

MORGAN COUNTY PLANNING COMMISSION
June 18, 2018 MINUTES

The Morgan County Planning Commission met on Monday, June 18, 2018 at 7:00 p.m. in the Assembly Room of the Morgan County Administration Building. Answering roll call was: Joe Ewertz, Bob Elrick, Dave Musgrave, Mike Bailey and Nathan Troudt. Also present were Pam Cherry, Planning Administrator; Jody Meyer, Planning Assistant; and Jeff Parker, Morgan County Attorney.

The meeting was called to order by Chairman Joe Ewertz.

Minutes of the June 11th and June 18th meeting were not available to vote on.

Agenda: Pam Cherry asked that the Jensen Farm Minor Subdivision application be heard first and then move to the Oil & Gas Amendments. **It was moved by Nathan Troudt and seconded by Bob Elrick to approve the agenda as amended. Motion carried 5-0.**

NEW BUSINESS:

APPLICANT: Don Neb

LANDOWNER: Jensen Farms, Inc.

Don Neb, Plains Realty, was present to represent this application.

Pam Cherry reviewed her file summary as follows:

Jensen Farms, Inc. as landowner and Don Neb as applicant are requesting approval of a Minor Subdivision of a 14.9 acre parcel at the southwest corner of Barlow Road and County Road S. The property is addressed as 19975 County Road S and has never been platted. The application is to create three lots, Lot 1 is 5.25 acres, Lot 2 is 4.67 acres and Lot 3 is 4.36 acres. The property is zoned Commercial where the minimum lot size is 4,000 square feet. The property is located in the NE $\frac{1}{4}$ of Section 5, Township 5 North, Range 57 West of the 6th P.M., Morgan County, Colorado.

At the present time, vegetable storage and processing are conducted on what is to become Lot 3. Agriculture crop production is a use-by-right in the Commercial zone district.

The City of Fort Morgan will provide sanitary sewer and water to lots 2 and 3. Lot 1 will remain on existing septic system and well water. There is a letter from the State Engineer cancelling Well Permit #569-R (August 31, 1959) and issuing Well Permit #308066 for exempt commercial uses. Access will be by existing driveways, two on Riverview Avenue, and on Barlow Road. These are City of Fort Morgan streets and will be allowed continued use in the current locations. The site of the minor subdivision is not located within the 100-year floodplain. Subject property is located within the Fort Morgan Fire District. Taxes are current.

All appropriate notice requirements have been completed. As of the date of this summary no comments have been received on this application, either in favor or opposition.

The file contains all documentation required for a Minor Subdivision application.

Pam Cherry recommended the Planning Commission refer a recommendation for approval to the Board of County Commissioners subject to these conditions:

- 1.) Water taps will be paid in full prior to recording of the plat.
- 2.) Sanitary sewer tap will be paid in full prior to recording of the plat.

Don Neb said this application is pending on a contract on Lot 3. They plan on repackaging onions and tomatoes. There will be approximately 40 full time employees. Lots 1 & 2 are being offered for sale. By splitting this parcel into 3 lots it becomes more saleable. Sewer exists on Lot 3 and includes a well in the corner. The City of Fort Morgan will provide water for Lots 1 and 2 and 3. One or more of these lots may be annexed into the City of Fort Morgan.

Traffic: Don Neb was unsure of the number of trucks coming and going. The City of Fort Morgan did not have a problem with the present access.

PUBLIC COMMENT

Those in favor: None

Those in Opposition: None

PUBLIC COMMENTS CLOSED

It was moved by Mike Bailey and seconded by Nathan Troudt to recommend approval of this Minor Subdivision named JENSEN MINOR SUBDIVISION to create three lots, Lot 1 is 5.25 acres, Lot 2 is 4.67 acres and Lot 3 is 4.36 acres all located in the NE¹/₄ of Section 5, Township 3 North, Range 57 West of the 6th P.M., Morgan County, Colorado, aka 19975 County Road S, Fort Morgan, Colorado and send it on to the Board of County Commissioners noting the following conditions listed below.

