

# COMMISSIONERS PROCEEDINGS 1

## BOARD OF COUNTY COMMISSIONERS Minutes of Meeting July 9, 2019

The Board of Morgan County Commissioners met Tuesday, July 9, 2019 at 9:00 a.m. with Chairman James Zwetzig, Commissioner Mark Arndt and Commissioner Jon Becker in attendance. Also in attendance is Morgan County Attorney Jeff Parker. Chairman Zwetzig led the meeting in the Pledge of Allegiance.

### CITIZEN'S COMMENT

There was no citizen comment provided.

### ADOPTION OF THE AGENDA

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

### CONSENT AGENDA

Ratify the Board of County Commissioners approval of meeting minutes dated June 25, 2019  
Ratify the Board of County Commissioners approval of meeting minutes dated July 02, 2019  
Ratify the Board of County Commissioners approval of Contract 2019 CNT 098, Boulder Weekly, Marketing for Philip K. Dick Festival, Term of Contract June 10, 2019 until July 31, 2019  
Ratify Chairman Jim Zwetzig's signature on the Veterans Officer report for the month of June, 2019  
Ratify Chairman Jim Zwetzig's signature on the Western Cleanup Corp. Special Waste Application, signed July 3, 2019  
Ratify the Board of County Commissioners approval of Amendment to Morgan County Government Personnel Policy, Section H.- Inclement Weather/Emergency Closure of County Departments  
Ratify the Board of County Commissioners letter of support for Broadband Fund Application submitted by Viaero Wireless, dated July 1, 2019  
Ratify Chairman Jim Zwetzig's signature on Liquor License Renewal Application, Shoreline Investments Inc., signed July 5, 2019

Commissioner Becker made a motion to move item number 7 off of the consent agenda and have it voted on separately and recuse himself from that vote, with Commissioner Arndt seconding the motion. Motion passed 3-0.

Commissioner Arndt made a motion to ratify the Board of County Commissioners letter of support for Broadband Fund Application submitted by Viaero that was signed by Commissioner Arndt and Chairman Zwetzig, with Chairman Zwetzig seconding the motion. Motion passed 2-0.

### GENERAL BUSINESS AND ADMINISTRATIVE ITEMS

There was no general business or administrative items.

### UNFINISHED BUSINESS

#### Applicant: Morgan Strong Inc.

Action: To consider a modified proposed service plan for the creation of a new parks and recreation district, pursuant to Title 32 of the Colorado Revised Statute

1. Consideration of Approval – Resolution 2019 BCC 15-A, Approving the Modified Service Plan for Morgan County Park and Recreation District and Excluding Property from the District
2. Consideration of Approval – Resolution 2019 BCC 15-B, Disapproving the Modified Service Plan for Morgan County Park and Recreation District and Excluding Property from the District

Chairman Zwetzig asked the representatives from Morgan Strong to introduce themselves.

Alli Howe, Morgan Strong Representative, 120 Balsam Street, Fort Morgan and Rob Carruth, Morgan Strong Representative, 428 Sherman Street, Fort Morgan,

Chairman Zwetzig stated the board approved the service plan at a previous meeting with some conditions. Ms. Howe explained the conditions which were set by the Commissioners were, first to remove the power of eminent domain from the service plan, and second was to provide documentation of support from municipalities that currently have recreation to show how Morgan Strong and the municipalities are working together and that they will not be competing or duplicating any services.

Chairman Zwetzig stated that the Board does have a copy of the service plan and asked if Mr. Parker had anything to add at which time he stated it looks as if the requested revisions have been made and had nothing further to add.

Chairman Zwetzig explained the letters from the municipalities do show support and recognized that there is a need for recreation in Morgan County.

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Chairman Zwetzig explained that the board's action is to either approve the modified proposed service plan for creation pursuant to a resolution approving it as modified and excluding property from the district or approve the second resolution disapproving the modified plan.

Commissioner Becker asked before this goes to the ballot is there going to be IGA's with the municipalities or is that done after, with Ms. Howe stating they have been in conversations and they will have a draft with the municipalities, but they cannot have an IGA without the organization being made first.

Commissioner Becker stated that Morgan Strong has the support from the main municipalities, however what about Weldona and Hillrose and their support? Ms. Howe stated that they have met with them but they do not have a formal letter, however most of those citizens do drive to Brush or Fort Morgan now to use those recreation facilities. Ms. Howe stated that Log Lane Village is also included in these meetings and communications. Commissioner Becker stated those municipalities had the ability to voice their support or opposition and have not. Commissioner Becker explained that he appreciates Morgan Strong getting the letters of support and all their hard work, however he still has the issue with whether they have met the standards for the statue and is this too much for the community. Discussion continued in regards to the collaboration that will continue with the municipalities.

