

# MINUTES

## Mountrail County Planning and Zoning Commission November 27, 2017

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Mountrail County South Complex 8103 61<sup>st</sup> St NW Stanley, ND 58784

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*Chairman Hovda called the meeting to order at 8:30 a.m.*

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### In Attendance

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**Board members present:** Charlie Sorenson, Gary Weisenberger, Linda Wienbar, Bill Klug, Joan Hollekim and Trudy Ruland.

Also present were Wade Enget, Mountrail County States Attorney, Don Longmuir, Interim Planning & Zoning Administrator, Nate Sem, Planning & Zoning Administrator, Jana Heberlie, Mountrail County Road & Bridge Engineer, Lori Hanson, Mountrail County Tax Director, Heather Greenlee, Mountrail County Auditor's Office, Teresa Captain, Mountrail County Deputy Tax Director and Liz Hollowell, Planning & Zoning Administrative Assistant.

Public attending was June Enget, Kari Enget, Gary Holmen, Starla Norstedt and Nels Norstedt.

Absent were Arlo Borud, Tom Bieri and Roger Hovda.

### Approval of Agenda

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Vice Chairman Sorenson requested a motion to review the meeting agenda with the additions of Savage Water Solutions impending industrial water pipeline to staff items for discussion.

Commissioner Wienbar moved to accept the agenda with additions. Commissioner Klug seconded. Upon roll call, all present voted yes. Motion carried.

### 8:30 Public Hearing      Variance Permit      Pumping water for fracking

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**Applicant/Landowner:** Beverly Fretheim, landowner

**Location:** 160 acre, more or less, tract of land described as the SW $\frac{1}{4}$  of Section 34, Township 155 North, Range 93 West (**Debing Township**).

**Number of certified mailing receipts provided: 3**

**North Dakota Temporary Water Permit:** *ND Temporary Water Permit number ND2017-18340*

**Purpose:** Pump slough water to sell under the terms of condition of ND Water Permit

**Present:** Kevin Fretheim

**Discussion:** Mr. Fretheim stated they will be using only flat hose. Wade Enget, Mountrail County States Attorney asked if their previous Variance Permit had expired. Liz Hollowell, Planning & Zoning Administrative Assistant confirmed their permit expires this month, November 28, 2017. Lori Hanson, Mountrail County Tax Director asked about the point of diversion as Mrs. Fretheim owns the S½ of the SW¼ in Section 34. It was agreed the Variance Permit will read the S½SW¼ Section 34, Township 155 North, Range 93 West (Debing Township). Vice Chairman Sorenson advised Mr. Fretheim he will be given a copy of Mountrail County Road & Bridge temporary ROW use requirements that must be adhered to when laying flat hose.

**Outcome: Approved with corrections**

**Motion:** Moved by Commissioner Hollekim, seconded by Commissioner Ruland to approve the zoning request filed by Beverly Fretheim landowner, for a variance to pump slough water under the terms of condition of *ND Temporary Water Permit number ND2017-18340* on a 80 acre, more or less, tract of land described as the S½SW¼ of Section 34, Township 155 North, Range 93 West (**Debing Township**) contingent upon the terms and conditions of the ND State Temporary Water Permit ND2017-18340 valid October 5, 2017 to October 5, 2018, using only flat hose, landowners being contacted regarding hose placement, and adhering to Mountrail County Road & Bridge temporary ROW use requirements as Beverly Fretheim has met all criteria as set forth in Article IV, Section IV in the Mountrail County Zoning Ordinance and is further contingent upon Beverly Fretheim complying with all other terms and conditions of the Mountrail County Zoning Ordinance. Upon roll call, all present voted yes, Motion carried.

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**8:33 Public Hearing**

**Variance**

**Pumping water for fracking**

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**Applicant/Landowner:** E.S. Krieger, landowner

**Location:** 40 acre, more or less, tract of land described as the SW¼NW¼ of Section 10, Township 154 North, Range 94 West (**Unorganized Township**)

**Number of certified mailing receipts provided:** N/A – no adjacent landowners.

**North Dakota Temporary Water Permit:** Pending.

**Purpose:** Pumping river water for fracking

**Present:** Dan Krieger.

**Discussion:** Mr. Krieger stated he does not have his temporary water permit yet but expects it any day. Vice Chairman Sorenson advised Mr. Krieger he will be given a copy of Mountrail County Road & Bridge temporary ROW use requirements that must be adhered to when laying flat hose. Wade Enget, Mountrail County States Attorney recommended this variance permit should begin January 2018 since Mr. Krieger has a current variance permit on this location until the end of 2017.

