

MORGAN COUNTY PLANNING COMMISSION
October 15, 2019 MINUTES

The Morgan County Planning Commission met on Tuesday, October 15, 2019 at 7:00 p.m. in the Assembly Room of the Morgan County Administration Building. Answering roll call was: Robert Pennington, Mike Erker, Terry Rutenbeck, Nathan Troutd, Dave Musgrave, Mike Bailey and Clay Miller. Also present were Pam Cherry, Planning Administrator, Jody Meyer, Planning Assistant; and Shannon Shields, Planning Clerk.

The meeting was called to order by Chairman Nathan Troutd.

Agenda:

It was moved by Mike Erker and seconded by Robert Pennington to approve the Agenda as presented. Motion carried 7-0.

Nathan read process of hearing.

NEW BUSINESS:

APPLICANT and LANDOWNER: Morgan County Rural Electric Association

Matt Richardson, Attorney for REA, and David Frick representing REA, were present to represent the application.

Pam Cherry read her file summary as follows:

This application is for a Minor Subdivision on property located W ½ of the NW ¼ of Section 4, Township 3 North, Range 57 West of the 6th P.M. The property is addressed as 734 Barlow Road.

The property is 28.7 acres and MCREA is requesting approval of a minor subdivision to create two lots, Lot 1 is 23 acres, Lot 2 is 5.7 acres. Lot 1 has the REA building, shop and a metal building. Lot 2 is proposed to be 5.7 acres and has a building and pole barn located upon it. The property is zoned Commercial and will continue to be used for commercial uses.

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.) There are two existing Morgan County Quality Water taps that serve the proposed lots. Quality Water September billing shows that there is one tap for 20169 Highway 34 (Lot 2, tap #370), and a second bill for 17802 Road 20 (Lot 1, tap #1200).

- 2.) Sewer service is provided to Lot 1 by the City of Fort Morgan. Lot 2 has Onsite Wastewater Treatment System Permit #M01-065.
 - 3.) There are two existing driveways on Barlow Road that will provide access to Lot 1. There are two existing driveways to Highway 34 that are controlled by Colorado Department of Transportation. CDOT will allow the continued use of two existing driveways, and will be reevaluated should traffic generation onto Highway 34 be increased by 20%.
 - 4.) Property is located in the Fort Morgan Fire District.
 - 5.) Soil map was provided by the Natural Resources Conservation Service.
 - 6.) Morgan County Extension Service requirement is not applicable.
 - 7.) Mineral rights have not been severed from the property.
 - 8.) Right to Farm notice was signed and provided with the application.
 - 9.) An improvement location certificate was provided with the preliminary plat drawing, all buildings meet the setback requirements.
- (B) Whether the proposed subdivision is consistent with the Morgan County Comprehensive Plan. The subdivision is located in very close proximity to the City of Fort Morgan City limits and is in an area of commercial and industrial development.
- (C) This subdivision is located in the commercial zone district and buffering is not required, adjacent uses are compatible.

All appropriate notice requirements have been completed and no comments have been received as of the date of this report. The site of the minor subdivision is not located within the 100-year floodplain. Property taxes are current.

Pam recommended that the Planning Commission refer this application to the Board of County Commissioners with a recommendation of approval.

Matt Richardson, Attorney for Morgan County REA, 626 E. Platte, Fort Morgan, CO 80701, said REA has outgrown its old facility and they would like to be able to sell the property to a third party. It is under contract.

PUBLIC COMMENT OPEN:

Favor: No one spoke in favor of this application

Opposed: No one spoke in opposition of this application.

PUBLIC COMMENT CLOSED

It was moved by Mike Erker and seconded by Dave Musgrave to recommend approval of a two lot Minor Subdivision Application for Morgan County Rural Electric Association as applicant and landowner known as the REA Minor Subdivision located in W ½ of the NW ¼ of Section 4, Township 3 North, Range 57 West of the 6th P.M. The property is addressed as 734 Barlow Road and 20169 Hwy 34, Fort Morgan, Colorado 80701. Motion carried 7-0.

APPLICANT: Brannon Zarbock
LANDOWNER: Donald Eugene Zarbock and Dean Allen Zarbock

Brannon Zarbock was present to represent the application.

Pam Cherry read her file summary as follows:

This application is for a Minor Subdivision on property located NE¼ of Section 13, Township 3 North, Range 57 West of the 6th P.M. The property is located southwest of the intersection of County Road Q and County Road 24.

