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BOARD OF COUNTY COMMISSIONERS Minutes of Meeting May 23, 2017

The Board of Morgan County Commissioners met on Tuesday, May 23, 2017 at 9:01 a.m. with Chairman James Zwetzig, Commissioner Laura Teague and Commissioner Mark Arndt in attendance. County Attorney Jeff Parker was also present by phone as well. Chairman James Zwetzig called the meeting to order and asked Morgan County Information Systems Manager Karol Kopetzky to lead the meeting in the Pledge of Allegiance.

ADOPTION OF THE AGENDA

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

CONSENT AGENDA

- Ratify the Board of County Commissioners approval of meetings minutes dated May 16, 2017
- Ratify the Board of County Commissioners approval on Contract 2017 CNT 109, O'Neil and Company, appraisal of property located at 27693 County Road R, Brush CO, Term of Contract April 27, 2017 until completed
- Ratify the Board of County Commissioners approval on Contract 2017 CNT 110, Denver Westword, lodging and tourism advertising, Term of Contract May 11, 2017 until completed
- Ratify the Board of County Commissioners approval on Contract 2017 CNT 111, Boulder Weekly, lodging and tourism advertising, Term of Contract April 19, 2017 until completed
- Ratify the Board of County Commissioners approval on Contract 2017 CNT 112, Winstead Construction, construction in COMM center offices, Term of Contract April 26, 2017 until completed
- Ratify the Board of County Commissioners approval on Contract 2017 CNT 113, Longmeadow Game Resort, Colorado Tourism Office Roadshow, Term of Contract May 15, 2017 until completed
- Ratify the Board of County Commissioners approval on Contract 2017 CNT 114, Critical Facilities Technology LLC, service and maintenance on UPS at Justice Center, Term of Contract May 29, 2017 through May 28, 2018
- Ratify the Board of County Commissioners approval on Contract 2017 CNT 115, Griffith Auto Body, repair front bumper & hood on unit #702, Term of Contract May 16, 2017 until completed
- Ratify the Board of County Commissioners approval on Contract 2017 CNT 116, 21st Century, diagnose & repair tractor #110, Term of Contract May 16, 2017 until completed
- Ratify the Board of County Commissioners approval on Contract 2017 CNT 117, Marla Dickson (Vancil Gravel Pit), purchase of gravel/sand and barrow material, Term of Contract May 1, 2017 through April 30, 2018
- Ratify Chairman Jim Zwetzig's signature on a support letter to City of Brush! for the application of a Rural Economic Development Initiative Grant dated on May 18, 2017
- Ratify the Board of County Commissioners approval on the letter to City of Fort Morgan to waive the annexation impact report for the American Legion annexation dated on May 18, 2017
- Ratify the Board of County Commissioners approval for the disposal of assets. (1) 2009 Chevrolet Suburban/Ambulance, asset #1662; (1) 2002 Ford F350/Ambulance, asset #1367; (1) 2006 Chevy Pick Up, asset #1504; (1) 2004 Chevy Pick Up, asset #1442; (1) 2010 Ford Crown Victoria Patrol Car, asset #1747 dated on May 16, 2017

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

GENERAL BUSINESS AND ADMINISTRATIVE ITEMS

There was no general business or administrative items.

COUNTY OFFICIAL AND DEPARTMENT HEAD REPORTS

Commissioners reviewed the calendar dated May 19, 2017 through May 30, 2017 with no changes.

UNFINISHED BUSINESS

There was no unfinished business.

CITIZEN'S COMMENT

Chuck Miller, 26060 Morgan County Road S, Brush, Colorado approached the podium to share his experience regarding the Range Rights Symposium in Nebraska last week. He shared information about those experiencing federal regulation and the troubles they are having with that, hearing from a logger out of Montana who is suffering the entire town has been basically shut down from federal regulations. He also spoke about a gentleman who had wanted to plant wheat in an area where he was presented a cease and desist order due to not obtaining the necessary permit from the federal government and the problems he has experienced. He stated he felt it was important to provide information to the Board today, indicating those cases they heard information about. As to locally, the floodplain issues that are being dealt with and they have been dealt with for quite some time, meetings held since 2015, and lots of conversation in the last 60 days, he finds it interesting that there was a resolution passed in January 2014. He apologized, having just walked in, and is concerned about how things have occurred over time and the resolution that was passed in 2014 did not surface until just recently, very discouraging.