Conditions:

- 1.) Water taps will be paid in full prior to recording of the plat.**
- 2.) Sanitary sewer tap will be paid in full prior to recording of the plat.**

Motion carried 5-0

A RESOLUTION AMENDING VARIOUS SECTIONS MORGAN COUNTY ZONING REGULATIONS CONCERNING THE USE OF PROPERTY BY OIL AND GAS OPERATIONS

Mike Paules from Colorado Petroleum Council, Denver, CO was present as well as Ryan Seastrom from Colorado Oil & Gas.

Pam Cherry reviewed her file summary as follows:

On August 21, 2017 the Board of County Commissioners adopted a moratorium on applications for proposed injection wells for the storage or disposal of exploration and production wastes and other oil and gas waste from oil and gas operations in Morgan County. On November 21, 2017 the Board amended the moratorium by limiting the moratorium application to only commercial disposal well facilities. On February 20, 2018 the Board extended the moratorium until March 30, 2018. Beginning after August 2017 and during the period of the moratorium, the Board hosted a series of stakeholder

meetings to assist the education and development of oil and gas regulations. After those meetings, draft regulations were produced and on March 12, 2018, the Planning Commission reviewed those draft regulations and unanimously recommended that the Board of County Commissioners approve them.

On March 27, 2018, the Board decided to approve a portion of the regulations which established use categorizations for certain oil and gas operations but determined further study of the regulations was warranted. On April 11, 2018, the Board held another stakeholder meeting and after the conclusions of that meeting, directed staff to make further revisions to the regulations. This second draft of the regulations, which including amendments to the use categorizations previously approved the Board, was produced and provided to the public, stakeholders and other interested parties on May 18, 2018 for review and comment. As of the date of this report, no comments have been received.

Included in your packets are the May 18th draft regulations, draft resolution amending the use categorizations and adopting the regulations, the oil and gas regulations as they are currently and Resolution 2018 BCC 14 which was adopted on March 27, 2018, establishing the use categorizations.

The draft resolution, if adopted, will completely replace Sections 4-455 through 4-495 of the Morgan County Zoning Code. The amendments as proposed will bring the current oil and gas regulations into compliance with the current status of the law on oil and gas and will clarify the approval process for oil and gas exploration in Morgan County. Currently, most of the oil and gas operations in Morgan County would be required to obtain a special use permit. The proposed use categorizations, particularly those uses in the agricultural and industrial zones, reflect the County's intent to allow for most oil and gas operations as a use by right or conditional use in zones where the use is well suited to operate and is most likely to be located. The amendment to the use categorizations includes the allowance of all injection wells, with the exception of commercial disposal injection wells, as uses by right in the Agricultural Production, Agri-Business, Light Industrial and Heavy Industrial Zones. Commercial disposal injection wells are proposed to be treated as conditional uses in these zones.

As for the regulations, the purpose is to provide specific procedural steps and additional criteria for oil and gas operations which require a conditional or special use permit. Some of the notable revisions since your review on March 12 are as follows:

1. Elimination of the requirement to hold a neighborhood meeting.
2. Application materials that more closely mirror the application requirements of the COGCC.
3. Refined requirements for the content of the application notice.
4. An exception to the agency referral requirement upon a showing that an agency has already reviewed the application through other state agency permit approval process.
5. Delineation that flowline regulations only apply to off-site flowlines.

Pam Cherry recommended Planning Commission recommend approval of the resolution to the Board of County Commissioners.

Pam noted that the draft Resolution had errors: on page 2, No. 11, “Section 2-15” should say “Section 2-105”.

Joe Ewertz asked if anyone knew of the ballot issue on oil and gas coming up in November that needed signatures.

Mike Paules from Colorado Petroleum Council thought this issue dealt with setback regulations on well locations. Joe Ewertz wondered if the Board should wait to make a decision regarding the proposed amendments. Jeff Parker, County Attorney, said this won’t bother the decision of this Board. Jeff Parker said they are trying to make the regulations more consistent with the Oil and Gas Conservation Commission rules.

Pam Cherry noted that the Board of County Commissioners worked with Jeff Parker and Kathryn Sellars, Morgan County Attorneys, and Pam to put these together. These reflect what the Commissioners have requested.

