

MORGAN COUNTY PLANNING COMMISSION
July 13, 2020 MINUTES

The Morgan County Planning Commission met on Monday, July 13, 2020, at 7:00 p.m. in the Assembly Room of the Morgan County Administration Building. Answering roll call were: Robert Pennington, Mike Erker, Mike Bailey were present; and Nathan Troudt, Terry Rutenbeck, Pete Mercer and Clay Miller appeared remotely by the Zoom platform. Also present were Pam Cherry, Planning Administrator, Jody Meyer, Planning Assistant and Jeff Parker, Morgan County Attorney was present attending remotely by Zoom. Also present was Karol Kopetsky, Morgan County IT Administrator.

The meeting was called to order by Vice Chairman Robert Pennington who agreed to chair the meeting as he was there in person.

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

Approval of Minutes: May 13, 2020

It was moved by Nathan Troudt and seconded by Mike Bailey to approve the May 13, 2020 minutes as presented. Motion carried 7-0.

Approval of Agenda:

It was moved by Nathan Troudt and seconded by Pete Mercer to approve the Agenda as presented. Motion carried 7-0.

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

NEW BUSINESS:

APPLICANTS: Epic Design for Charles Greenwood III
LANDOWNERS: Charles Greenwood III
CONSULTANT: Epic Design

Application Overview

Charles Greenwood III as landowner and Epic Design as applicant's consultant have submitted an application for a Special Use Permit for approval to expand an existing storage facility. The property is zoned Agriculture Production and is 3.55 acres, located in Section 2, Township 3 North, Range 58 West of the 6th P.M. Morgan County, Colorado; addressed as 16295 County Road R, Fort Morgan, CO.

The property is platted as Lots 34 and 35 of the Trailside Planned Development. Pages 1 and 2 of the recorded plat are included in your packets. The plat shows that Lots 34 and 35 have an intended use of ATZ which is defined as Agriculture Trailside zone and lists prohibited uses and does not include storage units or outside storage. Mobile home storage is listed as a prohibited use, however and will continue. Lot 36 to the west of this property is also used as commercial storage. The plan for expansion was submitted to the Trailside HOA and approved.

The property is a combination of uses including single-family residential. Lots 34 and 35 of the Trailside Planned Development have been combined under a separate application that was completed in May of 2019; that agreement is included in the packet. Setbacks will apply only to the exterior boundary of the two combined lots.

- a. Pursuant to Section 2-165; Within the districts established by these Regulations or amendments that may later be adopted there exist lots, structures, uses of land and structures, and characteristics of use which were lawful before these Regulations were passed or amended, but which would be prohibited, regulated, or restricted under the terms of these Regulations or future amendments. ***It is the intent of these Regulations to permit these non-conformities to continue unless provided otherwise below, until they are removed, but not to encourage their survival. It is further the intent that non-conformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.***
- b. 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.
- c. Pursuant to Section 3-175; Parcels smaller than 20 acres does not list commercial storage facilities as a Use by Right, Conditional Use or Use by Special Review.

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 south central 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.

Encourage infill in existing business and industrial subdivisions. This property has been used for storage for many years. Permitting the expansion of this facility meets the intent of this goal.

2.II.C

Goal - To encourage development where it is in proximity to the activity centers, compatible with existing land use, and there is access to established public infrastructure.

There is adjacent Agriculture Production zoning to the west of this property. This property is part of the Trailside Planned Development and included in those plans to continue use as it had always been operating.

- (B) All the application documents are complete and present a clear picture of how uses are to be arranged on the site or within Morgan County.
- (C) The Site Plan conforms to the district design standards of these Regulations.
- (D) All on and off-site impacts have been satisfactorily mitigated either through agreement, public improvements, site plan requirements or other mitigation measures.

The addition of a six foot fence will be constructed on the north property line after the Phase 1 building has been erected and retention pond constructed in accordance with the drainage plan. Fencing will also be constructed on the west side of the pond for buffering and safety purposes.