**Outcome: Approved with contingencies**

**Motion:** Moved by Commissioner Ruland , seconded by Commissioner Klug to approve the zoning request filed by E.S. Krieger, landowner, for a variance permit to use land zoned agricultural for pumping river water on a 40 acre, more or less, tract of land described as the SW¼NW¼ of Section 10, Township 154 North, Range 94West (**Unorganized Township**) contingent upon providing Mountrail County Planning & Zoning a copy of an approved ND State Temporary Water Permit, using only flat hose, landowners being contacted regarding hose placement, and adhering to Mountrail County Road & Bridge temporary ROW use requirements as E.S. Krieger has met all criteria as set forth in Article IV, Section V of the Mountrail County Zoning Ordinance and is further contingent upon E.S. Krieger complying with all other terms and conditions of the Mountrail County Zoning Ordinance. Upon roll call, all present voted yes. Motion carried.

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**8:36 Public Hearing    Conditional Use Permit    Placement of a  
Transmission line**

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**Applicant:** NextEra Energy Resources dba Burke Wind, LLC

**Location:** Beginning in Burke County traveling **south through Powers Lake Township, Sorkness Township, west through White Earth Township** and ending at the Tande Substation for a total route distance in Mountrail County of 17.3 miles, more or less.

**Number of certified mailing receipts provided:** 10

**Purpose:** Placement of a 345-kilovolt electrical transmission line

**Present:** Deanna Julsen, Nextera Energy, Clay Cameron, Nextera Energy Project Manager Development and Tom Von Bische, Nextera Energy Community Development Leader.

**Discussion:** Mr. Cameron gave an overview of their project. Vice Chairman Sorenson asked about the number of landowners. Mr. Cameron advised they do not have all the landowner's easements yet. Commissioner Ruland asked about landowner notification requirements. Don Longmuir, Interim Planning & Zoning Administrator stated a conversation was held with Wade Enget, Mountrail County States Attorney about this requirement. Mountrail County States Attorney Enget stated the hearing was published to inform the other landowners as well as notification sent to any landowner that had not signed an easement. Commissioner Ruland asked if we had received the certified mailing receipts from those landowners. Planning & Zoning confirmed all were received. Vice Chairman Sorenson asked the percentage of signed landowner easements. Mr. Cameron stated they have six unsigned easements at this time. Mr. Cameron confirmed they are doing single pole placement with the poles being steel. They are adhering to the 150' required setback. Mr. Cameron stated they do not have their final design. A discussion was held on which roads this project would follow. Mr. Cameron presented an updated map that shows the proposed placement. Vice Chairman Sorenson asked about the perception of the community. Mr. Cameron stated it was fairly positive.

June Enget, landowner, stated there are a number of things wrong with this project. She stated her contract has several items that she does not agree with. Mrs. Enget stated the contract gives the company easement of 250' which is too much land and the lease is for 99 years, which is four generations. Mrs. Enget stated this contract was in favor of the company, not the landowner.

Mr. Cameron stated they have adjusted contracts for others and can do that for Mrs. Enget as well. Vice Chairman Sorenson stated if their route changes then the Condition Use Permit would not be valid. Wade Enget, Mountrail County States Attorney stated due to the reasons stated by Mrs. Enget, she would not be signing the easement. Deanna Julsen, Nextera Energy stated the easement is for 3 years with a 2 year extension if necessary. Mountrail County States Attorney Enget asked specifically where the poles would be placed as the contract isn't very specific. Deanna Julsen, Nextera Energy stated they work with landowner's on an individually basis regarding pole placement. Wade Enget, Mountrail County States Attorney stated this was not done for Mrs. Enget even after they sat down with Nextera and clearly explained where they wanted the poles placed. Deanna Julsen, Nextera Energy stated they would sit down with Mrs. Enget to work out a contract that is satisfactory for the landowner. Vice Chairman Sorenson stated the ingress and egress statement is fairly loose and while they may want to

