

PROCEEDINGS OF THE MOUNTRAIL COUNTY PLANNING AND ZONING COMMISSION  
Monday, March 24, 2014

The Mountrail County Planning and Zoning Commission met on Monday, March 24, 2014 at the Mountrail County South Complex with the following voting members present: Rosemarie Bieri, Roger Hovda, David J. Hynek, Michael Hynek, Trudy Ruland, Darrell Salter and Gary Weisenberger. Members absent were Arlo Borud and Chase Lindberg. Also present were Lori Hanson, Mountrail County Tax Equalization Director, Wade Enget, Mountrail County State's Attorney, Teresa Capitan, Mountrail County Auditor's Office and Kathy Craft, Administrative Assistant, Planning & Zoning Office. Other present were Deb Boyle-Dean and Erin Muxlow, Eagle Rock Timber.

Chairman M. Hynek called the meeting to order at 8:30 a.m.

Chairman M. Hynek called the 8:30 a.m. public hearing to order regarding the subdivision review request filed by Gail L. Neether for a 69.72 acre, more or less, plat to be known as Outlot 2 located in Government Lots 2, 3, & 7 of Section 22, Township 157 North, Range 90 West (Clearwater Township). Present for this discussion was Gail L. Neether. Staff reported there had been no comments regarding this plat and the Plat Review Committee recommended approval. Gail L. Neether presented eight certified mail return receipt cards from adjacent landowners. Ms. Neether stated she wanted the change from agricultural to rural recreational for purposes of selling the property. Commissioner D. Hynek mentioned the County was considering purchasing property around lakes in Mountrail County for public recreational purposes.

Moved by Commissioner D. Hynek, seconded by Commissioner Hovda to approve the 69.72 acre, more or less, plat known as Outlot 2 located in Government Lots 2, 3, & 7 of Section 22, Township 157 North, Range 90 West (Clearwater Township) as Gail L. Neether has met all of the requirements of the Mountrail County Subdivision Resolution. Upon roll call vote all present voted yes, motion carried.

Chairman M. Hynek called the 8:35 a.m. public hearing to order regarding the zoning request filed by Gail L. Neether for an amendment to the Mountrail County Zoning Map to rezone a 69.72 acre, more or less, tract of land described as Outlot 2 of Government Lots 2, 3, & 7 Section 22, Township 157 North, Range 90 West (Clearwater Township) from agricultural to rural recreational for future sale of land. Present for this discussion was Gail L. Neether. Staff reported they had received no comments regarding this project. Ms. Neether had presented eight certified mail return receipt cards from the adjacent landowners and stated she was changing the zoning for a future sale.

Moved by Commissioner Salter, seconded by Commissioner Ruland to present findings of fact from the March 24, 2014 public hearing and make a recommendation to the Mountrail County Commission for the approval of the zoning amendment filed by Gail L. Neether to rezone a 69.72 acre, more or less, tract of land described as Outlot 2 of Government Lots 2, 3, & 7 Section 22, Township 157 North, Range 90 West (Clearwater Township) from agricultural to rural recreational for future sale as Gail L. Neether has met all criteria as set forth in Article IV, Section III, Subsection E of the Mountrail County Zoning Ordinance and is contingent upon Gail L. Neether complying with all other regulations as set forth in the Mountrail County Zoning Ordinance. Upon roll call vote all present voted yes, motion carried.

Chairman M. Hynek called the 8:40 a.m. public hearing to order regarding the zoning request filed by Mountrail County, with concurrence from Kevin Lapica, landowner, for a conditional use permit to use land zoned agricultural for the mining of gravel on an 80 acre, more or less, tract of land described in the boundary survey lying in the SE $\frac{1}{4}$ , NE $\frac{1}{4}$ , NW $\frac{1}{4}$  & SW $\frac{1}{4}$  Section 5, Township 154

North, Range 93 West (Rat Lake Township). Present for this discussion was Greg Nabours, Mountrail County Engineering Technician. Staff reported no comments had been received regarding this project. Mr. Nabours presented three certified mail return receipt cards from adjacent landowners and stated Brosz Engineering Inc. had prepared a boundary survey of the area that would be mined. This was done because of the placement of fences on the property. This will be a gravel pit for County use only and the County has a three year lease on the property. The County will be responsible for road maintenance, dust control and obtaining a bond. It was recommended he contact Debing Township regarding dust control for the mile of their Township road which will be impacted.

