

MORGAN COUNTY PLANNING COMMISSION
November 12, 2019 MINUTES

The Morgan County Planning Commission met on Tuesday, November 12, 2019 at 7:00 p.m. in the Assembly Room of the Morgan County Administration Building. Answering roll call was: Robert Pennington, Pete Mercer, Terry Rutenbeck, Nathan Troudt, Dave Musgrave, Mike Bailey and Mike Erker. Also present were Pam Cherry, Planning Administrator; and Jody Meyer, Planning Assistant, and Shannon Shields, Planning Clerk.

The meeting was called to order by Chairman Nathan Troudt.

October 7th and 15th 2019 minutes had not been finalized yet.

Agenda:

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

Nathan reviewed the Process that will be used for this hearing.

NEW BUSINESS:

APPLICANT: Andy Rowell
LANDOWNER: Wiggins Farms, LLC

Glenn Neal from Gateway Realty was present to represent this application for Wiggins Farms.

Pam Cherry, Planning Administrator, presented her File Summary as follows:

This application is for the Wiggins Farms #1 Minor Subdivision in the NE ¼ of Section 13, T4N, R60W of the 6th P.M. Morgan County, Colorado. The property is located on County Road W approximately ¾ of a mile east of County Road 5. Two existing homes on the property are addressed as 5632 and 5634 County Road W. The property is zoned Agriculture Production.

Andy Rowell, as applicant, is requesting approval of a minor subdivision that will plat 5.5 acres into two lots, Lot 1 will be 2.96 acres and Lot 2 will be 2.5 acres. The lots are being subdivided from an existing parcel of 93 acres and identified as parcel #1045-130-00-001. There are currently two homes on the property to be subdivided, one on proposed Lot 1 and one on proposed Lot 2. The existing structures will meet the setback requirements of the Agriculture Production zone district.

The existing access for the two lots has been permitted by Road and Bridge. An access and utility easement is created by this plat, across Lot 1, for the benefit of Lot 2.

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:

Criteria	5632 County Road W	5634 County Road W
Water	Quality Water Tap #397	Quality Water Tap #395
Septic	NE Colo Health – Existing Septic	NE Colo Health – Existing Septic
Access (2)	Road and Bridge – ok existing	Road and Bridge – ok existing
Fire	Wiggins	Wiggins
Soil map	Provided	Provided
Ext Svc	1 animal unit	1 animal unit
Minerals	Lease – Notification complete	Lease – Notification complete
R-T-F	Complete	Complete

(B) Whether the proposed subdivision is consistent with the Morgan County Comprehensive Plan.

The subdivision is located in the northwest planning area.

Chapter 2.II.C. 1., County Wide

Goals: Encourage the development where the proposed development is compatible with existing land uses – other exempted properties and small acreage properties are in the area.

There is access to existing infrastructure, Quality Water and County Road.

(C) Whether the proposed subdivision is compatible with surrounding land uses and is adequately buffered as needed.

There are other exempted properties in the area and distance creates a buffer - buffering is not necessary.

All appropriate notice requirements have been completed with no comments received as of October 31, 2019.

Eight property owners were notified of the application within the 1,320 foot notification area. Comments have not been received either in support or opposition.

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

Glenn Neal, Gateway Realty, 105 E. Central Ave, Wiggins, Colorado, had no other comments to add before the board.

Robert Pennington thought the access was confusing. Glenn Neal said access for Lot 2 has been existing and is created by going through Lot 1 with a labeled easement. There is a legal easement to that lot created by this plat.

Robert Pennington asked if there was an old well on site. Glenn Neal acknowledged there used to be an old well but it has been capped.

OPEN PUBLIC COMMENT.

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

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

CLOSE PUBLIC COMMENT.

It was moved by Terry Rutenbeck and seconded by Mike Bailey to recommend approval of this application for a two-lot Minor Subdivision aka Wiggins Farms No. 1 Minor for Andy Rowell as applicant and Wiggins Farms LLC as landowner as presented and send it on to the Board of County Commissioners; Lot 1 will be 2.96 acres and Lot 2 will be 2.5 acres, located in the NE ¼ of Section 13, T4N, R60W of the 6th P.M. Morgan County, Colorado aka as 5632 and 5634 County Road W, Wiggins, Colorado 80654.

