

# COMMISSIONERS PROCEEDINGS 1

## BOARD OF COUNTY COMMISSIONERS Minutes of Meeting June 27, 2017

The Board of Morgan County Commissioners met Tuesday, June 27, 2017 at 9:02 a.m. with Chairman James Zwetzig, Commissioner Laura Teague and Commissioner Mark Arndt in attendance. Chairman James Zwetzig called the meeting to order and asked Morgan County Undersheriff Dave Martin to lead the meeting in the Pledge of Allegiance.

### **ADOPTION OF THE AGENDA**

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

### **CONSENT AGENDA**

Ratify the Board of County Commissioners approval of meeting minutes dated June 13, 2017

Ratify the Board of County Commissioners approval of meeting minutes dated June 20, 2017

Ratify the Board of County Commissioners approval on Contract 2017 CNT 135, A & R Automotive, alignment on unit #5509, Term of Contract June 14, 2017 until completed

Ratify the Board of County Commissioners approval on Contract 2017 CNT 136, West Safety Solutions Corp, upgrades to the 911 telephone system – viper system, Term of Contract June 27, 2017 through June 26, 2022

Ratify Chairman Jim Zwetzig's signature on the Stormwater Inspection Form for the month of May 2017

Ratify Chairman Jim Zwetzig's signature on the NACo 2017 voting credentials form for the 2017 Annual Conference signed on June 19, 2017

Ratify Chairman Jim Zwetzig's signature on the Memorandum of Understanding 2017 MOU 03, with the Colorado Department of Human Services, Division of Child Welfare for the Title IV-E Waiver Demonstration Project funding signed on June 22, 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**

#### **Consideration of Approval – RIGHT OF WAY - 2017 PMT 19 – Xcel Energy**

Morgan County Public Works Director Bruce Bass presented to the Board for approval, a Right of Way Permit 2017 PMT 19, with Xcel Energy. Mr. Bass stated this right of way permit is to bore under County Round 16, starting 1100 feet south of Highway 144 and 9 feet east of the west right of way boring under County Road 16 to the eastern right of way of County Road 16, for the purpose of installing new gas service at 18626 County Road 16. He stated the fees are attached in the amount of \$150.00 and the location has been inspected.

Commissioner Teague made a motion to approve Right of Way Permit 2017 PMT 19 with Xcel Energy as outlined in the narrative of the permit and presented by Morgan County Public Works Director Bruce Bass and authorized the Chair to sign. Commissioner Arndt seconded the motion and motion carried 3-0.

#### **Consideration of Approval – FIREWORKS DISPLAY – Margaret Journey**

Morgan County Administrative Services Manager Kristi Waite presented to the Board the application submitted by Margaret Journey for a Fireworks Display Permit on July 1, 2017 with a rain date of July 8, 2017. The location for the fireworks display will take place at Jackson Lake Village. Ms. Waite stated the necessary paperwork has been submitted and the Wiggins Department has approved this fireworks permit.

Commissioner Arndt made a motion to approve the Fireworks Display Permit, indicating the location is Jackson Lake Village, stating the date and times of the permit with the notation that if there should be any fire ban in place, the permit will not be authorized with the applicant being Margaret Journey as outlined by Morgan County Administrative Services Manager Kristi Waite and authorized the Chair to sign. Commissioner Teague seconded the motion and motion carried 3-0.

#### **Consideration of Approval – FIREWORKS DISPLAY – Tracy Amen**

Morgan County Administrative Services Manager Kristi Waite presented to the Board the application submitted by Tracy Amen for a family Fireworks Display Permit on July 4, 2017. The address for the fireworks display will be 13913 County Road 18; Fort Morgan, CO. Ms. Waite stated there is no rain date provided, so this permit will be as indicated. Ms. Waite stated the necessary paperwork has been submitted and the Fort Morgan Fire Department has approved this fireworks permit.

Commissioner Teague made a motion to approve the Fireworks Display Permit, for July 4, 2017 with the notation that if there should be any fire ban in place, the permit will not be authorized with the applicant being Tracy Amen as outlined by Morgan County Administrative Services Manager Kristi Waite and authorized the Chair to sign. Commissioner Arndt seconded the motion and motion carried 3-0.

