carried by a pickup truck. Recreational vehicles shall include motor homes, camper trailers, 5th wheel trailers, pickup truck campers, tiny homes on wheels, and any similar vehicles.

APPROVED this 13th day of August, 2024, *nunc pro tunc* August 6, 2024

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

Mark A. Arndt, Chairman

Jon J. Becker, Commissioner

Gordon H. Westhoff, Commissioner

(SEAL)
ATTEST:

Kevin Strauch

Nicole Hay, Morgan County Planning and Zoning Administrator presented to the Board for approval Resolution 2024 BCC 35, A Resolution amending the Morgan County zoning regulations concerning tiny homes and tiny houses. Ms. Hay stated that The amendments to the Morgan County Zoning Regulations are concerning tiny homes and tiny houses. The Planning Commission recommended approval with recommended changes made at a work session held on June 10, 2024 and a public hearing held on July 8, 2024. On August 6, 2024, the Board of County Commissioner reviewed and considered the same amendments and approved them on a vote 3-0. Resolution 2024 BCC 35 reflects the outcome of that hearing.

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Commissioner Westhoff made a motion to approve Resolution 2024 BCC 35 a Consideration of Approval – Resolution 2024 BCC 35, A Resolution amending the Morgan County zoning regulations concerning tiny homes and tiny houses. Commissioner Becker seconded the motion and motion carried 3-0.

Consideration of Approval – Updated Settlement Agreement between Prairie View Ranch Partners, LLC., Harrison Homes, Inc., and the Board of County Commissioners of Morgan County.

Morgan County Attorney Kathryn Sellars presented to the Board for approval of the Updated Settlement Agreement between Prairie View Ranch Partners, LLC., Harrison Homes, Inc., and the Board of County Commissioners of Morgan County. She noted that the case will be held until the affected home is moved, then it will be considered resolved. The home must be moved within 120 days.

Commissioner Becker made a motion to approve the Updated Settlement Agreement between Prairie View Ranch Partners, LLC., Harrison Homes, Inc., and the Board of County Commissioners of Morgan County, with Commissioner Westhoff seconding the motion. At this time motion carried 3-0.

Consideration of Approval –A Resolution Conditionally Approving a Use by Special Review Permit for a New Confined Animal Feeding Operation, specifically a calf yard, located in part of the SE¼ of Section 20, the SW¼ SW¼ of Section 21, the NW¼ of Section 28 and the N½ NE¼ of Section 29, all in Township 3 North, Range 58 West of the 6th P.M., Morgan County, Colorado.

MORGAN COUNTY, COLORADO BOARD OF COUNTY COMMISSIONERS

RESOLUTION 2024 BCC 36

A RESOLUTION CONDITIONALLY APPROVING A USE BY SPECIAL REVIEW FOR A NEW LIVESTOCK CONFINEMENT FACILITY, SPECIFICALLY A CALF YARD, LOCATED IN PART OF THE SE¼ OF SECTION 20, THE SW¼ SW¼ OF SECTION 21, THE NW¼ OF SECTION 28 AND THE N½ NE¼ OF SECTION 29, ALL IN TOWNSHIP 3 NORTH, RANGE 58 WEST OF THE 6TH P.M., MORGAN COUNTY, COLORADO.

WHEREAS, Bos Farms, LLC (“Owner”) owns property located in part of the SE1/4 of Section 20, the SW1/4SW1/4 of Section 21, the NW1/4 of Section 28 and the N1/2NE1/4 of Section 29, all in Township 3 North, Range 58 West, of the 6th P.M. Morgan County, Colorado (“Property”);

WHEREAS, the Applicant (“AGPROfessionals”) submitted an application, on behalf of the Owner for a special use permit to establish a confined animal feeding operation housing and raising calves, storing and processing feed, and storing and maintaining feed equipment, up to 22,005 animal units and will include calf hutches, pens, and a pond (“Application”);

WHEREAS, the Owner previously sought a variance to reduce the required setback from a confined animal feeding operation to an occupied structure from 1320 feet to 770 feet from the Morgan County Board of Adjustment and the variance was approved through Resolution 2023 BOA 01 recorded at Reception No. 947073 of the records of the Morgan County Clerk and Recorder;

WHEREAS, on July 10, 2023, after holding a duly noticed public hearing, the Morgan County Planning Commission recommended that the Application be approved with the conditions proposed by staff;

WHEREAS, on August 15, 2023, the Board of County Commissioners (“Board”) held a duly noticed public hearing on the Application;

WHEREAS, during the public hearing, the Board received testimony and evidence from the Owner, Morgan County staff and the public; and

WHEREAS, the Board desires to conditionally approve the Application.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MORGAN COUNTY, COLORADO:

1. APPROVAL.

The Application is hereby granted, subject to the conditions set forth herein. This Resolution shall constitute the special use permit (hereinafter referred to as this “Resolution” or the “Permit”).