Moved by Commissioner Weisenberger, seconded by Commissioner D. Hynek to approve the conditional use permit request filed by Mountrail County, with concurrence from Kevin Lapica, landowner, for a conditional use permit to use land zoned agricultural to mine gravel on an 80 acre, more or less, tract of land described in the boundary survey lying in the SE $\frac{1}{4}$ , NE $\frac{1}{4}$ , NW $\frac{1}{4}$  & SW $\frac{1}{4}$  Section 5, Township 154 North, Range 93 West (Rat Lake Township) for a period of three (3) years, requiring road maintenance agreements with Rat Lake Township and Debing Township, dust control agreements with Rat Lake and Debing Township and a reclamation bond as Mountrail County has met all criteria as set forth in Article IV, Section IV, Paragraph E, Items 1 through 6 of the Mountrail County Zoning Ordinance and is contingent upon the provision Mountrail County comply with all other regulations as set forth in the Mountrail County Zoning Ordinance. Upon roll call vote all present voted yes, motion carried.

Planning & Zoning staff reported the public hearings scheduled for 8:45 a.m. and 8:50 a.m. actually lie within the extraterritorial territory of the City of Stanley. The County has submitted the applications to the City of Stanley. Present for these public hearings were Jim Enge, Chairman, Purcell Township, June & Bill Stevens, and Arnold Addicott.

Moved by Commissioner D. Hynek, seconded by Commissioner Bieri to approve building permits #1707 through 1713. Upon roll call vote all present voted yes, motion carried.

Moved by Commissioner Hovda, seconded by Commissioner Weisenberger to approve the minutes of the February 24, 2014 meeting as amended to reflect the removal of the word "an" from line 2, paragraph 6, page one and showing David J. Hynek Vice Chairman on the signature line on page 8. Upon roll call vote all present voted yes, minutes as amended passed.

Staff reported the County was re-advertising for the Assistant County Planner/Assistant Disaster Emergency Coordinator position, the working group regarding special waste landfills would be meeting Wednesday, March 24<sup>th</sup> and letter dated February 11, 2014, postmarked February 11, 2014 from Harlen & Evelyn Lahti objecting to the water depot in Section 22 (Sikes Township) but not received in the post office box until March 10<sup>th</sup>.

Chairman M. Hynek called the 8:55 a.m. public hearing to order regarding the zoning request filed by Curtis & Lesley Trulson for a variance to use land zoned agricultural for pumping surface water for oil well fracking in SE $\frac{1}{4}$ NW $\frac{1}{4}$  Section 20, NE $\frac{1}{4}$ SW $\frac{1}{4}$  Section 21, Township 156 North, Range 92 West (Ross Township). Present for this discussion was Wade Trulson. Staff reported no comments had been received regarding this project. Mr. Trulson presented five certified mail return receipt cards and four certified mail receipts from the adjacent landowners. Wade stated the plan was to take water from the slough by Curt & Lesley Trulson farmstead by Oasis Petroleum. There was discussion as to where the water would be taken out of the slough because of the railroad tracks, the land involved was once farmed and is now flooded.

Moved by Commissioner Weisenberger, seconded by Commissioner Bieri to approve the variance request filed by Curtis & Leslie Trulson to use land zoned agricultural for pumping water for oil well fracking in the SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> Section 20 and NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> Section 21, Township 156 North, Range 92 West (Ross Township) contingent upon a copy of the State Water Commission's permit being presented and road haul agreements with the township and/or County, which ever roads are to be used. Upon roll call vote all present voted yes, motion carried.

Chairman M. Hynek called the 9:00 a.m. public hearing to order regarding the subdivision review application filed by EFM Land Management LLC for a 10 acre, more or less, tract of land to be known as Outlot 1 of the N<sup>1</sup>/<sub>2</sub>N<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub> Section 33, Township 154 North, Range 91 West (Sikes Township). Staff reported they had received no comments regarding the plat and had not received the certified mail return receipt cards. Chairman M. Hynek asked if anyone was present representing EFM Land Management LLC or anyone who wished to speak regarding this matter. No one was present to speak to this project.

