

COMMISSIONERS PROCEEDINGS 1

BOARD OF COUNTY COMMISSIONERS Minutes of Meeting May 19, 2015

The Board of Morgan County Commissioners met on Tuesday, May 19, 2015 at 9:01 a.m. with Chairman Brian McCracken, Commissioner Laura Teague and Commissioner James Zwetzig in attendance. Chairman Brian McCracken called the meeting to order, and asked Under Sheriff Dave Martin to lead the meeting in the Pledge of Allegiance to the Flag.

CONSENT AGENDA

- Ratify the Board of County Commissioners approval of Meeting Minutes dated May 12, 2015
- Ratify the Board of County Commissioners approval of Planning and Zoning Public Hearing Minutes dated May 5, 2015
- Ratify the Board of County Commissioners approval of Contract 2015 CNT 62, Alida Fischer, LCSW, Services – DHS, Term of Contract March 1, 2015 – May 31, 2016
- Ratify the Board of County Commissioners approval of Contract 2015 CNT 63, Therapeutic by Nature, Inc, Jeffrey Kuba, Services – DHS, Term of Contract March 1, 2015 until complete scope.
- Ratify the Board of County Commissioners approval of Contract 2015 CNT 64, Quad County Plumbing and Heating – Hot Water Heater Repairs, May 4, 2015 until completed
- Ratify Laura Teague’s signature on the Town of Log Lane spring cleanup, one free roll off disposal delivery to Morgan County Landfill, letter dated May 13, 2015
- Ratify the Board of County Commissioners approval of transfer of debtors to the State Collections Agency, Ambulance Clients
- Ratify Chairman Brian McCracken’s signature on the License and Exchange Agreement for Geographic Data with Utility Notification Center of Colorado, dated May 15, 2015

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

GENERAL BUSINESS AND ADMINISTRATIVE ITEMS

Consideration of Approval – BID AWARD – 2015-0514 Small Projects Paving Bid

Morgan County Public Works Director Bruce Bass presented to the Board 2015-0514 Small Projects Paving Bid. Mr. Bass stated this bid process is for several smaller paving projects, naming the four projects that were included. Mr. Bass indicated that he received two bids, one from Aggregate Industries in the amount of \$61,500.00 and the other from APEX Paving Solutions in the amount of \$47,240.00. Commissioner Teague asked about the scope of services as to when these projects are scheduled to be completed with Mr. Bass indicating that June 12, 2015 was the completion date that was proposed in the bid packet. He stated given the recent weather events, this date could change in order to ensure County satisfaction of the completed project. Commissioner Zwetzig asked Mr. Bass if these projects were part of the 2014 work that had been “put off” because they were out of budget or if this was truly 2015 work. Mr. Bass answered that this was “new 2015” work not bid for 2014. Small projects whose need was based on winter bridge projects or spring culvert work recently completed.

Commissioner Teague made a motion to award 2015-0514 Small Paving Projects Paving Bid to APEX Paving Solutions in the amount of \$47,240.00 as recommended by Public Works Director Bruce Bass and authorized the Administrative Assistant to prepare a contract to be processed and executed as necessary. Commissioner Zwetzig seconded the motion and motion carried 3-0. Commissioner Zwetzig asked that the minutes also reflect that Elwyn Forbes, a representative from APEX Paving Solutions was present for today’s bid award.

COUNTY OFFICIAL AND DEPARTMENT HEAD REPORTS

Commissioners reviewed the calendar dated May 15, 2015 through May 26, 2015 with no changes.

UNFINISHED BUSINESS

Morgan County Clerk and Recorder Susan Bailey noted that a public hearing will be held Tuesday, June 2, 2015 at 9:00 a.m. for a Special Events License requested by James Graff dba The School for the Performing Arts. Ms. Bailey stated that this matter has been published and posted as required.

CITIZEN’S COMMENT PERIOD

There were no citizen comments.

At this time the Board recessed at 9:10 a.m.

Respectfully Submitted,
Susan L. Bailey
Clerk to the Board

(Minutes ratified May 26, 2015)

2 COMMISSIONERS PROCEEDINGS

PUBLIC HEARING

***Matter Tabled from May 5, 2015**

Application for a Special Use Permit to place a livestock confinement facility (dairy) for 16,596 total animal units being 19,135 total head of dairy livestock located in the W1/2 and a portion of the E1/2 of Section 6, Township 4 North, Range 56 West of the 6th p.m. Morgan County, Colorado, located south of Co Rd Y and east of Co Rd 24, Fort Morgan, Colorado 80701.

The Morgan County Board of Commissioners met at their regular meeting on Tuesday, May 19, 2015 at 9:35 A.M. in the Assembly Room of the Morgan County Administration Building. Present were Commissioners Brian McCracken, Laura Teague and James P. Zwetzig. Also present were John Crosthwait, Planning Administrator; Jody Meyer, Planning Assistant.

The hearing was called to order by Chairman Commissioner McCracken who stated this application is now re-convened from the prior hearing on May 5, 2015.

