

# COMMISSIONERS PROCEEDINGS 1

**BOARD OF COUNTY COMMISSIONERS  
BOARD OF EQUALIZATION OF MORGAN COUNTY, COLORADO  
Minutes of Special Meeting  
July 26, 2017**

The Board of Morgan County Commissioners sitting as the Morgan County Board of Equalization (the "Board of Equalization") met on Wednesday, July 26, 2017 at 8:30 a.m. with Chairman James Zwetzig, Commissioner Laura Teague, Commissioner Mark Arndt, County Attorney Kathryn Sellars and Mike Krening, Morgan County Deputy Assessor in attendance. Chairman Zwetzig called the meeting to order at 8:32 a.m.

## **GENERAL BUSINESS**

Chairman Zwetzig stated this matter comes before the Morgan County Board of County Commissioners sitting as the Morgan County Board of Equalization (the "Board of Equalization") regarding hearings for appeal of the Morgan County Assessor's valuation of property. Chairman Zwetzig indicated that the structure of the hearings today would follow the format allowing all property owners to have time to voice concerns related to property values. He asked to limit comments to no more than fifteen minutes. Chairman Zwetzig stated the Morgan County Board of County Commissioners sitting as the Morgan County Board of Equalization (the "Board of Equalization") would now hear matters regarding petitions for appeal of the decision of the Morgan County Assessor regarding the valuation of the property.

### **Ryan LLC R005890**

Mr. Michael Krening, Morgan County Deputy Assessor, stated that those representing this matter contacted him by telephone asking for an administrative denial and that there would be no one present at today's hearing.

Commissioner Teague made the motion to approve the administrative denial for Ryan LLC, Schedule #R005890 with Commissioner Arndt seconding the motion, and motion carried 3-0.

### **The E Company Inc R018743**

Ms. Kristi Waite, Morgan County Administrative Services Manager, stated she received a voicemail from Steve representing this company who has asked for an administrative denial.

Commissioner Arndt made the motion to approve the administrative denial for The E Company Inc, Schedule #R018743, with Commissioner Teague seconding the motion and motion carried 3-0.

### **Charles Jay and Norma K. Miller R016047**

Mr. Charles J. Miller, who resides at 26060 County Road S, Brush, Colorado stated he is here today to appeal property tax values for address of 17906 Morgan County Road 29, Brush, Colorado. He further stated his wife, Norma, was not able to attend today's hearing. Mr. Miller further stated this is the first time he has ever objected to property tax values and being a long term resident of Morgan County, he cares about the future of the County understanding that property values are very important to its economic stability. He called this a unique situation explaining the reason for his appeal is due to the fact the Board of County Commissioners adopted new floodway regulations in 2014 which has now made his property unbuildable given the floodway. He stated that his properties in the past were bought and sold with the right to build and at this point he has no right to build given the Commissioners chose to adopt floodway regulations and further stating that both the Assessor and the Board of County Commissioners have agreed that the value of his property has changed. He referred to discussions with the Assessor's office, whereas they have indicated his value has not changed and further commented that his notice of determination stated "the basis was developed considering the costs, the market and the income approach and asked to discuss this with him today and inform him why this value has been determined given he has no right to build on the property.

Chairman Zwetzig stated that for a point of procedure it is allowed for the property owner to provide comments and the Assessor is allowed to provide comments and then it is to go to discussion and decision. Mr. Miller stated he understands that but the Board has never had a hearing with the uniqueness such as what the Board has created today.

Michael Krening, Deputy Assessor, appearing as an agent for the County, stated he has not prepared an appraisal of the property, but has obtained documentation to present to better help the Board make a decision. He stated that he understands that Mr. Miller probably feels that his potential for future development on his property has diminished, but the County does not value future or potential value. He stated they value property using today's current value and highest and best use. Mr. Krening referred to page 3 of the information he provided to the Board, which referenced real estate bundle of rights, with those rights he read aloud and some statements, the right of possession means he has the right to possess and use that property; right of control meaning manage the use of the property within legal jurisdiction; the right of exclusion to limit who may access the property; that right of enjoyment, the right to participate in any activity he finds pleasurable, using the property as long as it falls in the convenience of law; right of disposition, the title holders right to transfer ownership of the property, which is what he believes is being discussed today as he has not been encumbered on his right to transfer that property or to use that property under its current use. Mr. Krening stated the information packet shows how it is valued in the County Assessor's

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office, they do not look at what could be happening in the future and they try to value property at the current use and without any encumbrances as transferability.

