

MORGAN COUNTY PLANNING COMMISSION
September 17, 2018 MINUTES

The Morgan County Planning Commission met on Monday, September 17, 2018 at 7:00 p.m. in the Assembly Room of the Morgan County Administration Building. Answering roll call was: Robert Pennington, Bob Elrick, Joe Ewertz, Dave Musgrave, Mike Bailey and Nathan Troudt. Also present were Pam Cherry, Planning Administrator; Jody Meyer, Planning Assistant; Andrea Hill Planning Clerk; and Pat Wilson, Morgan County Attorney.

The meeting was called to order by Chairman Joe Ewertz.

SEPTEMBER 10, 2018 MINUTES:

Unavailable at the time of the meeting

AGENDA: It was moved by Nathan Troudt and seconded by Robert Pennington to approve the agenda as presented. Motion carried 6-0.

NEW BUSINESS:

APPLICANT: H2 Enterprises, LLC
LANDOWNER: Neb Brothers

Matt Baumgartner was present representing H2 Enterprises, LLC.

Pam Cherry read her file summary as follows:

Application Overview

H2 Enterprises, LLC as applicant and Neb Brothers as property owner have submitted this application for a Use by Special Review Permit to operate a temporary pipe storage, handling and transfer facility in the "A" Agriculture Production Zone District on approximately 19 acres of the 149 acre parcel. The property is located in E½ of the NE¼ of Section 20, Township 3 North, Range 60W of the 6th P.M., south of the intersection of Morgan County Road P and Morgan County Road 2, Morgan County, Colorado.

A temporary pipe storage, handling and transfer facility is not listed as a Use-By-Right, Conditional Use or a Use by Special Review in the Agriculture Production Zone District in the Morgan County Zoning Regulations. Pursuant to Section 2-325 of the Morgan County Zoning Regulations any use, not designated as a Use by Right, Accessory Use, Conditional Use, Use by Special Review or not otherwise prohibited in a particular zone, may be approved as a Use by Special Review pursuant to the criteria and procedure as established by these Regulations.

H2 has stored approximately 734,000 linear feet of pipe for portions of the Colorado pipeline that started to be moved onto the parcel in July, 2018. The next phase, anticipated to be complete in December, 2018, is to move the pipeline off the property to the pipeline alignment. Hours of operation will be 7 a.m. until 7 p.m. and are H2 imposed through agreements with property owners in the area. The pipe is being supplied to OneOK for the natural gas liquids pipeline that was heard by the Planning

Commission on June 18, 2018 and then approved by the Board of County Commissioners on August 3, 2018. Export of the pipe has begun and will continue until late 2018.

Upon completion of the project the Neb parcel will be restored and returned to Agricultural use according to an agreement between H2 and Neb Brothers and a requirement of the state issued Stormwater Management Plan.

Conservation of agricultural resources and land is paramount, and such land and resources must be protected from adverse impacts resulting from uncontrolled and undirected business, commercial, industrial and residential uses.

The following criteria are to be used by the Planning Commission and the Board of County Commissioners when reviewing an application for a Special Use Permit.

- (A) The use and its location as proposed are in conformance with the Morgan County Comprehensive Plan.

The property is located in the Southwest planning area, south of the intersection of Morgan County Road P and Morgan County Road 2.

There is a county wide goal to diversify the economy in Morgan County to broaden business employment opportunities for residents and to further economic growth.

The southwest planning area goal is to encourage the preservation of agricultural lands production land to ensure continuation of this important industry.

In this area the goal is to preserve and protect existing agriculture uses south of County Road Q.

- (B) All the application documents are complete and present a clear picture of how uses are to be arranged on the site or within Morgan County.

- (C) The Site Plan conforms to the district design standards of these Regulations.

- (D) All on and off-site impacts have been satisfactorily mitigated either through agreement, public improvements, site plan requirements or other mitigation measures.
H2 has worked with property owners in the area to mitigate impacts. Morgan County Road and Bridge is allowing for dust mitigation on County Road 2, adjacent to the project.

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

The use will be temporary and this permit if granted shall expire December 31, 2018 or upon completion of the project

- (F) The special use poses only the minimum amount of risk to the public health, safety and welfare as set by federal, state or county regulation, whichever is the strictest.

H2 has worked with impacted property owners to reach agreement on the utilization of the Neb Brothers property for the storage, handling and transfer of the pipe to be used in the OneOK pipeline. The use is temporary and the permit will expire the end of 2018.

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

- (H) The applicant has adequately documented a public need for the project, all pertinent technical information, and adequate financial resources to implement it, and has paid all fees and review costs levied by the County for application processing and review.