Nathan Troudt asked for explanation on holding neighborhood meetings. He thought this was a good idea and we should look at implementing them. Joe Ewertz thought we should send out letters to the neighborhood notifying them of the meeting. Nathan agreed.

Joe Ewertz asked what is the advantage of mirroring the COGCC regulations. Pam Cherry said it simplifies the process for the applicant and avoids duplication in the process.

Mike Paules from Association of Colorado Petroleum Company supports the amendments but has a few tweaks to mention. He would like us to adopt definitions where possible that are established by the COGCC so there is consistency across the regulations. He outlined them as follows:

The definition for Production Facility states “facilities located on the same property as an oil or gas well or injection well shall be considered accessory uses to that well”. He said this should apply to common ownership also. Discussion on common ownership definition.

The County should adopt a definition for accessory equipment (and explain when a county permit is required) and he referred to Section 4-454(B) – needs more clarity.

4-454(C) Compliance with Regulations (last sentence) - can’t give access to private portions of the landowner’s property – needs to clarify – use same access as the used for oil and gas facility.

4-458(K) – Report from a traffic engineer only be required for multi-well pads.

4-458(L) Applications – landowner notification measured by the center of the oil and gas well or by the center of the property.

4-472(C) Off location Flowlines/Criteria - Don’t follow county maps for flowlines; it is better to call 811 for actual points of reference.

OPEN PUBLIC TESTIMONY:

Chuck Miller – Had questions saying this is pretty confusing. Everyone should be able to have a say so an application notice would be good for a neighborhood meeting. He wants to reserve more time so discussion can be had on these amendments.

Joe Ewertz – good idea to have neighborhood meeting. Pam said they could include that in their motion.

Disposal Wells:

Joe Ewertz said they already had an in-depth discussion on disposal wells and were against this. Jeff Parker, County Attorney, said commercial disposal wells are permitted as a Condition Use Permit. Joe – so they can dispose of the stuff they are drilling at the site of the parcel they are drilling from. Discussion was had on common ownership and contiguous ownership definitions. Can a person drill on one parcel and dispose of waste water on another parcel they own (by the same name). Does it have to be contiguous property/common ownership property – that is what this Board needs to decide. Jeff Parker – need to define what is on-site and off-site wastes – probably a policy call for the Board to make.

Chuck Miller talked about defining ownership. He said it should be like the IRS 1031 Exchanges, it has to be fee simple title. What about adjacent parcels? Are they contiguous? He was concerned about violating adjacent property rights. What if it goes beyond the setback requirement, then what happens? We want oil production but not oil waste.

Mike Paules reviewed flowline definition.

Chuck Miller- In common ownerships do rights of way or easements fall into that? Jeff Parker said you are looking at the underlying owner of the property for common ownership. Also Chuck Miller talked about confidentiality agreements and how can you sign one before you know what it says. Jeff Parker said that is something that would need to be looked at for sure.

Dave Musgrave had a question on 4-464(B)(4) last sentence regarding abandonment and reclamation process. Jeff Parker said there are regulations on this to follow.

Mike Paules and Jeff Parker said the Boards' main concern in these regulations is in the land use.

Chuck Miller – There are a lot of issues here; keep the doors partially open. Do what is good for Morgan County and its constituents.

Joe Ewertz reviewed what concerns they had talked about:

1. Have public neighborhood meetings
2. Contiguous ground under common ownership.
3. No out of county waste sites
4. Ownership, contiguous, adjacent definitions

Jeff Parker gave wording the Planning Commission could use for their motion by adding the following:

1. Add requirement of public meetings
2. Contiguous under common ownership
3. Offsite wastes and what constitutes an off-location of a flowline
- 4 Add back in the hearing for all applications
5. No out of County commercial waste sites

It was moved by Mike Bailey and seconded by Nathan Troudt to recommend approval of the resolution to replace Sections 4-455 through 4-495 of the Morgan County Zoning Code subject to:

- 1. Including a requirement for notice and neighborhood meeting for all applications.**
- 2. Commissioners considering whether the property as defined under the resolution should be all contiguous property under common ownership versus just the legally described parcel of property**
- 3. BoCC to seriously consider whether to allow out of county injection waste to be disposed of in Morgan County disposal injection wells.**

Motion carried 5-0.