guarantee that, they should also guarantee payment as more than likely Nextera will cause some damage. Commissioner Weisenberger asked if Nextera Energy was also applying with Burke County. Mr. Cameron stated they are and their meeting was scheduled for later this year. Commissioner Hollekim asked if there were Township roads or just a section line. Wade Enget, Mountrail County States Attorney stated it's just a prairie trail. Vice Chairman Sorenson asked their Nextera Energy would be interested in coming back once the project is more finalized. Mr. Cameron stated they would but they won't have the full design by next month. Don Longmuir, Interim Planning & Zoning Administrator recommended to Vice Chairman Sorenson instead of tabling the application to next month, to table it to the "Call of the Chairman" and that would give Nextera Energy more flexibility to when they would need to come back. Mr. Cameron asked when the Planning & Zoning meetings are held. Don Longmuir, Interim Planning & Zoning Administrator confirmed the 4<sup>th</sup> Monday of the month unless that falls on a holiday.

**Outcome:** Tabled to the Call of the Chairman

**Motion:** Moved by Commissioner Ruland, seconded by Commissioner Weisenberger to table to the "Call of the Chairman" the zoning request filed by NextEra Energy Resources dba Burke Wind, LLC for a conditional use permit on agricultural land to allow for placement of a 345-kilovolt electrical transmission line beginning in Burke County traveling **south through Powers Lake Township, Sorkness Township, west through White Earth Township** and ending at the Tande Substation for a total route distance of 17.3 miles, more or less. Upon roll call, all present voted yes. Motion carried.

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### Approval of Building Permits

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Commissioner Hollekim asked about building permit 2003 being in Lot 3 and for sure if 2004 was building in Lot 2. Planning & Zoning will check into this and let the Board know.

**Motion:** Moved by Commissioner Hollekim, seconded by Commissioner Klug to approve Building Permits #2003 to #2004 as corrected. Upon roll call, all present voted yes. Motion carried.

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### Approval of Minutes

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**Motion:** Moved by Commissioner Wienbar, seconded by Commissioner Ruland to approve the October 23, 2017 minutes as presented. Upon roll call, all present voted yes. Motion carried.

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## Staff Concerns

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- Bond Release - Knife River, with concurrence from Marty and Amalia Jorstad, landowners, for a conditional use permit to use land zoned as agricultural, to mine gravel on an 80 acre, more or less, tract of land described as the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9, Township 157 North, Range 94 West and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, Township 157 North, Range 94 West (White Earth Township). Pits have been reclaimed and we have a release form signed by the landowners. CUP expired August 25, 2017

The Board held a brief discussion regarding difficulty with approaches and confirmed that had all been cleared up. Commissioner Hollekim asked if the pits were inspected before the bond is released. Wade Enget, Mountrail County States Attorney stated there is nothing in our ordinance that requires anymore then the landowner's release.

**Motion:** Moved by Commissioner Wienbar, seconded by Commissioner Klug to approve the Bond Release request from Knife River on a conditional use permit with concurrence from Marty and Amalia Jorstad, landowners, to use land zoned agricultural, to mine gravel on an 80 acre, more or less, tract of land described as the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 9, Township 157 North, Range 94 West and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, Township 157 North, Range 94 West (White Earth Township) as the pits have been reclaimed to the landowner satisfaction. Upon roll call, all present voted yes. Motion carried.

- LOC/Pit Release - Knife River – North Central, with concurrence from Gary & Caroline Satterthwaite, landowners, for a conditional use permit to use land zoned agricultural for mining sand & gravel, on an 80 acre, more or less, tract of land described as the SW $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8, Township 153 North, Range 92 West (Knife River Township). Pit has been reclaimed and we have a release form signed by the landowners. CUP expires January 23, 2022.

Commissioner Ruland asked if the LOC is release does the CUP expire. Wade Enget, Mountrail County States Attorney stated this is a location we must be careful with as the CUP is still active. Mountrail County States Attorney Enget recommended putting this CUP on next month agenda and invite Gary & Caroline Satterthwaite, landowner, to verify they know the CUP has ended and no other work can be done there. Vice Chairman Sorenson stated this request, as well as the next one, should be tabled.