A temporary storage location for the pipe is necessary as part of the preparation for construction of the pipeline.

- (I) For any Use by Special Review requiring a supply of water that the applicant has demonstrated a source of water which is adequate for the proposed use in terms of quantity and reliability and in the case of human consumption, quantity, quality, and reliability.

A supply of water is not required for this temporary use.

Pam Cherry made the following recommendations for condition of approval:

1. The permit is for a pipe storage, handling and transfer facility on 19 acres of the 149 acre Neb Brothers property.
2. The property shall be reclaimed according to the Stormwater Management Plan permit and agreement with the property owner, Neb Brothers. The permit is issued on a temporary basis only which shall expire on December 31, 2018.

Matt Baumgartner, 1680 Colorado Parkway, Eaton, CO, presented that H2 Enterprises, LLC had been contracted by OneOK pipeline, which had been granted a Special Use in Morgan County, to haul and store pipe. Mr. Bumgartner apologized for not getting a Special Use Permit prior to storing pipe on the Neb Brothers property, but he assumed the Special Use granted to OneOK covered the pipe storage, or an “all in one” permit. Mr. Bumgartner stated they had worked with neighbors to mitigate any issues, such as dust and they were allowed by Morgan County Road and Bridge to lay Mag Chloride on the road to help with the dust from the increased traffic on Morgan County Road 2.

Mr. Baumgartner stated that they began hauling in pipe in July and plan to have it all out by December. H2 Enterprises, LLC will then start reclamation on the ground.

PUBLIC COMMENTS OPEN:

In Favor: No one

In Opposition: No one

PUBLIC COMMENTS CLOSED

It was moved by Bob Elrick and seconded by Dave Musgrave to approve this Special Use Permit as presented for temporary pipe storage, handling and transfer facility and send it along to the Board of County Commissioners along with Pam Cherry's conditions listed. Neb Brothers property located in the E¹/₂ of the NE¹/₄ of Section 20, Township 3 North, Range 60W of the 6th P.M., south of the intersection of Morgan County Road P and Morgan County Road 2, Morgan County, Colorado.

- 1. The permit is for a pipe storage, handling and transfer facility on 19 acres of the 149 acre Neb Brothers property.**
- 2. The property shall be reclaimed according to the Stormwater Management Plan permit and agreement with the property owner, Neb Brothers. The permit is issued on a temporary basis only, which shall expire on December 31, 2018.**

Motion carried 6-0.

APPLICANT: Erin Kress/THEngineering

LANDOWNER: Bullseye Holdings, LLC, an Arizona Limited Liability Company: Kevin Lamb, Manager

CONSULTANT: Travis Hertneky, THEngineering

Kevin Lamb, Manager, and Attorney Ray Laws were present to represent Bullseye Holdings, LLC.

Pam Cherry read her file summary as follows:

This application is for a Special Use Permit to operate a livestock washing and cleaning facility in the "A" Agriculture Production Zone District. Cattle truck washing and cleaning is listed in the regulations as a Use by Special Review in the A zone district in Section 3-180(R) of the Morgan County Zoning Regulations; this operation would not be limited to cattle truck washing and, if approved, could washout any livestock trucks, general truck washing will not be permitted. The property is located south and east of the intersection of County Road O and County Road 16 in the N¹/₂ of the S¹/₂ of Section 26, Township 3N, Range 58W of the 6th P.M. and south and west of the Bijou Canal, Morgan County, Colorado.

The truck washout is the southerly parcel of the two owned by Bullseye. The north parcel has been used as an Animal Feeding Operation in the past. The application includes a preliminary design report to address general layout, physical and social constraints and operation plans. Livestock trailers are cleaned of accumulated manure with high pressure, high volume water hoses. Soaps and/or solvents are not used. The wash water drains into a concrete separation pit. The facility will operate during typical business hours and will be extended to 6:00 a.m. to 9:00 p.m. if necessary, six days a week.

The Engineering designed the facility in accordance with Colorado State University, Kansas State University, Texas A&M University, American Society of Agricultural Engineers, the Natural Resources Conservation Service and others to develop the plan which utilizes generally accepted best management practices for livestock washout facilities. In addition the applicant's engineer consulted with the Colorado Department of Public Health and Environment to determine that a discharge permit is not required. Pursuant to 5CCR 61.14(1)(a)(iv):

The owner of a land application system can demonstrate that:

- (A) The design and operation of the system will result in complete evapotranspiration of the effluent;
- (B) There is adequate storage provided for the effluent during periods of inclement weather or where the ground has been frozen unless the provisions of (A) above, can be met during the entire year; and;
- (C) Any augmentation plan or substitute supply plan for the land application site does not provide a credit for return of the effluent to ground water.