- (E) The special use proposed has been made compatible with the surrounding uses and adequately buffered as determined by the County.
The project as proposed will include fencing as a buffer to the adjacent residential to the north and on the west side of the retention pond as a buffer and the safety of area residents.
- (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.
- (G) The special use proposed is not planned to be developed on a non-conforming parcel.
The property was created by exemption and 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.
- (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.
There is an existing Morgan County Quality Water tap on the property that will be monitored for possible increase to a commercial tap.

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 uses for this property shall comply with the Trailside Planned Development for this property including the prohibitions as listed on the plat:
 - a. Discharge of firearms
 - b. Commercial bulk fuel plats
 - c. Livestock confinement facilities
 - d. Mobile home storage
 - e. Junk, scrap metal, auto wrecking and salvage yards.
3. A 6' privacy fence shall be constructed on the north and west sides of the retention pond for buffering and safety purposes.
4. Grain bins shall be removed.
5. Retention pond shall be constructed and will include plans for mitigation of odors and pests.

Applicants George and Laurie Cromwell from Epic Design and Landowner Charles Greenwood III were present to represent this Special Use Permit application. George Cromwell noted that they have plans to remove old grain bins, elevator leg and concrete building. He reviewed the phasing plan as noted in Exhibit B of the application. Traffic – just retrieving vehicles to and from site.

PUBLIC COMMENT:

Favor: There was no one present or on zoom that talked in favor of this application.

Against: Donne and Leigh Garver attended virtually by the Zoom platform. Address: 16213 Co Rd R, Fort Morgan, Colorado, were objecting to the storage units which they covered in their letter dated July 3, 2020 and which is part of this file. They feel this is an invasion of their property, it is too close, and would bring down the value of their land if they were to sell. Garver's listed their concerns:

1. Not home occupation
2. Limit access hours to daylight hours
3. Lighting
4. Electric pedestal encroachment with consideration to fencing that may need to be moved should be Greenwood expense
5. Mechanic shop next to Garver residence

PUBLIC COMMENT CLOSED

Charlie Greenwood III reviewed the situation regarding the electric pedestal saying it could be moved. The safest place to move it would be on the easement on Garver's property. Greenwood also mentioned the possibility of leasing space for workshops; granite fabrication was suggested as a possibility. The intent is not to place a mechanics shop near Garver's residence. The request is for RV, boat, etc storage.

George Cromwell said Greenwoods have cleaned up this property and it has been vastly improved.

Mike Erker said there is a difference between storage and a warehouse. So this is a shop? Charlie Greenwood stated he will use it as a shop. Mike Erker said renting it out as a shop is not part of the application. Maps were reviewed at this point and phases were marked. Attorney Jeff Parker said Phase II includes personal shop which could not be voted on today it is a personal use by the applicant. George Cromwell designated building #118 as warehouse storage only along with #105 and #108.

Robert Pennington asked how large the pond would be. Charlie Greenwood said 50'x60'x7'.

Charlie Greenwood talked about placement of a privacy fence along the pond. Any overflow is to the north. George Cromwell added flow to the northeast and diverted more to the east. Charlie Greenwood III said it is not in the plans for a fence by the Garvers. Laurie Cromwell explained that any structure 5000 sq. ft. and over is required to have a drainage plan. George Cromwell said the ground surface is very permeable.

Clay Miller asked if these lots were part of Trailside. Charlie Greenwood yes the lots are part of Trailside but these lots have a different set of rules that apply.

CLOSE OF HEARING PORTION

Pete Mercer recused himself from voting on this application due to conflict.

It was moved by Mike Erker 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 uses for this property shall comply with the Trailside Planned Development for this property including the prohibitions as listed on the plat:
 - a. Discharge of firearms
 - b. Commercial bulk fuel plats
 - c. Livestock confinement facilities
 - d. Mobile home storage
 - e. Junk, scrap metal, auto wrecking and salvage yards.
3. A 6' privacy fence shall be constructed on the north and west sides of the retention pond for buffering and safety purposes.
4. Grain bins shall be removed.
5. Retention pond shall be constructed and will include plans for mitigation of odors and pests.

Motion carries 6-0 with Pete Mercer recusing himself from voting on this application.

APPLICANT: Kevin Lamb, Manager Bullseye Holdings, LLC
LANDOWNERS: Bullseye Holdings, LLC
CONSULTANT: Travis Hertneky, THEngineering

Landowner Bullseye Holdings LLC/Kevin Lamb and Consultant THEngineering/Travis Hertneky were present to represent this application.