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## COUNTY OFFICIAL AND DEPARTMENT HEAD REPORTS

Commissioners reviewed the calendar dated June 23, 2017 through July 4, 2017 with no changes.

## UNFINISHED BUSINESS

CONTINUED PUBLIC HEARING FROM MAY 23, 2017

### **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 read aloud the matter being heard today and indicated that County Attorney Jeff Parker was present by telephone. At this time, County Attorney Jeff Parker stated the matter scheduled for today is a continuation of the matter which was held on May 23, 2017. Mr. Parker further stated there has been a request made by the applicant to continue the matter due to him not being available to attend. Mr. Parker stated this is at the discretion of the Board of County Commissioners whether or not to continue the matter.

Chairman Zwetzig asked what procedure the Board should use with County Attorney Parker stating the Board can accept a motion to continue, they can accept comment, and indicated that this is not officially a public hearing, so it is at the discretion of the Board if they choose to accept public comment at this time or not.

At this time, Commissioner Teague made the motion to continue the hearing, on the request for Empire Dairy, LLC regarding the request for the vacation of County Road S right of way and requested this hearing until a future date when both parties representing the Baesslers and Empire Dairy can be notified and an appropriate date be scheduled that meets everyone's needs. Chairman Zwetzig asked to clarify a point of information, with the notation that this is not a public hearing, and this matter can be continued until a later date, with County Attorney Parker stating that the motion should be to continue the matter until a mutually agreeable date for the applicant and the primary individual who is objecting, the Baesslers be notified pursuant to the statute and then the hearing will be held. The motion would be to continue the matter, not a public hearing as stated by County Attorney Jeff Parker.

At this time, Commissioner Teague amended her motion regarding the consideration of request for the vacation of County Road S to a meeting in the future noting the meeting will be properly noticed and the parties will be notified. Commissioner Arndt seconded the motion and further stated that part of the motion will be he will note that it will be a date that both parties and the public will be noticed, also both parties will be worked with so that it works for both asking Commissioner Teague if that was correct, with Commissioner Teague stating yes.

At this time, Chairman Zwetzig stated that he would accept public comment, with County Attorney Jeff Parker stating that the public comment should be limited to only the continuation of the matter and not comments pertaining to the matter itself.

Monika Mika, Eaton, Colorado, stated she is here representing two of the parties involved in this matter and asked for the opportunity to provide their testimony today, further explaining there are family members present from out of town and the continuation would create a burden for others who are necessary to attend. She further stated there were family members as well as others who represent the applicant, Norm Dinis, in the audience who should be able to respond to this matter today. Ms. Mika stated that she does not feel this is an issue between two people, it is an issue the Board of Commissioners currently have and asked the hearing be opened up for public comment given the fact there are family members and representatives for Empire Dairy present today.

County Attorney Parker stated it would be his advice to limit comment as to whether or not this matter should be continued, not for any other comment and the Board could make the decision to not continue the matter but they should not be taking any evidence on the issue because that is the whole point of continuing. He stated it is up to the Board of County Commissioners to decide whether or not to allow comment, and stated that the comments be limited to whether or not to continue.

Rena Baessler, Wiggins, CO, pointed out last month Mr. Dinis agreed to this date, and when it was rescheduled, it was agreed by all parties to be present at today's hearing, explaining they have individuals present today that are here from out of town, and would like to proceed with the matter today, further stating this has gone on for nine years, and wants to move forward today. She further indicated that this can continue to be pushed back, asking how much longer will this take, stating it is a simple matter that should have been addressed years ago. She asked what would happen next month when Mr. Dinis decides he cannot make it to the meeting. She feels that Mr. Dinis has thumbed his nose for nine years and stated she is a little bit beyond frustrated.

Commissioner Zwetzig stated the question on the floor is whether we continue the matter for the request of the vacation of County Road S and that is what is being considered.

At this time, Commissioner Arndt stated that he did not believe the parties nor the public had been asked if the continued date would work for the parties, it was conversation between the Clerk and the Board and for that he apologized.

After no further discussion, the amended motion passed 3-0.