OWNER: Four X Ranch, Inc.
APPLICANT: Cody Millar

Martin Christensen and Cody Millar were present to represent this application for Four X Ranch, Inc.

Pam Cherry, Planning Administrator, presented her File Summary as follows:

Four X Ranch, Inc., represented by Cody Millar, has submitted this application for a Use by Special Review to allow for a livestock confinement operation, a feedlot, as required by Section 4-190 of the Morgan County zoning regulations. Section 3-180(O), Agriculture Zone Special Review Uses, requires a special use permit application when a livestock confinement operation is in excess of the allowed animal unit densities or conditional use permit allowance. The applicant has requested a permit for 600 animal units on property located immediately south of County Road W and west of County Road 22, Fort Morgan, CO 80701 with a parcel number of 1039-150-00-0001 located in the N½ of the NE¼ of Section 15, Township 4 North, Range 57 West, of the 6th P.M. Morgan County, Colorado.

The property is zoned Agriculture Production and is 80 acres in size. The use will be located on approximately 5 acres of the eighty acre property and will be the only area permitted through this application. If granted this operation will become an additional facility owned by 4X to supply cattle to dairies across the state of Colorado. This will expand the 4X existing CAFO operation located less than one mile to the northeast of this proposed location. The property is currently used as a shooting range.

The application states that a feed truck will deliver each morning and that through the winter manure will be hauled offsite to fields to spread as nutrients. The additional corrals are needed as soon as possible and will be constructed immediately upon approval from the Board of County Commissioners.

A variance Section 3-650 Table 1, Note (d) of Appendix B, Zone District Bulk Requirements of the Morgan County Zoning Regulations regarding minimum setback for a residential structure to a confined animal feeding operation in the Agriculture Production zone district. The minimum setback from an animal confinement facility to an occupied structure is 1,320 feet. There is an existing home that is approximately 700 feet from the proposed footprint for the feeding operation. The variance request is to reduce the setback 620 feet from the regulation requirement.

The applicant also submitted a variance application for a reduction of setback for the feeding operation from an occupied structure. The variance application was considered by the Board of Adjustment in a public hearing on October 21, 2019, that request was granted. However, when additional maps were provided, it was discovered that there is a second occupied structure within the 1,320 foot setback, that property is owned by Bellendir. The Board of Adjustment added a condition that a signed, notarized letter from Bellendir was required as a condition of approval. As of the date on this summary, the Bellendir letter has not been received.

Ten property owners were identified within the notification area of the application. As of the date on this summary, no comments have been received.

In reviewing this application the Planning Commission and the Board of County Commissioners are required to

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 2-345 of the Morgan County zoning regulations has been met.

Section 2-345 Special Use Permit Criteria:

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

1. The project will broaden employment opportunities for residents and will further economic growth.
2. The proposed use is compatible with existing land uses and there is access to established public infrastructure.
3. The use will protect existing agriculture operations by allowing it to continue while not restricting private property rights.

B. The application 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 Section 4-200 of the Morgan County Zoning Regulations. Specifically:

1. A variance from the 1,320 foot setback to an occupied structure was granted by the Board of Adjustment on October 21, 2019.
2. The plan submitted shows that the confinement facility is located more than 15' from County Roads W and 22.

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

1. There is existing vegetation that will be removed from the corral area. The remainder of the property's vegetation will remain in place.
2. There has been a drainage plan submitted that shows detention capturing the 100-year storm event and release at the 5-year rate as required by Section 3-705 of the zoning regulations.

E. The special use is compatible with surrounding uses and is adequately buffered from any incompatible uses by distance and topography.

F. The special use poses no or minimal risk to the public health, safety and welfare.

G. The special use will not be located on a nonconforming parcel of land.

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.

GENERAL PROVISIONS

- a. The Board of 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.