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Foy Chapin, 8244 Highway 144, Weldona, Colorado expressed his concerns as to the hazards of the county roads in the area in which he resides, stating the narrowing of the roadways is becoming a problem, and further indicated that about a half an hour prior to this meeting a feed truck and a county truck had to come to a stop as they about clipped mirrors. The location of this mishap was on County Road AA, between County Road 6, one road north of Highway 144, and County Road BB.

PUBLIC HEARING

Empire Dairy, LLC - Consideration of request for the vacation of County Road S from the west right of way of Morgan County Road 2 to the east right of way of State Highway 144 (also known as Morgan County Road 1)

Chairman Zwetzig called the hearing to order at 9:10 a.m. in the Assembly Room of the Morgan County Administration Building. At this time, he stated those present for today's hearing as being Chairman Jim Zwetzig, Commissioner Laura Teague, Commissioner Mark Arndt, and County Attorney Jeff Parker who was appearing by phone. Chairman Zwetzig asked if County Attorney Jeff Parker would review the process and requirements for county road vacations.

At this time, County Attorney Parker stated that vacations of county roads are governed by statute, CRS 43-2-301 through CRS 43-2-304, and stated the Board has been provided a drafted resolution which outlines how a road may be vacated, and generally to consider a vacation of a roadway, the Board must ensure the obligation to eliminate such roadway does not eliminate access to property owners and that there are utility easements left in existence for those things such as water and power. He further clarified the draft resolution presented to the Board is to authorize a vacation of the roadway explaining the purpose of the resolution, whereas the statutes allow easements for improvements that can be retained, including utilities of a right of way for a water line, sewer, ditches, pipelines, etc.

County Attorney Parker stated a standard rule for a vacation is if the county vacates a roadway, the right of way will be granted to the property owner on each side of the roadway granting 30 feet to each property owner and further explained the rule stating this is a section line right of way, in which the County owns a right of way of 30 feet on each side of the section line and the County would be vacating only what it has rights to.

Commissioner Arndt asked County Attorney Parker to explain the difference of vacating a roadway and closing the roadway for future generations. County Attorney Parker stated they are generally different, explaining that by vacating the road, you are following the statutory process and the county loses all ownership rights. By closing the roadway, he explained it is a different matter, as the County would be able to then control the roadway for purposes necessary, if the road is closed, the County could allow for limited public access, but still maintain ownership of the right of way and the County could also reopen the roadway at anytime.

Chairman Zwetzig asked about the procedural question regarding telephone calls the Board has received as public comments referencing this matter and would it be the appropriate time to mention these calls. County Attorney Parker stated this would be most appropriate at this time for the Commissioners to enter this information into the record. At this time, Chairman Zwetzig asked both Commissioner Arndt and Commissioner Teague to share the information they have received.

Commissioner Arndt stated he had received three telephone calls, one being from Jim Riopelle who resides on County Road S, west of Highway 144, who shared his concern that the portion being proposed was not the portion of roadway located near his residence, and was concerned about being forgotten given there is the short piece of County Road S, and wanted to be sure the County realized there is this short portion.

Commissioner Arndt further commented that he received a telephone call from Dave Knievel who had stated he wanted to be sure he understood what was being vacated and what the notice indicated, and Commissioner Arndt stated he believed Mr. Knievel may still have further concerns.

Commissioner Arndt stated he also received a call from Darren Baessler, a property owner along the portion of County Road S in question, who owns probably 25 percent of the road right of way who had expressed concerns about access to his property and future plans for his property if he should ever wish to expand his animal operations, asking what it would do to his property.

Commissioner Teague stated the only call she received was a phone message from an agency that had been notified, the Wiggins School District. Bill Crites, Transportation Manager indicated they did not have any concern as they would be able to access the area from a different roadway.

