

**MORGAN COUNTY PLANNING COMMISSION
DECEMBER 12, 2022**

The Morgan County Planning Commission met on Monday, December 12, 2022, at 7:00 P.M. in the Assembly Room of the Morgan County Administration Building. The meeting was called to order by Vice Chairman Robert Pennington.

Robert Pennington, Erik Morhlang, Dave Musgrave and Clayton Miller were present. Chairman Nathan Troutt appeared via Zoom platform. Pete Mercer was absent. Nicole Hay, Planning Director, Cheryl Brindisi, Planning Technician and Jenafer Santos, Planning Clerk were also present. IT Specialist, Karol Kopetzky joined the meeting via the Zoom platform.

APPROVAL OF AGENDA:

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

APPROVAL OF MINUTES: September 12, 2022

It was moved by Erik Morhlang and seconded by Nathan Troutt to approve the Minutes from the September 12, 2022 Planning Commission Hearing. Motion carried 5-0.

Vice Chairman Robert Pennington read the hearing process for tonight's meeting.

OLD BUSINESS: None

NEW BUSINESS: COLBURN 4 LOT MINOR SUBDIVISION

APPLICATION:

Applicant: William Colburn

Landowner: Martha Colburn

Legal Description: Parcel in the W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, Township 3 North, Range 56 West of the 6th P.M., Morgan County, Colorado.

Request: Minor Subdivision to plat approximately 19.73 acres into four lots.

APPLICATION OVERVIEW:

Planning Director, Nicole Hay, read her file summary as follows:

APPLICANT and LANDOWNER: William Colburn – Martha Colburn

This application is for a 4-lot Minor Subdivision of 19.73 acres located in the W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, Township 3 North, Range 56 West of the 6th P.M., Morgan County, Colorado.

The property is currently vacant and is zoned agricultural.

The applicants are requesting approval of the minor subdivision to create four new lots. Lot 1 – 4.95 acres, Lot 2 – 4.95 acres, Lot 3 – 4.91 acres, and Lot 4 – 4.92 acres.

Section 8-195 of the Morgan County Subdivision Regulations requires review of the listed criteria and compliance to be determined prior to approval of the proposed subdivision.

In reviewing an application for a minor subdivision the Planning Commission and the Board of County Commissioners shall apply the following criteria as listed from Section 8-195 of the Morgan County Subdivision Regulations:

- (A) Whether the application documents are complete and present a clear picture of how the subdivision is to be laid out including all infrastructure, easements, and access.
The application documents are complete:
 - 1) Northeast Colorado Health Department has issued a letter regarding onsite wastewater treatment systems on Lots 1 thru 4.
 - 2) There is 1 existing Quality Water Tap and a Quality Water Engineering report for the approval of 3 more taps.
 - 3) All lots will be accessed from County Road O. Road and Bridge has no objection to the use of a new driveway for all 4 lots.
 - 4) Property is located in the Brush Fire District.
 - 5) Soil map was provided by the Natural Resources Conservation Service.
 - 6) The applicant notified the mineral rights owners.
 - 7) Animal units will be per zoning requirements approved by the Morgan County Extension Service.
 - 8) Right to Farm notices were signed by both property owners and provided with the application.
 - 9) Lots 1 thru 4 are currently vacant with proposed development with single family residences.

- (B) Whether the proposed subdivision is consistent with the Morgan County Comprehensive Plan. The subdivision is located in the southeast planning area.
 - Chapter 2, Plan Summary
 - Goal: Section 2.C.1- To encourage development where proposed development is compatible with existing land uses and access to public infrastructure is established.

- (C) Whether the proposed subdivision is compatible with surrounding land uses and is adequately buffered as needed.
This subdivision is located in the Agricultural Production District and buffering is not required, uses are compatible.

The following conditions are recommended if the Minor Subdivision is approved:

- (1) The shared access and maintenance agreement to be executed and recorded at the same time as the plat and resolution being recorded.

All appropriate notice requirements have been completed.

