

# COMMISSIONERS PROCEEDINGS 1

## BOARD OF COUNTY COMMISSIONERS Minutes of Meeting December 5, 2017

The Board of Morgan County Commissioners met Tuesday, December 5, 2017 at 9:01 a.m. with Chairman James Zwetzig, Commissioner Laura Teague, Commissioner Mark Arndt and County Attorney Kathryn Sellars in attendance. Chairman James Zwetzig asked Morgan County Under Sheriff Dave Martin to lead the meeting in the Pledge of Allegiance.

### ADOPTION OF THE AGENDA

Commissioner Teague made a motion to adopt the agenda as presented, with Commissioner Arndt seconding the motion. Motion carried 3-0.

### CONSENT AGENDA

- Ratify the Board of County Commissioners approval of meeting minutes dated November 21, 2017
- Ratify the Board of County Commissioners approval on Contract 2017 CNT 236, Viaero Wireless, cellular service for Morgan County departments, Term of Contract December 2, 2017 through December 1, 2018
- Ratify the Board of County Commissioners approval on Contract 2017 CNT 237, MJ's Garage Door Service, replace jack shaft door opener at Fleet Department, Term of Contract November 20, 2017 until completed
- Ratify the Board of County Commissioners approval on Contract 2017 CNT 238, Alternative Elevations, inspect elevators at DHS, Admin Bldg, Fleet Bldg, Term of Contract November 21, 2017 until completed
- Ratify the Board of County Commissioners approval on Contract 2017 CNT 239, Lamar Companies, annual billboard advertising for Lodging & Tourism, Term of Contract December 11, 2017 through December 30, 2018
- Ratify the Board of County Commissioners approval on Contract 2017 CNT 240, ERI Direct, electronics recycling (one time pick up), Term of Contract November 6, 2017 until completed
- Ratify the Board of County Commissioners approval on Grant 2017 GRA 14, Foster Care Recruitment and Retention Grant, approved on November 30, 2017
- Ratify the Board of County Commissioners approval of transfer of debtors to the State Collections Agency, Ambulance Clients #171380B, #170868, #171076, #171527, #171254, #171412, #170950, #170847, #171482, #171129, #170855, #171279B, #171545, #170252, #170629, #171239, #170703, #162475, #162474, #171277, #160716, #171183, #171120, #170736, #171058, #171470, #171289, #170746, #162131B, #171635, #170105A, #170912, #1717352, #171048, #171165, #171515, #171369, #170748, #171162, #170380, #171590, #171310, #162292, #171241B, #171253, #170964, #170966, #171550, #162279, #171534, #171109, #171409, #171315, #171367, #171419, #171553, #171118, #171138, #171280, #171295, #171285, #170955, #170942, #170980, #171132, #171145, 170635, #170954, #170986, #171400, #171843, #171840, #171300, #170823, #170824, #171511, #171199, #171200, #171338, #171052, #171228, #171566, #170296, #170917, #170095, #170984, #171160, #170913, #170905, #170915, #171177, #171465, #171043, #171391, #171468, #171592, #170610, #170848, #171262, #171948, #170339, #171577, #170404
- Ratify Chairman Jim Zwetzig's approval of the Veterans Affairs report for November 2017
- Ratify Chairman Jim Zwetzig's signature on the Morgan County W-9 form dated on November 30, 2017
- Ratify Chairman Jim Zwetzig's signature on Stormwater Inspection form dated on November 27, 2017
- Ratify Chairman Jim Zwetzig's signature on a letter of designee for Krystle Dunson to represent on the Morgan County Interagency Oversight Group (IOG) signed on November 30, 2017

Commissioner Arndt made a motion to approve all items on the Consent Agenda as presented. Commissioner Teague seconded the motion and motion carried 3-0.

### GENERAL BUSINESS AND ADMINISTRATIVE ITEMS

#### **Consideration of Approval – RIGHT OF WAY - 2017 PMT 43 – Morgan County Quality Water District**

Chairman Zwetzig made note that he received a call this morning to revise the description and at this time, Morgan County Road Supervisor John Goodman presented to the Board for approval, as drafted, a Right of Way Permit 2017 PMT 43, with Morgan County Quality Water District. Mr. Goodman stated this right of way permit is to bore across County Road 16 and trench County Road S, starting at a point in the west right of way of County Road 16 and south right of way of County Road S boring under County Road 16 into the east right of way of County Road 16 and the south right of way of County Road S; then trenching east in the south right of way of County Road S, 5,280 feet to connect to an existing 10 inch main A.C. in the west right of way of County Road 17, for the purpose of installing a 4 inch water main. Also, boring across County Road S, starting at a point approximately 1,800 feet east of County Road 16 in the south right of way of County Road S, boring north under County Road S to the north right of way line of County Road S and at a point approximately 2,075 feet east of County Road 16 in the south right of way of County Road S, boring north under County Road S in the north right of way line of County Road S, for the purpose of installing two 1.5 inch water service lines.

Chairman Zwetzig stated the permit was initially received with the request to place this water line on the north side of the roadway and further indicated that this is the same area that was recently permitted for the Western Sugar pipeline, so it was requested that Morgan County Quality Water place this on the opposite side of the roadway. He further stated that the 1.5 inch water line should actually indicate ¾ inch and this shall be placed one foot from the pavement instead of the three foot to avoid the REA power lines. Chairman Zwetzig suggested that the Board meet further with Kent Pflager, Morgan County Quality Water District, to be sure this permit is done correctly before

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approving it. At this time, Commissioner Teague made the motion to table this matter to allow for additional time in order for a meeting to be held with Kent Pflager, Morgan County Quality Water District until December 12, 2017 at 9:00 a.m. Commissioner Arndt seconded the motion and motion carried 3-0.

### **Consideration of Approval – RIGHT OF WAY - 2017 PMT 44 – Rick and Larry Lorenzini**

Morgan County Road Supervisor John Goodman presented to the Board for approval, a Right of Way Permit 2017 PMT 41, with Rick and Larry Lorenzini. Mr. Goodman stated this right of way permit is to trench across County Road BB, starting at a point approximately 1,320 feet west of County Road 7 in the north right of way of County Road BB and trenching south across County Road BB, ending at the south right of way line of County Road BB, for the purpose of replacing an electrical line.