Moved by Commissioner Ruland, seconded by Commissioner Hovda to table action on the subdivision review application filed by EFM Land Management LLC for a 10 acre, more or less, tract of land, described as Outlot 1 of the N<sup>1</sup>/<sub>2</sub>N<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub> of Section 33, Township 154 North, Range 91 West (Sikes Township) to the call of the Chairman. Upon roll call vote all present voted yes, motion carried.

Chairman M. Hynek called the 9:05 a.m. public hearing to order regarding the zoning request filed by Targa Badlands, with concurrence from EFM Land Management LLC, landowner, for an amendment to the Mountrail County Zoning Map to rezone a 10 acre, more or less, tract of land described as Outlot 1 of the N<sup>1</sup>/<sub>2</sub>N<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub> Section 33, Township 154 North, Range 91 West (Sikes Township) from agricultural to industrial to allow for a pump location site. Staff reported they had received no comments regarding this project and had not received the certified mail return receipt cards from the adjacent landowners. Chairman M. Hynek asked if anyone was present representing EFM Land Management LLC or anyone who wished to speak regarding this matter. No one was present to speak to this project.

Moved by Commissioner D. Hynek, seconded by Commissioner Ruland to table action on the zoning request filed by Targa Badlands, with concurrence from EFM Land Management LLC, landowner, for an amendment to the Mountrail County Zoning Map to rezone a 10 acre, more or less, tract of land described as Outlot 1 of the N<sup>1</sup>/<sub>2</sub>N<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub> Section 33, Township 154 North, Range 91 West (Sikes Township) from agricultural to industrial to allow for a pump location site to the call of the Chairman. Upon roll call vote all present voted yes, motion carried.

Discussed temporary water permits and the process the State Water Commission follows in issuing the temporary water permits.

Chairman M. Hynek called the 9:10 a.m. public hearing to order regarding the zoning request filed by Targa Badlands, with concurrence from EFM Land Management LLC, landowner, for a conditional use permit to use land zoned industrial to allow for a pump location on a 10 acre, more or less, tract of land described as Outlot 1 of the N<sup>1</sup>/<sub>2</sub>N<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub> Section 33, Township 154 North, Range 91 West (Sikes Township). Present for this discussion was Patrick Johnson representing Targa Badlands and EFM Land Management LLC. Chairman M. Hynek advised Mr. Johnson two earlier applications had been tabled because no one was present and there were no certified mail return receipt cards from adjacent landowners. Mr. Johnson apologized for his tardiness.

Moved by Commissioner Bieri, seconded by Commissioner Ruland to remove from the table the subdivision review application filed by EFM Land Management LLC for a 10 acre, more or less, tract of land to be known as Outlot 1 of the N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$  Section 33, Township 154 North, Range 91 West (Sikes Township). Upon roll call vote all present voted yes, motion carried. Johnson presented four certified mail receipts from the adjacent landowners showing the letters had been mailed on March 2, 2014 but no green cards had yet been returned. Staff reported no comments had been received regarding the plat and the plat review committee has recommended the plat for approval.

Moved by Commissioner D. Hynek, seconded by Commissioner Ruland, to approve the 10 acre, more or less, plat known as Outlot 1 of the N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$  Section 33, Township 154 North, Range 91 West (Sikes Township) as EFM Land Management LLC has met all of the requirements of the Mountrail County Subdivision Resolution. Upon roll call vote all present voted yes, motion carried.

Moved by Commissioner Ruland, seconded by Commissioner Weisenberger to remove from the table the zoning amendment request filed Targa Badlands, with concurrence from EFM Land Management LLC, landowner, for an amendment to the Mountrail County Zoning Map to rezone a 10 acre, more or less, tract of land described as Outlot 1 of the N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$  Section 33, Township 154 North, Range 91 West (Sikes Township) from agricultural to industrial to allow for a pump station. Upon roll call vote all present voted yes, motion carried. Present for this discussion was Patrick Johnson representing Targa Badlands and EFM Land Management LLC. Staff reported no comments had been received regarding this project and Mr. Johnson had presented four certified mail receipts for the adjacent landowners. Mr. Johnson stated this pump station would be used to maintain the levels of the oil in the pipeline.