Chairman Zwetzig made mention of a letter that had been received from Xcel Energy dated May 16, 2017, stating that Public Service Company of Colorado's Right of Way and Permits Referral Desk had reviewed the vacation documentation for County Road S between Morgan County Road 2 and Highway 144/Morgan County Road 1 and has no apparent conflict. Chairman Zwetzig asked that this letter be entered into the record as public comment.

Chairman Zwetzig further stated, for the record, the Board sent notice to all property owners by mail, indicating that if someone owns multiple properties, they would have received only one notice and the list of property owners that received notice will be entered into the record regarding today's hearing.

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At this time, Chairman Zwetzig asked if there was anyone in attendance today who would like to make public comment either in favor of against this matter.

Chris Lenzini, 17528 County Road 2, Wiggins, Colorado, stated she had one thing of concern. She asked if the west side of Highway 144, from County Road 1, is not being vacated, as the description sent to them stated it would be on the west side of County Road 2, and she wanted to ensure that the intent of the Board is that the area reported is not being vacated with Chairman Zwetzig stating that is correct.

Ms. Lenzini then inquired about the County's policy of preferential treatment to certain landowners, and how vacating this roadway could possibly benefit one property owner over another. She mentioned her concerns about how vacating this roadway will create further issues for maintaining roadways and access being provided and who is going to bear the costs of ensuring access to roads that will still require maintenance. She expressed her concern about the fact that County Road S has been put in place and paid for by the taxpayers, and to vacate the roadway, allows that property to be given away to the property owners on each side. She stated she received her notice five days prior to the hearing and is concerned about the time she has been given to respond regarding her concerns. She stated she believes the Board needs to take into consideration all the other property owners in the area, and feels this vacation is being done for one property owner specifically, and has a problem with that as a resident in Morgan County and makes her not trust the Commissioners. Ms. Lenzini pointed to an area on the map being displayed pointing to where she resides as the first property on Road S. Commissioner Teague stated the map is from McMapper and the yellow line as indifference as it shows on the mapping. She stated the curve to Road S is not part of the request nor is the road west of Highway 144 included in this request.

Chairman Zwetzig stated that on May 2, 2017, the Board received a written request from Empire Dairy to vacate this roadway. He further asked the County Attorney to explain the entire process. County Attorney Jeff Parker stated that the Commissioners generally set these types of matters for hearing, and the statute requires ten days notice be sent to property owners in which the Board has done, and at this time the Board needs to now determine what needs to be done to vacate properly. Chairman Zwetzig stated the Commissioners generally want to respond to formal requests they receive and stated upon receipt of this request; they chose to set the matter for a public hearing.

Ms. Lenzini asked if the Board had completed a cost analysis of the impact this may cause, explaining she believes it will impact services and is concerned about the costs to taxpayers.

Chairman Zwetzig stated discussions have taken place as to how the roadways will be maintained with Commissioner Arndt stating there is still a portion of County Road S that will need to be accessed for maintaining as well as County Road 1, south of the interstate, where maintenance will be required.

Keith Bath, 16134 County Road 23, Fort Morgan, Colorado, introduced himself as a Morgan County farmer and stated everyone knows Empire Dairy and spoke about how they treat farmers, the public, and without the dairies in Morgan County, agriculture is done. He stated he does not know how you could turn down something that will improve agriculture, and this road being turned over to Empire Dairy, he believes they will make it stellar. He further stated that the County needs to welcome the dairies into Morgan County and help them to improve which will in turn improve the County. He stated the roadway in question needs to have attention from Empire Dairy feeling it will only improve the area greatly, and it will be a stellar road making it good for everyone.

Kyle Scott, 23252 County Road 14, Weldona, Colorado stated he is in favor of this vacation of roadway feeling it would be less expense to the County to not have to maintain and that it may allow the County to maintain his roadway better.

Foy Chapin, 8244 Highway 144, Weldona, Colorado spoke in favor of the applicants to close this road and after listening to the County Attorney's description of how this will be completed, it sounds like everyone will still be able to do what is necessary.

Ken Kingsbury, 19704 WCR 87, Orchard, Colorado, stated he is an adjacent property owner in the lower left hand corner and has no issues with it being closed.