TABLED BUSINESS:

APPLICANT: AGPROfessionals (TIM NAYLOR)

LANDOWNER: WILDCAT DAIRY, LLC

Application for a Use by Special Review located in the W1/2 and a portion of the E1/2 of Section 6, Township 4 North, Range 56 West of the 6th P.M., Morgan County, Colorado.

Tim Naylor from AGPROfessionals and Ed and Kathy Wilgenburg and son, Jacob Wilgenburg of Wildcat Dairy, LLC were present to represent this application.

John Crosthwait noted this application was tabled at the May 5, 2015 hearing and was to be reconvened on May 19, 2015 at 9:30 a.m. concerning two issues: road construction and runoff conditions and the Riverside Agreement.

John also said the County Attorney could be reached by phone if the need arose. If the Board of County Commissioners decides to continue this hearing, it cannot exceed 40 days, which is State Statute. If this hearing is concluded today, the Commissioners need to make a decision within 15 days. The Board of Commissioners decided to receive public comment only on the two items stated above.

Mr. Crosthwait did talk with Don Chapman of Riverside Irrigation District prior to this hearing and was told they had received the engineering data.

Tim Naylor – It is his understanding in discussion with Riverside that they have provided the information necessary for their review and he thinks they are in agreement with what Riverside requested. This information has been given to Riverside's Attorney. It is understood that the funding of the 2015 CBDG grant is not guaranteed and applicant would request we look at funding for Phase II for 2016 and use that funding for any offsite improvements.

PUBLIC COMMENTS (specific to Riverside and road construction/runoff issues)

Commissioner Zwetzig wanted each issue to be considered one at a time and Commissioner Teague wanted to consider the conditions separately one at a time from the permit in a motion.

RIVERSIDE IRRIGATION DISCUSSION:

Don Chapman, Superintendent for Riverside Irrigation District, Fort Morgan, Colorado – Riverside has received the inflow and outflow data from Hertnecky engineering for the storm event and discharges. They are working on a draft agreement to encompass the ditch location and other issues involving the dairy, but they do not have a draft to provide to the dairy at this time; maybe in a couple of weeks.

Commissioner Zwetzig requested clarification on the design Riverside is requesting. He has seen a 25/24 storm event and assumed it was a 3.4" event. So a 7" isn't a 25/24 event? They are two different things? The minutes reflected differently.

Tim Naylor – A 25/24 storm event is a 25 year event in a 24 hour time frame or 3.4" in this area. A 100 year storm event is 4.2". This facility has the capacity of holding a 7" storm event in a 24 hour period. Riverside has been given this engineering information so they can review the calculations. This is designed beyond catastrophic.

Don Chapman – The Riverside Board has decided a 7" storm should be designed and incorporated because the ponds and the facility are right above the ditch and they are providing those numbers to Riverside and they are reviewing.

Jim Zwetzig – From what he understands from Mr. Naylor's testimony, the criteria used for the runoff is greater than normally required and would be better than what is there now. Mr. Naylor agreed.

Commissioner Zwetzig asked Don Chapman, if the Board of County Commissioners approve this permit, but no agreement is reached with the applicant, what would the Riverside do? Zwetzig said the Commissioners are not the enforcers of this agreement. Mr. Chapman said he does not anticipate any problems coming to an agreement with Mr. Wilgenburg. Commissioner Teague thought there should be some trigger point, maybe when a building permit is submitted. She agreed enforcement is very difficult.

COMMISSIONERS PROCEEDINGS 3

There was discussion regarding Riverside Irrigation requirements. (more detail on recording). Commissioner Zwetzig said the County should not become the enforcer on these conditions.

It is noted there were no downstream landowners that spoke at the hearing. Must be okay with what applicant wants to do.

ROAD ISSUES:

Kari Linker-Nation – met with John Goodman and Bruce Bass from Road and Bridge to get some figures on paving Co Rd 24 for two miles and repairing the bridge on Rd 24 which was \$1.2 million. Kari Linker-Nation went into detail on the process of applying for the CDBG grant and how the grant would come into play over the next two years, depending on deadline dates and phase dates of the dairy facility. The breakdown of paving and bridge was \$957,000 for asphalt; \$30,000 for the bridge; and \$214,000 for road prep.

Commissioner McCracken thought it was the County's obligation to take care of repairing the bridge. John Goodman said the repair on the bridge would have to be done sometime in the winter when the ditch was dry. There was discussion on what would trigger these improvements to be started. Commissioner Zwetzig read the Special Use Criteria from the Regulations and said they needed to decide if this was an impact related to the dairy. Mr. Wilgenburg did not want to pay for road improvements.

Curt Poitz, Co Rd W – Agreed the road needs to be paved, but that he could wait for a while; but did note there was a lot of traffic on Rd 24.

Chris Kraft, Co Rd 21, Badger Creek Dairy – He told about working with the County to get his road paved for his dairy. He said tax money was not coming back into the County and the Commissioners need to get busy on getting funds back into the County.