2. FINDINGS OF FACT.

The Board, having reviewed the application, all information provided, and testimony heard, finds that:

- A. The use and its location as proposed are in conformance with the Morgan County Comprehensive Plan. Specifically, the property is located in the south-central planning area as defined by the Morgan County Comprehensive Plan. The area south of County Road Q remains agriculture that must be protected and allowed to expand. In this area, Comprehensive Plan goals include encouraging the preservation of agricultural production land to ensure continuation of this important industry and maintain an open space buffer around livestock facilities. The Application encourages the preservation and continuation of the livestock and agricultural production

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industries. The calf yard will provide replacement cattle to local feedlots and dairies. This is a vital element of the cattle industry.

- B. The Application and associated documents are complete and present a clear picture of how the use is to be arranged on the site.
- C. The Site Plan conforms to the district design standards of Sections 2-470 and 4-200 of the Morgan County Zoning Regulations.
- D. On and off-site impacts are subject to the following findings:
 - 1. Road impacts
 - a. Haul and access route. The Applicant represented during the public hearing and through materials submitted that the majority of vehicle traffic associated with the permitted use is proposed to use County Road 14 south from County Road Q to County Road P and then across County Road P onto the vacated portion of County Road 14 to access the Property. This is the requested haul and access route. There are seven residences currently located on County Road 14, which is a gravel road. Several residents expressed concerns, during the Planning Commission meeting, regarding the increased traffic on County Road 14 and further whether the road would be able to handle the increased traffic. The proposed vehicle counts, outlined below in paragraph D(1)(b), could result in a significant increase in passenger vehicle traffic on County Road 14 and a significant increase in heavy truck and vehicle traffic, which is less common on County Road 14. Alternatively, County Road P between County Roads 14 and 15 only has one residence. To limit the negative impacts of heavy vehicle and truck traffic on the residents who live on County Road 14 from dust and decrease the potential conflicts between these residents and the Owner's operation, it is determined that County Road 15 to County Road P should be the designated route for heavy vehicle and truck traffic for the use approved through this Permit and County Road 14 should be subject to the dust mitigation condition below. As such, subject to the conditions below, County Road 14 shall not be used for heavy vehicle and truck traffic related to this Permit.
 - b. Road Maintenance.
 - i. The Applicant presented information that vehicle traffic would be as follows:
Owner/employee vehicles: 28 roundtrips per day
Cattle trucks: 4 roundtrips per day
Feed trucks: 4 to 6 roundtrips per day
 - ii. County Road 14 between County Road Q and County Road P is a gravel road with several residences. Through comments received and presented at the public hearing, the Morgan County Public Works Department requested a road maintenance agreement be entered into between the County and the Owner to address dust control, road repairs and road improvements for County Road 14. The Applicant represented during the hearing and in writing that the Owner was willing to maintain County Road 14 and enter into a road maintenance agreement, including but not limited to, the application of dust control and paving. The County and the Owner have not been able to reach an agreement on road maintenance. Subject to the conditions below, the County does not approve County Road 14 as an access route for heavy vehicles and trucks to the Property for the use conditionally approved under this Permit.
 - 2. Nuisance Control. The Nuisance Control Plan, submitted with the Application and in the Preliminary Environmental System Design satisfies the requirement to provide nuisance control on the Property.
- E. Subject to the conditions below, the special use proposed has been made compatible with the surrounding uses and is adequately buffered from any incompatible uses by distance and topography.
- F. Subject to the conditions below, the special use poses no or minimal risk to the public health, safety and welfare.
- G. The special use proposed is located on a conforming parcel.
- H. The Applicant has adequately documented a public need for the project. The Applicant has submitted all pertinent technical information, has demonstrated that it has adequate financial resources to implement the project, and has paid all County fees and review costs.
- I. The Applicant has demonstrated a source of water which is adequate for the proposed use in terms of quantity and reliability. Water will be provided to the proposed cattle ranch by the adjacent property owner, Q Ranch, LLC through their agreement with Bijou Agricultural Water Activity Enterprise.

3. CONDITIONS.

The approval of the special use is conditioned upon the following:

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- A. The use approved under this Permit is limited to 22,005 animal units. These animal units shall only consist of up to the following maximums: 1) 4,473 animal units of un-weaned/hutched calves; and 2) 17,532 animal units of weaned calves up to 600 lbs. Any expansion or change in the amount or type of cattle on the Property requires an amendment to this Permit.
- B. The Owner is required to comply with the Nuisance Control Plan and the Preliminary Environmental System Design.
- C. The Owner shall direct all heavy vehicle and truck traffic and drivers to use County Road 15 to County Road P to access the Property and County Road P to County Road 15 to leave the Property. For purposes of this Permit, heavy vehicle and truck traffic means any vehicle that has a gross vehicle weight rating exceeding 26,001 pounds as defined by the USDOT regulations. The purpose of this route designation is to require heavy vehicle and truck traffic to and from the Property to avoid County Road 14 and direct traffic to roads which have fewer residences and are paved. The Owner will pay for and place signage, as required by the County Road Supervisor, along this designated route to adequately direct heavy vehicle and truck traffic. The Owner is responsible for maintaining all the signage, at its own cost. The County may require the Owner to repair or replace any signage that has fallen into disrepair and is damaged. At any time, the County may undertake traffic counts and may station cameras to ensure compliance with this condition. Heavy vehicle and truck traffic may not use any other routes than designated in this Permit. Violations may result in a County initiated amendment to or revocation of this Permit, upon notice to the Owner and a hearing before the Board of County Commissioners. Notice and the public hearing shall be conducted in the same manner as required for a special use permit.
- D. Employee traffic to and from the Property may use County Road 14 or 15 as access routes.
- E. If the traffic count on County Road 14 or County Road P, separately, reaches an average of 150 vehicles per day (“VPD”) over a period of seven consecutive days, the Owner will be required to provide dust mitigation along the effected County Road (either County Road 14 or P or both, depending on the traffic count). Dust mitigation shall occur as determined by and at the direction of the County personnel based upon site-specific conditions and in order to ensure the effectiveness of any dust mitigation activities by the Owner. As part of the dust mitigation, the Owner may be required to apply no more than one full-depth mag-chloride application per calendar year. The Owner is required to coordinate the timing of full-depth mag-chloride application with the County Road Supervisor. Application of mag-chloride shall only occur after the County has graded the road where the application is to occur. The County shall not grade the road if it will negatively impact the application of the mag-chloride unless there is an immediate threat to public safety. In addition, the County may require the Owner to reapply mag-chloride topically, if necessary, but no more than five times during any calendar year. In conducting dust mitigation, the Owner shall only be required to pay for the Owner’s proportionate share based upon the percentage of traffic on the road that is attributable to the use permitted pursuant to this Permit. The Owner shall not be responsible for traffic that is not sourced from the use permitted pursuant to this Permit. The remainder of the costs shall be paid by the County and/or owners whose property abuts the road, as determined by the County. If necessary, the Owner’s proportional share shall be established by a traffic count, conducted by the County at the sole cost of the Owner. For the purposes of this Permit and any condition herein, vehicles per day shall be calculated on passenger car equivalent (PCEs). Each passenger vehicle equals one vehicle per day and semi-tractor trailers equal three PCEs.
- F. If traffic counts reach an average of 400 vehicles per day (“VPD”) over a period of seven consecutive days on County Roads 14 or P, separately, the County may require the Owner to pave County Road 14 (between County Roads Q and P) or County Road P (between County Roads 15 and 14) and construct turn lanes on County Road Q for traffic turning onto County Road 14, if the vehicle count on County Road 14 has reached the VPD threshold of 400. The Owner shall only be required to pay for the Owner’s proportionate share based upon the percentage of traffic on the road that is attributable to the use subject to this Permit. The Owner shall not be responsible for traffic that is not sourced from the use. If necessary, the Owner’s proportional share shall be established by a traffic count, conducted by the County at the sole cost of the Owner.
- G. The Owner shall be responsible for the payment of all costs and fees incurred by the County associated with this Permit pursuant to Sec. 2-160 of the Morgan County Zoning Regulations. The County shall invoice the Applicant for costs and fees and payment will be due by the Owner within thirty (30) days of the date of the invoice. Failure to pay may result in enforcement actions by the County and revocation of this Permit.
- H. All other third-party permits, approvals and authorizations required under other applicable law will be obtained prior to the commencement of the use conditionally approved under this Permit.

4. GENERAL PROVISIONS.

- A. The Board of County Commissioners retains continuing jurisdiction over this Permit to ensure compliance with this Permit and the Morgan County Zoning Regulations. County Representatives are authorized to inspect the Property at any reasonable time upon notice to the Applicant. This approval is conditioned on compliance with all information and representations contained in the Application and presented by the Owner and Owner’s agent, which are incorporated into this Permit. If any representations or information presented by the Owner, Owner’s agent and the

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Applicant during the public hearing or the Application are found to be erroneous, lacking a factual basis or otherwise inaccurate, the County may institute enforcement proceedings to address such representations or information and require the Owner to take measures to correct such representations or information. The County, subject to notice and hearing, may amend, add, or remove any conditions on this Permit or exercise any action provided for in the Morgan County Zoning Regulations.

- B. The Owner shall comply with all governmental and regulatory agency requirements and permits, including without limitation those promulgated for the protection of health, safety, and welfare of the inhabitants of Morgan County. Such compliance shall include without limitation compliance with the regulations of the Colorado Department of Public Health and Environment, the Colorado Department of Agriculture, and the United States Environmental Protection Agency.
- C. This Owner shall comply with all requirements, conditions and design standards set forth herein. Noncompliance shall be grounds for revocation of this permit by the Morgan County Board of Commissioners after notice and hearing.

DATED this 13th day of August, 2024.