- b. The Applicant 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 and the United States Environmental Protection Agency.
- c. Material alterations to the proposed development as set forth in this Application shall require an amendment to this Permit, after hearings before the Morgan County Planning Commission and the Board of County Commissioners. Nonmaterial alterations may be approved by the Morgan County Planning Administrator, upon receipt of written application requesting approval of the proposed alterations.
- d. The Applicant shall comply with all the 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.
- e. Applicant shall submit a survey as required under Section 2-480 of the Morgan County Zoning regulations and be in a format as required by Section 8-180 of the Morgan County Subdivision Regulations.

Pam Cherry recommended the Planning Commission submit a recommendation of approval of this Use by Special Review to the Morgan County Commissioners.

Pam Cherry noted that Cody Millar turned in a notarized Letter that was signed by Tim Bellendir and Cody Millar stating Mr. Bellendir had no problem being within 1320 ft. of a livestock confinement facility which letter was required by the Board of Adjustments at a Variance hearing held on October 21, 2019. Pam said she did not have a chance to review this letter yet.

Cody Millar stated there wasn't going to be any feed storage on site nor storage of manure, just looking to build a few holding pens. The Gun Club is going away. They will do all the dirt work themselves and build a few corrals. We are keeping this confinement under 1000 head or they have to go to the next level with the State. They will never have more than a 1000 head on site.

Pete Mercer asked about the Variance letter that was handed out to them. Pam Cherry said it has to do with a Variance Hearing in front of the Board of Adjustments, which they approved on the condition that we receive this letter from Bellendirs.

Drainage Plan – Criteria D-2: Dave Musgrave asked if they were going to haul dirt in because it was a big hole. Cody Millar said that is why this is so close to Road W because there is a ridge up there to so they can put the corrals up on the ridge.

Mike Erker asked what the definition of an occupied structure was. Pam said it is a residence, a business, a shed, whatever is regularly occupied. Erker asked if it was an office. Millar stated he doesn't know if they use it for an office; they store supplies in there. There is an apartment in the shop but he thinks it is vacant. He said Bellendir's meet there every day and then leave to go do their jobs. He has spoken to Tim and Marva Bellendir and to Tim Bellendir Jr. and they signed the letter of support.

OPEN PUBLIC COMMENT

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

There was no one present to speak against this application.

CLOSE PUBLIC COMMENT

Robert Pennington asked where the gun club would go. Cody Millar didn't know and he told the Planning Commission that Four X Ranch offered up some land 3 to 4 miles further north.

It was moved by Mile Bailey and seconded by Pete Mercer to forward Planning Commission's recommendation of approval to the Board of County Commissioners with a recommendation of approval for the Use by Special Review to allow a livestock confinement operation, a feedlot, as required by Section 4-190 of the Morgan County Zoning Regulations, Section 3-180(O) Agriculture Zone Special Review Uses for 600 animal units located on property located immediately south of County Road W and west of County Road 22, Fort Morgan, CO 80701 with a parcel number of 1039-150-00-0001 located in the N¹/₂ of the NE¹/₄ of Section 15, Township 4 North, Range 57 West, of the 6th P.M. Morgan County, Colorado; applicant being Cody Millar/Four X Ranch, Inc.. Motion carried 7-0.

**OWNER: T&M Limited Partnership
APPLICANT: Tim Naylor, Shannon Toomery - AGPROfessionals**

Tim Naylor from AGPROfessionals and Lee Perriera, manager of site operation at T& M Limited were present to represent the file.

Pam Cherry, Planning Administrator, read her File Summary as follows:

T&M Limited Partnership, represented by Tim Naylor of AGPROfessionals, has submitted this application to amend a Use by Special Review to Section 3-180(O) of the Morgan County Zoning Regulations to add additional pens and calf areas on the property. Resolution 2011 BCC 18 permitted the existing footprint and 18,000 animal units. There are conditions on Resolution 2011 BCC 18 that have not been met; the animal unit increase is not permitted unless those conditions are satisfied. T&M was originally permitted under 2007 BCC 16 for 15,000 animal units.

The property is located in the NE¹/₄ of Section 8, Township 3 North, Range 59 West of the 6th PM; the E¹/₂ of Section 9, Township 3 North, Range 59 West of the 6th P.M.; and the W¹/₂ Section 9, Township 3 North, Range 59 West of the 6th PM, Morgan County, Colorado aka 7999 Co Rd Q, Wiggins, Colorado 80654.