Commissioner Arndt made a motion to approve Right of Way Permit 2017 PMT 44, noting a spelling correction, with Rick and Larry Lorenzini as outlined in the narrative of the permit noting the fees in the amount of \$150.00 are attached as presented by Morgan County Road Supervisor John Goodman and authorized the Chair to sign. Commissioner Teague seconded the motion. At this time, the motion carried 3-0.

### **Consideration of Approval – RIGHT OF WAY - 2017 PMT 45 – Wiggins Farm, LLC**

Morgan County Road Supervisor John Goodman presented to the Board for approval, a Right of Way Permit 2017 PMT 45, with Wiggins Farm, LLC. Mr. Goodman stated this right of way permit is to trench across County Road W, explaining the reason why he has asked for a trench and open cut on this paved road, starting at a point approximately 20 feet east of County Road 7 in the south right of way of County Road W trenching across to a point 20 feet east of County Road 7 in the north right of way of County Road W, for the purpose of installing 27 inch PVC water pipeline. He stated the fees are attached in the amount of \$152.00 and the location has been inspected. Mr. Goodman stated they will repair the asphalt and will hire a paving company to repair the roadway and will provide proper flagging and traffic control. Chairman Zwetzig suggested that landowners be notified of this road closing.

Commissioner Teague made a motion to approve Right of Way Permit 2017 PMT 45 with Wiggins Farm, LLC as outlined in the narrative of the permit noting the fees are attached as presented by Morgan County Road Supervisor John Goodman and authorized the Chair to sign. Commissioner Arndt seconded the motion and asked to clarify that the information regarding the roadway being repaired is part of the permit. Commissioner Teague suggested adding the information regarding adding the road cut in lieu of a trench/bore at this time, and at this time she amended her motion to add the notation being added by Mr. Goodman as to why this roadway is being an open cut trench rather than bored. At this time, the motion carried 3-0.

### **Consideration of Approval – RIGHT OF WAY - 2017 PMT 46 – Wiggins Farm, LLC**

Morgan County Road Supervisor John Goodman presented to the Board for approval, a Right of Way Permit 2017 PMT 46, with Wiggins Farm, LLC. Mr. Goodman stated this right of way permit is to trench across County Road 7, starting at a point approximately 595 feet north of County Road W in the east right of way of County Road 7 trenching across and ending in the west right of way of County Road 7, for the purpose of installing 21 inch PVC water pipeline.

Commissioner Arndt made a motion to approve Right of Way Permit 2017 PMT 46 with Wiggins Farm, LLC as outlined in the narrative of the permit noting the fees in the amount of \$150.00 are attached as presented by Morgan County Road Supervisor John Goodman and authorized the Chair to sign. Commissioner Teague seconded the motion. At this time, the motion carried 3-0.

### **Consideration of Approval – RIGHT OF WAY - 2017 PMT 47 – Wiggins Farm, LLC**

Morgan County Road Supervisor John Goodman presented to the Board for approval, a Right of Way Permit 2017 PMT 47, with Wiggins Farm, LLC. Mr. Goodman stated this right of way permit is to trench across County Road 7, starting at a point approximately 500 feet south of where County Road 7 would intersect the Fort Morgan Canal in the east right of way of County Road 7 trenching across and ending in the west right of way of County Road 7, for the purpose of installing 27 inch PVC water pipeline.

Commissioner Teague made a motion to approve Right of Way Permit 2017 PMT 47 with Wiggins Farm, LLC as outlined in the narrative of the permit noting the fees in the amount of \$152.00 are attached as presented by Morgan County Road Supervisor John Goodman and authorized the Chair to sign. Commissioner Arndt seconded the motion. At this time, the motion carried 3-0.

Chairman Zwetzig asked about these permits as being for trenching across the road, asking if they connect to private property, with Mr. Goodman stating the last permit being presented will provide those details. He stated they have requested the crossing separately from the parallel request. At this time, Chairman Zwetzig stated he believes these permits have then been drafted incorrectly, whereas these were all written for crossing of the roadway, no request for trenching parallel in the right of way. Chairman Zwetzig suggested that Wiggins Farms, LLC be asked to submit an additional application for the pipeline to parallel the right of way.

### **Consideration of Approval – RIGHT OF WAY - 2017 PMT 48 – Wiggins Farm, LLC**

Morgan County Road Supervisor John Goodman presented to the Board for approval, a Right of Way Permit 2017 PMT 48, with Wiggins Farm, LLC. Mr. Goodman stated this right of way permit is to trench across County Road 7, starting at a point approximately 4,000 feet south of the South Platte River in the east right of way of County Road 7

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trenching across and ending in the west right of way of County Road 7, for the purpose of installing 24 inch PVC water pipeline.

Commissioner Teague made a motion to approve Right of Way Permit 2017 PMT 48 with Wiggins Farm, LLC as outlined in the narrative of the permit noting the fees in the amount of \$152.00 are attached as presented by Morgan County Road Supervisor John Goodman and authorized the Chair to sign. Chairman Zwetzig seconded the motion. Chairman Zwetzig again mentioned that Wiggins Farms, LLC will need to make an additional request. At this time, the motion carried 3-0.

## **COUNTY OFFICIAL AND DEPARTMENT HEAD REPORTS**

Commissioners reviewed the calendar dated December 1, 2017 through December 12, 2017 with no changes.

## **UNFINISHED BUSINESS**

There was no unfinished business.

## **CITIZEN'S COMMENT**

There were no citizen comments made at this time.

At this time, the Board took a short recess at 9:24 a.m. before proceeding with the Public Hearing as posted.

## **PUBLIC HEARING**

Chairman Zwetzig called the hearing to order at 9:31 a.m. in the Assembly Room of the Morgan County Administration Building. Present were Chairman James Zwetzig, Commissioner Laura Teague and Commissioner Mark Arndt in attendance. Also present was Morgan County Planning and Zoning Planning Director/Floodplain Administrator Pam Cherry along with staff and Kathryn Sellars, County Attorney.