Ed Wilgenburg, 24588 Road 21, Fort Morgan, Colorado, stated he resides north of town and indicated that numerous roads in this area have been vacated in the past, explaining the specific roadways and how it has helped to eliminate high traffic flow. He further stated his past experiences living in a previous town, how some of the problems that happened, and when businesses have been embraced, embracing how the areas are succeeding and thriving, he believes that it is the job of the government to embrace business and not to try and push business away.

Jason Wickham, 23 Saddle Ridge Drive, Fort Morgan, Colorado, stated he is here representing Wickham Tractor Company and WTC Feeds. He indicated that the company has sales pickups, feed semis, and other vehicles that travel on the road in question and have had issues with this roadway in the past but have had no issues with the roadways within Empire Dairy. He stated that he believes access will be given to those necessary for commerce to survive in this area. On a more personal note, he stated he lives on Saddle Ridge Drive and the fact that the County does not maintain the roads within this subdivision is best for the County, and believes this road vacation would be a win for the County and not having to pay for the upkeep and maintenance of the roadway, it would be positive action for the County taxpayers, and allow Empire to maintain it for their purpose of commerce.

Chris Kraft, 19560 Road 21 Fort Morgan, Colorado, stated his wife Mary and he moved to the County in 1988 because this County had everything needed to make a good successful dairy operation to happen, it provided good feed, good roads, and those things necessary to succeed. He stated that most recently Morgan County, after being welcomed to this County to do their business, they are not feeling quite so welcome any longer and is hopeful the County looks at this to keep the dollars and business here in the County and is in favor of this road vacation.

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Chuck Miller, 26060 Road S, Brush, Colorado asked what is the process to reopen the road in the event there would be a request to do so in the future.

County Attorney Jeff Parker stated the process to reopen a closed road would be up to the Commissioners to decide whether or not it should be reopened once it is closed, for a vacated road, there would be no more steps to be taken.

Ronnie Graff, 43820 Highway 34, Orchard, Colorado indicated his company services Empire Dairy as well as other pivots in the area and stated they would still be able to obtain access to where they need to if this road is vacated. He also indicated they feel that Empire Dairy would do a good job with the road access to this area.

Chairman Zwetzig read aloud the Notice of Meeting regarding the vacation of a certain portion of Morgan County Road S between County Road 2 and State Highway 144 that was signed and dated May 11, 2017 by Clerk and Recorder Susan Bailey which was sent to all those necessary by mail and asked that this be entered into the record at this time.

Chairman Zwetzig explained that on Tuesday, May 16, 2017, the Board received notice from Planning Administrator Pam Cherry that she had received a letter from Darren Baessler, regarding this notice who had indicated that he uses this roadway and that he had made attempts to contact the Board of County Commissioners numerous times and Chairman Zwetzig asked that this also be made part of the record.

Mary Kraft, 15960 County Road 21, Fort Morgan, Colorado asked if the roadway in question could still be used once it is vacated, with the question relayed to the County Attorney who responded that the public could not use the road after a vacation. If the road is closed, if the County reopens it, it can be used by the public. Ms. Kraft asked about in a case of those needing access for sprinkler pivot work, would they be able to use the road, with County Attorney Jeff Parker stating once the road is vacated, it is not to be used by the public, as the land is then reverted back to the adjacent property owners. If the road should be closed, it could be reopened by the County to be used with limited access for certain property owners for certain situations. He stated the County has closed roads in the past and have allowed limited access to certain property owners depending upon the circumstances.

Ms. Kraft asked if Empire Dairy could allow access, with County Attorney Jeff Parker stating the northern 30 feet that would be granted to Empire Dairy and like any other property owner would have the ability to allow access to this portion of property. Commissioner Arndt stated it is his understanding that if the road is vacated; it would be to the section line, wherever that section line may be, so either party could fence it along their section line because it becomes their property. If it is a road closure, the County would have the option to come back in and reopen for access at a later date if necessary with County Attorney Jeff Parker confirming this statement.