APPLICANT: ONEOK Elk Creek Pipeline, L.L.C.

LANDOWNERS:

| | |
|------------------|---|
| Arnold Piel | NW ¹ / ₄ Section 3, T6N, R55W and the S ¹ / ₂ of NE ¹ / ₄ |
| Douglas E. Piel | SE ¹ / ₄ of Section 3, T6N, R55W |
| Jay Harryman | SW ¹ / ₄ Section 2, T6N, R55W |
| Mark Mertens | NW ¹ / ₄ Section 11, T6N, R55W |
| Alan Ladd | NE ¹ / ₄ Section 11, T6N, R55W |
| Gerald Montague | S ¹ / ₂ Section 11, T6N, R55W |
| Margo D. Mesch | S ¹ / ₂ SW ¹ / ₄ Section 12, T6N, R55W |
| Matt Baker | NE ¹ / ₄ Sections 8, T6N, R56W |
| Darrel L. Dilley | W ¹ / ₂ Section 13, T6N, R55W |
| Darrel L. Dilley | W ¹ / ₂ Section 24 T6N, R55W |
| Owen Nichol森 Jr. | W ¹ / ₂ NW ¹ / ₄ NE ¹ / ₄ , SW ¹ / ₄ NE ¹ / ₄ , W ¹ / ₂ SE ¹ / ₄ , SE ¹ / ₄ SE ¹ / ₄ & S ¹ / ₂ NE ¹ / ₄ SE ¹ / ₄ S ¹ / ₂ Section 13 T6N R55W |

Jake Rosenberg from OneOK was present to represent this application.

Pam Cherry reviewed her file summary as follows:

Application Overview

The applicant, ONEOK (Elk Creek Pipeline), and various owners, listed above, have submitted an application for a Conditional Use Permit for approval to construct, own and build a buried natural gas liquids pipeline across approximately 4.2 miles in the northeast corner of Morgan County. The pipeline will be no greater than 20" in diameter. The right-of-way for the pipeline is approximately 25.5 acres. The pipeline alignment is on a diagonal and enters the County at approximately County Road 34 and

exits at approximately County Road II. The properties are located in Township 6 North, Range 55 West of the 6th P.M., Morgan County, Colorado. The properties are all located in the Agriculture Production Zone District.

- a. Pursuant to Section 3-175(F) (properties greater than 20 acres) of the Morgan County Zoning Regulations, a pipeline is a Conditional Use permit.
- b. Section 4-495(F) of the Morgan County Zoning regulations require that all production oil and/or gas be transported from the well head to the production facilities by buried pipeline or other approved method.

The Elk Creek Pipeline is approximately 900 miles long. It originates in Richland County, Montana and terminates at the existing ONEOK facility near Bushton, Kansas. The route parallels the existing Overland Pass pipeline in a portion of Colorado. The disturbed ground will be returned to natural conditions upon completion of construction. Following reclamation of the disturbed area the surface will return to agricultural use.

ONEOK has acquired 75' construction right-of-way along the alignment that will be reduced to 50' permanent right-of-way upon completion of the construction. This application does not propose the addition of any above ground facilities such as pump stations or contractor yards.

Criteria to discuss for approval of Conditional Use:

- A. The application documents are complete and present a clear picture of how uses are to be arranged on the site.
- B. The Site Plan conforms to the design standard of these Regulations.
- C. There are no off-site impacts imposed by the conditional use proposed that require additional infrastructure or upgrades by the County or Special Districts.
- D. The use proposed is compatible with the surrounding uses and adequately buffered as necessary.

Analysis

ONEOK submitted this application on May 4, 2018. Exhibits A-P are listed as attachments to the Conditional Use permit application. Exhibit G (utilities) and Exhibit J (irrigation ditches) were waived for this application, utilities are not necessary and there are not irrigation ditches in the area.

The site plan shows the entire pipeline alignment with labels for property owners on each parcel to be effected as well as road crossings necessary. The application includes typical cross sections of the pipeline and typical construction methods to be utilized.