Mr. Krening stated that he has also included in the information packet comparable properties with values, page 4, which indicate Mr. Miller's property at \$5,040 an acre, and another property, Loves, page 6, stating the property is about the same size indicating it sold for \$12,678 an acre, and another sale on page 8, was a transfer of a property, approximately ten acres at \$16,176 per acre and page 10, shows a smaller parcel that transferred for \$76,923 an acre. He stated this does not mean his property should be valued as this, but wanted to show the Board that they are valuing the property using variable properties and explained that these sales have been adjusted for size, location and time. This is raw data for the Board to determine the value of Mr. Miller's property and the value of these properties that have been sold, and these were sold as raw land. On a comparable basis, he stated he is trying to show that he is not being valued at that same level.

Commissioner Teague asked how the income approach plays into the current use, with Mr. Krening stating he could do a calculation using ground rent, but does not have any rented properties that could be good comparables, but could do some further research to see how people are renting out property for storage. He stated they do not have good data to come up with a potential gross income.

Mr. Miller stated as to the question how income approach works and as to the response of the Assessor's office, the Board must also take into consideration the permitted uses of the property, does each property have the same uses of the same income stating his property does not have the right for storage so it should not be compared to other properties that have the right for storage. Commissioner Arndt stated he agrees with Mr. Miller's comment about the different uses on rental properties. Mr. Krening clarified by saying his point regarding income approach was not specific to storage, that was only an example regarding a landlord/tenant relationship: if someone wanted to place an implement storage lot, or oilfield equipment storage, and they would be willing to pay x amount of dollars per month for this use, and Mr. Miller is not encumbered to any certain use, he could put items on that lot to sell, he is not encumbered if a landlord trip net lease for the current use could continue.

Mr. Miller stated the board should address what his property is permitted for, he has a permitted use for use by right inside and out, he does not have the right to store equipment in his existing permit. He stated he has a permitted right when he purchased the property and it is defined within the Planning and Zoning office. He stated he has a use by right which was granted to him when he purchased the property, and storage is not a use by right that would be by special use. Mr. Krening stated it would have to be determined if that would be denied by the Planning Commission. If there is a regulation they would have to determine that to make sure and take that into account under that determination as far as his inability to reapply for that. Mr. Miller stated under today's terms given the floodway regulations the property cannot be used for storage, and an application could be used to change the use, but the way the floodplain regulations that were passed, does not allow as of today.

Discussion followed with Commissioner Arndt stating that he understands that the use by right includes mobile and moveable equipment that is placed in and then out, it cannot include equipment storage.

Mr. Miller asked to clarify that the floodway is being discussed, not the floodplain with Chairman Zwetzig commenting he agreed. Commissioner Teague inquired about the value of transfers between properties in the floodplain versus those not in the floodplain, with Mr. Krening stating they look at those variable, but there are not many transfers of what compares to Mr. Miller's property.

Chairman Zwetzig stated he understands Mr. Miller's floodway because the regulations that were adopted in 2014 said that if you have an undesignated floodplain it is all considered a 100 year special hazard area to be a floodway so the designation is not floodway yet until those are adopted but the rules and regulations in a floodway apply to all the floodplain under our current regulations so the designation is floodplain but the rules are floodway. Mr. Miller stated for the record, he would object to this statement.

Commissioner Teague asked if Mr. Miller's current use has been encumbered by potential changes by the adopted regulations, with Mr. Miller stating no.

Mr. Krening asked Mr. Miller if he should be willing to pay Mr. Miller what the property is being valued at stating this is only being posed as an example, as he feels as if he did buy the property at this price, he could then turn around and rent it back to Mr. Miller and receive income from that property and he does not feel that he would be encumbered by purchasing the property feeling that he could make a fair income from the property in question.

Mr. Miller stated that if he is going to use an example, do not use a what if, he should place a check on the table, stating that he has been in business as a real estate broker and property values are determined by a buyer and a seller coming to an agreement of what that property is worth to each party. He then stated as an assessor, they use those values and assess a fair value, and again reiterated he feels this is a unique situation, and we are here to learn today, not prove who is right and who is wrong. Mr. Miller stated the Commissioners, by adopting a resolution, put them in a position that they cannot be right or wrong; it has put them in a situation where we need to learn from the situation.