Brannon Zarbock as applicant is requesting approval of a minor subdivision to create two lots, each is 2.5 acres. The property is currently undeveloped; each lot will be used for residential purposes. The five acres is located on a 160-acre parcel.

Access for proposed lots is from County Road Q across an access and utility easement which is proposed and shown on the plat.

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.) There is one existing Morgan County Quality Water tap #62 for one lot. In addition, an additional tap #2932 has been purchased for the second lot.
 - 2.) Northeast Colorado Health Department has provided a will serve letters for two onsite wastewater treatment systems.
 - 3.) Morgan County Road and Bridge has no objection to the use of an existing driveway to County Road Q for access to the subdivision.
 - 4.) Property is located in the Fort Morgan Fire District.

- 5.) Soil map was provided by the Natural Resources Conservation Service.
- 6.) Morgan County Extension Service has approved 2 animal units per lot.
- 7.) Researched mineral rights owners, both of which have passed away. Applicant made contact with son, Dennis Johnson, who contacted Planning and Zoning offices stating he has no objection to the subdivision.
- 8.) Right to Farm notice was signed and provided with the application.
- 9.) The property is undeveloped, no structures, and Improvement Location Certificate is not required.

(B) Whether the proposed subdivision is consistent with the Morgan County Comprehensive Plan. The subdivision is located in the south central planning area.

Chapter 6, Land Use Planning, III.C.

Goal: Preserve and Protect existing agriculture uses south of County Road Q.

(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.

All appropriate notice requirements have been completed and no comments have been received as of the date of this report. The site of the minor subdivision is not located within the 100-year floodplain. Property taxes are current.

Pam Cherry recommended that Planning Commission refer this application to the Board of County Commissioners with a recommendation of approval.

Pam Cherry noted response letters from Xcel and Fort Morgan Reservoir & Irrigation Company to our referral memo that was sent out.

Brannon Zarbock noted the minor subdivision was for future use for family members.

Robert Pennington asked if the access was good for 911/emergency services. Brannon Zarbock said yes and said they would probably use crushed concrete on the driveway.

OPEN PUBLIC TESTIMONY

There was no one present to speak in favor of or in opposition to this application.

CLOSE PUBLIC TESTIMONY

Mike Erker asked how far away the Fort Morgan Reservoir & Irrigation Co ditch was from the property and was told about 700 to 1000 ft. away.

It was moved by Mike Bailey and seconded by Mike Erker to approve this application for a 2-lot Minor Subdivision from Brannon Zarbock, applicant, and Donald and Dean Zarbock as landowners located on property in the NE¼ of Section 13, Township 3 North, Range 57 West of the 6th P.M. Motion carried 7-0.

**APPLICANT: Craig Potthoff
LANDOWNER: TLL Land Holdings, LLC and Heinz Deffert**

Heinz Deffert and Craig Potthoff were present to represent the application.

Pam Cherry read her file summary as follows:

This application is for an amendment to the Dean Estates Minor subdivision, replat of Lot 3, SW¼ of Section 25, Township 2 North, Range 60 West of the 6th P.M. The property is located southwest of the intersection of County Road H and Highway 52/County Road 5. Deffert's property is addressed as 7116, State Hwy 52, Wiggins, CO 80654.

Craig Potthoff as applicant, representing the landowners TLL Land Holdings and Heinz Deffert, are requesting approval of a minor subdivision that will replat Lot 3 of the Dean Minor Subdivision. Mr. Deffert would like to purchase an additional 7.85 acres from TLL to increase the size of his 1.5 acre lot to a total of 9.3 acres. Deffert's property currently had a shed placed on it. The property to be sold to Deffert is undeveloped.

Access for Deffert will remain unchanged; the additional acreage will use the existing access to Highway 52.

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.) There is an existing Morgan County Quality Water tap #2079 that will be used for the property and for one residence only under one parcel number.
 - 2.) There is an existing septic system on the Deffert property.
 - 3.) Colorado Department of Transportation has extended access permit #416088 until December 31, 2019 by which time the access shall be constructed to CDOT specifications and

inspected.

- 4.) Property is located in the Wiggins Rural Fire District.
- 5.) Soil map was provided by the Natural Resources Conservation Service.
- 6.) Morgan County Extension Service has approved 4 animal units for the property.
- 7.) Mineral rights are owned by TLL Land Holdings and will be transferred to Deffert upon closing.
- 8.) Right to Farm notice was signed and provided with the application.
- 9.) The Deffert property has a shed and foundation for future home on it, the TLL property is undeveloped. The locations of the structures are shown on the Preliminary Plat and meet setback requirements in the Agriculture Production Zone District.