The applicant has also submitted an application for a variance to Appendix B Table 1, Note C and Section 4-200(A) of the zoning regulations. The Board of Adjustment met on October 21, 2019 to consider the variance request to reduce the setback required from a feeding operation to an occupied structure, a home on another parcel owned by T&M that is within the 1,320 foot setback. The variance request was reviewed and granted by the Board of Adjustment on October 21, 2019.

Property owners within 1,320 feet of the property boundary were notified of this application, as of the November 5, 2019, no comments have been received. There are two properties that are landlocked as a result of the vacation of County Road 8 by Resolution 2007 BCC 58. Those properties belong to Melinda Smith and US-76 Properties.

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 2-345 of the Morgan County zoning regulations:

- a. The use and its proposed location are in conformance with the Morgan County Comprehensive Plan. Specifically:
 - i. The project will broaden employment opportunities for residents and will further economic growth.

- ii. The proposed use is compatible with existing land uses and there is access to established public infrastructure.
- iii. The use will protect existing agriculture operations by allowing it to continue while not restricting private property rights.
- b. The Application is complete and presents a clear picture of how the use is to be arranged on the site.
- c. The site conforms to the district design standards of Section 4-200 of the Morgan County Zoning Regulations. Specifically:
 - 1. A variance from the 1,320 foot setback to an occupied structure was granted by the Board of Adjustment on October 21, 2019.
 - 2. The plan submitted shows that the confinement facility is located more than 15' from Interstate 76 and from County Roads Q and 7. County Road 8 has been vacated.
- d. The special use is compatible with surrounding uses and is adequately buffered from any incompatible uses by distance and topography.
- e. The special use poses no or minimal risk to the public health, safety and welfare.
- f. The special use will not be located on a nonconforming parcel of land.
- g. 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.

Recommendation

Pam Cherry recommended that the Planning Commission forward a recommendation of approval on to the County Commissioners subject to:

- 1. Animal units are limited to 15,000.
- 2. Applicant is required to follow all nuisance control measures set out in the Facility Management Plan as prepared by AGPro and approved by the State of Colorado. 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 expand animal units without amending this permit.
- 6. This Use by Special Review permit shall supersede Resolutions 2007 BCC 16 and 2011 BCC 18.
- 7. Access to the landlocked parcels owned by US 76 Properties and Melinda Smith will be resolved with those property owners.

Tim Naylor passed out an information guideline of his presentation to the members of the Planning Commission. He stated that T&M is also known as "Q Ranch", a dairy heifer feedlot operation. He noted that T&M will not move forward with the dairy portion (milking) of their Amended Special Use permit, Resolution 2011 BCC 18 because of the marketing conditions and water requirements. They are requesting to amend their Special Use Permit, Resolution 2011 BCC 18, asking to return to the original allowed 15,000 animal units and add additional pens to better manage their herd and be able to move them around. Right now they have about 13,000 animal units and are asking for 15,000 animal units. The new pens are where the proposed dairy site was going to be. They are removing the dairy operation from the permit.

It has come to Mr. Naylor's attention there are two parcels of land that need access from vacated Co Rd 8 on the very north end of the road. Mr. Naylor has not made contact with those two landowners about purchasing their parcels. Resolution 2007 BCC 58 addresses the vacation of Co Rd 8. Tim Naylor said Co Rd 8 was vacated in Resolution 2007 BCC 58 and this Resolution also provided an easement for all the properties using Co Rd 8. Q Ranch will certainly allow access to these 2 property owners.

Tim Naylor said they believe that item #7 of Pam Cherry's condition of approval which reads as follows, has been addressed: "Access to the landlocked parcels owned by US 76 Properties and Melinda Smith will be resolved with those property owners". He believes it is taken care of and he read Resolution #2007 BCC 58 #2 which addresses the landlocked properties because there is an easement for it.

Tim Naylor proceeded with the handout regarding Existing Site Plans, Existing Layout, Approved 2011 Dairy Site and Proposed Layout. He pointed out where the waste water ponds were located. New pens allow them to better manage their livestock plans. He reviewed the Variance which was granted by the BOA on October 21, 2019 to reduce the required setback distance from the feeding operation to an occupied structure.