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

This application is for a Special Use Permit to operate a Confined Animal Feeding Operation in the "A" Agriculture Production Zone District. Section 3-180(O) of the Morgan County Zoning Regulations lists livestock confinement operations in excess of the allowed animal unit densities ... as a Use by Special Review; this operation proposes a maximum of 9,000 head which exceeds permitted numbers of 4 animal units per acre, this property is 90.87 acres and would be permitted 363 animal units. The property is located on the southeast corner of County Road O and County Road 16 in the West ½ of Section 26, Township 3N, Range 58W of the 6th P.M. and south and west of the Bijou Canal, Morgan County, Colorado.

This application is to re-establish a confined animal feeding operation of no more than 9,000 head. The facility began operations prior to 1989 (see historic imagery in packet). The facility currently has livestock on it and does not exceed the use by right permitted number. Sections in the Design Report will be presented by the applicant and/or consultant at the public hearings. These sections contain specific information on regulations and potential impacts related to:

1. Regulation Applicability (Colorado and Morgan County)
2. Hydrology and Hydraulics (A system of ponds and diversions to protect adjacent properties – Bijou Ditch)
3. Manure Management (combination of methods proposed)
4. Traffic (tables on anticipated vehicle trips in appendix)
5. Nuisance Management (pests, air quality and noise)

6. Appendices (aerial maps, topo, soils map, floodplain map, pond size spread sheet, pond stage storage curves, pond line certifications, hydrology, manure generation calculation traffic, O&G wells, emergency action plan)

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 location is south of the intersection of County Road O and County Road 16; located in the South Central Planning area as defined by the Morgan County Comprehensive Plan 2008. In this area the goal is to preserve and protect existing agriculture uses south of County Road Q. A feeding operation is an agriculture use.

Agriculture is a highly valued resource in Morgan County. Conservation of agricultural resources and land is paramount, and such land and resources must be protected from adverse impacts resulting from uncontrolled and undirected business, commercial, industrial and residential uses.
- (B) All the application documents are complete and present a clear picture of how uses are to be arranged on the site or within Morgan County.
- (C) The Site Plan conforms to the district design standards of these Regulations.
- (D) All on and off-site impacts have been satisfactorily mitigated either through agreement, public improvements, site plan requirements or other mitigation measures.
All adjoining properties are also zoned Agriculture Production and one property is also a feeding operation.
- (E) The special use proposed has been made compatible with the surrounding uses and adequately buffered as determined by the County.
Buffering is not required as adjacent land uses are compatible.
- (F) The special use poses only the minimum amount of risk to the public health, safety and welfare as set by federal, state or county regulation, whichever is the strictest.
Engineering reports and studies have been conducted for the property and submitted to the Colorado Department of Public Health and Environment (CDPHE) as well as the State Engineer's office for review.
- (G) The special use proposed is not planned to be developed on a non-conforming parcel.
- (H) The applicant has adequately documented a public need for the project, all pertinent technical information, and adequate financial resources to implement it, and has paid all fees and review costs levied by the County for application processing and review.
There are a number of feeding operations in the county that support the local economy.
- (I) For any Use by Special Review requiring a supply of water that the applicant has demonstrated a source of water which is adequate for the proposed use in terms of quantity and reliability and in the case of human consumption, quantity, quality, and

reliability. *The State of Colorado Division of Water Resources response to request for comment is attached. The Division of Water Resources has permitted well number 80348-F to not more than 24.27 acre-feet, or the amount covered under a substitute water supply plan that was approved on October 15, 2019 based on 1,000 head per month for a one year period that ends on September 30, 2020 until a decree is obtained for a permanent plan for augmentation. Water Court Case #2016CW3028 is currently in review by the state.*

Property taxes are current.