Commissioner Teague asked if the vacation was to occur and the property on both sides of the section line reverts back to the adjacent property owners, is the County basically out, and is it up to the property owners to survey and figure out where the property line is. She further stated in other hearings the County has considered that if the original right of way was the section line and there is a public highway because of 18 years of adverse use, is the County actually vacating the section line or is the County vacating the public roadway that has been deemed the public roadway due to use. County Attorney Jeff Parker stated the real issue is the County can only vacate what they own, and noted there has not been any hearings, proof of 18 years of adverse possession, and at this time the County is only looking at vacating of what it knows it owns which is the section line right of way 30 feet on either side and that is what the County would be able to do at this time. Anything other than this would be the issue of the parties, as we are only vacating from the section line and what we know we have, the 60 feet right of way from the section line. Any historical research, or surveying, in regards to the section line, the County could not do anything as to the actual location of the roadway.

Chairman Zwetzig asked if the property owners own to the section line, with County Attorney Jeff Parker stating yes, the County only has a right of way to the section line, and that Empire Dairy actually has right of ownership to the section line, and the County is only vacating the actual right of way, that the law basically says what happens after that, and basically the ownership of the right of way basically goes to the adjacent property owners after the vacation of the right of way. County Attorney Jeff Parker stated for the purpose of this hearing, the County is looking at vacating the right of way rights.

At this time, Chairman Zwetzig asked if the adjacent landowner to the south, the Baessler's would like to make public comment.

Rena Baessler, 17223 County Road 2, Wiggins, Colorado and thanked Mr. Dinis for bringing the issue of County Road S to the attention of the Morgan County Commissioners and further stated they have made numerous attempts to contact the Commissioners, Planning Department and Road and Bridge Department numerous times over the last 8 years and have been met with unreturned phone calls and deaf ears. She further summarized the issues and concerns they have in regards to the matter today. Ms. Baessler stated that by Mr. Dinis bringing this to the attention to the Board, he too realizes the growth of the dairy, increased traffic has impacted the condition of County Road S and is becoming a hazard to the landowners. She made mention of the dairy routinely grading the road and maintaining the road in an unskilled manner which has caused the road to deteriorate. Ms. Baessler continued to read aloud information she had prepared for today's hearing.

She further expressed her concerns about the commitments and obligations that were made eight years ago by Empire Dairy which were enacted by the past Board of County Commissioners. She read aloud the several terms and conditions that were put in place. She reiterated that Mr. Dinis has had eight years to fulfill his obligation that he entered into with the County. One of the conditions of this permit clearly stated the fact that the access to the dairy should consist of three county approved driveways and currently there are more than fourteen. She stated the

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County has failed to enforce this condition. The permit also states there should be a fence built along County Road S explaining the reasons given and further indicated there has been no fence built in which the County has failed to enforce this condition as well. The condition of approval clearly stated that Mr. Dinis is responsible to use best management practice as established by AGPRO. In doing so, offsite impact must be satisfactory mitigated to protect the citizens of Morgan County and adjacent landowners. She stated further that the applicant was to, at his own expense, pave County Road S from Highway 144 to Morgan County Road 2, indicating the exact wording, and stated the County has failed to enforce this condition as this condition has not been met. She outlined the dates by which Mr. Dinis was to have provided his plan to the County as to his intentions to comply with the conditions of the permit as being no later than the 2009 paving season.

She stated that Mr. Dinis has spent the last eight years expanding his dairy and acquiring property indicating his business has grown and the offsite impacts this has created for the adjacent landowners as well as others in the County have not been mitigated. The safeguards the past County Commissioners put in place to protect the citizens of Morgan County have not been met.

Ms. Baessler continued to express her concerns regarding the fact that the conditions of the permit that was approved in 2008 have not been met nor been enforced by Morgan County. She further stated that Mr. Dinis was granted an additional two years beyond the traditional three years of vesting. At this point his vesting period has expired due to his inaction and disregard of conditions of approval. Mr. Dinis has proven through his disregard and conduct that he is accountable to no one not even the government. Now he has the audacity to give him the road, asking the County to give away public property because he does not want to fulfill his commitment and stand by his word. What is the message the county will be sending if Mr. Dinis is granted this request. If the conditions of a permit that are granted are not met, does that mean the County will give you the property? The other question she mentioned was in regards to responsible business owners being required to do road improvements, why other business owners required to pay and Mr. Dinis is not. Ms. Baessler stated the actions of Mr. Dinis and the County appear to be unethical at best, and further spoke in regards to this gifting of County property and the request for the County Commissioners to revisit the Code of Ethics dated May 27, 2016, as a County Commissioner is held to a high standard of conduct and further mentioned the ethical principles outlined in the policy. She feels this should serve as a guide to public officials in which the public places their trust.