(B) Whether the proposed subdivision is consistent with the Morgan County Comprehensive Plan. The subdivision is located in the southwest planning area.
Chapter 6, Land Use Planning, III.C.
Goal: Encourage the preservation of agricultural production land to ensure continuation of this important industry.

(C) Whether the proposed subdivision is compatible with surrounding land uses and is adequately buffered as needed.
There are many subdivisions in the area of the Highway 52 corridor which is an area that is attractive for subdivision development. It provides easy access to the Denver Metro area. There are many subdivisions in the area and buffering is not required.

All appropriate notice requirements have been completed with one comment received. That was a request that the property be cleaned up and arrange the equipment, no other comments have been received as of 10-4-19. The site of the minor subdivision is not located within the 100-year floodplain. Property taxes are current.

Pam Cherry recommended the Planning Commission refer this application to the Board of County Commissioners with a recommendation of approval.

Pam Cherry told the Planning Commission that Mr. Deffert is currently building a home on the lot. The property is clean; has been very well taken care of and pictures were taken.

Craig Potthoff, Custer Street, Brush, Colorado, told the commission that Mr. Deffert wanted to expand his acreage for his home site and had previously worked out an agreement between himself and Deffert. There is no new driveway. There is a shared driveway between Lots 3 and 4 in the Dean Minor Estate.

Mike Erker questioned where the lots were located and was concerned about how long it has taken Deffert to construct the home and have building materials on site for that long.

PUBLIC TESTIMONY OPEN

There was no one present to speak in favor of or in opposition to this application.

PUBLIC TESTIMONY CLOSED

Mike Erker is tired of the constant complaints from people out south of Wiggins. He does not like to see junky property; he wants it cleaned up. He is just disappointed in Hwy 52 south of Wiggins.

Mr. Deffert said he does not have vehicles stored on his property, just building materials. He mows and uses a tarp to cover the construction supplies, mainly concrete. When his house is done, it will go away. He hopes to finish early summer of 2020. He could put up a fence – he wants to have a clean lot. Pam Cherry said his lot meets County standards. The Board can put conditions on the application. There was discussion on how long a permit can be open and Pam Cherry said it can be renewed every 6 months. Mike Bailey either they can make a condition on this application or he can start over on his building permit; is it fair to put this condition on this application? Robert Pennington said he did not think it would be fair if the property is in compliance with standards now. Mike Bailey said the County needs to put some teeth into violations.

Clay Miller asked why Mr. Deffert wanted more acreage. Mr. Deffert said just wanted more land and wanted to plant grass.

Craig Potthoff told the Board that a third party was involved and to please take that into consideration.

Maps of the subdivision area were reviewed on the overhead projector.

It was moved by Mike Erker and seconded by Dave Musgrave to recommend approval to the Board of County Commissioners for an Application for an Amendment to Lot 3 of the Dean Estates Minor subdivision, located in the SW¹/₄ of Section 25, Township 2 North, Range 60 West of the 6th P.M. aka 7116 Hwy 52, Wiggins, CO 80654, subject to:

- 1. All construction debris to be cleaned up by October 1, 2020.**

Motion carried 7-0.

**APPLICANT: Riverside Milk, LLC
OWNER: Chapin Dairy Two, LLC – Foy Chapin
CONSULTANT – Paragon Consulting Group – Anne Best Johnson**

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

Foy Chapin Sr., Foy Chapin Jr. applicants, Anne Best-Johnson and Dave Rau from Paragon Consulting Group were present to represent the application.

Pam Cherry read her file summary as follows:

Application Overview

This application is for an Amendment to Special Use Permit that was approved on November 1, 2005, Resolution 2005 BCC 63. The property is located in the SW1/4 of Section 26, Township 5 North, Range 56 West of the 6th P.M., Morgan County, and addressed as 28253 County Road Z, Snyder, Colorado. The property is zoned Agriculture Production.

The owner is requesting approval of this application to allow for the installation of new technology to the existing operations and an increase in animal units from 857.5 to 3,500 which will occur gradually over the course of a couple of years according to the development schedule. New technology will include an automated milking parlor, cross ventilated barn and a cow-initiated milking system. The milking parlor will be open 24/7.