The properties that are crossed by the pipeline are zoned Agriculture Production as is all of the surrounding properties to each. There will be no visual impact to surrounding properties upon completion of the construction the alignment will be reclaimed and returned to existing uses. There is no need for additional infrastructure or upgrades by the County or Special Districts.

Best Management Practices will be implemented to address the construction impact mitigation and restoration, proper waste handling, dust suppression, fire prevention and suppression practices, spill prevention, containment and countermeasures, weed management and minimization of impacts to irrigated agricultural land.

This is a buried pipeline and is compatible and buffering is not necessary.

Suggested conditions of approval:

1. This approval grants vested rights for a period of 3 years from the date of approval.
2. Road crossings will require a permit from Morgan County. Road cuts are not permitted on paved roads.
3. The pipeline area will be returned to its pre-construction condition.
4. ONEOK will obtain all permits necessary by the State of Colorado and federal agencies and will remain in compliance with the requirements and conditions of those permits.

Comments received on this application:

As of June 4, 2018 there have been no comments received.

Suggested conditions of approval:

1. The pipeline will be constructed within two years of this approval or new application will be required.
2. Road crossings will require a permit from Morgan County Road and Bridge. Road cuts are not permitted on paved roads.
3. Easement agreements must be obtained from the property owners and recorded prior to commencing construction.

Pam Cherry recommended the Planning Commission's acceptance of this Conditional Use subject to the conditions to be referred to the Board of County Commissioners for final approval.

Doug Jeffrey from OneOK talked about road crossings, 20" pipeline, and 14.4 maximum pipeline pressure. There will not be any above ground facilities in Morgan County. He said there are easements on 9 of the 11 properties with 1 landowner holding out. Jeff Parker, Morgan County Attorney, said this application will be conditioned on OneOK acquiring all easements necessary from the effected property owners.

PUBLIC COMMENT OPEN

Those in favor: Mike Paules from Colorado Petroleum Council was in favor.

Those in Opposition: None

PUBLIC COMMENTS CLOSED

Jake Rosenberg from OneOK said they agree with all proposed conditions.

It was moved by Nathan Troudt and seconded by Mike Bailey to APPROVE this Application for a Conditional Use Permit for the applicant, ONEOK (Elk Creek Pipeline), and various owners and legal descriptions listed below:

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|-------------------------|---|
| Arnold Piel | NW¹/₄ Section 3, T6N, R55W and the S¹/₂ of NE¹/₄ |
| Douglas E. Piel | SE¹/₄ of Section 3, T6N, R55W |
| Jay Harryman | SW¹/₄ Section 2, T6N, R55W |
| Mark Mertens | NW¹/₄ Section 11, T6N, R55W |
| Alan Ladd | NE¹/₄ Section 11, T6N, R55W |
| Gerald Montague | S¹/₂ Section 11, T6N, R55W |
| Margo D. Mesch | S¹/₂ SW¹/₄ Section 12, T6N, R55W |
| Matt Baker | NE¹/₄ Sections 8, T6N, R56W |
| Darrel L. Dilley | W¹/₂ Section 13, T6N, R55W |
| Darrel L. Dilley | W¹/₂ Section 24 T6N, R55W |
| Owen Nichol森 Jr. | W¹/₂ NW¹/₄ NE¹/₄, SW¹/₄NE¹/₄, W¹/₂SE¹/₄, SE¹/₄SE¹/₄ & S¹/₂NE¹/₄ SE¹/₄ S¹/₂ Section 13 T6N R55W |

to construct, own and build a buried natural gas liquids pipeline across approximately 4.2 miles in the northeast corner of Morgan County and send it along to the Morgan County Commissions subject to the following conditions:

- 1. This approval grants vested rights for a period of 3 years from the date of approval.**
- 2. Road crossings will require a permit from Morgan County Road and Bridge. Road cuts are not permitted on paved roads.**
- 3. The pipeline area will be returned to its pre-construction condition.**
- 4. ONEOK will obtain all permits necessary by the State of Colorado and federal agencies and will remain in compliance with the requirements and conditions of those permits.**
- 5. Easement agreements must be obtained from the property owners and recorded prior to commencing construction.**

Motion carried 5-0.