Commissioner Arndt made a motion to approve Resolution 2019 BCC 15 a resolution approving the Modified Service Plan for Morgan County Park and Recreation District and Excluding Property from the District, with Chairman Zwetzig seconding the motion. Chairman Zwetzig made a comment to Mr. Parker that the Board has the exclusion and it has been presented and where those are available for preview where at, with Mr. Parker explaining that they will be exhibit B to the resolution and that will be recorded with the resolution along with exhibit A which is the service plan. At this time the motion passed 2-1, with Commissioner Becker being the dissenting vote.

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

Commissioners reviewed the calendar dated July 5, 2019 through July 16, 2019 with no changes.

Commissioner Arndt gave a road report from Road and Bridge as to what they have worked on from July 1st through the July 5th.

Kara Morgan, Reporter for the Fort Morgan Times introduced Cora Rhode who will be interning with the Fort Morgan Times this summer.

Commissioner Arndt stated that everything is on track for the County Fair, with the fair starting on July 27<sup>th</sup> and the steak fry and concert being on August 7<sup>th</sup>.

## **PUBLIC HEARING**

Chairman Zwetzig called the hearing to order at 9:30 a.m. in the Assembly Room of the Morgan County Administration Building. Present were Chairman James Zwetzig, Commissioner Mark Arndt and Commissioner Jon Becker were present. Also present was Morgan County Planning and Zoning Planning Director/Floodplain Administrator Pam Cherry, Morgan County Attorney Jeff Parker and Magnum Feedyard LLC, owner and Tim Naylor, AGPROfessionals the applicant.

**Magnum Feedyard Co. LLC-** As Applicant and Landowner

**APPLICANT: Tim Naylor, AGPROfessionals**

**OWNER: Magnum Feedyard LLC, Co**

**Legal Description-** Parcels of land located in the W½ of Section 05, Township 2 North, Range 60 West of the 6<sup>th</sup> p.m., Morgan County, Colorado (adjacent to and east of Co Rd 1 from the existing feedlot) aka 11665, 11649 and 11344 Co Rd 1, Wiggins, CO 80654. This Amendment will consist of 143.56 acres for expanded footprint facility; existing footprint consists of approximately 145.34 acres.

Chairman Zwetzig asked Morgan County Planning and Zoning Planning Director/Floodplain Administrator Pam Cherry to present the file at which time Ms. Cherry read aloud the following information.

Ms. Cherry explained that this application is for an Amendment to a Special Use Permit and Vesting of Rights to allow for the expansion of an existing 145.34 acre Confined Animal Feeding Operation which was granted by Resolution 1998 BCC 16 and is included in your packets. There is an existing composting area of 21.33 acres that is not proposed to expand. The original permitted area is located in the E½ of Section 6, Township 2 North, Range 60 West of the 6<sup>th</sup> P.M., Morgan County, and addressed as 11665 County Road 1, Wiggins, Colorado.

Ms. Cherry stated that the owner is requesting an expansion of the feedyard footprint into the W½ of Sections 5 (feed lot) and 8 (compost area), Township 2 North, Range 60 West of the 6<sup>th</sup> P.M., Morgan County, Colorado. The expansion is to add an additional 122.23 acres to the feedlot footprint. The animal units that were previously approved under Special Use 1998 BCC 16 are 35,000 and will not be increased with this application. The property is zoned Agriculture Production.

Ms. Cherry explained that primarily, young cattle are kept on the feedlot. The animal equivalent for young cattle is .8; at the 35,000 animal units permitted 43,750 young cattle are allowed under the current permit. The number of animal units is not proposed to increase. Animal numbers will be modified to remain in compliance with regulations whenever necessary.

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Ms. Cherry stated that the new area will include concrete aprons and feed bunk areas, fenced corrals, alleys, hospital/doctoring area and a waste management system including manure storage area/composting area and a waste/stormwater pond system. The entrance to the feedlot will be from County Road 1. The setbacks from Confined Animal Feeding Operations are 1,320' to residential structures and are measured from the footprint of the operation.

At this time Ms. Cherry went over the Citizen comments that were received.

There were four property owners notified of this application, there is an e-mail from one of the property owners that was within the notification area. The concerns of this owner were related to dust control on Road M and use of County Road 1 (paved) in lieu of Road M, the planting of trees on the south side of Road M, radar enforcement on Road M, installation of bus stop warning signage, dust control, fly control, installation of "no Jake Brake" signage and impact on property values.