Tim Naylor proceeded to go through his presentation that covered water, and new waste water pond according to State Regulations prepared by their engineer. They were working with Quality Water but they required them to pay for more water up front in order for them to expand animal numbers and that is why they are not moving forward with the dairy portion of project. The pond design is a 25yr - 24hr storm event. There have not been any issues with nuisance problems; the traffic has been taken care of with a turn lane on the last application and they are meeting all Special Use Requirements. T&M is asking for approval of this amended special use application.

Robert Pennington asked if this heifer operation was in compliance. Pam Cherry said Resolution 2011 BCC 18 is not in effect.

Tim Naylor addressed this comment further: He said Resolution 2011 BCC 18 showed proof of the water needed; however Quality Water wanted T&M to own the taps up front. Quality Water and T&M could not come to an agreement on this. Tim Naylor said T&M doesn't believe they are not in compliance because T&M never requested a building permit for the dairy portion. They do not have any intention of building a dairy there anymore. Condition #6 said this Special Use would supersede Resolution 2007 BCC 58 and Resolution # 2011 BCC 18 which is the dairy portion so they would go back to the original 15,000 animal units with the additional pens. They would no longer have the ability to build a dairy there and they could not expand to the 18,000 au. They agree with the County on their request to supersede two permits and go back to the 15,000 au and additional pens.

Tim Naylor said they will try to resolve this condition as approved in Resolution 2007 BCC 58. Tim questions whether they are buildable lots.

Vacation of Co Rd 8 and the 2007 Resolution and how they are connected:

Pam asked Tim Naylor about this connection. Tim said he was not with AgPro at that time so he does not know

the history. T&M asked for vacation of Co Rd 8 since it ended at the interstate. An easement was provided by Q Ranch and there are gates to the north parcels. US 76 Properties and Ms. Smith may use the vacated road 8 to get to their properties. Tim said they would like them to check in with Q Ranch first that they are coming in for periodic visits. Pam Cherry said she has been contacted by US 76 Properties a number of times in the past few years. Tim Naylor said they have never been approached by the two parties named above about the landlocked parcels owned by US 76 Properties and Melinda Smith. Tim Naylor said they would reach out to see if US 76 Properties would be interested in selling the land. Tim from AgPRO wondered how the Board of Commissioners can require a change in Resolution on access when it was recognized in the 2007 resolution. The easement does not show up on the survey but is just part of the resolution. Tim said those two properties are easily accessible. Tim said if these lots were purchased, it would have to go through another process with the county. He was worried about dealing with third party agreements. If houses were ever built on these two lots, they would need to get a variance because of the closeness to the facility.

PUBLIC COMMENTS OPEN:

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

There was no one present to speak against this application.

PUBLIC COMMENTS CLOSED:

Pete Mercer asked about maintenance of the Road. Lee Perriera, general manager of T&M Limited Partnership, said that T&M maintains the access road.

It was moved by Robert Pennington and seconded by Terry Rutenbeck to pass this Amended Special Use application from T&M Limited on to the Commissioners with a recommendation of approval with the following condition:

1. **Change #7 of Pam Cherry's condition of approval by referring to Resolution 2007 BCC 58 and the 60 ft. easement along with easement being maintained.**

With changing #7 to a 60 ft. easement along the existing road 8 referencing Resolution 2007 BCC 58 to rather than having to make everything satisfactory with all the property owners.

Jody Meyer, Planning Assistant and recorded secretary asked for clarification on Motion: Instead of saying "will" you are saying "shall work it out according to the Resolution in 2007 – based on the 2007 resolution which referenced that 60 ft. easement. Pam Cherry said it was Resolution 2007 BCC 58.

Motion carried 7-0.

Other Business:

Platting of new property and direct access to a county road: Pam said the Commissioners would rather see a new buyer own the access directly connected to a county road instead of having to plan an easement. There was discussion on creating flag pole lots. The Planning Commission thought this made sense and it would assure no court proceedings. They thought making that as a rule for new subdivisions coming in; on the older parcels, it would need to conform to the new rule when replatted etc.

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