The facility will apply wastewater at a rate less than the evaporation rate and provides seven months storage. Groundwater will be protected using native clay material to provide a discharge rate of less than 1×10^{-6} , or .000001 cm/second. The pond has been recertified by the Colorado Department of Public Health and Environment.

Agriculture is a highly valued resource in Morgan County. Conservation of agricultural resources and land is paramount, and such land and resources must be protected from adverse impacts resulting from uncontrolled and undirected business, commercial, industrial and residential uses.

The following criteria are to be used by the Planning Commission and the Board of County Commissioners when reviewing an application for a Special Use Permit.

- (A) The use and its location as proposed are in conformance with the Morgan County Comprehensive Plan.
The location is south of the intersection of County Road O and County Road 16, and located in the South Central Planning area as defined by the Morgan County Comprehensive Plan 2008. In this area the goal is to preserve and protect existing agriculture uses south of County Road Q. The truck washout is an agriculture use and while not associated with a Concentrated Animal Feeding Operation is a much needed service in Morgan County.
- (B) All the application documents are complete and present a clear picture of how uses are to be arranged on the site or within Morgan County.
- (C) The Site Plan conforms to the district design standards of these Regulations.
The Agriculture Production District includes design standards for a CAFO, however a CAFO is not proposed at this time. If a CAFO is planned in the future, a Special Use Permit application will be required. This application is for an operation that will provide necessary services to CAFO's.
- (D) All on and off-site impacts have been satisfactorily mitigated either through agreement, public improvements, site plan requirements or other mitigation measures.

Morgan County Road and Bridge has no objection to the continued use of the present driveway located on Morgan County Road 16.

- (E) The special use proposed has been made compatible with the surrounding uses and adequately buffered as determined by the County.
The livestock washout operation is not required to be buffered as all surrounding properties are also zoned Agriculture Production.
- (F) The special use poses only the minimum amount of risk to the public health, safety and welfare as set by federal, state or county regulation, whichever is the strictest.
Engineering reports and studies have been conducted for the property and submitted to the CDPHE and the State Engineer's office that have reviewed the applications. The property owner's consultant has been working diligently to bring the property into compliance with State statute. A condition of approval will be recommended is that the property remains in compliance with regulations of all agencies that license this sort of facility. Bullseye Livestock was served with a Notice of Violation and Cease and Desist Order on January 10, 2018. In an e-mail dated September 5, 2018 all corrective actions have been completed as required by the Colorado Department of Public Health and Environment.
- (G) The special use proposed is not planned to be developed on a non-conforming parcel.
- (J) 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.
A livestock washout operation is needed in Morgan County. This facility will be commercial in nature and will wash trucks for operators not associated with this property.
- (K) For any Use by Special Review requiring a supply of water that the applicant has demonstrated a source of water which is adequate for the proposed use in terms of quantity and reliability and in the case of human consumption, quantity, quality, and reliability.
The applicant has provided Town of Wiggins Resolution No 36-2018 that approves a water agreement between the Town of Wiggins and Bullseye Holdings. The agreement states that the Town will sell Bullseye up to 72 acre feet of raw water per year, subject to the terms set forth in the contract.

In addition the applicant has provided an agreement to lease augmentation water from the Fort Morgan Water Company, LTD.

The applicant has estimated that the operation will use approximately 12.77 acre feet of water per year. The Division of Water Resources has permitted well number 80348-F to not more than 24.27 acre-feet, or the amount covered under a substitute water supply plan until a decree is obtained for a permanent plan for augmentation. Water Court Case #2016CW3028 is currently in review by the state.

Pursuant to Morgan County Zoning Regulations Section 6-130:

No application for a permit, rezoning or any other action requiring County approval under these regulations shall be accepted by the County for any property which is delinquent or past due on the payment of property taxes. Taxes are current on Bullseye properties within Morgan County.

Recommended conditions of approval:

1. The facility shall not commence operations until it has received approval from all federal and state agencies with jurisdiction over its operations and all required permits have been issued.
2. The facility shall not commence operations until all improvements set forth in the application have been constructed and are operational.
3. The facility shall operate its wells (Bullseye 3T Well - Permit No. 80348-F and backup well – Permit No. 23040-F) in compliance with all well permit conditions and the applicable substitute water supply plan and/or permanent augmentation plan.
4. The facility shall operate in compliance with all state and federal laws and regulations applicable to the livestock truck washout.
5. Generally accepted best management practices as recommended by the Natural Resources Conservation Service and established in applicable publications of Colorado State University for land application of manure and waste water shall be followed.
6. Future expansion of the washout facility shall require an amendment to this Special Use permit.