One additional property owner that is located approximately 2,500 feet from the proposed expansion footprint objects to the expansion due to conditions from the Resolution 98 BCC 16 that have not been met, "planting of trees adjacent to County Road M". The condition from the 98 resolution reads: "Tree breaks must be planted and maintained in accordance with ASCS (Agricultural Stabilization and Conservation Service) office recommendations on the north and east sides of the property. Such plantings shall take place before work on the livestock confinement facility expansion. Such plants shall be maintained in a live condition and shall be replaced as necessary."

Ms. Cherry stated the conditions will appear in the new resolution, if approved, will clarify previous conditions and expand upon the previous permit.

Ms. Cherry went over the comments received from Morgan County Road and Bridge department.

On May 30, 2019 Bruce Bass and John Goodman of Road and Bridge were in the office to discuss concerns of Allart email dated May 29, 2019. Road and Bridge provided these responses:

- 1.) As a condition of approval require Magnum to obtain contractor to apply dust reduction agent to County Road M.
- 2.) Jake brakes are necessary due to the hills in the area.
- 3.) Road and Bridge will check into the bus stop warning signs.

Update July 5, 2019 - Road and Bridge was able to find documentation on the bus stop signage, they should be able to replace it this week.

Ms. Cherry stated the Planning and Zoning department comments.

On and off site mitigation measures

- 1.) Tree breaks were required to be planted on the "north and east sides of the property". There were trees planted north and east sides of feedlot boundary.
- 2.) The application included a Preliminary Environmental System Design Plan for management of waste that includes the storage ponds, sediment basins, diversions, dewatering and land application calculations and rate. The plan satisfies the current CDPHE regulations and meets current industry standards.

Ms. Cherry explained the Criteria for 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:

At this time, Ms. Cherry explained the Analysis.

*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 as defined by the Morgan County Comprehensive Plan. Areas north and south of the Wiggins are home to several feeding operations. In this area Comprehensive Plan goals include:

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

The request to amend the 1998 special use permit will encourage the preservation and continuation of the industry.

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

The application is complete and presents a clear picture of locations of pens, composting area, existing pens and residential structures on the property.

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

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

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*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 Preliminary Environmental System Design and the Management Plan for Nuisance Control Plan that was approved as part of the 1998 application.

*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. There is a minimum of 1,320 feet from the footprint of the feeding area to the nearest residential structure.

*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 1998 resolution to increase the footprint of the feeding area and clarifying some previous requirements 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 is located on a conforming parcel.

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

The public need for the project was demonstrated with the original special use application. Animal units will remain at 35,000, the animal numbers may increase based on animal type and on market needs.

*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 well permits for the property are included in the file. All of which have been updated since 2015.

Ms. Cherry stated that on June 10, 2019, the day of the Planning Commission public hearing, a letter was received from the State Engineer related to Magnum's permitting of water wells. That letter was read into the record and she stated it was part of the board's packet. On October 22, 2018, the Colorado Ground Water Commission approved a request for change of location for a feed lot to include the W $\frac{1}{2}$  of Section 5, the SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$ , the S $\frac{1}{2}$  of the NE $\frac{1}{4}$ , and the SE $\frac{1}{4}$  of Section 6 and the NW $\frac{1}{4}$  of Section 8, Township 2 North, Range 60 West. Commercial well #2971-FP may continue to be commingled with permit nos. 11376-RFP, 11377-RFP and 11378-RFP for irrigation of 315.3 acres. Annual appropriation not to exceed 107 acre-feet per year except as defined by the Order. Morgan County does not regulate water wells and a condition of approval will be for the applicant to comply with all regulations of other agencies with jurisdiction over the operation.

Ms. Cherry explained that the Planning Commission considered this application at their meeting on June 10, 2019. There was a unanimous recommendation of approval subject to amending the recommended conditions. They requested that Condition #3, as requested by Road and Bridge, be removed.

At this time, Ms. Cherry recommended approval of the amendment to Resolution 1998 BCC 16 subject to:

1. Animal units are limited to 35,000.
2. Trees will be planted, at recommended separation distances (depending on species), on the north and east sides adjacent to the pens in phase 2, for dust and visual mitigation purposes.
3. Applicant shall obtain a contractor, at their own expense, to treat County Road M between the Morgan County line and Road 3 with appropriate dust mitigation materials at a minimum of once each year.
4. Applicant is required to follow all nuisance control measures set out in the Environmental System Design and the Management Plan for Nuisance Control. Enhanced measures may become necessary at some time in the future if there is unreasonable impact on surrounding properties. Enhanced measure would be required following written notice to the applicant and a hearing before the Board of County Commissioners if requested by the applicant.
5. The facility shall not commence operations until it has received approval from all federal and state agencies with jurisdiction over the operation and all required permits have been issued.
6. The wells serving the Property shall be operated in compliance with all applicable decrees, court orders, and substitute water supply plans.
7. This Use by Special Review permit shall supersede Resolution 98 BCC 16.