******RECESS FOR BREAK CALLED******

APPLICANT: Tim Naylor, AGPROfessionals

OWNER: Empire Dairy

Tim Naylor from AGPROfessionals, Robert James, attorney for Empire Dairy, and Norm Dinis of Empire Dairy were present to represent this application.

Pam Cherry reviewed her file summary as follows:

Application Overview

This application is for an Amendment to a Special Use Permit that was granted by Resolution 2008 BCC 35, which is included in the packet for your reference. The property is located in Section 32, Township 4 North, Range 60 West of the 6th P.M., Morgan County, Colorado. The address of the dairy is 1473 County Road S, Wiggins, CO 80654. The property is zoned Agriculture Production and is 283 acres that is used as a dairy and farmland.

The applicant is requesting approval of an amendment to condition 3.a.iv and deletion condition 3.a.vi., both imposed by Resolution 2008 BCC 35 that currently read as follows:

- 3.a.iv.** - Access from the facility onto County Road S shall be limited to three County approved driveways between County Road 2 and Highway 144. The remainder of the facility fronting County Road S shall be fenced off to reduce direct ingress and egress onto County Road S.

- 3.a.vi.** -The applicant must, at their own expense, pave County Road S to meet County standards, from County Road 2 to Highway 144. This can be done through grants noting that the applicant will be responsible for applying for the grants and meeting all requirements. This can be done through a County bid process, with applicant responsible for administrative cost. Applicant must notify the County of their plans for financing this project no later than May 1, 2009.

Applicant's requested changes:

- 3.a.iv.** - Access from the facility onto County Road S shall be limited to nine driveways for access to the facility along County Road S between County Road 2 and Highway 144.

- 3.a.vi.** - Deletion.

Criteria – Special Use Permits

Amendments to special use permits are governed under Sec. 2-430 of the County's Zoning Regulations. Under that section, amendments to special use permits are subject to the same criteria as the original permit. The following criteria are to be used by the Planning Commission and the Board of County Commissioners when reviewing an application for a Special Use Permit:

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

- (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.

- (E) The special use proposed has been made compatible with the surrounding uses and adequately buffered as determined by the County.
- (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 regulations, whichever is the strictest.
- (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.
- (I) For any special use requiring a supply of water that the applicant has demonstrated a source of water which is adequate for the proposed use in terms of quantity and reliability and in the case of human consumption, quantity, quality, and reliability.

Public Comments/Concerns

On May 15, 2018, notifications of this hearing were sent to property owners within 1,320 feet of the subject property. As of the date of this report, June 8, 2018, one comment has been received that is in support of the proposal.

This application requests the amendment of one condition (number of driveways) and the deletion of another (paving of Road S). The terms of these conditions have been a topic of discussion for a number of years. Some of the discussion has included other owners in the area of Empire Dairy. On previous occasions, those owners have requested the roadway be paved and the accesses limited to the three that were originally permitted versus the nine that are constructed and used.

Analysis

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

The property is located in the northwest planning area as defined by the Morgan County Comprehensive Plan. Areas north of the Wiggins activity center are home to several very large dairy and feeding operations. In this area Comprehensive Plan goals include:

- a. Encourage placement of livestock facilities in areas with very low residential densities.
- b. Encourage the preservation of agricultural production land to ensure continuation of this important industry.

The request to amend the conditions will encourage the preservation and continuation of the industry.

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

The application is complete and presents a clear picture of the proposed driveway locations on the site.

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

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

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

Impacts to surrounding properties have been mitigated and documented in the attached Nuisance Plan that was approved as part of the 2008 application. Also included in the packet is the Paved Road Policy that was drafted and signed by the County Commissioners in 2009. Road S is not a high priority road and Road and Bridge has not recommended the paving of it and increasing the number of driveways is also approved (e-mail attached). Pam Cherry said Road and Bridge were concerned with one of the proposed accesses near Co Rd S.

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

Buffering from adjacent agricultural uses is not necessary as the use is compatible with other agricultural uses in the area. Increasing the number of driveways and removing the paving requirement will not cause incompatibility with adjacent agricultural uses.