Commissioner Teague said it looks like Co Rd 24 needs paved now from what she is hearing from the neighbors.

Tim Naylor said the dairy can move forward on the old Resolution which M&J Dairy applied for. There was more discussion on the CDBG grant, the applicant contribution for that etc. Mr. Wilgenburg said he would pay the amount of money for road improvements as agreed to in the first Resolution just to get this application moving.

PUBLIC COMMENTS NOW CLOSED.

Commissioner Teague – should get grant and the County should participate in paving of the road. Discussion of grant process and timelines for dairy phases was had. The amount agreed to in the M&J Resolution for road improvements was \$159,634.

Riverside Discussion – Commissioner Zwetzig said the County is not part of enforcement on Riverside issues. Don Chapman thought an agreement was getting close.

John Crosthwait explained procedure on Resolution and getting it ratified by the County.

It was moved by Commissioner Teague and seconded by Commissioner Zwetzig to approve RESOLUTION 2015BCC11, a resolution granting an Application for a Special Use Permit to place a livestock confinement facility (dairy) for 16,596 total animal units being 19,135 total head of dairy livestock located in the W1/2 and a portion of the E1/2 of Section 6, Township 4 North, Range 56 West of the 6th p.m. Morgan County, Colorado, located south of Co Rd Y and east of Co Rd 24, Fort Morgan, Colorado, with the following conditions:

- 1. Feedlot (Dairy) facility is to be built to the design criteria of a 7" 24/25 inch storm and following an agreement with Riverside Irrigation District regarding any potential movement of the ditch.**
- 2. Applicant and Morgan County will work toward the pavement of the road (Co Rd 24 from Co Rd W to Co Rd Y) by the end of 2016 by utilizing funds obligated by the applicant in the amount of \$159,634.00 and a partnership to apply for the CDBG funding to complete the paving of the road by the end of 2016.**

Discussion: Commissioner Zwetzig asked for clarification on both conditions:

Commissioner Zwetzig - The FIRST CONDITION was to require the facility to be built to the design for a 7"; Commissioner Zwetzig asked if that was the standard that was set by the applicant that was sent to Riverside - that would be the minimum design? Commissioner Teague cautioned that the County does not want to make this a precedent setting design – it is a design agreed upon between the two entities (applicant and Riverside). Zwetzig said he heard in public comment that the applicant agreed to use the 7" design standard as requested by Riverside. We are not setting a precedent that all dairies have to be built for a 7" storm.

Commissioner Teague amended her motion to state if Phase II falls within the 2017 budget year, then we have the opportunity to move the improvement of the road to match the Phase II and the opportunity of the CDBG funds. Commissioner Zwetzig seconded the amendment.

4 COMMISSIONERS PROCEEDINGS

More discussion: Zwetzig going back to Riverside issue – it was mentioned in the first condition about the ditch realignment agreement and that is not part of our consideration of the permit. We don't need to be involved in that agreement. It is between Riverside and applicant.

It was moved by Commissioner Teague to take out the statement in her first condition (~~and following an agreement with Riverside Irrigation District regarding any potential movement of the ditch~~) and Commissioner Zwetzig seconded that motion.

Commissioner Zwetzig – It is his understanding of this motion that the County is requiring the dairy to be built to a minimum design that applicant provided to Riverside Irrigation and that if it less than that, then the permit is not in effect. (This is the first condition) If Riverside Irrigation doesn't agree to that, the County's approved it, then that is the way they are going to build their dairy.

Commissioner Zwetzig - SECOND CONDITION Clarification: The Applicant agrees to provide \$159,634.00 in the event the road is paved upon demand of the County (would be paid right away) OR IN ADDITION Applicant agrees to go through whatever process is necessary to apply for the CDBG grant.

Other discussion:

Low Drop sprinklers and the ability to use the end guns in times of emergency – Commissioner Teague had concerns about constituents who can't differentiate between whether it is irrigation water and effluent coming out of the end guns. It would be difficult for the County to police. It is necessary for CAFO's to be able to use end guns to dewater and for irrigation purposes. How can we enforce that? Commissioner McCracken said that is part of our land use regulations and is not significant to this application. Commissioner Zwetzig said the applicant had agreed not to use the end gun for effluent and it could be part of the condition. Ed Wilgenburg said he would like to be able to use the end guns to run effluent in times of emergency but only to use away from houses.

John Crosthwait reviewed some items in his draft resolution. Tim Naylor requested that applicant be able to review the Resolution before signing. Commissioners agreed to have parties read the Resolution prior to approving.

Motion carried 3-0, becoming Resolution 2015BCC11.

There being no further business, the meeting was adjourned 11:33 a.m.

Respectfully submitted,

Jody Meyer, Planning Assistant

(Public Hearing Minutes ratified May 26, 2015)

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

s/ Brian D. McCracken
Brian K. McCracken, Chairman

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

s/ James P. Zwetzig
James P. Zwetzig, Commissioner

(SEAL)

ATTEST:

s/ Susan L. Bailey
Susan L. Bailey, Clerk to the Board