At this time, Chairman Zwetzig asked the applicant for comments with Tim Naylor, AGPROfessionals 3050 67<sup>th</sup> Avenue Greeley. At this time Mr. Naylor presented a power point to the board that was also included their packets.

At this time, Chairman Zwetzig opened the matter for public comment.

Mark D. Becker, 1639 N. 35<sup>th</sup> Court, Greeley, CO expressed his concerns in opposition of the application.

At this time, Chairman Zwetzig moved into discussion and decision.

Mr. Naylor responded to Mr. Becker's concerns and explained that this site makes for better conditions for the animals and the citizens of Morgan County.

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Commissioner Arndt asked if the condition about the tree breaks that were in the 1998 resolution were met, with Mr. Naylor showing on the map where trees were placed for the tree break. Mr. Naylor stated that the 1,320 feet from the residence should be an adequate buffer for the residents.

Commissioner Arndt stated as for the signage that is directing traffic down County Road M and explained that the County did have a counter on County Road M at the request of the State, however they do not feel that the counter was accurate and they want another count because the counter only showed 21 vehicles and they feel that counter was not correct. The State is waiting for another counter to be placed on County Road M for a more accurate count. Commissioner Arndt asked the applicant, since 1998, for the three residences that were on County Road M, what have they done as far as mag chloride on the road. Mr. Naylor stated they have not applied any mag chloride to the road, and as for the signage it is only saying that Magnum is this way, it is not directing them down County Road M and they have asked drivers to use County Road 1 to get to the facility. Discussion continued as to the dust control on County Road M.

Commissioner Becker asked the applicant what the route is they are asking the drivers to use because he explained he does not see an easy route to get to the facility, with Mr. Naylor stating they have asked the drivers to use the paved roads.

Steve Gable, Magnum Feedyard Owner, 11665 Morgan County Road 1, Wiggins, CO stated that when they were approved prior and in 1998 there was discussion as to the best entrance and exit of the facility and he does not have control over the trucks he can ask the trucks to use different routes, but he cannot make them. At the time, in 1998, there were 3 residences and now there are 5 residences on County Road M. There is a way for the trucks to go on the paved roads but they will pass 17 residences so is that better or is it better to go the dirt roads that it only affects 5 residences. There is a sign in the office that asks the truck drivers to stay off of County Road M, and there is a sign at the intersection of County Road M and County Road 3 that has an arrow that points to the facility. He explained that many years ago that was necessary because people were not aware of where it was located that has changed some today. Mr. Gable asked the where they would prefer the truck traffic on County Road M or have them on the paved road affecting 17 residences.

Commissioner Becker asked if there was an overflow of a pond from flooding or from rain and which pond it was. Tom Haren, AGPROfessionals 3050 67<sup>th</sup> Avenue Greeley, CO stated that in 2013 there was wide spread flooding all over the Front Range. There was a discharge along with other facilities in Morgan County. They went through the proper protocol and documenting that is required, the State came out and it was determined it met the requirement for a legal discharge beyond the 25 year, 24 hour storm. The discharge was mitigated as much as it could be, but it was found with that State that it was within the perimeters and the regulations.

Mr. Haren explained to the Board the new facility is across the road from the current feedlot and it has good southern exposure, they will be putting four percent grade on the area, it is in a natural bowl and the new lagoon and design if there is another storm like 2013 half of the new feedyard would flood before it ran out of the bowl. He stated they feel this is a better design for drainage which is better for cattle comfort, fly control and many other issues. Mr. Haren explained that the land use and zoning is predicated on intensity, the intensity of the use, the traffic, the dust, the off site impact and currently the permit allows for 35,000 animal units and the intensity of the trucks and traffic has already been approved and all they are asking for is to move to a better piece of ground. Mr. Haren stated that Mr. Gable cannot control the trucks and the traffic, the number of trucks coming in and going out for 35,000 animal units is already approved. They are only trying to make things better with this application.

Commissioner Becker asked if there are new water run off storage ponds, with Mr. Haren stating yes there will be two new storage ponds in addition to the existing ponds and they are in located in between where the new pens are located. Discussion continued as to what work it will take to make these news ponds and how the new area is better is for drainage.