Moved by Commissioner D. Hynek, seconded by Commissioner Bieri to present findings of fact from the March 24, 2014 public hearing and make a recommendation to the Mountrail County Commission for the approval of the zoning amendment filed by Targa Badlands, with concurrence from EFM Land Management LLC, landowner, to rezone a 10 acre, more or less, tract of land described as Outlot 1 of the N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$  Section 33, Township 154 North, Range 91 West (Sikes Township) from agricultural to industrial to allow for a pump location as Targa Badlands has met all criteria as set forth in Article IV, Section III, Subsection E of the Mountrail County Zoning Ordinance and is contingent upon Targa Badlands complying with all other regulations as set forth in the Mountrail County Zoning Ordinance. Upon roll call vote all present voted yes, motion carried.

Moved by Commissioner Salter, seconded by Commissioner Bieri to approve the conditional use permit request filed by Targa Badlands, with concurrence from EMF Land Management LLC, landowner, for a conditional use permit to use land zoned industrial to allow for a pump location on a 10 acre, more or less, tract of land described as Outlot 1 of the N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$  Section 33, Township 154 North, Range 91 West (Sikes Township) contingent upon the approval of the zoning amendment by the Mountrail County Commission as Targa Badlands has met all criteria as set forth in Article IV, Section IV, Paragraph E, Items 1 through 6 of the Mountrail County Zoning Ordinance and is further contingent upon the provision Targa Badlands comply with all other regulations as set forth in the Mountrail County Zoning Ordinance. Upon roll call vote all present voted yes, motion carried

Chairman M. Hynek called the 9:15 a.m. public hearing to order regarding the zoning request filed by Kurt Klev, with concurrence from Rodney Thurston, landowner, for a conditional use permit to use land zoned agricultural to place mobile homes on a 3.87 acre, more or less, tract of land described as Outlot 7 of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 15, Township 156 North, Range 90 West (City of Palermo). Present for this discussion was Derek Mathison, Allied Engineering, representing Kurt Klev, Walter

Dunham, Lawrence & Darlene R. Bruhn. Staff reported they had received 10 of 11 certified mail return receipt cards from the adjacent landowners, a letter from Robert M. Hamers objecting to the project and have had conversations with Walter Dunham, Mayor of Palermo regarding this project. Mr. Mathison stated the 27 trailers shown on the drawing is the maximum number that could be located on the property, that they are working with the State Health Department regarding the sewer system, the lots will be rented out with the mobile homes being owned by individuals, truck parking on the northwest side of town would be disruptive, capacity of the lagoon and this development would be done in phases. There was discussion concerning the water available for the site, they are not planning on hooking up to the City sewer system, and the City of Palermo's ordinance regarding required hooks as a result of the Farmers Home Loan the City received to upgrade their sewer system in approximately 1982. Walter Dunham, Mayor of Palermo stated the City's recommendation is to null and void this application because of the requirement of all properties within 200 feet of the City limits be connected to the City sewer system, the added expense it would put on the City and the increase in taxes for the residents of Palermo, particularly the elderly.

Moved by Commissioner Salter, seconded by Commissioner Ruland to table action on this request to the call of the Chairman until the developer and City of Palermo can come to an understanding, the State Health Department has made a determination regarding the sewer system and the City of Palermo has reviewed its ordinances enacted when the Farmers Home Loan mortgage was closed. Upon roll call vote all present voted yes, motion carried.