Ms. Baessler further stated she believes that Mr. Dinis should be treated like everyone else, hold him accountable to his commitment and his word and to give Mr. Dinis this land, is an easy way out and does not set a good precedence if the County does not enforce their own requirements. She asked the Board table his matter today and instead addresses the matter in which it should be, and that is in a code violation hearing.

Commissioner Arndt stated that he would like to ask Mr. Baessler to speak and at least say if he quoted him right in his phone call, explaining that today we are only here to talk about this road and we are not here to talk about the permit of Empire Dairy but the request to vacate the road and it is very important that you as a landowner talk about the use of the road and if you need that road. He asked Mr. Baessler to say whether or not he was quoted correctly.

Mr. Darren Baessler, 17223 MCR 2, Wiggins, CO stated he had been quoted right answering Commissioner Arndt's question, but feels they are here today for more than just that. He stated as an adjacent landowner to Morgan County Road S, he shared that he has several problems with the dairy's request to vacate this road indicating first and foremost the road should currently be paved, and stated he should not be here if the conditions of the dairy's permit had been enforced. Mr. Baessler further commented if the road is vacated, his buffer with the dairy will be lost and as an adjacent landowner to the dairy, the roadway is the only buffer that stops the encroachment onto his property. He further expressed concerns that his fences have been destroyed by the dairy and provided pictures to the Board to review of this damage to the fence line. At this time, it was requested that these pictures be entered into the record and become a part of the file.

Mr. Baessler stated he is also concerned about who would be responsible for sharing a fence with the dairy, the way he sees this matter is the Board is passing their problem onto him and they refuse to enforce the requirement of paving the road on the dairy. Instead the board will be saddling him with a shared fence line with someone who has no regards for their neighbor and stated this will then become a civil issue.

Mr. Baessler stated that if the request is granted, he is concerned they will have a drainage issue resulting from the natural flow of water, if the dairy elevates their side of the road of the gifted land, his property will not drain. He then shared photos of the current drainage problem after a rain. At this time, the photos were asked to be entered into the record and be made part of the file.

He further commented that if granted the request to vacate, this does nothing to help the dust created by the dairy traffic. He asked what the plans were to mitigate the dust as it pertains to the permit, as it is supposed to be paved. Additionally he stated that Morgan County Road S is used as a side road to avoid traffic on Highway 34 when removing large equipment as well as Morgan County Road S having been used to divert traffic from Highway 144. Not only does vacating County Road S limit access to his corners, he is restricted from building as there are utility easements on his side of the property and he gains nothing.

Mr. Baessler stated that Morgan County is a Right to Farm County, and that agriculture is important to the success of the county, and he would expect equal treatment amongst its citizens. He stated his future business plan include building corrals and a lambing shed on those corners, and they have plans for expansion after successful pavement of County Road S. He stated by vacating this road, the County would be hindering their expansion and further stated the bottom line is Empire Dairy committed to building the road when they started their dairy expansion and now they want to back out on their commitment to the County and Mr. Baessler asked the Board to enforce the requirements of the permit at this time and further asked the Board to deny this request and instead enforce the requirements of the permit as granted in 2008.