**Motion:** Moved by Commissioner Wienbar, seconded by Commissioner Weisenberger to table the LOC Release requests from Knife River on the conditional use permits with concurrence from Gary & Caroline Satterthwaite, landowners, to use land zoned agricultural for mining sand & gravel, on an 80 acre,

more or less, tract of land described as the SW $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 8, Township 153 North, Range 92 West and a 80 acre, more or less, tract of land described as the S $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 7, Township 153 North, Range 92 West (Knife River Township) until the Board can meet with the Satterthwaite's to ensure the pits are closed and no other work would be done there without new conditional use permits. Upon roll call, all present voted yes. Motion carried.

- *(Pit tabled above)* LOC/Pit Release - Knife River – North Central, with concurrence from Gary & Caroline Satterthwaite, landowners, for a conditional use permit to use land zoned agricultural for mining sand & gravel, on an 80 acre, more or less, tract of land described as the S $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 7, Township 153 North, Range 92 West (Knife River Township). Pit has been reclaimed and we have a release form signed by the landowners. CUP expires January 23, 2022.
- MBI Real Estate LLC dust control question. Don Longmuir, Interim Planning & Zoning Administrator stated he was contacted by MBI regarding dust control on 91<sup>st</sup> Ave NW going North from Highway 2 for 1 mile, ending at the railroad tracks. When MBI was granted their Amendment August 5, 2008, dust control was a requirement and MBI agreed to it at that time as they were the only company there. That has since changed. Now there are several companies using 91<sup>st</sup> Ave NW, MBI has requested the dust control be shared by all. Wade Enget, Mountrail County States Attorney stated Interim Planning & Zoning Administrator Longmuir had spoken with him on this matter and he recommended this request be brought to the Planning & Zoning Board. Each of the Board members were given a copy of the MBI's 2008 Amendment. Vice Chairman Sorenson stated the Amendment was probably done incorrectly in 2008 as once the area is rezoned to industrial, the requirements of the applicant change. Jana Heberlie, Mountrail County Road & Bridge Engineer asked if the road was a Township road and if so, was the Township ok with taking care of the road. Vice Chairman Sorenson stated they must be as they have been doing it for a while now. Commissioner Hollekim stated if this requirement was going to be changed; the Township should be advised before it is changed. Wade Enget, Mountrail County States Attorney suggested this request be put on the December's 2017 agenda and invite Manitou Township to come to the meeting to get their input. Lori Hanson, Mountrail County Tax Director asked if the Board is looking to end the requirement or require the other companies to participate. Don Longmuir, Interim Planning & Zoning Administrator stated that would be up to Manitou Township to decide. Vice Chairman Sorenson stated since the area is zoned industrial; the road should be taken care of by the Township as the companies there pay taxes towards the road. Wade Enget, Mountrail County States Attorney asked if 91<sup>st</sup> Ave NW going north from Highway 2 is part of Manitou Township certified miles. Jana Heberlie, Mountrail County Road & Bridge Engineer stated she will look into this and get that information to

Planning & Zoning. The Board decided to give this request back to Planning & Zoning to gather more information and communicate with Manitou Township about representation at a meeting.

- Ames/Savage Water Line. Vice Chairman Sorenson stated Savage Water Solutions is putting in a permanent industrial fresh water pipeline and it is not clear in the current Mountrail County's Ordinance that they would need an amendment or conditional use permit. This type of project didn't exist when the ordinances were developed. Vice Chairman Sorenson reported Makenzie County's Ordinances cover this type of project. This water line would include several "taps" where they would hook temporary lay flat hose to deliver to different locations. Vice Chairman Sorenson stated the taps and the end of their pipeline would require a change of zoning to industrial. Commissioner Ruland stated there are companies that already have fresh water pipelines. Don Longmuir, Interim Planning & Zoning Administrator stated those pipelines were included in the companies easements and it's believed those fresh water pipelines come up in New Town. Commissioner Weisenberger asked the length of Savage Water Solutions water line. Vice Chairman Sorenson stated about 12 miles. Commissioner Ruland stated the point of diversion and any taps would need to be zoned industrial at least temporarily. Vice Chairman Sorenson stated this is a permanent line. Wade Enget, Mountrail County States Attorney reminded there is an exception for municipals. The current ordinance does include utilities, but not water. Vice Chairman Sorenson stated if these are going to be zoned industrial then they must be along a highway and that would start limiting their placement. Commissioner Ruland stated there is an advantage to this pipeline not being along a highway as they are underground, not bothering the fields, and where they come up only flat hose is used, than that is better than a truck depot. Vice Chairman Sorenson stated it becomes a depot because when there is a point of sale, they would hook up a pump and the water would have to be delivered most likely by flat hose. Commission Ruland stated she would rather this be done by flat hose than by trucking as they are already dealing with this on the peninsula where flat hose is not allowed. Chairman Sorenson stated Savage water line is going to a site 4 miles off of 1804 as there is a lot of fracking being done there. Commission Ruland stated there should be a requirement that no trucking is allowed from that pipeline. Wade Enget, Mountrail County States Attorney stated, as Vice Chairman Sorenson alluded to, this project is industrial and industrial sites must be close to a major highway, so if they are placing this 4 miles north of 1804, there is no major highway there. Commissioner Ruland stated care must be taken as there are industrial site out there that can't be permitted due to this requirement but access needs to be given to keep trucks off the roads. Commissioner Ruland stated we should look at their plans to see what the options might be. Vice Chairman Sorenson stated they are starting this project in a few days. Commissioner Ruland stated there is nothing in our ordinance that could stop