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

Mark A. Arndt
Mark A. Arndt, Chairman

s/ Jon J. Becker
Jon J. Becker, Commissioner

s/ Gordon H. Westhoff
Gordon H. Westhoff, Commissioner

(SEAL)
ATTEST:

s/ Kevin Strauch
Kevin Strauch

Nicole Hay, Morgan County Planning and Zoning Administrator presented to the Board a Resolution Conditionally Approving a Use by Special Review Permit for a New Confined Animal Feeding Operation, specifically a calf yard, located in part of the SE¼ of Section 20, the SW¼ SW¼ of Section 21, the NW¼ of Section 28 and the N½ NE¼ of Section 29, all in Township 3 North, Range 58 West of the 6th P.M., Morgan County, Colorado. Ms. Hay stated that:

A Special Use Permit application was submitted to allow for a new livestock confinement operation (CAFO) by AGPROfessionals on behalf of the owner, Bos Farms, LLC. The permitted area is located in a part of the SE¼ of Section 20, the SW¼SW¼ of Section 21, the NW¼ of Section 28 and the N½NE¼ of Section 29, all in Township 3 North, Range 58 West of the 6th P.M., Morgan County, Colorado.

The application was for a confined animal feeding operation housing and raising calves, storing and processing feed, and storing and maintaining feed equipment, up to 22,005 animal units and will include calf hutches, pens, and a pond.

A variance was sought to reduce the required setback from a CAFO to an occupied structure from 1320 feet to 770 feet from the Morgan County Board of Adjustment. The variance was approved through Resolution 2023 BOA 01 recorded at Reception No. 947073 of the records of Morgan County Clerk and Recorder.

On July 10, 2023, the Planning Commission held a public hearing on the application and recommended conditional approval on a vote of 7-0. On August 15, 2023, the Board of County Commissioners considered the application and conditionally approved it, requesting a traffic count be conducted by the County and that the owner enter into a road maintenance agreement for County Road 14, as discussed between Morgan County Public Works and AGPROfessionals prior to the hearing. During the public hearing, AGPROfessionals represented that the owner was willing to enter into a road maintenance agreement with the County to address the impacts of the traffic related to the proposed use.

Based upon the representations of the owner, the County proposed a road maintenance agreement and met with AGPROfessionals and a representative of Bos Farms in February 2024. Based upon that meeting, the County proposed a revised road maintenance agreement. The County has not received any specific substantive comments from the owner on the agreement since the agreement was sent to the owner’s representative in March 2024. The basic terms of that road maintenance agreement are included at the end of this staff report.

To establish a baseline traffic count, between July 9th and 15th, the County’s contractor conducted a

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traffic count at five locations in the vicinity of the proposed use. The counts were recorded for traffic at the following locations: County Road 14 ((vacated) south of County Road P and south of County Road Q), County Road P (east of County Road 13 and west of County Road 15) and County Road 15 (south of County Road Q). The totals for the week for each location are included with this staff report. Two resolutions in your packet provide alternative options for your consideration. These are not the only two options for a final decision by the BOCC.

Resolution No. 1

County Public Works is recommending the conditions in the resolution designated as “Resolution No. 1”. Resolution No. 1 requires heavy vehicle and truck traffic to use County Road 15 to County Road P to access the property. Heavy vehicle and truck traffic is defined in the resolution as any vehicle that has a gross vehicle weight rating exceeding 26,001 pounds as defined by the USDOT regulations. Gross vehicle weight rating is defined under USDOT regulations as the value specified by the manufacturer as the loaded weight of a single vehicle. As outlined in the resolution, the purpose of this condition is to avoid the impacts on the residences located on County Road 14 and reduce the likelihood of conflicts between heavy vehicle and truck traffic and these residents. Employee and other vehicle traffic below this weight would be permitted to use County Road 14 or County Road 15 as an access route. To enforce this condition, the resolution also addresses required signage. A violation of this condition may result in an amendment or revocation of the permit, subject to the public hearing process.

In addition to this condition, dust mitigation would be required on County Roads 14 or P if the vehicles per day (VPD) (as defined in the resolution) reaches 150. This threshold was recommended by HDR; however, it should be noted that HDR has not been involved in this application and has no specific knowledge of the roads. The condition, designated as E, describes the type of dust mitigation that could be required.

Further, if the traffic count on County Roads 14 or P reaches 400 VPD (also a threshold recommended by HDR), the owner will be required to pave the effected County Road. If the effected County Road is County Road 14, turning lanes will also be required.

For both dust mitigation and paving, the owner will only be obligated to pay for the proportional share of traffic attributable to the traffic associated with the use.

Resolution No. 2

Resolution No. 2 does not require the use of County Road 15 but allows all the use’s traffic to utilize County Road 14. The conditions regarding dust mitigation and paving, as described above for Resolution No. 1 also appear in Resolution No. 2.

In addition, there is an additional condition (Condition C), that permits County staff to recommend dust mitigation if the use’s traffic results in nuisance conditions or negative impacts on the residences on County Road 14 or on the road itself. The owner is not required to comply with these recommendations; however, if the owner objects, County staff may refer the matter to the Board of County Commissioners for consideration and decision. This process will be subject to the same notice and hearing requirements.