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Monica Mika, Eaton, Colorado, stated she has been asked to speak on the behalf of the Baessler's naming the specific individuals and company. She further stated the Baessler's will be gravely impacted by any decision made today and further stated the Baesslers' appreciate the time here today to answer their questions. She then shared her appreciation for response to a recent open records request. She spoke about the notice of public hearing that was received less than ten days ago, which is just short of the statutory requirement, the Baessler's were given notice that the Board would be considering a vacation of right of way. This information was presented with little or no justification, and further expressed questions about discussions held during the hearing as to who owns the road, and more technical details of where the road is located. She spoke of a letter that was initiated by Mr. Dinis who asked for the vacation of this roadway and stated in his own letter, and she quoted "the reason for doing this is to vest Empire Dairy with title, that portion line north of the section line." He stated in his letter the vacation would be beneficial to all parties concerned including Morgan County. This roadway has been highly debated and a source of community concern and is referenced and listed as a condition of a special use permit in an ongoing unsatisfied special use permit and that is why they are here talking about it. She stated there is a pending application on this road and now the Board has accepted a second application for this same road. She further stated the conditions of the permit have not been met and the pictures presented today clearly define this. She wants to know why this is being heard today as this is not a benefit to the County, feeling the only person it benefits is Mr. Dinis. She asked how this will benefit the County, and would ask Mr. Dinis to explain why he believes it will be a benefit. Information was shared about our Morgan County regulations that will assist the Board in their decision here today and the process that should be followed. She stated as per Morgan County code, the Planning Administrator has not made a decision about this matter, and now the fact that Mr. Dinis is asking for additional time for vesting. She stated that vesting occurs when an applicant applies for and is given a certain amount of time to act on those requirements and stated the Board did act honorably by granting a permit for this facility and the fact there were certain requirements of that permit, and the fact that Mr. Dinis has not done anything and he presents today for more, indicating her concerns about the fact that he has done nothing and he is again asking for more.

She cited the code surrounding the vesting requirements, stating the entire section, and stated that failure to do what you are to do, you are to lose the right to do so, additional vesting for CAFR regulations, and read aloud the requirements of distance indicated in the regulations, for the expansion of any facility. She further stated that by granting anything short of violation is outside the scope of their duties today. She again stated the right thing to do is to enforce the rules and require this applicant to do what was required in the original permit that was granted by the County.

As a final point of order, Commissioner Teague signed off on the CORA request, and the form and function is in question whereas she is here today hearing additional testimony. Further discussion followed, as to Ms. Mike clarifying her question about the CORA request, she found it interesting that a Commissioner signed off on it where that person had access to it before the information was sent to her.

County Attorney Jeff Parker stated he does not understand the question and Ms. Waite stated she is not a department manager, so she has to have her department manager sign off on the request for her to complete the request. County Attorney Jeff Parker does not see an issue with this, and explained this hearing is not a quasi judicial hearing and this should not be an issue in this matter.

Norm Dinis, Empire Dairy, 1473 County Road S, Wiggins, here to discuss the vacation of the road today, with clarification that they already own the property in question. Chairman Zwetzig stated that this question may or may not be able to be answered, with County Attorney stating in general, the section line right of way, is just that, generally the property owners on either side of the section line, own the property in interest to the section line, and the County only has the right of way to this property in question. Generally, the north adjacent property owner would own the 30 feet north of the section line and the southern owner would own the 30 feet south of the section line and vacating the roadway would grant those owners

Tim Naylor, AGPROfessionals, 3050 67th Avenue, Greeley, Colorado, thanked the Board for bringing this matter forward today. He stated that Empire Dairy does own 75 percent of this area in question on the northern side and this roadway is not an arterial roadway, a collector road, does not have through traffic as it dead ends at Highway 144 and Highway 34. He stated this roadway would be considered useless for transportation purposes given it does not go anywhere and the vacation of the roadway would create a benefit to the citizens whereas there would no longer be maintenance costs as well as the safety issues. If the road were to be paved, it would be the burden of the County to maintain a paved road. He spoke about DFA and the damage that can be caused to paved roads, and believes this is a benefit to the County to vacate this section of roadway and again stated he does not believe it is a useful section of roadway to the county. He believes the requirements of the vacation of the roadway have been met. He mentioned other roadways that have been vacated within the County in the past and stated he believes they have met the requirements for this road vacation request and asked this be approved.