Chairman M. Hynek called the 9:20 a.m. public hearing to order regarding the zoning request filed by Earthwater Bakken LLC, with concurrence from Susan K. Leljestrand and Jane Van Havermaet, landowners, for an amendment to the Mountrail County Zoning Map to rezone a 14.72 acre, more or less, tract of land described as Lot 2 Section 10, Township 152 North, Range 90 West (Parshall Township) from agricultural to industrial to allow for water sales. Staff reported they had received an email from Mr. Sand on Sunday afternoon stating he would not be able to attend the meeting and we should call him. Staff called 701.323.7962 and there was no answer. Discussion included the comment period for the State Water Commission does not close until March 31<sup>st</sup>, no water permit has been issued by the State Water Commission, this is new technology that does not follow traditional water sources, Earthwater Bakken LLC has a well in McKenzie County and the State Water Commission is testing the water to see where it is coming from to insure it is not coming from a known aquifer.

Moved by Commissioner D. Hynek, seconded by Commissioner Weisenberger to present findings of fact from the March 24, 2014 public hearing and make a recommendation to the Mountrail County Commission to deny the zoning amendment filed by Earthwater Bakken LLC, with concurrence from Susan K. Leljestrand and Jane Van Havermaet, landowners, to rezone a 14.72 acre, more or less, tract of land described as Lot 2 Section 10, Township 152 North, Range 90 West (Parshall Township) based on the fact there is no water permit in place. Upon roll call vote all present voted yes, motion carried.

The Mountrail County Commission at their March 18, 2014 meeting followed the recommendation of the Mountrail County Planning & Zoning Board and denied the zoning amendment filed by Jane Paulson & Phillip R. MacLellan, Trustees of the Jane Paulson Living Trust for an amendment to the Mountrail County Zoning Map to rezone a 37.70 acre, more or less, tract of land described as Lot 3 Section 20, Township 158 North, Range 92 West (Powers Township) from agricultural to industrial to allow for a water depot but referred the item back to the Planning & Zoning Board with a recommendation of approving a variance for this project. Present for this discussion was Phil MacLellan, Jane Paulson and Joe Bender, Oasis Petroleum. Mr. MacLellan stated their intent was to

help get trucks off the road to save the roads and limit the creation of additional dust. He said it would take approximately 500 loaded trucks per frac and 500 unloaded trucks per frac, or 750 trucks each way during road restrictions, which would be eliminated as a result of the company using above ground pipelines to move the water. Discussion included approximately 80% of Powers Lake is in Mountrail County, the average depth of the lake is 7.2 feet, according to the North Dakota Game & Fish Department, the average frac would drop the lake about the width of a penny per frac, .22 of an inch drop for fracking 4 wells, City of Powers Lake sold 65,000 gallons of water in 2011 to 2012 to the oil industry, no monitoring of the lake's changes by the State Water Commission, 2% evaporation rate on the lake, and the ability of the State Water Commission to shut down the water permit at any time.

Moved by Commissioner D. Hynek, seconded by Commissioner Bieri to grant a variance to Jane Paulson & Phillip R. MacLellan Trustees of the Jane Paulson Living Trust for a temporary water diversion on Lot 3, Section 20, Township 158 North, Range 92 West (Powers Township) to coincide with State of North Dakota Temporary Water Permit SWC Project No. 1400A from September 30, 2013 through September 29, 2014 as Jane Paulson & Phillip R. MacLellan Trustees of the Jane Paulson Living Trust has met all criteria as set forth in Article IV, Section V of the Mountrail County Zoning Ordinance and is contingent upon Jane Paulson & Phillip R. MacLellan comply with all other rules and regulations as set forth in the Mountrail County Zoning Ordinance.

Board items included water pumping from the Curt Trulson property to Oasis wells, the proper size of space needed for cell towers with guy wires, meeting day for May meeting is Tuesday, May 27, 2014 and the need to elect a chairman and vice-chairman at the June meeting.

Moved by Commissioner Hovda, seconded by Commissioner Ruland to adjourn upon roll call vote all present voted yes, motion carried

The next regular meeting of the Mountrail County Planning & Zoning Board is to be held on Monday, April 28, 2014 at 8:30 a.m. at the Mountrail County South Complex, 8103 61<sup>st</sup> Street NW, Stanley, ND.

Accepted and approved this 28<sup>th</sup> day of April, 2014

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Michael Hynek, Chairman  
Mountrail County Planning & Zoning Commission

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Donald W. Longmuir Jr., AICP  
Zoning Administrator