Both resolutions specifically limit the animal units to calves no greater than 600 lbs. However, the Applicant and Landowner expressed concern with the sentence “No cattle above 600 pounds shall be housed or kept on the property at any time” in condition (A). There may be times they cannot get the calves off of the property with that strict of condition. The applicant represents that Bos has no intention of being anything other than a calf yard. Staff supports removing the sentence.

Appendix to Staff Report

Road Maintenance Agreement – Proposed Terms

Permittee – Bos Farms

Approved Haul Route – Both County Roads 14 and 15

III. Road Dust Control/Abatement

A. Permittee is required to provide dust abatement along an Approved Haul Route being utilized by Permittee to access the Property for the use granted under the SUP. Dust abatement, as outlined in this Section III, shall occur as determined by and at the direction of the County personnel based upon site-specific conditions and in order to ensure the effectiveness of any dust abatement activities by Permittee. The County and Permittee shall coordinate a time for full-depth mag-chloride application by Permittee annually. Application of mag-chloride shall only occur after the County has graded the Approved Haul Route. The County shall not grade the Approved Haul Route if it will negatively impact the application of the mag-chloride, unless there is an immediate threat to public safety. The County may require Permittee to reapply mag-chloride topically, if necessary. However, the Permittee shall not be required to apply full depth mag-chloride more than once a year and reapply mag-chloride topically more than five times during any year.

B. Permittee is required to comply with the direction of County personnel regarding the application of mag-chloride as outlined in subsection III(A) above. All dust abatement shall be coordinated with the

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County personnel. The County personnel, at its discretion, may waive any requirement of this Section III.

C. The County reserves the right to install traffic counters at the access points of Permittee's facility to the Approved Haul Route Roads, and any other necessary points, to evaluate whether the traffic attributable to Permittee's use has increased and may require more dust abatement. If the County does find there has been an increase in traffic to Permittee's facility and current level of dust abatement is not satisfactory, it shall provide that information to Permittee and the parties shall coordinate the correct level of dust abatement to address the increased traffic count.

D. Permittee shall pay all costs for dust control mitigation and abatement for the Approved Haul Route as described above in Section III. If the Approved Haul Route is designated by the County for another permittee, Permittee shall only be responsible for its proportionate share as described in this Agreement.

IV. Obligation to Repair and Maintain

A. Permittee's Responsibilities. Permittee will be financially responsible for the excavation, repair, and patching of any damage on Approved Haul Routes, which in the sole opinion of the County personnel has been created by vehicle traffic to and from the Property. Should Permittee's use change in a manner that results in an approval of an alternate haul route by the County, it shall be subject to subsection II(B).

B. Significant Damage Repairs. In the event of damage to an Approved Haul Route by Permittee's traffic that causes an immediate threat to public health and safety or renders the road impassible ("Significant Damage") the County personnel shall, after inspection, notify Permittee of such Significant Damage. The County personnel shall identify the repair required and shall consult with Permittee on the extent, type, timing, materials, and quality of repair (i.e. temporary versus permanent) within twenty-four (24) hours after the County's inspection and Permittee shall commence such repair within forty-eight (48) hours after the consultation with the County personnel or as such time designated by County personnel, which shall be no less than forty-eight (48) hours. If such repair does not commence within the designated time period, the County shall have the right to undertake the repairs and invoice the Permittee for such charges. If Permittee identifies Significant Damage prior to receiving notice thereof from the County, Permittee may commence repair of such Significant Damage and shall concurrently notify the County of the extent, type, timing, materials, and quality of repair (i.e. temporary versus permanent).

C. Ongoing Maintenance. In the event of Road Damage (as defined below) is identified by County personnel as being caused by Permittee's traffic and is not Significant Damage, the County personnel may provide notice to Permittee of the Road Damage, basis for the determination that the Road Damage was caused by Permittee's traffic and the required repairs. Permittee shall be required to commence repairs in the time designated in the notice, which shall not be less than thirty (30) days from the date of the notice. Nothing herein shall limit the ability of the County and the Permittee to agree upon different repairs or timelines. Road Damage includes but is not limited to the following:

1. Potholes or wheel-depressed areas after the roads have been maintained or graded.
2. Damage to shoulders due to heavy vehicles running off the edge of the road.
3. Damage to ditches as the result of heavy vehicles squeezing the ditches closed by running on the shoulders of the road.
4. Damage to culverts crushed by heavy hauling activities or being "plugged" by sediment from closed ditches.
5. Damage to road surface causing the re-cycling of the surface for the purpose of proper roadway drainage.
5. Damage to the existing base by heavy traffic.