## **Amendments to Morgan County Zoning and Subdivision Regulations**

### **1) Proposed amendments to various sections of the Morgan County Zoning Regulations regarding the applicability of zoning permits.**

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

### **RESOLUTION NO. 2017 BCC 53**

#### **A RESOLUTION AMENDING THE MORGAN COUNTY ZONING REGULATIONS REGARDING THE APPLICABILITY OF ZONING PERMITS**

WHEREAS, the Board of County Commissioners of Morgan County has adopted the Morgan County Zoning Regulations to protect the public health, safety and welfare;

WHEREAS, the Board of County Commissioners may make amendments to the Morgan County Zoning Regulations upon its own motion or upon petition of the Morgan County Planning Commission;

WHEREAS, the Board of County Commissioners has determined that it is in the best interest of the County to amend and clarify the applicability of the zoning permit requirement under the Morgan County Zoning Regulations;

WHEREAS, the Planning Commission has considered the amendment set forth herein and recommended approval conditioned upon the addition of language to require that developers notify affected ditch companies of the proposal; and

WHEREAS, the Board of County Commissioners, after a duly noticed public hearing on December 5, 2017, considered any public testimony and the Planning Commission recommendation and finds that the amendment is in the best interests of the citizens of Morgan County.

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

1. Section 1-320 of the Morgan County Zoning Regulations is hereby deleted.
2. Section 2-100 of the Morgan County Zoning Regulations is hereby deleted amended to read as follows:  
  
No building, structure, or land shall be used, and no building or other structure shall be erected, reconstructed, or structurally altered except in conformance with these Zoning Regulations.
3. Section 2-135 of the Morgan County Zoning Regulations is amended by the addition of a new subsection (J):

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Proof of notification to any ditch or irrigation company having rights to any ditch over or adjacent to the property which is the subject of the application.

The current subsections (J), (K) and (L) shall be renumbered accordingly.

4. Section 2-135 of the Morgan County Zoning Regulations is hereby renamed and amended to read as follows:

## 2-135 Permits Required

A building permit, zoning permit, or mobile home placement permit shall be required prior to construction or placement in all zone districts in Morgan County for structures that are roofed and 120 square feet and larger. Zoning permits shall be required for uses by right as provided for in Sec. 2-290 of these Regulations. All applications for building permits, zoning permits and mobile home placement permits shall include:

\* \* \*

5. Section 2-290 of the Morgan County Zoning Regulations is hereby amended to read as follows:

All uses-by-right that are not subject to the County's building or mobile home placement permit requirements, require a zoning permit for use or operation.

6. Section 2-335 of the Morgan County Zoning Regulations is hereby renamed and amended to read as follows:

## 2-335 May Apply for Permit

The approval of a Special Use Permit by the Board of County Commissioners allows the applicant to apply for any permit required pursuant to Sec. 2-135 of these Regulations.

7. Section 2-400 of the Morgan County Zoning Regulations is hereby amended to read as follows:

The public hearing before the Board of Commissioners is quasi-judicial in nature and the Board is to consider evidence presented and make findings in regard to the use permit or amendment. Findings are to be made in regards to the criteria listed for zoning amendment or permit types. Testimony may be required to be given under oath.

8. Section 3-790(E) of the Morgan County Zoning Regulations is hereby amended to read as follows:

(E) Time limits for the development of various uses in a floodplain will be the same as those attached to any use, building, zoning or other development permits issued.

9. Section 6-115 of the Morgan County Zoning Regulations is hereby amended to read as follows:

(A) The Administrator shall not issue any building or zoning permit unless the plans for the proposed erection, construction, reconstruction, movement, alteration, or use fully conform to all applicable provisions of these Regulations.

(B) All building and zoning permits shall be issued in conformance with the provisions of these Regulations and shall be valid for a period of time not exceeding twenty-four (24) months from the date issued.

(C) A fee shall be charged in conjunction with issuing the building permit or zoning permit and shall be set by the Board of County Commissioners.

APPROVED this 5<sup>th</sup> day of December, 2017.

## THE BOARD OF COUNTY COMMISSIONERS MORGAN COUNTY, COLORADO

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s/ James P. Zwetzig  
James P. Zwetzig, Chairman

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s/Laura D. Teague  
Laura D. Teague, Commissioner

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s/Mark A. Arndt  
Mark A. Arndt, Commissioner

(SEAL)  
ATTEST:

\_\_\_\_\_  
s/ Susan L. Bailey  
Susan L. Bailey

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Chairman Zwetzig asked Morgan County Attorney Kathryn Sellars to present the file at which time Ms. Sellars stated that the purpose of this proposed amendment is to clarify the applicability of the zoning permit requirements under the Morgan County Zoning Regulations. All structures that are uses by right and over 120 square feet in area and roofed require the application and issuance of a county issued permit. Uses by right that are not subject to the County's building or mobile home placement requirement require a zoning permit for use or operation. Granting of Special Use Permits are determined by the Board of County Commissioners in a public hearing based on findings for compliance with specific criteria of Section 2-345 of the Zoning Regulations.

Commissioner Teague asked the question about a portion of the drafted resolution, and if an old building is being used in a non-conforming manner, with clarification made by Ms. Sellars that the County could not go in and state it could not be used any longer unless it was deemed a public safety hazard. Commissioner Teague referenced the statement "No building, structure, or land shall be used, and no building or other structure shall be erected, reconstructed, or structurally altered except in conformance with these Zoning Regulations". Ms. Cherry indicated if they are enlarging it, it would be required for the applicant to apply.

Ms. Cherry stated the planning commission unanimously recommended approval of this matter. Ms. Sellars further explained that the Planning Commission recommends the addition of a requirement for any sort of permit that notification to ditch companies be mandatory prior to application submittal. The Planning Commission recommended this be added to the amended regulations.

At this time, Chairman Zwetzig opened the matter for public comment at which time there was no public comment.

At this time, the matter moved to discussion and decision. Chairman Zwetzig noted the resolution was misidentified as Resolution 2016 BCC 53, and it should be noted as 2017 BCC 53. Chairman Zwetzig asked if Ms. Sellars could identify what has been revised with Ms. Sellars outlining in detail those revisions.