Pam Cherry requested the Planning Commission's recommendation of approval of the Special Use to permit a livestock washout facility, subject to the listed conditions, be referred to the Board of County Commissioners.

Ray Laws, Attorney for Bullseye Holdings LLC, said there would be several people he would be calling on to talk about the Bullseye application: Rick Fendel, water attorney; Travis Hertneky and Erin Kress of THEngineering; Heath Kuntz, water resource engineer; and would provide petitions from truck drivers in support of the application. This application has met the criteria as required by the Morgan County Regulations and he reviewed each criteria with explanations. No discharge permit is needed in this particular instance. They are meeting setback requirements according to Morgan County regulations. Access has been tentatively approved by the County on Co Rd 16 about a .25 mile south of Co Rd O which is more direct to the washout facility. He reviewed wastewater plans. Solid manure will be removed on an annual or semiannual basis and he explained the separating process.

Mr. Laws said the earthen settling basin will be lined and will be 889 ft. from the Bijou canal. Once in the settling basin, the water will be dealt with mostly by evapotranspiration, then application to area farms, and application to a 40 acre farm south of the livestock facility. If the pond gets too full, applicant will stop operations.

Traffic: Mr. Laws said trucks could run 20 trips per day (one in and one out) during the Fall and Spring. He referred to the letter from a water attorney Scott Miller. He read parts of the letter stating there is no recorded document stating a 50 ft. wide easement on his client's property. He talked about the

difference of implied and inclusive easements. When pond is built, it will be 1000 ft. away from the ditch and it will be lined. Multiple petitions from truckers state the truck washout is a big need in the County. Ray Laws is in agreement with Pam Cherry on all conditions and her amendment on taking out her CAFO verbiage.

Joe Ewertz – what kind of liner will be used? Kevin Lamb said if the clay is available on site and is of good enough quality, they want to use that. If unavailable and they can bring in clay, they will use that. Mr. Lamb also presented a sample pond liner they have looked at for the pond. It carries a 20-year warranty. Joe – is there any type of monitoring or leak detection? Mr. Lamb was not sure. Joe – What will you use for drinking water for employees? Lamb – We will use domestic well water, same as they already use for the house located on the north parcel. He did not think Quality Water was available in this area. There was discussion on what type of trucks would be allowed to use the facility. Mr. Lamb said they would not washout anything that is not agronomic, mostly livestock trailers.

Robert Pennington asked who issued the cease and desist? Kevin Lamb said the County did and Pam Cherry said CDPHE did also.

Travis Hertneky from TEngineering, Greeley, Colorado, design engineers. He stated there would be 10 trucks per day or 60 trucks per week. Each truck would take 2000 gallons of water to clean out; some of that to be recycled back through – washout on a concrete pad which runs back to a concrete settling basin which will get about 50% of the solid manure. Then it will move on to earthen settling basins and eventually be land applied to pasture or farm ground. Phase II – possible mechanical separator based upon how clean they need to get the water. Liner Options: compacted clay or a plastic liner is an option as well. Southern basins will be lined. Joe Ewertz – do liners have to be certified after they are put in? Travis – yes, they would do a durability test which would be certified by him. The truck washout will run into the proposed new pond.

Joe Ewertz – Does the washout facility have its own legal description? Pam Cherry said yes, it has its own description. Travis Hertneky said they do not have it broken off into a legal parcel yet, but if approved, it is the intention to survey it off and make them two separate facilities.

Rick Findel, Denver, Colorado, Bullseye Holdings water lawyer. He is working on the augmentation plan that is currently pending in the water court in Greeley and the substitute water supply plan while the other case is pending. Bullseye currently has a substitute water supply plan authorizing use of the well and augmentation plan. The contract with the Town of Wiggins for additional augmentation water is not yet in the case and he working to file an amendment to the case. Augmentation will be one for one regard irrigated land or whether used for the washout.

Nathan Trout, Planning Commission Board member, asked why financial parts of the agreement redacted out. Kevin Lamb said it was to maintain privacy. Nathan said that Wiggins was a public entity and people should be able to see the document. Mr. Lamb said if you have a need to know, they have no problem sharing that.