Commissioner Becker asked for an explanation as to the trees and how they create issues. Mr. Haren explained that feedlots try to reduce habitat for vectors such as flies, mosquitos, birds and if trees were planted at the edge of the feedlot they would be placing habitat for vectors for the purpose of screening. These trees would also require watering and maintenance and it is a sand hill. He stated they would prefer to not place a habitat for birds next to the feedlot. If there is a need for screening he would rather put up a fence or just use the hill as the screening from seeing the facility. Commissioner Becker agrees with Mr. Hagen that the hill will guard the facility. There was discussion as to pictures from the presentation as to what the hill looks like from the road.

Chairman Zwetzig asked if the 1998 footprint is the existing permitted area and what happens to it is it, to be added on the new footprint, with Ms. Cherry explaining that is what the application was and yes it will be added onto the new footprint. Chairman Zwetzig asked if the pens and the existing footprint will all remain, with Mr. Naylor and Ms. Cherry stating yes that is correct. Chairman Zwetzig stated that the applicant explained that they are not going to change the animal units that are permitted, but it changes the actual animal units that are there. Mr. Naylor stated there are 20,000 head on the existing and they will be adding 8,000 more head, but they are still under the amount that is currently permitted they are just getting more space.

Chairman Zwetzig stated that the argument with the drainage is still there on the existing feedlot but it will be better on the new feedlot. With Mr. Haren stating they are making it better and they have more storage and can move water from the existing facility to the new lagoons if they need to by pumping.

Commissioner Zwetzig asked Ms. Cherry to point out the total of the new footprint if it is approved. Ms. Cherry along with Mr. Naylor showed the Board the existing and new footprints on the map. Chairman Zwetzig what bothers him with the new footprint is that County Road 1 is part of that footprint. Chairman Zwetzig asked how they are going to be able to maintain the County Road 1 for a public right of way, with Mr. Haren stating that with it

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being the same owner on both sides of the road, the road is a dead end road at Magnum, Magnum does do some maintenance on the road and they would be willing to look into abandoning County Road 1 to County Road M south. Discussion continued as to who all uses County Road 1 and County Road M.

Chairman Zwetzig asked the applicant what kind of screening they are suggesting with Mr. Haren stating a six foot semi solid fence much similar to a wind break, but explained they would have to be careful with the design. He stated if the Board is going to require some kind of screening they would rather it be a fence than trees. Chairman Zwetzig stated that some facilities use hay bales as a screening and Mr. Haren said if that is acceptable they are willing to look into that as well.

Chairman Zwetzig asked where the trucks clean out the trailers is it is onsite with Mr. Gable stating that they clean out in a facility Greeley. Chairman Zwetzig asked where the creek is that was mentioned in early discussion with Mr. Haren describing and showing the location of the stream on google maps. Mr. Haren explained that with the new facility and if storm like 2013 happens they will be able to pump the water to the new lagoons and that will help also they will also be able to land apply the water as well. There was discussion as to the capacity and material of the lagoons, the possible chance of discharge and the testing reporting that must be done and reported to the State.

Chairman Zwetzig asked Mr. Becker if the bus stop signs were up with him stating he is not sure. Ms. Cherry stated that Road and Bridge will be doing those this week.

Mr. Becker asked the applicant to explain the sub soil that is used for the containment pits with Mr. Haren & Mr. Naylor explaining the materials, requirements and the layout.

Chairman Zwetzig asked if drainage facilities are regulated and by whom with Ms. Cherry stating that is CDPHE. Mr. Haren stated that they have regulations they have to follow and the State comes out and makes sure they are in compliance. Mr. Naylor stated that Mr. Gable has also redone all of his water permits with the State as well.

Chairman Zwetzig stated that going into recommendations:

1. *Animal units are limited to 35,000.*- Chairman Zwetzig asked why this has to be listed with Mr. Parker explaining that this will supersede the prior permit so it is there to be sure it is clear.
2. *Trees will be planted, at recommended separation distances (depending on species), on the north and east sides adjacent to the pens in phase 2, for dust and visual mitigation purposes.* - Chairman Zwetzig stated that Planning and Zoning has listed this recommendation and asked which is a bigger nuisance the dust or the mitigation, Chairman Zwetzig explained his question the trees are needed for dust and visual mitigation is dust going to really be an issue. Ms. Cherry stating that it seems that it is not going to be and that a tree line would not help, but the reason it is listed it was in the previous resolution and she did not want to take anything out without the Board looking at it first. Chairman Zwetzig there can be a decision made on that and a visual mitigation is minimal and can be done.
3. *Applicant shall obtain a contractor, at their own expense, to treat County Road M between the Morgan County line and Road 3 with appropriate dust mitigation materials at a minimum of once each year.*- Chairman Zwetzig asked who will police this with Ms. Cherry stating that Road and Bridge Department.
4. *Applicant is required to follow all nuisance control measures set out in the Environmental System Design and the Management Plan for Nuisance Control. Enhanced measures may become necessary at some time in the future if there is unreasonable impact on surrounding properties. Enhanced measure would be required following written notice to the applicant and a hearing before the Board of County Commissioners if requested by the applicant.* - Chairman Zwetzig does this not need to be done now, with Mr. Parker stating that is open ended, Chairman Zwetzig would like to see all those figured out at the beginning.
5. *The facility shall not commence operations until it has received approval from all federal and state agencies with jurisdiction over the operation and all required permits have been issued.*
6. *The wells serving the Property shall be operated in compliance with all applicable decrees, court orders, and substitute water supply plans.* - Chairman Zwetzig stated that #5 and #6 are always looked at as why are they listed they are part of life to follow State rules.
7. *This Use by Special Review permit shall supersede Resolution 98 BCC 16.* - Chairman Zwetzig is okay with this recommendation.

Commissioner Arndt is not ready at this time to make an approval without addressing the road issue with something solid with what is required. He needs Road and Bridge to help figure out what is the best for the road and the residences on Morgan County Road M. Mr. Haren agrees with Commissioner Arndt that it needs to be listed as to what is required and he would like to see there be a decision today possible with the Board using the State regulations. Mr. Naylor stated that he agrees that there will be impact to the road however it will be minimal.

Commissioner Becker stated there is not an increase of animals units, no matter if this is approved or not, they can go to 35,000 animal units and that amount of traffic is going to increase, this is just an expansion to stay within the same amount which has already been approved. He understands Commissioner Arndt's need to look at traffic count and that county be done by resolution if needed. However, he does not like trees being planted on a hill that will

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already guard the facility. Commissioner Becker explained that yes, maybe the road count of 21 is not correct, but they do owe the homeowners the respect for an actual count. He stated he knows that the applicant does not control how the trucks get to his facility, but they can ask them to use a preferred route.

Commissioner Becker asked Mr. Parker if the Board can consider vacating the road inside of the area, with Mr. Parker explaining yes they can but that would be a separate application process.

Commissioner Arndt stated the biggest concern is the roads. Also it is saying they are not increasing animal units but in his mind there will be an increase of animal units not above the permitted number the historic but above the use at this time. With Mr. Haren stating that is correct they are not at capacity with the old permit, and the intensity has already been approved once.

Chairman Zwetzig asked if the floodplain map that was provided by the applicant and if that was verified. Ms. Cherry brought up the floodplain map up for the Board to review. Further discussion ensued as to the flood plain and the footprint of the application. Mr. Haren explained to the Board the rules that they have to follow per the State as to where the lagoons can and cannot be placed and also explained the stream that is on the property.

Commissioner Arndt mentioned that it does not have to be Morgan County that does the traffic study and that it can be traffic engineers and that may be faster as they can mitigate and figure what would be best for the road. In 1998 it was thought it was mostly silage trucks and now it is hay trucks, he would like to have a certified traffic engineer supply the number and show what the impact on the road would be.

Commissioner Arndt motioned that one recommendation would be to have a traffic engineer study of County Road M providing the traffic count and impact to County Road M due to the operation and possible increase in traffic. There was discussion as to how they would like to proceed. Mr. Parker asked if this is a motion to continue to a date certain with Commissioner Arndt stating yes a date certain but he is not sure if that needs to be in a separate motion. Mr. Parker explained that if it's a motion to continue to a date certain and it is voted on without a date certain it would require the process of making notice of the hearing. Mr. Parker made a suggestion that if the applicant willing to consider that study then makes a motion and the proper date for the hearing to be continued.

Mr. Haren stated they do have a traffic engineer in house and they understand they would probably have to use a different engineer, but to properly do that they would need for counters to be on County Road 1, the driveways of the landowner's, to isolate the Magnum traffic from the background traffic for a proper evaluation. Mr. Haren also stated that at the current time there is increase activity at Magnum going on and will continue until September and the study from now until then would not be accurate due to the elevated count it would be normal activity. Mr. Haren does not want to push this off until September and he is willing to speak with Mr. Gable and see if there is something that they can come up with.