Surrounding land uses include farm ground and rangeland. The nearest residential structure is 172 feet from the property boundary and 1,734 feet from the existing facility operations. On September 16, 2019 the Board of Adjustment granted a reduction in the required setback of 1,320 feet to 875 feet from the proposed footprint to the nearest residential structure which is owned by Chapin Dairy Two, and is the residence for a member of the Chapin family. All other residences are outside of the 1,320 foot setback limitation.

Utilities

The application included:

- a. Notification from Quality Water that two additional tap equivalents were approved at their meeting on June 18, 2019.
- b. Northeast Colorado Health Department requested the onsite wastewater treatment system be designed for two restrooms serving a maximum of ten employees. Modifications may be required that will be determined at the time of permit application.
- c. Morgan County REA provided a letter dated June 12, 2019 that they are able to supply the necessary power for the operation.

Road and Bridge Comments

On June 12, 2019 provided a letter of no objection to the continued use of the existing three accesses.

Riverside Ditch

On June 12, 2019 Ed Wilgenburg, owner of this lateral, provided a letter of no impact.

Financial

On June 6, 2019 American AGCredit provided a letter stating that the improvement will enhance efficiencies of the operations.

Drainage Plan

The site plans that were submitted with the application include drainage and grading. The plans submitted exceed State of Colorado requirements for CAFO drainage and meet the Morgan County requirement pursuant to Section 3-705 of the zoning regulations.

Nuisance Mitigation Plan

Paragon Consulting has prepared a Facility Management Plan/Nuisance Mitigation Plan which is in compliance with Colorado Code of Regulations 1002-81 and was submitted with the application.

Citizen comments

There were fourteen property owners notified of this application, six of them in the Chapin family. As of the date of this report there has been one inquiry from a property owner, just outside the notification area. That owner was concerned about the increase in odors as a result of the increase in animal units.

Criteria – Special Use Permits

Amendments to special use permits are governed under Sec. 2-430 of the County's Zoning Regulations. Under that section, amendments to special use permits are subject to the same criteria as the original permit. 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:

Analysis

The use and its location as proposed are in conformance with the Morgan County Comprehensive Plan. The property is located in the northeast planning area as defined by the Morgan County Comprehensive Plan. This area is primarily irrigated farm ground.

In this area Comprehensive Plan goals include:

- a. Encourage the preservation of agricultural production land to ensure continuation of this important industry.

The request to amend the 2005 special use permit will encourage the preservation and continuation of the industry.

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.

The application is complete and presents a clear picture of locations of structures on the property.

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

The Site Plan meets the district design standards of the Morgan County Zoning Regulations pursuant to Section 4-200.

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

Impacts to surrounding properties have been mitigated and documented in the Facility Design Plan and Nuisance Control Plan.

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

Buffering from adjacent agricultural uses is not necessary as the use is compatible with other agricultural uses in the area.

The special use poses only the minimum amount of risk to the public health, safety and welfare as set by

federal, state or county regulations, whichever is the strictest.

Amending the 2005 resolution to increase the animal units will not increase risk to public health, safety or welfare.

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

The proposed amendment is located on a conforming parcel.

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.

The public need for the project was demonstrated with the original special use application. Animal units will be increased to 3,500 to meet demands of the market.

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.

Morgan County Quality Water has approved an additional two tap equivalents for the project.

Recommendation

Pam Cherry recommended approval of the amendment to Resolution 2005 BCC 63 subject to:

1. Animal units are limited to 3,500.
2. Applicant is required to follow all nuisance control measures set out in the Facility Management Plan as prepared by Paragon Consulting Group. Enhanced measures may become necessary at some time in the future if there is unreasonable impact on surrounding properties. Enhanced measures would be required following written notice to the applicant and a hearing before the Board of County Commissioners if requested by the applicant.
3. The applicant shall remain in compliance with all regulatory agencies having jurisdiction over the operation.
4. The applicants are responsible for complying with all foregoing requirements, conditions and design standards. Noncompliance with any of the foregoing requirements, conditions or design standards may be reason for revocation of this permit by the Board of County Commissioners after notice to the applicants or their successors in interest and public hearing.
5. The facility shall not commence operations until it has received approval from all federal and state agencies with jurisdiction over the operation and all required permits have been issued.
6. This Use by Special Review permit shall supersede Resolution 2005 BCC 63.