Heath Kuntz, Adaptive Resources, Kiowa Ave., Fort Morgan, Colorado. He is a water resource consultant for Bullseye Holdings, and they do most of the augmentation plan pieces. He talked about depletions and replacement supplies in the river. The augmentation plan is in the current state of

renewals. Their current accounting procedure is meeting the State criteria. Kevin Lamb – Reached out to the City of Fort Morgan and they allowed to sell them water through a meter. They are trying to cover any issue that might come up.

Emergency Action plan: The sign on the property gives a phone number to call in case of emergency; will there be someone on site? Yes, Mr. Lamb's son. Joe Ewertz wondered why there is a Brush phone number for emergency facilities. Erin Kress from THEngineering said she will check on the contact numbers to make sure it is correct.

OPEN PUBLIC COMMENT

In Favor: Ray Laws noting the 30+ names on the petitions handed out tonight.

In Opposition:

Denice Wagner Administrative Manager of Bijou Irrigation was hopeful the Planning Commission would consider her contingencies and recommend that they be taken care of prior to sending this hearing on to the Board of County Commissioners:

The State of Colorado has setbacks of 100 ft. for any down gradient surface water where manure water can be applied (Reg. 81 and 61). The County setback is only 35 ft. Consider the State's regulation when looking at this application. Erosion and Blowing: meet 100ft. setbacks when applying effluent on the 40-acre parcel. Robert Pennington asked this applied to a farmer spreading manure. Denice could not answer this. She asked the Board to look at the soils. They maintain their ditch, but blowing sand builds up and they had to clean out two years in a row. May do some agreement between ditch and landowner (this is an example of what can happen). Just look at the soils on this property.

Kevin Lamb – will use a nozzle end gun which seems the least invasive way to put it on.

Denice Wagner – Look at the Town of Wiggins agreement (page 6). The loan is not in place, just a contingency that is not finalized right now; not completed only contingencies.

Denice – Looking at the Water law letter on easements. Allow Bijou to brief the Planning Commission on ditch easements. Deeded easement is different from a prescriptive easement. Bijou has not been allowed on the ditch on west side.

Pat Wilson, County attorney, said a prescriptive easement is based upon adverse use over the years.

Denice - Should have these issues addressed before making a decision.

Keri Kosman, 17015 Co Rd 15, Fort Morgan, neighboring landowner, said she granted a 50' easement in 2013. She was concerned with well permits having different numbers that did not match and thought someone should be checking with the State to get this clarified. She wondered if permits were pulled for a transformer that was replaced or was it needed. Mr. Lamb said no permit was needed. She was concerned about truck traffic numbers. If the numbers go up, what will happen?

Roger Schaefer, 13077 Co Rd 17, Fort Morgan, had concerns about who would check for compliance on this application. Also concerned about the size of the pond – is it big enough, is it engineered – can it withstand big rains.

Gary Teague, 15366 Co Rd O, landowner directly to the west of Co Rd 16 and to the south of this proposed parcel. He was concerned with the following: decreed water source, land application, operational design plan, use of honey wagon, and use of big guns blowing the soil and creating erosion. Also he wanted to see a Final Plan not a Preliminary. Build to a recommended design plan. Who will police. Gary said there are two non-conforming parcels. What about impact fees?

CLOSE PUBLIC COMMENT.

Rick Fendel said the water source is in process. He explained why the wells had different numbers on them, but they were talking about the same well. He said Wiggin's water is contingent on getting water from the Conservation Board. The plan will cover the feed lot as well.

Travis Hertneky, from THEngineering, said the application plan gives options for land application. Joe Ewertz asked why there was not a final plan.

Robert Pennington asked about traffic.

Kevin Lamb said there would be 2-3 employees and there are 3 bay washouts. Kevin Lamb handed out soil maps that show Teagues' land apply also. (Did not leave picture)

It was moved by Robert Pennington and seconded by Dave Musgrave to approve this application for a Special Use Permit to operate a livestock washing and cleaning facility and send it on to the Board of County Commissioners with conditions as outlined by Pam Cherry. Applicant being Erin Kress/THEngineering and Landowner being Bullseye Holdings, LLC, an Arizona Limited Liability Company, Kevin Lamb, Manager, and Travis Hertneky from THEngineering, Consultant. The property is located south and east of the intersection of County Road O and County Road 16 in the N½ of the S½ of Section 26, Township 3N, Range 58W of the 6th P.M. and south and west of the Bijou Canal, Morgan County, Colorado. Motion carried 5-1 with Nathan Troutdt having the dissenting vote.

Meeting adjourned.

Respectfully submitted,

Andrea Hill, Planning Clerk
Jody Meyer, Planning Assistant