Commissioner Becker understands that traffic counts are difficult, but it would have to be put at the intersection, he has no problem with it being done in house he asked what the time frame is for a study. Mr. Haren stated in house it would take about 60 to 90 days. Chairman Zwetzig asked what the elevated traffic is due to with Mr. Haren explaining there is construction at Magnum. Chairman Zwetzig made comment that they are building without the permit, with Mr. Haren stating yes they are and they have spoken with Morgan County Planning and Zoning where they provided a site plan, and after contracting and after construction began it was determined that public notice for the 1998 hearing did not include the west half of section 5. After speaking with Planning and Zoning it was determined that this piece is not covered, that they are within the animal units, within the intensity and within the permit except there was not notice of the west half of section 5 in the 1998 permit. Chairman Zwetzig has concerns with that, with Mr. Parker stating that typically they cannot start a project until the permit is granted. Mr. Haren stated they knew that there could be risk involved with that if the permit is not approved. Chairman Zwetzig asked if it is primarily dirt work, Mr. Haren stated it is dirt work and recently the bunks are getting poured. Mr. Haren explained that prior to the project getting started they did speak with Planning and Zoning and it was later down the road that that it was determined that the old permit did not include the newest west half of section 5, that is when they submitted the application within a few weeks. Mr. Gable stated they were concerned that is why they worked with Planning and Zoning and looked at solutions, but the big picture is intensity has been approved, there is some issues to be worked on, but there is no dispute that Magnum could have expanded in the old footprint but this is a much better plan for many reasons.

Mr. Haren stated that he just had a conversation with Mr. Becker regarding dust mitigation and if it would be possible to lower the speed limit in front of the residences and he would consider that. Chairman Zwetzig said they can post signs but will people follow it. Commissioner Arndt stated that with not being a heavy residential neighborhood it will take CDOT coming out and doing traffic study because the County does not have the ability to change speed limits to whatever they want as they have to follow state law and to lower a speed limit there needs to be a traffic study.

Chairman Zwetzig stated the sign in the office asking the truck drivers to use County Road 1 is appropriate and believes there is a need for this type of facility. Commissioner Becker stated that he feels they do have the ability to change the speed limit without any study and the Board can make it more restrictive. Mr. Haren asked if there possibly could be a strategy of things done to deal with the dust. Mr. Haren stated they could take a short recess and discuss those ideas. Chairman Zwetzig stated if there can be specifics into that than it is worth taking a break. Mr. Parker stated that he is willing to work with more specific conditions during a break and come back and present those conditions to the Board.

At this time, the Board took a recess to have the audit meeting and for Mr. Parker, Ms. Cherry, the applicant and landowners to discuss specific conditions for County Road M at 11:36 a.m.

# 8 COMMISSIONERS PROCEEDINGS

At this time, the Board reconvened from the recess from the audit meeting and the discussion at 12:14 p.m.

Mr. Parker explained there was discussion with himself, Ms. Cherry, the applicant and Mr. Becker and one of the concerns is the traffic study may not help with what the board is looking for. They did come up with three conditions that were agreed on. The first one is the Owner will remove the sign on County Road 3 that is directing traffic to the Magnum property down County Road M. Second condition, the Owner shall provide haulers serving the property with designated haul route as approved by the County which may be revived from time to time. The third condition very similar to what is already suggested is upon notice by County Road and Bridge the Owner shall treat County Road M between the Morgan County Road Line and County Road 3 with the appropriate dust mitigation material at least one time a year. Chairman Zwetzig stated he would like to see added is to what would be used to treat the road is approved by County Road and Bridge as to what they require. Discussion continued as to how many times and what to be used on County Road M to mitigate the dust.

Commissioner Arndt stated he feels that something is being left open as far as saying what Road and Bridge recommends. He feels that in 1998 the County made a promise to those three residences on County Road M and to say the entire road does not work for him. Commissioner Arndt asked Mr. Gable if they would be able to do some kind of dust mitigation only in front of those 3 residences, with Mr. Gable explaining the distance between those residences.

Chairman Zwetzig agrees that a traffic study is not needed due to nothing is ever done with them, these are options that are acceptable.

Chairman Zwetzig went over the conditions that were presented by Mr. Parker. He stated that the first condition presented is okay, the third one they will just get lost as it was mentioned, and the one with the designated haul route he asked what route would that be right now. Mr. Parker explained that right now it would be the paved route and not use County Road M. Chairman Zwetzig asked if they have to notify all those residences on that route. Commissioner Becker stated that he would have worded it as one, remove the sign, give haulers a preferred route to be reviewed by County on a bi-annual basis rather than time to time. Commissioner Becker agrees with Chairman Zwetzig that it could be creating as many issues as County Road M if they use the paved route.