Chairman Zwetzig asked if this now clarifies if there is an existing structure and there would be an addition done, can they do the inside work without getting the zoning permit, with Ms. Cherry stating it depends on how much work is done on the inside, and that a building permit would be required, if it does not meet the threshold for a building permit, then there would not be the need for a zoning permit. Discussion followed with the fact there is now a procedure in place to help clarify this matter so there is no confusion explaining it should be friendlier to the landowner. Ms. Cherry stated as long as it is not substantial improvement, increasing the value of the structure by 50 percent if it is part of a floodplain. Ms. Cherry stated if it is located in a floodplain there are additional circumstances that need to be taken into account.

Commissioner Arndt made a motion to approve Resolution 2017 BCC 53, a Resolution amending the proposed amendments to various sections of the Morgan County Zoning Regulations regarding the applicability of zoning permits as presented by Morgan County Attorney Kathryn Sellars and Morgan County Planning and Zoning Planning Director/Floodplain Administrator Pam Cherry with Commissioner Teague seconding the motion. At this time, the motion carried 3-0.

## **2) Proposed amendments to various sections of the Morgan County Zoning Regulations concerning the use of pipelines as a use by right for wastewater.**

Chairman Zwetzig asked Morgan County Attorney Kathryn Sellars to present, with Ms. Sellars explaining the matter in detail. Ms. Sellars stated this amendment adds the language regarding how to address wastewater and she further read aloud those parts which have been added as drafted in the prepared resolution.

Ms. Sellars explained that a public hearing on this resolution was held before the Planning Commission on November 13, 2017. At that time, it was requested by the Planning Commissioner that the addition of the term "Hazardous Waste" also be included as an exclusion to the use-by-right, as well as include a definition of Hazardous Waste to reference Colorado Statute. Ms. Sellars explained that the purpose of this proposed amendment is to clarify the Morgan County Zoning Regulations as they regulate pipelines for transport of wastewater. The current regulations allow all wastewater lines as a use by right in all zone districts. It was not the intent for the previous resolution to include industrial waste from oil and gas operations. All sections of the Zoning Regulations that refer to pipelines for transport of water have been corrected to except produced water from oil and gas operations. Ms. Cherry stated with those changes Planning Commission unanimously recommends the Board approve this resolution.

Commissioner Teague stated she does not recall that oil and gas was specifically called out, explaining what discussion was held during the last board meeting. She stated that waste may not be deemed hazardous either, so those types of pipelines would require a special use permit. Ms. Sellars stated that Commissioner Teague is correct, indicating that those two items are separate, and in discussions prior, it was mentioned that the information in this drafted resolution was requested and if that has since changed that could be removed. She stated the definition of hazardous is quite lengthy and her suggestion was that it be referenced to in the resolution, not included in the resolution itself.

At this time, Chairman Zwetzig opened the matter for public comment at which time there was public comment.

Chuck Miller, 26060 County Road S, Brush, stated he is here today to try and learn some things and get some definition of what is being done today. He asked Ms. Sellars about the definition of hazardous waste indicating it is quite extensive and asked the Board if they have reviewed that statute. He stated he has made contact with a couple of Planning Commission members and they have not reviewed the statute either. He stated he believes the statute should be reviewed explaining his concerns. He asked further how will the Board keep up with how the State

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amends from time to time, with Commissioner Teague stating they try to be thoughtful in regards to permits in general feeling it is silly to have a condition in any type of permit that could be ultimately changed at the state level in five to ten years suggesting that the wording may be incorrect. Ms. Sellars stated the wording is correct and that their office keeps up with changing regulations on an ongoing basis. Mr. Miller stated it answers his question but is not sure he is in agreement with it stating his reasons. He stated his biggest concern is when things are adopted broadly, it is hard to refer back to them at a later date with the issue of those not remembering what occurred expressing his concern that those in place at this time may move onto bigger and better things. He stated he believes the Planning Commission did bring up important items, and during the prior meeting whereas oil and gas was discussed, he does not believe the Board has gone far enough. He feels when they start using the words about defining certain things broadly; it is hard to keep up with. He also stated the manner in which the resolution has been drafted seems confusing.

Ms. Sellars stated this is how you draft amendments to zoning regulations indicating the reasons why, the section has to be identified and how it is being changed. Commissioner Teague stated they are trying very hard to reference any change to any other area where change may need to be made. The amendment needs to be made in several areas so this one amendment references any area necessary. Definitions are being added, wastewater is being added, and the "except for" information was reviewed by Ms. Sellars.

Commissioner Teague agreed she should have reviewed the hazardous waste statute stating she takes heed before she should look at approving this matter. She stated they are trying to make the regulations say how the County practices and allows. Their intent is to encompass how the County does business.

Mr. Miller stated that he would hope if they do sit down and read the definition they do not find something that is conflicting as to what the Board is trying to do today as when he read it last night he found things that seem conflicting. He further commented about his concerns in how the resolution was drafted as it seems confusing. He stated he is disappointed in the planning commission that they failed to review the hazardous waste statute and has spoken to a couple members who believe after hearing this information; they are concerned that this may not be their intent.

Commissioner Teague asked Mr. Miller to give an example of what he feels is conflicting, with Mr. Miller reading aloud the statutory information about hazardous and further expressing his concerns that the Board has not reviewed the information in detail. Ms. Sellars interjected reciting 6A, Roman #1 and #2, are the extent of defining what hazardous waste is, B throughout the rest of 6, and defines what hazardous waste is not. Mr. Miller asked the question how this information enters into the simple pipeline matter approved for Western Sugar, how does that affect that, what is the reason why that water has to be moved. Commissioner Teague stated there would need to be an analysis of the water being transported. Chairman Zwetzig stated the definition of hazardous waste is important.

Commissioner Arndt stated that the subject of hazardous waste is totally new, and the planning commission is trying to protect those pipelines that may be carrying hazardous waste and feels it is a thoughtful item the Planning Commission has come up with to be sure the County is handling hazardous waste properly.

Discussion followed as to the wording at question, and discussed non-commercial injection wells as not being a use by right; those require a special use permit, with Ms. Sellars stating injection wells are not listed in Morgan County's zoning regulations currently. The County has only dealt with the non-commercial, not the commercial ones at this time. The Board feels they simply dealt with the moratorium and this was confirmed by Mr. Miller. He asked if it would be proper for the Board to table this matter today and review this with the information at the time they are able to review the moratorium matter.