them. Vice Chairman Sorenson stated we have industrial zoning and if Savage Water Solutions pipeline is not going to an oil site, then they must be zoned industrial at their end which is in Mountrail County. Now is the time to decide what to tell them. Commissioner Ruland agrees this project should be zoned industrial but to limit them to be near a paved road might not be prudent. This would require them to use flat hose to transport the water and if one landowner says no flat hose, then they would go back to using trucks. Commissioner Hollekim asked if industrial properties have to be by a paved road. Commissioner Ruland stated basically. Commissioner Hollekim asked where this was stated in the ordinances as what she is reading it does not state a paved road is a requirement. Wade Enget, Mountrail County States Attorney reminded the board of a previous decision where the applicant was required to move closer to a paved road be zoned industrial. Commissioner Ruland stated for that instant, they needed a good transportation system. Vice Chairman Sorenson listed several projects that were not approved due to not being on a paved highway. Vice Chairman Sorenson suggested a letter to Savage Water Solutions from Planning & Zoning outlining Mountrail County's requirements. Lori Hanson, Mountrail County Tax Director asked the starting and ending point of this water line. Vice Chairman Sorenson stated it begins in Williams County and is ending in the Unorganized Township 154-94, crossing Mountrail County roads several times. Lori Hanson, Mountrail County Tax Director asked if they had crossing permits. Jana Heberlie, Mountrail County Road & Bridge Engineer stated she will look into it. Commissioner Hollekim asked Mountrail County States Attorney Enget if zoning these sites industrial is his recommendation. He stated it is as that is the stated use. Lori Hanson, Mountrail County Tax Director asked if Savage Water Solutions had landowner easement and if this was zoned industrial, would the landowner need to sign the application as well. More discussion was held on pipelines, easements and requirements. It was decided Planning & Zoning would write Savage Water Solutions a letter regarding the requirements.

- 2018 Mountrail County Zoning Ordinance discussion. Wade Enget, Mountrail County States Attorney addressed the ordinance handout that each Board member received today. These are the ideas and suggestions that have been gathered throughout the year. Don Longmuir, Interim Planning & Zoning Administrator reminded the Board of the steps it takes to update ordinances. A discussion was held on setbacks and the importance of getting those correct.

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## Board Concerns

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Commissioner Wienbar asked if the rig mats located by Palermo have been moved. Don Longmuir, Interim Planning & Zoning Administrator stated they are still there. Wade Enget, Mountrail County States Attorney stated he had spoken with

Mrs. Ottesen and she told him the mats were moved to the reservations. Nate Sem, Planning & Zoning Administrator stated many of the mats are still there as he goes out on a site visit once a week and they have not moved.

Commissioner Klug advised he would not be attending the December 27, 2017 meeting.

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### Next Meeting

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Next regular meeting of the Mountrail County Planning & Zoning Board is **Wednesday, December 27, 2017** at 8:30 am at the Mountrail County South Complex, 8103 61<sup>st</sup> St. NW Stanley, ND 58784.

Meeting was adjourned at 9:50 a.m.

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### Approval

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Accepted and approved this 27<sup>th</sup> day of December 2017

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Roger Hovda, Chairman  
Mountrail County  
Planning & Zoning Commission

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Liz Hollowell  
Administrative Assistant  
Planning & Zoning