Nicole Hay
Morgan County Planning Administrator

APPLICANT PRESENTATION:

Applicant William Colburn presented this 4 Lot Minor Subdivision application to the Planning Commission.

DISCUSSION: Planning Commission to Applicant

Clayton Miller confirmed with applicant that they had one water tap existing and approved for three others. He asked if they are installing water taps prior to selling the lots or are they included with the purchase of the lot?

William Colburn said they haven't gotten that far because they have other options. They have two other taps available to them. He thinks they are going to sell the lots where the buyers purchase their own taps.

Robert Pennington mentioned that the access easement goes to the north and then back to the east between lots 2 and 3. What was the purpose of that easement going back the east?

William Colburn stated, "In case in the future that other 20 up there, if we ever build up there, we continue that easement on up to the other road. It would be more handy for everyone."

Robert Pennington asked Planning Administrator, Nicole, if there were any requirement with that road or easement and how it would have to be?

Nicole Hay replied No. That is why she is requiring the access agreement and maintenance agreement. It is for the buyer of the lot to know who is responsible for maintaining the road and who can access the road. There are no requirements as to how the road is built.

Robert Pennington It can be a sand or gravel road? Fire Department doesn't have any requirements?

Nicole Hay No-one has said anything to the MCPZ.

Clayton Miller asked if there was a proposed HOA?

William Colburn stated, "Not at this time."

Dave Musgrave wanted clarification of what fire district this proposed subdivision is located in. On the narrative it says it's located in the Hillrose fire district. It is actually located in the Brush Fire District.

Robert Pennington was concerned about the verbiage of the road maintenance agreement in Section 3 and wanted clarification of how the landowners would handle the road maintenance, improvements and who would cover the cost of the bill for the road.

William Colburn He wasn't sure how to handle that and said the he has a lawyer to draw up a road agreement. He was thinking about maintaining it themselves but doesn't know what will happen when he is gone.

Robert Pennington said the language should be more specific about who is to maintain the road and who is in charge of the road so one person cannot dictate to the others.

Erik Mohrlang agreed that language needed to be more specific on the road agreement.

Dave Musgrave stated he did some research on Quality Water taps years ago and restrictors were put on the lines down south so they could deliver water. The engineer said they only have to have 25 pounds of pressure down there. He wasn't sure if anyone knows about the restrictors on the lines and years ago they were having issues getting Quality Water down there south of Brush so that is why they put the restrictors on the lines. A 4-inch line runs from Brush all the way down to the south.

William Colburn stated, "You don't want a well in that area. You definitely want quality water."

No further comments

Robert Pennington opened the meeting to public comment.

PUBLIC COMMENT OPEN:

Those speaking in favor: Nobody was present or on Zoom platform.

Those in opposition: Nobody was present or on Zoom platform.

PUBLIC COMMENT CLOSED:

MOTION:

Clayton Miller moved to approve the proposed Colburn 4 Lot Minor Subdivision as presented along with the condition recommended by Nicole of recording the Shared Access Agreement at the same time as the resolution.

Erik Morhlang seconded motion.

Roll call vote. Motion carries 5-0.

This application will move on to the Board of County Commissioners.

NEW BUSINESS:

Subdivision Amendments: Clarify referral language and provided consistency between subdivision applications, requirements for plat monuments, and clarify the lot combination process.

Planning Director, Nicole Hay, read her file summary as follows:

AMENDMENTS TO MORGAN COUNTY SUBDIVISION REGULATIONS

Included with this staff report are redlines of the proposed changes as outlined below.

Subdivision Amendments

1. The proposed changes are intended to clarify referral language and provide consistency between subdivision applications. Under state law, the referral period for what the County categorizes as a major subdivision is a minimum of 21 days, that is the reason it is different than other subdivision processes.
2. The proposed changes are indented to fix language regarding plat monuments to reflect what is required under state law for Land Surveyors and to delete certain acts the County was not regulating or enforcing.
3. The proposed changes are intended to provide clarification as to when a lot combination process is available. This process was made available prior to the amended plat, replat, and boundary adjustment processes were adopted. With all of these processes available, there has been some confusion over what process would control.