Commissioner Teague mentioned what the Board is trying to consider is to address wastewater pipelines, not effluent lines that, for example, run between three farms parallel to a county road feeling that a dairy should not have to come in for a special use permit to run water from one area to another.

Chairman Zwetzig stated that water lines were approved as a use by right and that has been the practice by the County for many years. Commissioner Arndt stated as that was clarified as a use by right, when the Planning Commission reviewed this, which provided a blanket as to allowing a water pipeline, they now need to clarify what needs to have some sort of review and feels that is where we are today.

Mr. Miller stated what is so mind boggling, is the issue where the Board now wants to look at each and every pipeline to see if the public needs to know about it or not, and the fact they are trying to make it a use by right, stating he feels the County needs to stay positive in regards to the growth of Morgan County and be able to better itself, and to be so defined, relying on legal counsel, who is not vested in the community, to sort through all of this and guide the Board, he feels has created confusion. Commissioner Arndt stated he is confused, just a minute ago, he understood Mr. Miller to say we are not going far enough, and how he is trying to define things and put a definition to things. Mr. Miller responded that he feels by not defining all the terms that need defined, it is important that it not be completed halfway and leave it up to legal counsel to define what is done. Commissioner Arndt questions why we are calling out only one industry, oil and gas, why are we not calling out other industries. If it does not say the other lines in the last portion, matching up with what has gone on for many years, if you were irrigating using effluent from a dairy, that was a use by right, but in reading the regulations, that is not what is stated as they want to clarify as to what is agricultural use. The Board wants to clean the regulations up so that if a new planning administrator should be in office, they would be able to review the regulations as they are stated, not try to determine what the County has done historically. Commissioner Arndt stated that is the point of all of the changes being made; it is about practices that have been ongoing for years and being able to have those practices in writing.

Discussion followed with what is going to be allowed, domestic was agreed by all. Chairman Zwetzig mentioned agricultural zoning and further asked what if a chemical company would come in wanting to run through a pipeline,

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with Commissioner Teague stating CDPHE already requires a standard at the beginning or the end of the pipeline and we do not want that in our regulations, a chemical company moving chemical through a pipeline would be regulated by another state or federal agency. Transportation of chemicals or oil and gas do not play into these regulations as per Ms. Sellars. Chairman Zwetzig confirmed the County does not regulate industrial wastewater either.

At this time, Chairman Zwetzig closed the public comment portion of the matter and moved to discussion and decision. Chairman Zwetzig asked that the Board review the hazardous waste definition with Ms. Sellars stating she has forwarded the information to all board members.

Discussion followed with Commissioner Teague asking the proper protocol to follow if the Board would like additional time to review the definition with Mr. Miller asking if the Board would want to have the time to take this back to the Planning Commission. Commissioner Teague stated that she did speak with Planning Commission Board member Nathan Troudt and indicate her conversation.

Commissioner Teague made a motion to continue the hearing for the consideration of various sections the Morgan County Zoning Regulations concerning the use of pipelines for wastewater, referencing Resolution 2017 BCC 54 until December 19, 2017 at 9:00 a.m. to give Commissioners time to review the statute with Commissioner Arndt seconding the motion. At this time, the motion carried 3-0.

### **3) Proposed repealing and reenacting, amending and deleting of the Morgan County Zoning Regulations for variances and clarify variance process for Floodplain Regulations.**

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

#### **RESOLUTION NO. 2017 BCC 55**

#### **A RESOLUTION REPEALING AND REENACTING, AMENDING AND DELETING CERTAIN SECTIONS OF THE MORGAN COUNTY ZONING REGULATIONS TO REVISE THE PROCEDURE FOR CONSIDERATION OF VARIANCES FROM THE COUNTY'S ZONING REGULATIONS AND CLARIFY LANGUAGE IN THE VARIANCE PROCESS FOR THE COUNTY'S FLOODPLAIN REGULATIONS**

**WHEREAS**, the Board of County Commissioners of Morgan County desire to streamline and clarify the process for variances from the County's Zoning Regulations;

**WHEREAS**, the Board of County Commissioners desire to authorize the Board of Adjustment of Morgan County to consider all variances; and

**WHEREAS**, the Board of County Commissioners finds that these amendments in are the best interest of the citizens of Morgan County.

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

1. Sections 5-100 through 5-225 of the Morgan County Zoning Regulations shall hereby be repealed and reenacted to read as follows:

#### **BOARD OF ADJUSTMENT AND APPEALS PROCEDURE**

##### **5-100 Intent**

The purpose of the Board of Adjustment hereby created shall be to provide for, in appropriate cases and subject to additional conditions and safeguards, the ability to make special exceptions to the terms of these Regulations in conformance with their general purpose and intent.

##### **5-105 Membership of the Board of Adjustment**

The Board of County Commissioners of Morgan County shall appoint a Board of Adjustment consisting of five (5) voting members. Not more than one (1) of the members of such board may at any time be a member of the Planning Commission. Each of the members of the Board of Adjustment shall be a resident of the County. The term of appointed members of the Board of Adjustments shall be three (3) years and until their respective successors have been appointed. The terms of office shall be staggered by making the appointments so that at least one (1) member's term will expire each year. Each individual member can serve no more than two (2) consecutive full three (3) year terms.

##### **5-110 Associate Members of the Board of Adjustment**

Two (2) associate members to the Board of Adjustment are to be appointed by the Board of County Commissioners. Each associate member shall be a resident of the County. In the event that any regular member of the Board of Adjustment is temporarily unable to act, owing to absence from the County, illness, interest in a matter before the Board of Adjustment, or any other cause, that member's place may be taken during such temporary disability by the most senior associate member present based upon length of service.

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## 5-115 Removal of Members of the Board of Adjustment

Any member of the Board of Adjustment may be removed for nonperformance of duty or misconduct by the Board of County Commissioners. Vacancies shall be filled for the unexpired term in the same manner as in the case of original appointments.

## 5-120 Compensation

The Board of Adjustment shall receive such fees as determined by Morgan County and for reimbursement for actual expenses incurred and mileage for attending official and special meetings.