D. Annual Evaluation and Repairs.

1. If the County undertakes a site analysis and/or pavement testing ("Assessment") for any Approved Haul Route prior to June 30th in any year and the results of such Assessment concludes that a portion of an Approved Haul Route will require repairs, paving or other improvements in order to protect the public health, safety, and welfare, the County may determine that such repair, paving or improvements is required. The County shall notify Permittee in writing by August 1st of the year of the Assessment that repairs, paving or other improvements are being considered, along with an estimate of Permittee's proportional share of costs, and copies of the Assessment. Permittee shall have the right within sixty (60) days of notice to Permittee to review, comment upon and supplement the data, collection methodology, and determinations of the Assessment. The County shall consider Permittee's response before final approval of budgeting for the repairs, improvements, or paving. Nothing herein shall prevent the County from reducing the Permittee's proportional share of the costs in its sole discretion. If the County fails to budget sufficient funds or obtain funding for remaining cost of the repairs, paving or improvements described in the notice to Permittee or later determined by the County following Permittee's response period, by the end of the calendar year in which notice was sent to Permittee, Permittee shall not be required

10 COMMISSIONERS PROCEEDINGS

to contribute to the costs of such repairs, paving or improvements that occur in the year subsequent to year in which notice was provided to Permittee. If the County determines to require repairs, paving or other improvements in a subsequent year, it must provide new written notice to Permittee as described in this subsection, but may rely on the previously conducted Assessment.

2. The County shall undertake the repairs, improvements or paving described in subsection IV(D) and invoice Permittee its proportional share of costs. Payment on the invoice shall be due within sixty (60) days of the date of the invoice.

E. Future Road Replacement. At any time in the future, if, in the opinion of the County, road damage increases beyond the point that repair of damage cannot maintain the road in a safe and usable condition, Permittee shall pay a proportionate share of a complete road restoration. Notification to Permittee of the required roadway replacements shall be provided in the same manner as subsection IV(D) above.

V. Proportional Share of Maintenance and Repairs

Permittee's proportionate share shall be based upon the percentage of traffic on the road that is attributable to Permittee's use. Permittee shall not be responsible for traffic that is not sourced from Permittee's use.

VI. Traffic Triggered Repairs and Improvements

A. If Permittee's traffic volume reaches a certain threshold, the County may require Permittee to pay a proportionate share of the cost of certain improvements. If traffic counts attributable to Permittee's use reach 400 vehicles per day, the County may require Permittee to pave the gravel portions of the Approved Haul Route and construct turn lanes on County Road Q for traffic turning onto County Road 14, if County Road 14 is being utilized as a haul route.

B. Vehicles per day shall be established by a traffic count. Vehicles per day shall be calculated on passenger car equivalent (PCEs). Each passenger vehicle equals one vehicle per day and semi-tractor trailers equal three PCEs.

Commissioner Westhoff noted that he sees it as unlikely that trucks will use the longer path as suggested by Planning and Zoning and questioned who will enforce these requirements.

Attorney Sellars noted that this responsibility would not fall on law enforcement but on citizens reporting the problems.

Commissioner Becker asked how many additional miles would the proposed route be than the other route. Mr. Goodman stated that it was one mile. Commissioner Becker noted that perhaps they could work with the property owner and the county to pave the affected road.

Commissioner Westhoff noted that for solar projects previously that roads had been paved.

Chairman Arndt noted that this site will have less traffic than other similar properties and that this is why the traffic study was completed. He also noted that there may not be room on the road to put in turn lanes. He also asked staff what would happen if a major subdivision went in along the road. Attorney Sellars noted that in that instance, a new traffic study would be completed and the cost of dust mitigation would be split accordingly. Chairman Arndt noted that he would prefer strong language in the proposition to that end. Commissioner Becker noted the difficulty of doing so.

Commissioner Westhoff asked if the county had equipment to do dust mitigation. Mr. Goodman noted that the county doesn't but they would hire out a company. Chairman Arndt noted that new houses along the road would also have a responsibility for dust control. He also stated the difficulty of enforcing the restrictions on the trucks that will be working at this site.

Commissioner Becker noted that even though these conditions would be difficult to enforce, the framework would be put in place to do so.

Commissioner Westhoff noted that the easiest solution would be to pave the road and that it is proven elsewhere in the county. He stated that he believes there should be a cost share on the road. Commissioner Becker noted that that wasn't part of the previous discussion.

Tim Naylor of AGPROfessionals noted that this is the only county where a finalized resolution isn't present at the hearing. He noted the difficulties of changing the resolution after the public hearing. He noted the resolution didn't feel finalized and he felt that it was arbitrary and unhelpful. He noted that the traffic was twenty-six vehicles a day and that during harvest, trucks are everywhere in Morgan County so how can it be tracked which vehicle belongs to whom? He noted that Weld County has similar requirements but the county takes action at the various checkpoints. He noted that they were accepting of either option before the commissioners.

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Commissioner Becker stated that a road agreement was previously agreed upon with AGPROfessionals with Mr. Naylor disagreeing with the assertion.