Recommended conditions of approval:

1. The facility shall not commence operations until it has received approval from all agencies with jurisdiction over the operation and all required permits have been issued.
2. The facility shall not commence operations until all improvements set forth in the application have been constructed and are operational.
3. The facility shall operate the Bullseye 3T well, Permit No. 80348-F in compliance with all well permit conditions and the applicable substitute water supply plan and/or permanent augmentation plan as determined by the State.
4. Generally accepted best management practices as recommended by the Natural Resources Conservation Service and established in applicable publications of Colorado State University for land application of manure and waste water shall be followed.
5. Any increase to the 9,000 head as proposed by this application shall require an amendment to this permit
6. 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.
7. Bijou Irrigation shall be granted access to the Bijou ditch for the purpose of inspection and maintenance of the irrigation ditch.

Terry Rutenbeck recused himself from hearing this application because of a conflict of interest.

Travis Hertneky of THEngineering stated this feedlot existed in 1962 and they consider it grandfathered. However, the landowner has decided to apply for the special use.

Travis Hertneky presented a slide presentation covering Proposed Additions, Map of Ponds, Wastewater Generation, Solid Manure Generation, Feed, Traffic, Pest Control, Dust Mitigation & Odor. The proposed design is an improvement on the environmental controls that are currently in place. They want to be transparent and they may need to land apply as an option. There was discussion regarding storm event operations.

Mike Erker asked about the ponds and Travis Hertneky said they meet the seepage requirements of the State. They talked about an emergency spillway to keep water out of the Bijou Canal. Kevin Lamb said he was looking to make this better for Bijou.

OPEN PUBLIC COMMENT:

Favor: No one present or on virtual Zoom to speak in favor of this application.

Against:

Dave Stewart of Stewart Environmental Consulting Group, Fort Collins, (Zoom) and representing Bijou Irrigation;

Stuart Corbridge of Vranesh and Raisch, LLP, Boulder, Colorado, Attorney for Bijou Irrigation, had concerns.

Dave Stewart had concerns with this application and referred to the Deer Valley Dairy Resolution and Bullseye should have the same requirements that are more restrictive than state regulations. The alternative pond, good safety factor and should be entire length of ditch.

Stuart Corbridge stated that the plan should be like Deer Valley, more detail and clarification is needed in the Bullseye plan.

Travis Hertneky response – the plan is to size the improvement for a CAFO of 9000 head. Pond 4 they would catch water and then send to Pond #1.

There was much discussion on the ponds and emergency spillway. Travis said you cannot compare this operation with Deer Valley's. Bijou wants something to stop erosion. Ditch rights-of-way – They are not proposing new structures on the ditch road. It needs to be maintained in easement. Pond meets bunk lines and acts as diversion.

Kevin Lamb gave background about working with Bijou and said it was hard to negotiate with them and they would not meet with him. Bijou did not agree with Bullseye. They are willing to meet.

Jeff Parker, Morgan County Attorney, said it was a County requirement. There needs to be more discussion on storm events, and how this project should be built.

PUBLIC COMMENTS CLOSED

Travis Hertneky said they are open to sending water to the south end of site and they will look into that.

Kevin Lamb said he reviewed the SWSP.

Pam Cherry said the application is for re-establishing a CAFO.

It was moved by Mike Erker and seconded by Pete Mercer to send this application on to the Board of County Commissioners with their recommendation of approval with the following conditions as laid out by Pam Cherry, Planning Administrator:

1. The facility shall not commence operations until it has received approval from all agencies with jurisdiction over the operation and all required permits have been issued.
2. The facility shall not commence operations until all improvements set forth in the application have been constructed and are operational.
3. The facility shall operate the Bullseye 3T well, Permit No. 80348-F in compliance with all well permit conditions and the applicable substitute water supply plan and/or permanent augmentation plan as determined by the State.
4. Generally accepted best management practices as recommended by the Natural Resources Conservation Service and established in applicable publications of Colorado State University for land application of manure and waste water shall be followed.
5. Any increase to the 9,000 head as proposed by this application shall require an amendment to this permit

6. 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.
7. Bijou Irrigation shall be granted access to the Bijou ditch for the purpose of inspection and maintenance of the irrigation ditch.
8. Thorough investigation looking into alternate spillway.

Motion carried 5-1 with Nathan Troudt having the dissenting vote and Terry Rutenbeck recusing himself from voting because of conflict of interest.

It was moved by Mike Erker to adjourn this meeting and seconded by Mike Bailey. Motion carried 7-0.

Jody Meyer
Planning Assistant