The question was asked what Mr. Miller feels his property is valued at, with Commissioner Teague stating she read his appeal as stating \$75,000. Mr. Miller stated he indicated this amount explaining he has been actively selling properties in his duty as a real estate broker and summarized how he handles real estate transactions. He stated that he indicated a value of \$75,000 as being half of what the assessor values his property at, but the true value is zero given this unique situation. He stated he feels the decision by the Board adopting floodplain regulations; they have to start at zero and work up from there. Until his property changes hands, they cannot use it as a comparable, when asked if he would sell it for zero today, he stated absolutely not. He stated he is not here to ask for zero taxes, he is

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here to learn from a decision that was made from a federal agency that imposed something on the County and it has created an economic impact on the County and stated he has many answers to provide after this hearing.

Mr. Krening stated Mr. Miller introduced himself today as having a tax issue and Mr. Krening stated this is a value issue, explaining that based on statute the Assessor is required to assess a value for every property and the matter to be decided today is not to talk about taxes, only valuation.

Chairman Zwetzig asked Mr. Miller to clarify what he is stating as there have been no sales in the last two years in the floodplain area, with Mr. Miller answering under the scrutiny of a no build zone. Chairman Zwetzig stated that he is guessing that regulation took affect when adopted with Mr. Miller stating exactly, but it was not enforced by the County. Mr. Miller stated the Board has approved building permits where they have not enforced the floodway requirements.

Chairman Zwetzig stated there have been eleven floodplain permits issued and the only fault the County has had was that of not receiving the final elevation certificate which is a required condition and those requirements have since been met. Chairman Zwetzig stated he also spoke with the City of Brush and they have also issued permits under regulations they adopted in 2015.

Commissioner Teague stated the County has abided by the regulations; it only failed to obtain the final elevation certificate and has asked for this from all necessary parties. She stated it was designated as a floodplain and the County does not have a designated floodway, it is all considered a floodway in a floodplain. Mr. Miller does not believe this has been complied with and Chairman Zwetzig stated he would disagree with that as the county has eleven permits in which the County has fully complied.

Mr. Miller spoke about details of a meeting that had been held at the Morgan County Fairgrounds in which a representative from FEMA had indicated to him the Board of County Commissioners had not followed regulations that were set forth in 2014. Chairman Zwetzig stated the rules that were adopted have been followed and complied with.

At this time, Chairman Zwetzig reined the meeting back to the discussion as noticed, that being the value of the property in question, with the Assessor having provided detailed comparables and the fact Mr. Miller has not provided any sales comparables regarding his concerns about the valuation.

Commissioner Teague asked the question about owning a piece of land and the value of such property on the assessor records and the scenario if a neighbor buys or sells it as a landfill, how would that affect the value of her property. Mr. Krening stated if this was a permitted landfill, he would look at what it would do to the property value as transfer of value change.

Mr. Miller stated that all property is bought and sold with property rights and that creates value. He believes the property itself is zero as it is the rights that creates the value and stated the property in question was purchased knowing it was in the floodplain. He did everything he needed to be able to conduct business at the time he purchased the property, and then further spoke about his son being in business with him and the fact that they planned to build a complex in the future that would allow for expanded auction sales and given the regulations put in place in 2014, it has stricken the property right where he is not able to build which has decreased the value. He stated he does not believe there is a way of determining a value until there is a sale of the exact same property with the exact same situation to be able to adequately assess the value.

Mr. Krening stated they have always known this is in a floodplain area and the values have been set accordingly. He stated this property would be assessed much higher if it was not in this floodplain area. He again stated that he feels that it is still usable under its current use and the property is worth what is valued. He stated he is not going to speculate on what he can do with the property in the future, but feels that the property does have value and feels that he could use the property himself as an investment.