Chairman Arndt noted that he doesn't believe that resolution being complete before the hearing would be effective as important information often comes out during the hearing. He stated that road use agreements should be completed by the hearing date however. Commissioner Becker noted that he has seen many other counties with much tougher regulations than Morgan County.

Commissioner Westhoff made a motion to approve A Resolution Conditionally Approving a Use by Special Review Permit for a New Confined Animal Feeding Operation, specifically a calf yard, located in part of the SE¼ of Section 20, the SW¼ SW¼ of Section 21, the NW¼ of Section 28 and the N½ NE¼ of Section 29, all in Township 3 North, Range 58 West of the 6th P.M., Morgan County, Colorado with Option 1 except the 600 lb. animal weight condition is withdrawn from the resolution. Commissioner Becker seconded the motion and motion carried 3-0.

COUNTY OFFICIAL AND DEPARTMENT HEAD REPORTS

Chairman Arndt noted that Sheriff Martin and Ambulance Supervisor Travis Freeman were involved in the Back the Blue event in Fort Morgan. Sheriff Martin said that was correct and that they are thankful for the support of the community.

Commissioners reviewed the calendar dated August 9, 2024 through August 20, 2024 with no changes.

The meeting was adjourned at 10:03 a.m.

Respectfully Submitted,

Kevin Strauch
Clerk to the Board

(Minutes ratified August 20, 2024)

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

Mark A. Arndt, Chairman

s/ Jon J. Becker
Jon J. Becker, Commissioner

s/ Gordon H. Westhoff
Gordon H. Westhoff, Commissioner

(SEAL)
ATTEST:

Kevin Strauch

PUBLIC HEARING

Chairman Arndt called the hearing to order at 10:10 a.m. on Tuesday, August 13, 2024 in the Assembly Room of the Morgan County Administration Building.

Chairman Mark Arndt, Commissioner Jon Becker, and Commissioner Gordon Westhoff were present. Planning and Zoning Administrator Nicole Hay, Planning and Zoning Technician Jenafer Santos, IT Specialist Karol Kopetzky, and Morgan County Attorney Kathryn Sellars were also present.

APPLICATION:

Applicants and Landowners: Dwayne and Diana Malone

Legal Description: Lot 2, Walker Minor Subdivision in the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 3, Township 3 North, Range 58 West of the 6th P.M., Morgan County, Colorado. Also known as 17540 County Road 15, Fort Morgan, CO 80701.

Request: Special Use Permit to construct a second single-family dwelling in a commercial zone.

APPLICATION OVERVIEW:

Planning Administrator Nicole Hay read her file summary as follows:

APPLICANT and LANDOWNER: Dwayne and Diana Malone

This application is for a Special Use Permit to allow a second residence on a lot in the Commercial zone. The property is described as Lot 2, Walker Minor Subdivision in the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 3, Township 3 North, Range 58 West of the 6th P.M., Morgan County, Colorado. Also known as 17540 County Road 15, Fort Morgan, CO 80701.

The property is zoned Commercial and is in the Fort Morgan Fire District. Second residences are not a designated use by right, conditional use, or special use under the Morgan County Zoning Regulations in the Commercial zone and therefore, require a special use permit pursuant to Sec. 2-435.

In reviewing this application, the Planning Commission and Board of County Commissioners are required to make a finding that the criteria for granting a Use by Special Review in Section 2-455 of the Morgan County Zoning Regulations has been met.

Section 2-455 Special Use Permit Criteria:

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

The property is located in the central planning area as defined by the Morgan County Comprehensive Plan. In this area Comprehensive Plan goals include:

- Encourage the preservation of agricultural production land to ensure continuation of this important industry. For many years, this specific area along Highway 34 has been used as residential property. This proposed second residence will not impact current agricultural production and therefore preserve the agricultural economic base historically attributed to the area.*
- 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.

The requirement of a special use map was waived by the Planning Administrator. The site plan provided included sufficient information for the proposed use.

- D. All on and off-site impacts have been satisfactorily mitigated either through agreement, public improvements, site plan requirements or other mitigation measures.
There is access to public infrastructure. There is an existing access easement to the property from County Road 15.
- E. The special use proposed has been made compatible with the surrounding uses and adequately buffered as determined by the County.
The adjacent properties are all being used as residential purposes except to the south across Highway 34 the property is farm ground.
- F. The special use poses only the minimum amount of risk to the public health, safety and welfare as set by either federal, state or county regulation, whichever is the strictest.
The proposed special use will not increase the risk to public health, safety or welfare.
- G. The special use proposed is not planned to be developed on a non-conforming parcel.
The proposed special use is located on a conforming parcel which is a lot in a recorded subdivision.
- H. The applicant has adequately documented a public need for the project, all pertinent technical information, adequate financial resources to implement it, and has paid all fees and review costs levied by the County for application processing and review.
- I. For any special use requiring a supply of water for human consumption that the applicant has demonstrated a source of water which is adequate for the proposed use in terms of quantity, quality, and reliability. For any special use which does not require a supply of water for human consumption, an adequate source of water for the proposed use in terms of quantity and reliability must be obtained prior to commencement of the use.
Morgan County Quality Water will be available on the property.