## LIQUOR LICENSES

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At this time, the Board of County Commissioners convened as the Morgan County Liquor License Authority in the matters of:

**Liquor or 3.2 Beer License Renewal – 3.2% Beer On/Off Premises (County)**  
**Licensee: Shoreline Investments Inc DBA as Shoreline Marina**  
**Operating Manager: Margaret E. Pope**

Morgan County Clerk and Recorder Susan Bailey presented to the Board a Liquor License or 3.2 Beer License Renewal Application submitted by Margaret E. Pope for Shoreline Investments Inc DBA Shoreline Marina for a 3.2% Beer On/Off Premises (county) license. Ms. Bailey stated that she has received the necessary documents and all fees have been submitted. Ms. Bailey stated she has had no issues with this licensee and then asked the Morgan County Sheriff's Department to report at which time UnderSheriff Dave Martin indicated he had nothing to report. Ms. Bailey indicated that this licensee has never had a violation and for that Ms. Pope is very proud and Ms. Bailey commended her for this and asked that the Board for approval of this license renewal.

Chairman Zwetzig opened the matter for public comment at which time no comment followed.

A motion was made by Commissioner Teague to approve the liquor license renewal for Margaret E. Pope for Shoreline Investments Inc DBA Shoreline Marina and authorized the Chair to sign noting the fees are attached. Commissioner Arndt seconded the motion and motion carried 3-0.

**Liquor or 3.2 Beer License Renewal – Hotel And Restaurant / Optional (County)**  
**Licensee: City of Brush dba The Course Café and Lounge**  
**Operating Manager: Lance Schwindt**

Morgan County Clerk and Recorder Susan Bailey presented to the Board a Liquor License or 3.2 Beer License Renewal Application submitted by City of Brush dba The Course Café and Lounge with the Operating Manager being Lance Schwindt for a Hotel and Restaurant / Optional (county) license. Ms. Bailey stated that she has received the necessary documents and all fees have been submitted. Ms. Bailey stated this licensee did receive a violation in which a stipulation and order was entered for the reason of serving an underage individual. She stated the violation occurred in December 2016 and this licensee was required to cease serving alcohol for a five day period, March 5, 2017 through March 8, 2017. She then asked UnderSheriff Dave Martin to report at which time he indicated the report his office initially filed was in error and that this licensee did in fact violate their license by serving an underage individual and had followed through with the Colorado Department of Revenue's order and stipulation. Ms. Bailey explained that the County Attorneys had provided a memorandum regarding the matter today and the Board had the option of setting this matter for hearing where testimony could be offered to show good cause or the Board may, at their discretion, approve the renewal of the license today. Ms. Bailey recommended that the Board approve the renewal given the licensee had fully complied with the stipulation and order as set forth by the State.

Chairman Zwetzig opened the matter for public comment at which time no comment followed.

A motion was made by Commissioner Arndt to approve the liquor license renewal City of Brush dba The Course Café and Lounge with the Operating Manager being Lance Schwindt noting this licensee has had a violation and the State has taken action and they have complied, and noted it is very important that they follow the State's requirements and fully comply with all liquor license regulations and rules and authorized the Chair to sign noting the fees are attached. Commissioner Teague seconded the motion and motion carried 3-0.

Chairman Zwetzig asked that the Clerk attach the memorandum the Clerk received from the County Attorney to the minutes for today's meeting and note any necessary information.

## **CITIZEN'S COMMENT**

Chuck Miller, 26060 County Road S, Brush, Colorado stated that he comes to the Board again today to point out a few things the new FEMA rules and floodplain regulations. He further stated that he has been very involved in this process, and states his position is that this has definitely affected the economic stability of this county, and he has provided a letter of objection which is in the County's files. He stated he has reached out not only to the Board, as well as the elected officials of the City of Brush, the State, and has received a letter back from the Governor of Colorado stating it is a federal issue, that it is not a state issue. He stated that he has spoken with a representative from the state level as well as the federal level, and it was stated by the Federal representative that the local government has not made this an issue, so why would it be an issue.

He spoke about the 2014 regulations that were signed and adopted by the Board, and further stated he has sent an email asking the Board to rescind this information and received information back from their employee acknowledging the email but no reply from the Board. He stated he has spoken with Jerry Sonnenburg, State Senator, and he is going to look into the matter to see what can be looked at at the state level but strongly suggested the County Commissioners look into this matter and address it.