There was discussion as to the wording for condition number three, the dust mitigation, and how often it should be applied and what should be applied to the road.

Chairman Zwetzig asked the landowner what their thoughts are with Mr. Becker stating that to save the County money for there to be a speed limit sign put up to lower the speed to 35 miles an hour. Mr. Gable stated he would pay for the speed limit signs. Chairman Zwetzig wanted it to be clear that changing the speed may not help the issue with Mr. Becker stating he understands. Commissioner Arndt stated that he is okay with slowing down the traffic and taking out the unknowns of the treatments the 250 feet spotting on the road is a nightmare and a waste of money. Chairman Zwetzig stated there should still be a prevision route supplied to drivers and if they use they do if they do not at least he has tried to be a good neighbor. Chairman Zwetzig stated that removing the sign should also be a condition.

Chairman Zwetzig said as to the speed limit signs it is the boards commitment to do and Mr. Gable's commitment to pay for them. Chairman Zwetzig stated that is not part of the permit with Mr. Parker stating it is not but it can be in the resolution. Commissioner Arndt stated that Mr. Gable should be notified as to the cost of the sign and man hour time and that the County accepts to be paid for it and not to exceed \$500.00.

Mr. Parker stated that he has two conditions; first condition Owner will remove the sign on County Road 3 that is directing traffic to the property via County Road M, second condition being the owner shall provide haulers serving the property with a prefer route as approved by the County on a bi-annual basis. Mr. Naylor asked to clarify what bi-annual was with Mr. Parker stating that is every two years. Chairman Zwetzig asked to add the speed limit signs as well. Mr. Parker stated if the speed limit is changed by the County and new signs are erected, the owner shall pay the County's cost not to exceed \$500.00. Mr. Gable asked that if in a few years the speed changes back up, would he have have to pay those too with the Board stating no.

Commissioner Arndt stated that number two still needs to be addressed as to the trees. Commissioner Becker does not like number two. Chairman Zwetzig stated that there was a commitment to fencing. Mr. Haren stated he feels that neither is necessary because of the distance and the site but if there is a choice between trees and fence they would rather have a fence. Mr. Haren does like the hay bale idea as well. Commissioner Becker stated that it will not be there all the time but he likes it better than trees or a fence. Commissioner Becker stated that the hilltop is the best natural feature. Commissioner Arndt is in favor of striking number two as it does not serve any purpose to anyone with Commissioner Becker agreeing.

Commissioner Becker explained that number two would be stricken, number three would be stricken because there is a different provision, he asked about number four. With Chairman Zwetzig stating number four is a given along with number one, five, six and seven. Commissioner Becker stated he does not like number six. Chairman Zwetzig explained that they have to have that along with they have to have number seven.

Commissioner Becker stated you have to keep number one because this replaces the 1998, you keep seven you strike two, three, four, five and six and use the ones that we just discussed. Chairman Zwetzig asked Mr. Parker if those had to be left in, with Mr. Parker explaining it doesn't have to be listed out separately, but it could say the permit is conditioned upon compliance with all applicable laws rules and regulations. Chairman Zwetzig they will figure out who can lower the speed and if the County cannot do it then it cannot be done.



# COMMISSIONERS PROCEEDINGS 9

Mr. Parker went over what the resolution will be the animal units are limited to 35,000, Owner will remove the sign on County Road 3 that is directing traffic to the property via County Road M. Owner shall provide haulers serving the property with a preferred route as approved by the County on a bi-annual basis, if the speed limit is changed on County Road M by the County and the County erects new signs the Owner shall pay the County's cost for such sign up to a maximum of \$500.00, the owner shall apply to all applicable State and Federal laws rules and regulations and this Use by Special Review permit shall supersede Resolution 98 BCC 16.

A motion was made by Commissioner Arndt to approve the application with the suggested language for the speed limit noting that numbers two, three, four were struck and number six was reworded to be that the owner shall follow all applicable State and Federal laws, rules and regulations with Commissioner Becker seconding the motion. Chairman Zwetzig stated that a formal resolution will be reviewed at a later meeting. At this time motion carried 3-0.

Being no further business the meeting was then adjourned at 12:42 p.m.

Respectfully Submitted,

Randee Aleman  
Deputy Clerk to the Board

(Minutes ratified July 30, 2019)

## THE BOARD OF COUNTY COMMISSIONERS MORGAN COUNTY, COLORADO

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

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

\_\_\_\_\_  
s/Jon J. Becker  
Jon J. Becker, Commissioner

(SEAL)

ATTEST:

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