On August 12, 2024 the Planning Commission will be holding a hearing on this proposed project.

Nicole Hay,
Morgan County Planning Administrator

Dwayne and Diana Malone presented this application to the Board of County Commissioners.

Commissioner Becker asked if there were 2 driveways?

Dwayne Malone stated that there are 2 accesses.

Commissioner Westhoff asked if there are 2 quality water taps out there?

Dwayne Malone stated that it was approved for another tap, they are just waiting to go through this process before they purchase it.

PUBLIC COMMENT OPEN: None

PUBLIC COMMENT CLOSED:

BOARD OF COUNTY COMMISSIONER DISCUSSION: None

Commissioner Westhoff motioned to approve the special use permit to allow a second residence in the commercial zone for the applicants and landowners Dwayne and Diana Malone.

Commissioner Becker seconded.

Motion carries 3-0.

REGULATION AMENDMENTS OVERVIEW:

Planning Administrator Nicole Hay read her file summary as follows:

AMENDMENTS MORGAN COUNTY ZONING REGULATIONS

Natural Medicine Health Act of 2022 - Prop 122 was voter approved in November of 2022 which legalized the use and possession of “natural medicines”. Since this law affects the County’s zoning regulations, amendments relating to regulation of natural medicine facilities – including natural medicine healing centers, natural medicine cultivation facilities, natural medicine products manufacturers, and natural medicine testing facilities need to be considered and approved.

This law has two basic components.

First, as of December 30, 2022, personal use and possession of natural medicine (including psilocybin, a derivative of what is commonly referred to as psychedelic mushrooms) by an adult 21 years of age or older is no longer a crime in Colorado. For purposes of zoning, the County may not prohibit the growing, cultivating or processing of plants or fungi capable of producing natural medicine for personal use within the County, subject to certain exceptions. This area of law is largely preempted by State law.

Second is the creation and licensing of certain healing centers, defined as State-licensed facilities with licensed “facilitators” organized to provide natural medicine as part of administrative sessions. Retail purchase of natural medicine at health centers is not permitted. So, these healing centers are not like retail marijuana establishments. Unlike similar laws related to marijuana in the State, the County may not ban or completely prohibit the establishment or operation of natural licensed medicine businesses within its boundaries or practice by a licensed facilitator. However, the County may impose certain time, place and manner restrictions on operation of these licensed businesses. This means the County can require healing centers to be located within certain zoning areas and may require evidence of State licensure prior to the operation of a healing center.

Planning Commission held work sessions on these amendments on June 10, 2024 and July 8, 2024 and made recommendations. On August 12, 2024 the Planning Commission is holding a public hearing on the amendments.

Overview of proposed changes:

1. Definitions. Addition of definitions for natural medicine, natural medicine business, and natural medicine services.
2. Natural Medicine Business. Will be allowed in the Light Industrial (LI) zone as a Special Review use only. They will be prohibited in all other zones.

3. Additional Regulations. Included with the draft are a couple proposed submittal requirements (in addition to what would be required under the SUP) and several additional regulations. These regulations are typically of the regulation of marijuana related businesses and they have been included for your consideration.

Nicole Hay
Morgan County Planning Director

Commissioner Westhoff asked if the County can charge a fee for a license?

Attorney Kathryn Sellars stated that it is not a dual licensing system. It's a State license only.

Commissioner Becker asked how many Light Industrial areas are in the County?

Nicole Hay answered that there are only a few. They are generally located closer to the towns.

Commissioner Westhoff asked if they have to show the license from the State go be able to obtain a special use permit?

Nicole Hay, "Yes."

Commissioner Becker asked how the Planning Commission members decided on the Light Industrial zone to be the zone for Natural Medicine?

Attorney Kathryn Sellars answered that they wanted to be as restrictive as possible.

Commissioner Becker asked if it could be designated to just one specific area or plot of land.

Attorney Kathryn Sellars, "Technically yes, but that is not how we zone, we regulate by zone districts."

PUBLIC COMMENT OPEN: None

PUBLIC COMMENT CLOSED:

BOARD OF COUNTY COMMISSIONER DISCUSSION: None

Commissioner Becker motioned to approve the zoning amendments relating to natural medicine facilities, including natural medicine healing centers, natural medicine cultivation facilities, natural medicine product manufactures, and natural medicine testing facilities with the recommended change from Planning Commission.

Commissioner Westhoff seconded.

Motion carries 3-0.

Being no further business the meeting was then adjourned at 10:37 a.m.

Respectfully Submitted,
Jenafer Santos
Planning Technician

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

s/ Mark A. Arndt

Mark A. Arndt, Chairman

s/ Jon J. Becker

Jon J. Becker, Commissioner

_____ s/ Gordon H. Westhoff

Gordon H. Westhoff, Commissioner

(SEAL)

ATTEST:

_____ s/ Kevin Strauch

Kevin Strauch