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

Amending the 2008 resolution to increase the number of driveways and eliminate the paving requirement will not increase risk to the public health, safety or welfare.

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

The proposed amendment to a special use will not result in a non-conforming parcel.

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

The public need for the project demonstrated with the original application for the special use permit has not changed and the project is not be substantially changed by the requested amendments to increase the number of driveways to nine or eliminate the requirement for paving to the conditions. The applicant has paid all fees and costs.

For any special use requiring a supply of water that the applicant has demonstrated a source of water which is adequate for the proposed use in terms of quantity and reliability and in the case of human consumption, quantity, quality, and reliability.

The requested amendments do not affect the current supply of water used by the special use on the property. Therefore, there is no evidence that additional water is needed as a result of the requested amendments.

Staff Comments

Please see attached emails from Public Works Director, Bruce Bass regarding paving of County Road S and number of driveways to be permitted.

Recommendation

Pam Cherry's recommendation to the Planning Commission is to recommend approval of this application to the Board of County Commissioners as follows:

1. Condition 3.a.iv shall be amended to read:

Driveways from the facility onto County Road S shall be limited to nine County approved driveways between County Road 2 and Highway 144. The remainder of the facility fronting County Road S shall be fenced off to reduce direct ingress and egress onto County Road S.

2. Condition 3.a.vi shall be deleted in its entirety.

Tim Naylor, AgPro, said Empire Dairy is asking to amend Condition 3.a.iv and delete Condition 3.a.vi entirely noting this is the only thing open for this Amendment to the Special Use. Regarding 3.a.vi, he has provided a map showing the facility and road system surrounding Empire Dairy. County Road 1 aka Hwy 144 (CDOT maintained highway). To require Empire Dairy to pave Co Rd S would force or allow traffic and direct traffic onto a county road that would be maintained by Morgan County. It's in the best interest of Morgan County to keep the traffic on the Hwy that is maintained by CDOT and has a higher density use. It is better to not direct traffic to Hwy 34 and S as it has minimal traffic control. Access has been there since 1989; there are 12 accesses now and they will be reducing down to 9. If Co Rd S is paved, people will probably use it at a higher rate of speed which would create safety issues. Road and Bridge is in agreement with proposed points with one concern.

Robert James, Attorney for Empire Dairy agrees with Pam Cherry's analysis in her File Summary. In the March 11, 2009 letter from Barbara Gorrell, previous Planning Administrator, confirmed the understanding of all parties at the time the Special Use went into effect, the paving requirement must be done contemporaneously with the expansion proposal that the dairy was putting on hold. The letter stated "It is the County's understanding that your dairy expansion may be delayed for a few years depending on the market demand. The County has been asked to allow you to delay the required road improvements on Co Rd S." "The Resolution does state that you must provide the County with your plans for financing the project no later than May 1, 2009. As you know your permit is vested for five years from the date of approval."

Mr. James said the financing statement provided to the County in 2009 specifically stated that the source of financing and paving of the road would come from a grant that Empire Dairy would only be eligible for if they added 50 employees, which they never did. The vesting for 5 years has expired, so at this point and time the dairy cannot expand without getting further approval.

In addition the other letter from the County dated September 10, 2009 was addressed to a neighbor, Darin and Rena Baessler – a complaint by them of violations of Empire's Special Use permit. Mr. James read the letter – "The Morgan County Board of Commissioners has reviewed and considered your terms regarding the expansion of Empire Dairy. It is concluded by information received by the Morgan County Assessor the dairy has not expanded; further Morgan County Board of Commissioners considers Empire Dairy in full and complete compliance with their permit as well as Morgan County Zoning Regulations."

Accesses: Mr. James said the load-out shoot access can work out so as to not impede traffic.

Joe Ewertz said the only issues we are looking at tonight are the paving of road S and the number of accesses.

Joe Ewertz – Told Norm Dinis they do a great job on keeping the dairy facility clean. It is a real asset and you have given to the community a lot. Nathan Troutd agreed with Joe.

Joe Ewertz mentioned some of the other dairies that upgraded roads. He asked Dinis why after 10 years you do not want to pave the road.