Tom Heron, AGPROfessionals, 3050 67th Avenue, Greeley, Colorado, stated he has been involved in Morgan County economic development and agriculture for about 20 years. He stated this is not a violation hearing, and not here to read the code, and further stated there have been many provisions made for good business, but also recognized that anything, whether it is agriculture, oil and gas, economic development, there are impacts. He stated this road has been an issue since he has been involved with the dairy, and has wondered why the road is in existence, a road to nowhere.

He stated is it smart, is it wise, a good solution to vacate the road After all he has been involved with, he believes it is, he believes it is fair and equitable, is a good thing for the County, with most of the traffic on this roadway is for the use of the dairy. He stated that both sides get to access; they will both have their 30 feet, and the fact that each property owner can allow anyone to access their side of the roadway in question on their side. He further stated there is precedence to vacate this road; this has been done before for other dairies, agricultural businesses. He

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believes the benefits include no further county maintenance, and there are also some public safety measures that it will benefit.

At this time, after hearing no further public comment, Chairman Zwetzig closed the public comment period and moved to discussion and decision.

At this time, County Attorney Parker reviewed the criteria that Morgan County uses to close a Morgan County road, with County Attorney Jeff Parker stating there are no statutory requirements for this action, it is solely up to the Board of County Commissioners, generally have to reserve easements for utility and to not deny access to property owners. It is up to the County to determine whether or not this is an appropriate action based on the hearing this morning.

Commissioner Teague asked that the Board move into Executive Session for further legal advice, with County Attorney Jeff Parker indicating a motion for executive session for a conference with the County Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b).

A motion was made by Commissioner Teague to move into executive session for the stated reasons as per County Attorney Jeff Parker, Commissioner Arndt seconded the motion. Chairman Zwetzig asked the County Attorney to clarify what the executive session would be limited to with County Attorney Jeff Parker stating it would strictly be for obtaining legal advice pertaining to the public hearing. At this time, the motion passed to move into executive session 3-0.

At this time, the Board of County Commissioners exited the public board room to participate in Executive Session with Chairman Zwetzig naming those present in the meeting room as being Chairman Zwetzig, Commissioner Teague, Commissioner Arndt, Planning Administrator Pam Cherry and County Attorney Jeff Parker by phone.

At this time, County Attorney Jeff Parker attested to the subject of this meeting as attorney client privileged and stated that no further recordings of this executive session shall be made and the recorder was turned off. Chairman Zwetzig noted the time as being 10:47 a.m. and stated the executive session has been concluded with County Attorney Jeff Parker stating the information discussed during the executive session was strictly attorney client privileged in regards to procedural legal questions and specific questions as to the legal process for road vacation and the grounds for such vacation and further stated the recording reflects the actual contents of the discussion at the executive session and has been made in lieu of any written minutes to satisfy the recording requirements of the Open Meetings Law. It was noted the tape will remain in the County's possession for a 90-day period and indicated the Board may return to the open meeting at this time.

At this time, the Board moved into discussion and decision. Commissioner Teague stated she wants to ensure that access to all property owners are not being ceased, with Chairman Zwetzig stating testimony was heard from the landowners that part of the future plans identifies the need to maintain the east to west roadway there so it eliminates that discussion or potential for them.

Commissioner Arndt stated that he feels further discussion needs to be held as to what has been determined here today, whether or not access to Highway 144 is important and limiting or changing the scope of property would occur by vacating this road. Also, the fact there is options to look at, either closing the road or vacating the road. At this time Commissioner Arndt made the motion to continue this matter until June 27, 2017 at 9:00 a.m. to consider the proposed resolution at that time. Chairman Zwetzig commented that he is not in favor of this matter as he is ready to proceed today, and upon the vote being taken, the motion passed 2-1.

Chairman Zwetzig confirmed that by continuing this matter, there is not to be any discussion held between the Commissioners concerning the matter, but can additional comments be accepted, with County Attorney Jeff Parker stating if the Board would like to receive additional comments, they can do so, but to be sure it is considered at the next scheduled hearing date.

Being no further business, the meeting was adjourned at 10:57 a.m.

Respectfully Submitted,
Susan L. Bailey
Clerk to the Board

(Minutes ratified June 13, 2017)

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

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

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

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

(SEAL)
ATTEST:

s/ Susan L. Bailey
Susan L. Bailey