Mr. Miller, stating "the narrowness of Mr. Krening's thought process", the rights to use the property, it would be absolutely impractical to sell the property for \$150,000 given there is quality water infrastructure valued at \$130,000 as well as septic tanks and phone system infrastructure in place. The infrastructure that was put in place for future expansion is no longer good. He again stated he is not here to the tax for 2016, based in 2017, as being wrong, he is here to work with the Board and understand what comes down the pike when these sales start occurring. He stated there is no change of value within a floodplain, people are willing to buy property in the floodplain, and we now have a new issue where owners are not able to build on the property given the regulations that were put in place. Mr. Miller stated he is here today to educate the Board as to what has occurred with the regulations that were put in place in 2014. Further discussion followed with Chairman Zwetzig stating Mr. Miller just made a counterproductive comment stating the property includes a water taps worth \$130,000 and the taxable value being \$151,000. Mr. Miller stated that he could sell the property and take the water tap with him to another property with Chairman Zwetzig stating then that will be added to the value of the other property.

Commissioner Arndt stated that at this time, Mr. Miller is right, we are in unchartered waters and until there are sales in place for property with the uniqueness of Mr. Miller's property, until they see the sales in the floodway that would show a decrease in value, the Board would have to stay within the value as it is.

Mr. Miller asked who in this County is responsible to make a personal decision when they have no factual basis to work from. Commissioner Teague stated Mr. Miller has enjoyed his property at its current use and the assessed value has been set as to this current use and he continues to enjoy at its current use and there is nothing to provide the Board with an increase in value or a decrease in value and she believes the property needs to be valued at its current use.

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Mr. Miller again asked the same question as he posed above, with Chairman Zwetzig deferring to Kathryn Sellars. Ms. Sellars stated that as Mr. Krening stated, there are three different approaches and the assessor has the ability to find the most reasonable approach taking all three in to consideration. Ms. Sellars explained that Mr. Miller is right there may be something later on that the market approach which is based on comparable sales indicates a decrease in value because of the floodway regulations and designation, but the assessor has to make their value based on what is now, and not speculate necessary as to the future.

Ms. Sellars explained what someone tends to do with their property in the future, this should not be speculated to, what someone's plans are cannot be taken into consideration, and that is not part of the assessor's job or the Board's job.

Ms. Sellars stated the language is what is most reasonable the three approaches the cost, income and market, and the market approach given the use of the property believes that is the most reasonable, take into consideration all three approaches, but feels that they have used the best approach.

Mr. Krening stated he provided past sales data so the Board could review that information, and also uses the scenario of him being the landlord, renting it back to Mr. Miller on a triple net rental basis, he could make a profit and it would show that the transfer of that property would be appropriate.

Mr. Miller asked what number he would use in this scenario, with Mr. Krening stating \$3,000.00 as the number, with Mr. Miller stating if he would be required to pay the taxes, expenses, that would be doing all the owners job.

Mr. Miller, under the current circumstances the County is moving into, with Commissioner Teague stating we are here today, not what is in the future. Mr. Miller stated that the only thing is if today we goes in and fills out a building application you as the Board will have to deny it.

Kathryn Sellars stated she does not believe that is accurate, he could obtain a building permit with the information from an engineer given the elevation rise for the building being constructed. Mr. Miller stated he does not believe he could walk into the office today and ask for a permit, pay the dollars for an engineer and based on the current regulations, he would be denied as per what he was informed by FEMA.

Chairman Zwetzig stated that he understands Mr. Miller's information that he has provided in his protest and the fact it could create devaluation of property in the areas being affected by what was adopted by the Board in 2015. He again stated that he believes the County has followed their regulations

Mr. Miller stated the rumor that is out there that the County has 11 violations with FEMA is incorrect, with Chairman Zwetzig stating they were not violations there was suggestions for follow through that they were incomplete files.

Chairman Zwetzig explained that on the Assessor property cards it has somewhere on eth card that this property is in the floodplain, he cannot see that on this card. With Mr. Krening stating that he is not sure if there is something in their system and he cannot answer that. This has been taken into consideration with Mr. Krening saying that he knows this is in the floodplain area and tries to recognize that in evaluating the properties in this area. Mr. Miller asked if the Assessor's office has received the resolution and the new regulations set forth by FEMA and has read them and understands them. Ms. Sellars stated that she does not believe that is an appropriate question with Mr. Krening stating that he will not answer if it is or not, and they do recognize that this property is located within the flood area.

Mr. Krening stated the land value is \$5,040 on an acre basis, and it is 18.52 acres with Mr. Miller stating he believes it is 15.8, and Mr. Krening stated it needs to be reviewed and that could be corrected.

Mr. Miller asked Ms. Sellars to clarify her comment about the question being inappropriate with Ms. Sellars deferring to the Board if she should answer and Chairman Zwetzig stated he did not have an issue with her answering and she stated she does not believe that is a relevant question to ask in this situation.