## 5-125 Officers

The Board of Adjustment shall elect from its members a Chairperson and a Vice-Chairperson whose term shall be for one (1) year. Other positions may be created by the Board of Adjustment when needed.

## 5-130 Internal Rules

The Board of Adjustment shall adopt such rules and regulations governing its proceedings as it may consider necessary or advisable; such rules and regulations shall be consistent with the guidelines of this section and appropriate state law.

## 5-135 Meetings

The Board of Adjustment shall meet as often as necessary to hear and act upon applications and other appropriate requests submitted.

## 5-140 Special Meetings

The Board of Adjustment may call special meetings for special projects and other important topics for review, discussion and/or recommendation. Alternate hearing dates due to weather conditions and other scheduling difficulties may be considered by the Chairperson of the Board of Adjustment.

## 5-145 Planning Administrator Duties

- (A) The Planning Administrator or designee shall serve as secretary to the Board of Adjustment and shall be present at all regular and special meetings of this Board. The minutes shall be made a matter of public record within a practical time after the official meeting of the Board of Adjustment. Anyone wishing have a transcript of the proceedings may have a court reporter present at their own expense.
- (B) All file summaries and other documents as determined appropriate by the Planning Administrator are to be provided to the Board of Adjustment prior to the hearing as a business item.

## 5-150 Powers and Duties of the Board of Adjustment

The Board of Adjustment has the following powers:

- (A) To hear and act upon requests for appeals from the administrative decisions of the Planning Administrator and interpretive decisions of the Planning Administrator regarding Zone District Boundaries.
- (B) To hear and grant or deny variances from the bulk requirements of these Regulations, variances regarding the maximum number of residences permitted per parcel, and the floodplain regulations, as provided for in Sections 3-800 and 3-805 of these Regulations.

## 5-155 Majority Needed

- (A) The concurring roll call vote of four (4) members of the Board of Adjustment shall be necessary to reverse any order, requirement decision, or determination of any such administrative official or agency or to decide in favor of the applicant.
- (B) No appeals from the Planning Administrator's action shall be granted by the Board of Adjustment when, in the opinion of said Board, the applicant has not provided reasonable and adequate evidence justifying the request presented, or when the applicant cannot demonstrate compliance with the criteria in Section 5-220.

## 5-160 Decision by the Board of Adjustment

The decision by the Board of Adjustment shall be final and appeal of such a decision shall be as provided by law.

## PROCEDURE FOR APPEALS AND VARIANCES



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## 5-175 Pre-application Procedure

The applicant shall discuss the appeals and variances informally with the Planning Administrator to learn what materials and what steps are necessary for the application.

## 5-180 Decision of Administrator - Application

A formal application shall be submitted to the Planning Administrator and he or she shall render a decision on the completeness of the application within ten (10) days of submittal of the application. Appeals of this decision may subsequently be made to the Board of Adjustment. The Planning Administrator shall notify the applicant, in writing, of the completeness of the application and if applicable, the reason(s) why the application is not complete. Only complete applications will be considered by the appropriate decision making authority pursuant to these Regulations.

## 5-185 Requirements for Variance Application

Variance applications shall consist of the following items:

- (A) A completed application form.
- (B) Proof of ownership of the land on which the appeal is requested.
- (C) Application fee.
- (D) A site plan drawn to appropriate scale showing the location of existing structures, fences, natural features, streets and rights-of-way, boundary lines, and lot lines. The site plan will graphically display the design standards, such as setbacks, which are the subject of variance or disagreement. Drawing sheet size shall be a minimum of eighteen by twenty-four inches (18" x 24").
- (E) Any other information determined to be necessary by the Planning Administrator or the Board of Adjustment that will aid in making a decision which will not impair the intent and purpose of these Regulations.
- (F) A statement or narrative that demonstrates compliance with the applicable criteria for variances.
- (G) A list and a map provided by the Planning Department showing all adjacent surface property owners of the property which is the subject of the variance application.
- (H) For variances to minimum lot size, any additional requirements provided for in Section 8-170 of the Morgan County Subdivision Regulations. References in this section to the Morgan County Board of Commissioners or Planning Commission shall be deemed to refer to the Morgan County Board of Adjustment.

## 5-190 Requirements for Appeals Application

All appeals of the Planning Administrator's decision shall consist of the following:

- (A) All application requirements of Section 5-185(A) through (E) and a written description of the grounds for the appeal and why the administrative decision was incorrect.
- (B) Citation of the Section of the Zoning Regulations that is the subject of the appeal.
- (C) Any written statements desired by the appellant.

## 5-200 Notice of Hearing

- (A) Planning Administrator or designee shall be responsible for publishing the notice of a public hearing, required under Section 5-215 of these Regulations, at least one time in a newspaper of general circulation in Morgan County, Colorado, at least ten (10) days prior to said hearing before the Board of Adjustment. Said notice shall read as shown on Form 7, Appendix A.
- (B) At least ten (10) days prior to the hearing, the Planning Administrator or designee shall mail a notice of said hearing by first class mail, to owners of property of adjacent property under consideration for the appeal or variance.

## 5-210 Administrative Variances

Variance applications requesting a variance of no more than a 10% from the applicable bulk requirement(s) may be considered for approval by the Planning Administrator, subject to the following procedure and criteria:

- (A) Within five (5) days of receipt of a complete application, the Planning Administrator or designee

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shall mail notice of the application by first class mail, to owners of property adjacent to the property under consideration for the variance. Such notice shall provide that owners may file comments with the Planning Administrator within fourteen (14) days of the date of the notice.

- (B) No earlier than the final date for submission of comments as described in subsection (A) above but within thirty (30) days of receipt of a complete application, the Planning Administrator shall render a written decision on the application. The Planning Administrator is authorized to impose conditions on an application in conformity with these Regulations. The written decision shall be mailed to the applicant.
- (C) Decisions by the Planning Administrator under this Section may be appealed to the Board of Adjustment pursuant the procedures in these Regulations.
- (D) In considering the application and any comments, the Planning Administrator shall consider the following criteria:
  - (1) The variance, if granted, will not adversely affect the use of adjacent property as permitted under these Regulations and/or use of the adjacent right of way;
  - (2) That the variance, if granted, is in keeping with the intent of these Zoning Regulations and the Morgan County's Comprehensive Plan; and
  - (3) That the variance, if granted, does not adversely affect the health, safety, and welfare of the citizens of Morgan County.