Nicole Hay
Morgan County Planning Director

Nicole Hay mentioned that the referral time in #1 was not consistent across the board. We wanted to go 14 days with all referrals except major subdivisions that are required to be 21 days. We are trying to get the verbiage consistent across the regulations and easier to understand.

DISCUSSION: Planning Commission to Nicole Hay

Robert Pennington mentioned on the changes on #4, the very last sentence, “approve” is in the sentence twice. On F, #4 do we have an allowable number of buildings on a lot?

Nicole Hay we have a percentage of lot coverage. I will ask to have that say the maximum lot coverage so that it matches our Bulk Requirements.

Robert Pennington asked if there were any further comments.

MOTION:

Erik Morhlang moved to approve the proposed subdivision regulations.

Dave Musgrave seconded.

Roll call vote.

Motion passed 5-0.

NEW BUSINESS:

Zoning Amendments: Definition and regulations regarding digesters, allowing solar collector facilities up to a certain kilowatt capacity as accessory uses in the Ag and Ag/Business districts, addressing interior property lines located within solar project, provide process and expand temporary uses, clarify which resolution controls over another passed in 2011, and change the timing of the decommissioning bond for BESS.

Planning Director, Nicole Hay, read her file summary as follows:

AMENDMENTS TO MORGAN COUNTY ZONING REGULATIONS

Included with this staff report are redlines of the proposed changes as outlined below.

Zoning Amendments

1. Adds definition and regulations to digesters. The County’s current regulations do not address digesters and propose changes to add digesters as a special use in the Agricultural and Agri-Business Zones and to clarify type of use permit.
2. The proposed changes would allow for solar collector facilities as a use by right as an accessory use in Agricultural and Agri-Business Zones up to a certain kilowatt capacity. For solar collector facilities with more capacity, a conditional use for accessory use would be required.
3. The proposed changes are intended to address the interior property lines for solar collector facilities and to clarify section line restrictions. If the changes are not made regarding interior property lines, solar collector facility applicants will need to go through some type of subdivision process or lot combination.
4. The proposed changes would provide a process for a temporary use permit and to expand the scope of temporary uses. Currently, there is no specific permit process or review criteria for temporary uses and the uses are very restrictive. The intent is to allow for temporary retail activities, for example fireworks stands and Christmas tree stands.
5. Move Special Provisions regarding Single-Family Dwellings to Section 3-143, it is currently in Section 3-153, which is not correct.

6. Clarify which resolution controls over another resolution passed in 2021. These resolutions came through around the same time and the second one did not reflect changes made by the first one. Particularly rear setbacks for accessory structures in Appendix B.
7. The proposed change is to change the bond timeline for BESS to match WEF and Solar Collector Bonds.

Nicole Hay
Morgan County Planning Director

Robert Pennington asked how big is a 20 Kilowatt facility?

Nicole Hay To come up with that number we looked at our previous residential solar collector permits for the last 2 years and averaged that amount out. The high end was approximately 16.5 so we went to 20. I suggest to switch this over because if you have a house or shop that you want to add roof mounted or ground mounted solar to, with the current regulations you would have to go through an extra step, which is a Conditional Use. It doesn't seem quite right, when it should be a Use by Right for a home or residential use.

Dave Musgrave raised his concern about the solar farm off of I-76 east towards Brush and the glare that he has seen it cause.

Robert Pennington asked Nicole if any significant changes to the regulations were in the packet?

Nicole Hay Regarding internal property lines for utility scale solar facility. Our regulations currently require the applicant to meet setbacks on those internal property lines. It would not allow solar companies to build to the size that they want and how they want. It is not efficient. We are trying to change some of the verbiage and have a waiver process with the internal property lines. A compromise to allow or do the setbacks but with a waiver similar to what we would do for a road Right of Way. Like all of the roads that aren't built but Morgan County has a Right of Way on them and they need to request a waiver on those so they don't have to do a 70-foot setback. So they aren't left with strips of setbacks that they can't build in. Several solar companies have been giving input on why these setbacks would cause issues as far as building the facilities. This issue has come up in several Pre-apps that we have done. This was not addressed when we came up with the original set of regulations since it's new.