Norm Dinis said the difference between other facilities and his is that Empire did not expand their facility. Tim Naylor said there are other higher impact roads in Morgan County. County road S is not considered a high impact road. According to policy of Morgan County, they would not be required to be paved. The neighbors to the south, Baesslers, have a pivot south of Co Rd S. Empire Dairy mainly uses Co Rd S. Norm Dinis said there is fence in place on a portion of Rd S.

PUBLIC COMMENT

Those in favor – none

Those in opposition:

Rena Baessler, Wiggins, Colorado, owns property just south of Co Rd S and south of Empire Dairy. She had a packet with pictures and exhibits to hand out to the Planning Commission but not enough for everyone. Joe Ewertz said this should be tabled. Discussion on handouts. Jeff Parker, Attorney, suggested that they see what Empire has to say.

TEN MINUTE RECESS CALLED - BACK IN SESSION 9:30 P.M.

Robert James, Attorney for Empire Dairy, said if these handouts from Baessler were not relevant to the permit, then they do not want to consider them at this hearing. After looking at documents, they had no objection and wanted to continue with hearing.

Rena Baessler – What does expansion mean? Is it an increase of animal units or increase of impacts? She claimed the Dairy increased in size and they had multiple building permits and impacts have increased. The Dairy should be held to their 1998 permit.

Access on Co Rd S is being used as a main artery in the daily operation of the dairy. The fence mentioned by Norm Dinis is made of 2 posts with bailing wire. Rena talked about different animal unit numbers referring back to Exhibits A and B of packets she handed out. (See attached)

Norm Dinis said it did not make sense to pave the road. The County did not accept their offer – it was not an official offer by the whole Board.

Rena Baessler said the road is unsafe, the Commissioners are not doing their job; she wants Empire to do what the County said to do. Why has the County not enforced on a permit they issued.

Monica Mika, representing the Baesslers, said the regulations and the Resolution are confusing; there are ambiguities and it's happened for 10 years. There are conditions in the existing permit that still have not been met; weekly traffic for one. Monica stated Section 2-430 regarding amending permits – not limited to two items. There is no valid information to go by. There is intensity of impacts – principal of equity – they should have looked at other grants out there.

Jeff Parker – Baesslers are focused on expansion. They need to look at criteria and code of Section 2-430 and look at Special use criteria. Need to apply this criteria to the applicant’s request.

Tim Naylor – there is no significant expansion. Milking parlor was built but employees have not increased by 50 which was required to determine eligibility for the grant.

(Tape II is needed to continue hearing at 10:15 pm – short pause)

Tim Naylor – there is an email from Road and Bridge stating they did not need to pave Co Rd S.

There was significant discussion about paving requirements at 7000 animal units. Dinis has said he has never gone over 7000 au. Baesslers disagreed stating he has gone over. Dinis said he has not expanded.

Monica Mika gave a time line of events which included animal units and improvements. Words “will” and “shall” are not defining when things will be done or what triggers these conditions. Conditions are not enforced. She referenced Commissioner comments in Exhibit F saying Commissioner Teague told them you need to pave the road.

Monica Mika – They need to mitigate impacts, exceeding animal units – information is not forth coming (Exhibit E & F). Please deny this request and ask the Board of County Commissioners to resolve this matter.

Nathan Troudt asked Baesslers when their house was built. No definite answer was given.

Joe Ewertz had a legal question to ask the attorney and asked for an executive session. **It was then moved by Dave Musgrave and seconded by Bob Elrick to enter into executive session for legal advice pursuant to C.R.S. 24-6-402(4)(b) related to the application. Motion carried 5-0.** (Time 10:40 pm.)

(10:54 pm – Hearing back in session)

It was moved by Bob Elrick and seconded by Dave Musgrave to recommend approval of the amended Special Use Permit application for Empire Dairy and send it on to the County Commissioners with the following stipulations:

- 1. If Empire Dairy goes over 7000 animal units, the applicant must pave Co Rd S.**
- 2. If Empire Dairy is below 7000 animal units, the applicant does not have to pave Co Rd S.**

Motion carried 4-1 with Nathan Troudt having the dissenting vote.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Jody Meyer, Planning Assistant