## 5-215 **Actions of the Board of Adjustment**

- (A) The Board shall conduct the public hearing on an appeal or variance application in a controlled manner, hearing presentations of application materials by the applicant, comments from the Administrator and public testimony. The Board shall make its decision based on the information presented and on findings related to the criteria in Section 5-220, as applicable. The Board may convene the hearing only if a quorum of four (4) members or associate members is present.
- (B) The Board shall make its decision at the meeting and instruct the Administrator to prepare a resolution approving, approving with condition or denying the application. Resolutions from the Board of Adjustment may be forward to the Board of County Commissioners as an information item.

## 5-220 **Criteria for Reviewing Appeals and Variances - Board of Adjustment**

The Board of Adjustment shall make decisions concerning appeals and applications for variances utilizing the following criteria, as applicable:

- (A) Appeals Criteria. In hearing an appeal of an administrative decision or interpretation, the Board of Adjustment shall consider the following:
  - (1) the technical meaning of the provision being appealed;
  - (2) evidence as to the past interpretation of the provision;
  - (3) the principles of interpretation and rules of construction in these Zoning Regulations; and
  - (4) the effect of the interpretation on the intent of this Code and the implementation of the Comprehensive Plan.
- (B) Variance Criteria. In order to grant a variance, the Board of Adjustment shall find that the following criteria have been satisfied:
  - (1) The strict application of the applicable regulation results in peculiar and exceptional practice difficulties or exception and undue hardship on the owner due to:
    - (a) exceptional narrowness, shallowness, or shape of the property at the time of the enactment of the regulation; or
    - (b) exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property; and
  - (2) the hardship is not self-imposed;
  - (3) the variance, if granted, will not adversely affect the use of adjacent property as permitted under these Regulations;

# COMMISSIONERS PROCEEDINGS 11

- (4) that the variance, if granted, is in keeping with the intent of these Zoning Regulations and the Morgan County's Comprehensive Plan; and
  - (5) that the variance, if granted, does not adversely affect the health, safety, and welfare of the citizens of Morgan County.
- (C) In granting any variances, the Board of Adjustment may prescribe appropriate conditions, safeguards and permit time limits in conformity with these Regulations. Violations of such conditions, safeguards, and time limits when made part of the terms under which the variance is granted, shall be deemed a violation of these Regulations and punishable under Chapter 6 of these Regulations.
- (D) Other nonconforming uses, lots, and structures shall not be grounds for a variance request.
- (E) A variance granted regarding the maximum number of residences per parcel shall only be granted for the medical care of a family member and shall only be granted for a period of time and not in perpetuity. The recipient of such a variance shall be required to certify annually to the Planning Administrator that the additional residence is still occupied by either the family member needing medical care or the caregiver.
- (F) Criteria for review of variance to the floodplain regulations are contained in Section 3-800.

## 5-225 Implementation of Variances

Upon the granting of a variance by the Board of Adjustment, the successful applicant shall have one (1) year from the date of issuance of the variance to commence implementation of the variance allowed. The Planning Administrator shall inspect all variance implementation projects to determine that they conform to the intent of the variance. Should a variance not be implemented in the time period allowed, the variance will be null and void upon action of the Planning Administrator. A one-time extension of the implementation period for a maximum of six (6) months may be granted by the Planning Administrator at the request of the variance holder.

2. Section 3-795 of the Morgan County Zoning Regulations shall be amended to read as follows:

The Planning Administrator, in the Administrator's sole discretion, may issue a Floodplain Development Permit unless the Planning Administrator determines that the application should be considered and decided by the Board of County Commissioners. In considering any application the Administrator must follow the same criteria and impose the conditions and design standards required by Sections 3-740 through 3-810 of the Floodplain Regulations.

3. Section 3-800(A) of the Morgan County Zoning Regulations shall be amended to read as follows:

The Board of Adjustment, as established in Chapter 5 of these Regulations, shall hear and decide appeals and requests for variances from the requirements of the County's Floodplain Regulations. Applications for appeals and variance shall be governed by the process outlined in Sections 5-175, 5-180, 5-190, 5-200 and 5-215 of these Regulations.

4. Section 3-800(D) of the Morgan County Zoning Regulations shall be amended to read as follows:

In reviewing upon such appeals, the Board of Adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of the Floodplain Regulations, and:

\* \* \*

5. Section 3-800(E) of the Morgan County Zoning Regulations shall be amended to read as follows:

Upon consideration of the factors of Section 3-800 (D) and the purposes of the Floodplain Regulations, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of the Floodplain Regulations.

DATED this 5<sup>th</sup> day of December, 2017.

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

s/ James P. Zwetzig

# 12 COMMISSIONERS PROCEEDINGS

James P. Zwetzig, Chairman

s/Laura D. Teague  
Laura D. Teague, Commissioner

s/Mark A. Arndt  
Mark A. Arndt, Commissioner

(SEAL)

**ATTEST:**

s/ Susan L. Bailey  
Susan L. Bailey

Chairman Zwetzig asked County Attorney Kathryn Sellars to review the file. Ms. Sellars stated that the purpose of repealing and reenacting the Sections 5-100 through 5-225 of the Morgan County zoning regulations related to variances is to establish a process where the Board of Adjustment will hear and grant or deny:

1. Requests for appeals from administrative and interpretive decisions of the Planning Administrator;
2. Requests for variances from bulk requirements of Section 3-650, Table 1 Appendix B;
3. Variance requests regarding maximum number of residences per parcel;
4. Variance requests to floodplain regulations Sections 3-800 and 3-805.

Ms. Sellars states that currently, variance requests to the floodplain regulations and appeals to the Planning Administrator's interpretation and decisions are considered by the Board of Adjustment. The Board of County Commissioners has heard variances from the bulk regulations for a number of years. The large majority of jurisdictions have these applications considered by the Board of Adjustment instead of the Commissioners. The decisions of the Board of Adjustment are final and appeal to the decision shall be as provided by law.