As for other amendments to the regulations:

-When the digesters started coming in to the County, we did not have any regulations on them. We needed to address them in the regulations.

-We needed a process in our office for Temporary Uses for things like Fireworks stands.

-Change the BESS bond to match the Solar and Wind bond. Their lifespan is very similar. We still had the 5 year in the regulations and we wanted to change it to 12 years.

These changes are fairly minor with some cleanup and more explanation in the verbiage.

These items arose after conducting Pre Apps and speaking with potential applicants. We need to get some sort of process and regulations to address these items.

PUBLIC COMMENT OPEN:

Those speaking in favor:

Ash Moore, from Juno Beach, Florida, representing NextEra, gave input on NextEra being in support of the proposed Amendments to the regulations that Nicole has presented. It enables them and any other utility scale company to work in Morgan County. He stated that he was open to any questions that anyone may have to explain in further the proposed amendments.

Nathan Trout asked Ash if there were any other regulations that you would add to this or is this good for Morgan County?

Ash Moore feels that the regulations both protect the developer as well as the county. Nicole has worked diligently to get the regulations where they are right now. There are just a few tweaks as we are

addressing now. As we move forward and work in Morgan County I think we will find that the regulations are really solid.

Page Bolin (via Zoom) represents AES Clean Energy, Louisville Colorado, wanted to reiterate what Ash has also said. She thinks that the way Nicole has addressed the issue of the parcel line setbacks is a great compromise. It provides the applicants with some flexibility to ask for a waiver and to be able to show how it makes a better project for Morgan County. It gives the commissioners some leeway to make decisions that are good for the residents in the area of the project. Page feels Morgan County's regulations are well written and are a solid set of regulations that work for both sides. A few tweaks may arise here and there as the first few projects come before you.

Mike Kruger (via Zoom) President and CEO of the Colorado Solar and Storage Association, Denver Colorado, would like to commend Nicole for her work. COSSA gave Morgan County Commissioners an award for their effort on these regulations. COSSA points to these regulations for reference for other communities that are working on their own Solar and Energy projects. He appreciates the BESS bond and the efficiency that it allows. The proposed property line setbacks make a lot of sense. It allows the companies to utilize the land more efficiently. Only using the least amount of land necessary to create the energy. They would like to commend the Morgan County Community for being very clear to storage and energy developers. The regulations are well written and he hopes that they will be adopted this evening.

Those in opposition: None

PUBLIC COMMENT CLOSED

PLANNING COMMISSION COMMENTS:

Robert Pennington What was decided as far as setbacks from residential structures for wind turbines?

Nicole Hay It might have been 1.1 from ground to top of tip. So it's a percentage dependent on the size of the turbine itself.

Ash mentioned it's "about" a 500-foot setback. It depends on the size of the turbine.

Robert Pennington asked if we have had a lot of interest in solar?

Nicole Hay We have had about 8 Pre Apps for solar and battery storage.

Nathan Troudt asked if the digesters were specific to livestock confinement operations or would it include meat processing facilities waste as well?

Nicole Hay said that was not discussed. Most of the digesters were specific to that dairy. If they are going to transport waste in from another third party, it will go through a different process. We were concerned with situations such as truck traffic and other things that these may bring in. This was the main basic step to get digesters into our regulations to be clarified and specific on how we can address them.

Nathan Troudt said for future reference.

Erik Mohrlang motioned to approve the amendments as presented.

Clayton Miller Seconded that motion.

Roll call vote. Motion passed 5-0.

These proposed amendments for Subdivision and Zoning Regulations will move on to the Board of County Commissioners meeting for January 10, 2023.

Clayton Miller moved to adjourn the meeting.

Erik Mohrlang seconded. Motion passed 5-0.

Meeting adjourned at 7:43 P.M.

Respectfully submitted,
Cheryl Brindisi, Planning Technician