Anne Best Johnson from Paragon presented a slide show (see attached paper copy). Chapin's bought this facility in 2011 and gave it a new name of Riverside Dairy. She reviewed the facility footprint; their attempts to contact neighbors within the quarter mile setback; letters of support; letters from neighbors who were against; additional animal units; bigger footprint; reviewed new facilities; pest, odor, dust nuisance management and drainage plan; facility management plan and ground water protection plan; said traffic pattern would not change – probably an increase of 2-3 trucks/12 people a

day at site; discussion on animal units with added cushion for a cap of 3500 animal units; 54% of animals are always indoors; there is cross ventilation in the new barn with climate control and automatic milking parlor. She also talked about the need of a Development Schedule; Public Health and Safety, Nuisance Conditions and reviewed the criteria for this Special Use Application. They are requesting approval of this Amended Special Use for the installation of new technology to the existing operations and an increase in animal units.

Rutenbeck - How do you remove manure in barn?

Foy Chapin – There is a robotic scraper system that runs on the cement to a pit and then is put in a pen outside. No water is used to remove manure. It will then be land applied or hauled off. Mr. Rau explained further and said this method reduces the use of water.

Mike Bailey – Asked about cross ventilation.

Foy Chapin – There is a roll down curtain and he explained how it works.

There was discussion on manure and how they handle that which will be composted. Foy said any dead animals will go to the rendering plant.

OPEN PUBLIC COMMENT

Those in favor: No one was present to speak in favor of this application.

Those in opposition:

1. Connor McMullen, 25771 Co Rd 28, Snyder, CO – He lives a ¼ mile away from the dairy. He said they are building sheds now and the electricity is in. Feels like they have been blindsided as they did not receive a letter and no ability for input. Why can't the manure be moved to a different spot? Property values will go down. Traffic – feed trucks force extra maintenance on the roads. This is not agriculture, this is industrial. Their home is their investment; they should consider surrounding areas. He discussed traffic patterns on Rd 28.

Foy Chapin Jr. tried to go to the houses that had received a letter.

2. Paul Christensen, 27896 Co Rd AA, Snyder, CO – He said they are outside the ¼ mile notification area. He stated concerns of odor, traffic, loss of property value.
3. Hal Brown, 2530 55th Ave., Greeley, CO – He sent in a letter to the County stating his concerns. He said he never heard from the Chapin's. He lives here part time but lives in Greeley. His concerns were storm water runoff and where it releases to and concerns of ground water contamination. He worries about flooding runoff from fields; traffic, dust, manure plans, odor and nuisance pests and wondered about the paving of roads. He asks the applicant to not increase the numbers.
4. Deb Wacker, 29583 co Rd V, Brush, CO – Deb owns land near this dairy facility. She said the ¼ mile notification area needs to be bigger. She wanted assurance that no sprinklers would be used to spread the manure.

5. LeeAnne Christensen, 27896 Co Rd AA, Snyder, CO – Her concerns were loss of property value. The article read by Anne Best-Johnson dealing with property values stated more information in the article than what was given by Anne Best-Johnson.
6. Harold Dahle, 27541 Co Rd Z, Snyder, CO – He was concerned with waste water running through the sprinkler system.

Pam Cherry noted that this expansion has to go through a public process.

Anne Best-Johnson responded to property values concerns and said 13% was a tax reduction. She said Brown's property was partly in the floodplain and that is why it is wet.

Foy Chapin Sr. responded to traffic saying not all trucks go to his dairy property. Of course there is more traffic during harvest. The barn will be safer for the cows. There will not be any waste water going in sprinklers.

Dave Rau, engineer for Paragon, said the manure water is tested for nutrients which have to be reported and are closely regulated. The storm water pond is in the southwest corner of this site.

CLOSE OF PUBLIC COMMENT

Dave Rau – He explained the release rate and the fresh water historic route

Nathan – It seems there are lots of concerns; applicant-were you aware?

Anne – Foy Chapin Jr. talked to Christensens.

Pam said a letter was sent out to landowners in the area.

Anne Best-Johnson – said she would be happy to sit down and talk with anyone with questions.

It was moved by Mike Erker and seconded by Dave Musgrave to recommend approval of this Application for an Amended Special Use Permit for Chapin Dairy Two, LLC and to send it on to the Board of County Commissioners for hearing. Said property is located in the SW1/4 of Section 26, Township 5 North, Range 56 West of the 6th P.M., Morgan County, and addressed as 28253 County Road Z, Snyder, Colorado. Motion carried 7-0.

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

Jody Meyer
Planning Assistant