Ms. Sellars stated another change proposed is the amount of variance that may be granted administratively. Currently, it is 30% and will be reduced to 10% if this resolution is approved. The reasoning is that 30% is significant and a smaller percentage may decrease the number of variance requests submitted when a hearing is required. The significant number of variances has had to go through the hearing process; when one objection is received, a public hearing is required.

Ms. Sellars explained that there was a public hearing before the Planning Commission on November 13, 2017. Several members of the Board of Adjustment were in attendance. There was no public comment on the amendment. There was support from the BOA members present for this resolution. Planning Commission recommended approval unanimously, without suggestions for change.

At this time, Chairman Zwetzig opened the matter for public comment at which time there was public comment.

Chuck Miller, 26060 County Road S, Brush, CO, stated he often gets confused when we want to adopt everything that the State deals with and not look at the County and be a leader. The State is pressured with a tremendous boom in the Front Range counties, and they are being challenged to do things that those counties see to be significant. When we adopt things that the State does based on what other counties are pushing to do to get a handle on what is going on in their county, sometimes it becomes detrimental to a county like ours. He stated he feels he has been very blessed to reside in this county for nearly 59 years but this county has been remarkable for the opportunities it has allowed its constituents. He stated when something new came to town everyone wanted to know what was in it for them, how good it would be for their business, and were excited. He stated it almost seems like the County is more focused on restriction now, and trying to define what that new thing has to be. He stated he was up quite late last night trying to look into the future for all the right reasons and it seemed like the County is trying to restrict and trying to define and narrow this down and down. He stated back to his point that we are always adopting state statute, not trying to do something what the State is doing and asked the Board to be leaders like they always have been and do what is good for the community, see how we can get new things here, and to thrive from those that are here. He asked for clarification about the 30 percent down to 10 percent variance, with Chairman Zwetzig stating if there is a need for a 30 percent variance, they believe it may be too broad, indicating that rather than approving variance after variance, just to allow it. The 10 percent is the allowance after all the changes are made.

Commissioner Teague commented on the bulk requirements which look at different types of criteria and stated they are in the process of looking at those bulk requirements to be sure they are actually what is needed. She stated after reviewing variance upon variance upon variance, it becomes where the Board starts setting a precedence based on what was done before. She stated setbacks are designed to protect county roadways, indicating a scenario about granting a 30 percent variance to a county road, which could in turn require the county to purchase the property to retain the roadway. She stated by approving this matter, it would then allow for a review

Commissioner Arndt stated when you are looking at it saying administratively we can change our rules by 30 percent using the six foot fence as an example, and this will now allow the Planning Administrator to violate that rule by 30 percent, and is that really the Planning Administrator's job to arbitrarily change that rule. The 10 percent would be more of an allowance to give the Planning Administrator a lead way. On variances, these were going to the Commissioners not to the Board of Adjustments, stating that is what that Board is in place for. He stated that in requesting a variance, there should be a reason for that variance to be granted, some type of hardship and this is what this is doing, is taking it back to the BOA to take the politics out of it, it is a group who is looking at the regulations and they have a criteria of where they make their decision from. Commissioner Arndt feels it is a good idea to have this, it is not just one person looking at this, it takes it back to a group of citizens who have been put in place to review these types of things.

# COMMISSIONERS PROCEEDINGS 13

Ms. Cherry explained that there was a public hearing before the Planning Commission on November 13, 2017. Several members of the Board of Adjustment were in attendance. There was no public comment on the amendment. There was support from the BOA members present for this resolution. Planning Commission recommended approval unanimously, without suggestions for change.

Mr. Miller asked what is the cost and the time period of going to the Board of Adjustments, with Ms. Cherry stating the application fee for a variance administrative review is \$150.00, the fee to go through the full review, which includes going to the Board of County Commissioners which would need to be adjusted to indicate the BOA, is \$250.00 and at this time, the fee to submit to the BOA is \$500.00 and the time frame requires a public notification, a neighboring notification, and it does not work any different time wise as it does now with the Board of County Commissioners. Commissioner Teague encouraged Mr. Miller to comment as to what he believes needs to be looked at in detail regarding the bulk regulations.

Discussion followed as to how the regulations were in place as to the 80 acres use by right and the practice that has followed in the past years, and should the regulations say what is going on, and this process here does not change anything, sooner or later when the bulk regulations are reviewed, that is when Mr. Miller may want to be more involved.

Mr. Miller asked about the 30 to 10 percent, as Ms. Cherry having the leniency at 30 percent to revise a regulation, it will take it down to 10 percent, and how would it work to appeal this decision. Chairman Zwetzig stated if the decision made by the Planning Administrator and not what the applicant desired, they could still go back to the bulk regulations and apply for the variance through the process.

At this time Chairman Zwetzig closed the public comment period and moved to discussion and decision.

Chairman Zwetzig stated that Mr. Miller's comments now lead the Board to the fact the bulk regulations need to be reviewed and updated making it more equitable, if it is allowed for one, it is allowed for another making it sensible for everyone. He stated he disagrees that it makes it more restrictive, they are only trying to get to what they are doing in the regulations.

Commissioner Arndt made a motion to approve Resolution 2017 BCC 55, a Resolution amending the proposed repealing and reenacting, amending and deleting of the Morgan County Zoning Regulations for variances and clarify variance process for Floodplain Regulations as presented by Morgan County Attorney Kathryn Sellars and Morgan County Planning and Zoning Planning Director/Floodplain Administrator Pam Cherry with Commissioner Teague seconding the motion. At this time, the motion carried 3-0.

Being no further business, the meeting was adjourned at 10:47 a.m.

Respectfully Submitted,  
Susan L. Bailey  
Clerk to the Board

(Minutes ratified December 12, 2017)

## THE BOARD OF COUNTY COMMISSIONERS MORGAN COUNTY, COLORADO

\_\_\_\_\_  
s/ James P. Zwetzig  
James P. Zwetzig, Chairman

\_\_\_\_\_  
s/Laura D. Teague  
Laura D. Teague, Commissioner

\_\_\_\_\_  
s/Mark A. Arndt  
Mark A. Arndt, Commissioner

(SEAL)

ATTEST:

\_\_\_\_\_  
s/ Susan L. Bailey  
Susan L. Bailey