Mr. Miller stated that he would expect that office to be aware of this information and these regulations. Further discussion followed with the Board as to what the assessor's office should understand and follow

Three ways the Assessor has, and Ms. Sellars feels they have used the most reasonable manner in assessing the value, using the market approach. Mr. Krening believes that is the most reasonable and uses this approach in most all property values, and will use other approaches if there is difficulty in coming to a proper value, and they try to be reasonable in their valuations and when someone appeals a value, they try to make a determination without bias and the fact they do not have many appeals filed, he feels they are doing an appropriate job.

Discussion followed with Mr. Miller stating that in a business don't you try to build your business, and feels they have become stale in the business where it is located and what it cannot be used for. It had the ability to grow and do other things and it no longer has that ability given the regulations that were approved.

Future situations are not part of what is to be considered in today's hearing, with Commissioner Arndt stating that the Board does not have any facts to go on at this time, and the argument being made here today is somewhat premature, as there are no sales data to look at that would provide devaluation or an increase in valuation.

Mr. Krening stated that most everyone in this floodway have the ability to continue using their property in the manner in which they have been, and in the future, all those properties could have the same issue of not being able to build and expand.

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Chairman Zwetzig stated the matter today is the valuation, and the fact there are properties that were removed from the floodplain, would the county increase their value when the floodplain maps changed. Discussion followed as to the floodplain mappings and flood insurance costs, and until those situations occur, there is no data to help in determining value.

Mr. Miller asked what would be the first impression, what would cause the Board to say in person to him that they believe the value of his property has changed given the property being in the floodplain. Chairman Zwetzig stated he has always known his property is in the floodplain. Mr. Miller asked if Chairman Zwetzig has never stated to him that his property has become a "BOWL", now that it is in the floodway, with Chairman Zwetzig stating that he has always considered property that is in the floodplain as not as valuable as property outside of the floodplain due to the increase in costs given they are required to purchase flood insurance.

Mr. Miller stated he would agree, he only paid \$30,000 for the property when he purchased the property given it was in the floodplain. Chairman Zwetzig asked about who purchased the property for \$7500 in 1990, with Mr. Miller stating he believes that was Albert Muth and he paid \$30,000 to him for the property. Discussion followed with Chairman Zwetzig stating he paid \$90,000 for a property and the value is now at over \$400,000.

Mr. Miller asked Commissioner Arndt if he made the above comment, with Mr. Arndt stating he did make the comment, and stated that this argument today is premature and until he sees the facts, it is not his job to tell the future and they have to base their decision on what is in front of them today.

Mr. Miller stated they are correct, this argument is premature, but unfortunately, it is past due as in 2014 the legal council recommended to the Board that new regulations be adopted so the County could comply with the new floodplain regulations.

Mr. Miller stated two out of the three were on that board, and unfortunately there was not the time, there was not the commitment from the public to address the rippling effect of this action, and until the County Commissioners and the legal firms that represent the County start understanding that the violation of property rights is damaging to our economic base in each and every County. Mr. Miller stated that the Board has the authority to step up and require them to work with you and until then we are going to continue down this path. Mr. Miller ended with the decision is on the Boards hands if they consider that it is premature he understands if they consider that yes we have a current change of value for whatever reason, they need to research this. He again suggested they appoint a committee to dissect this and work with the Commissioners and the Assessor's office to work through this matter, as this is a huge economic impact if the things go the other way and can this County survive that impact.

Chairman Zwetzig stated it is worth \$5,040 an acre and if there is a discrepancy, this can be changed, with Mr. Krening stating if there is a physical discrepancy, they would correct this. Mr. Miller stated that after reviewing his survey, the 18.5 acres is correct, as that is the information on the recorded survey.

At this time, Commissioner Teague made the motion to deny the appeal of the property value for Charles J. and Norma K. Miller R#016047 and uphold the assessor's valuation amount of \$151,330 with Commissioner Arndt seconding the motion, passed 3-0.

Discussion followed confirming if there should be a clerical error in the physical legal description as to the acreage indicated, that will be changed with all parties in agreement.

There being no further business the meeting was adjourned at 9:43 a.m.

Respectfully Submitted,  
Susan L. Bailey  
Clerk to the Board

(Minutes ratified August 15, 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