At this time, Monika Mika, Eaton, Colorado; stated she is here to spend time to talk to the Board about a recent research project in relation to USR, located in the SW ¼ corner of Section 32, township 4N Range, 60<sup>th</sup> West, also known as Empire Dairy. She stated there is a lot of emotion, and concern, and wanted to speak with the Board about reviewing the record and look at the number of times and resources it has taken to get someone to comply with a permit that was issued, and the number of hours staff has taken to respond. The Board has met with the Dinis' numerous times, and all agreed something needs to happen, the resolution is good, encouraged the Board to enforce what they have in place. She stated that Morgan County needs to enforce any agreement that is entered into.

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She spoke about an individual who came in to obtain a building permit and the staff was not asked to defer, wait until later, and again stated the Board entered into a resolution, and encouraged the Board to enforce the information in the resolution, and stated this is a primary function of the Board of County Commissioners which is land use and to do so in a prudent fashion. She stated the resolution and staff time is incredibly valuable and to expect them to repeatedly meet with the Dinis's to come up with a new idea, the bottom line is the Dairy has huge impacts, both positive and negative and the positive is greatly seen in the community but the negatives are also seen and need to be mitigated. She stated that she believes that future businesses only want to come to Morgan County if they know there is a fair and consistent platform for economic development. She stated they will be back to discuss the vacation of a road.

Ms. Mika continued stating the Board need to take action on resolutions that are in place, even entered into by a prior board of county commissioners, and the fact this matter is nine years old, and it exceeds the vesting requirements, the conditions have not been met. She asked the Board to review the record and support what the record indicates as to what is required. She further stated they will be going through the CORA information they have obtained and asked the Board to do its due diligence and look at ongoing compliance which affects the entire county.

Chuck Miller, again spoke, adding to the comments that were just stated, stating that both parties that are in controversy he considers as friends and has business relationships with both. He states there are two sides to every story and unfortunately there were many flaws in the resolution, it was a poor resolution and at this point it has actually created more problems and it is only getting worse by the day. He stated that he would suggest sitting down with the parties and try to come to some satisfaction with both parties and sees this as a road that is heading in the direction of no return believing this does point back to a previous board that did make some mistakes.

Chris Lenzini, 17528 County Road 2, Wiggins, Colorado, further commented about Chuck Miller's comments, stating she was not involved in any of this but stated the County does not charge any impact infrastructure fees, feeling that fees need to be assessed accordingly and is what she took from the prepared resolution in question. She mentioned C.R.S. 43-1-3 outlining what can be vacated in a road, has been upstairs in the vault getting plat maps, and information from the public records. She further stated the damage on Road 1, as being phenomenal which is a CDOT road, and further indicated that the ingress and egress lanes were placed on Highway 144, accessing Road S, and further indicated her feelings about what she would rather see. She further stated she has aggregate total of experience and shared a book with the Board that she believes they should be reviewing in regards to road construction and maintenance of roadways. Standards Road and Bridge Construction is the CDOT Highway book in reference. She indicated she believes that County Road 2 is a dangerous road.

Rena Baessler, 17223 County Road 2, Wiggins, Colorado, commented in follow up to Chuck Miller, whether or not the resolution is poorly written, stating that Norm Dinis had 30 days to sign into the resolution and here we are 9 years later and he has failed to comply with what was required in the resolution and named several items listed in the permit that have not been complied with. She does not believe that any part of the resolution has been met, and it has been 9 years stating it is a disappointment in the County, and feels they have given the County the ample opportunity to make this matter good and is frustrated that Mr. Dinis is not accountable to the County and the Board has allowed him to escape by. She asked if she is wrong to think they have no power to enforce its own rules, and stated she would think they have the power to do so and believes that 9 years is long enough. She indicated that she does not see any change, indicating that every two days, Empire Dairy is out grading the road and they have had times they have not been able to access their property given the poor maintenance of County Road 2. She stated she will be here again and again until someone gets enough political courage to do the right thing, and the Board knows the rules, they made the rules and she is now asking the Board to enforce their own rules, it is not a crazy thing to be asking.

Being no further business, the meeting was adjourned at 9:47 a.m.

Respectfully Submitted,  
Susan L. Bailey  
Clerk to the Board

(Minutes ratified July 11, 2017)

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

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

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

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

(SEAL)

**ATTEST:**

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s/ Susan L. Bailey  
Susan L. Bailey