

PROCEEDINGS OF THE MOUNTRAIL COUNTY  
PLANNING & ZONING COMMISSION  
Monday, December 28<sup>th</sup>, 2015

The Mountrail County Planning & Zoning Commission met on Monday, December 28<sup>th</sup>, 2015 at the Mountrail County South Complex with the following voting members present: Roger Hovda, Charlie Sorenson, Bill Klug, Arlo Borud, Gary Weisenberger, Linda Wienbar, Trudy Ruland, and Rosie Bieri. Absent was Chase Lindberg and Lori Hanson, Mountrail County Tax Director. Also present were Thomas Bieri, prospective Board member, Wade Enget, States Attorney, Teresa Captain, Mountrail County Deputy Tax Director, Heather Greenlee, Mountrail County Auditor's Office, Lisa Lee, Assistant Planning & Zoning Administrator, Liz Hollowell, Planning & Zoning Administrative Assistant and Don Longmuir, Planning and Zoning Administrator.

Planning and Zoning staff introduced Thomas Bieri, a prospective new member of the Planning and Zoning Board who would replace Rosie Bieri in January 2016 as she retires after 30 years on the Board.

Chairman Hovda called the Planning and Zoning meeting to order at 8:30 a.m.

Chairman Hovda called the 8:30 a.m. public hearing to order regarding the zoning request filed by Dale Honsey of Pinky's Aggregates Inc., with concurrence from Jerry Wurtz, landowner, for a conditional use permit to use land zoned agricultural for mining aggregate on an 80 acre, more or less, tract of land described as the E½NW¼ of Section 18, Township 152 North, Range 90 West (Parshall Township). Present for this discussion was Dale Honsey and Jeff Martinson, Pinky's Aggregates Inc. Mr. Honsey provided seven return receipt cards from adjacent landowners. This item had been tabled at the November 23<sup>rd</sup> 2015 meeting due to lack of easement from the landowner.

Moved by Commissioner Ruland, seconded by Commissioner Weisenberger to remove this request filed by Dale Honsey of Pinky's Aggregates Inc. from the table. Upon roll call all present voted yes, motion carried.

Discussion included a letter had been received from Randy and Kori Hodgson with concerns regarding access to this project and forbidding use of their land for it. A written easement has been obtained from Marian Evenson for access to the gravel pit. Also discussed were road maintenance, dust control, pipeline easements, existing oil sites, and Ag versus industrial usage.

Moved by Commissioner Weisenberger, seconded by Commissioner Bieri to approve the zoning request filed by Dale Honsey of Pinky's Aggregates Inc., with concurrence from Jerry Wurtz, landowner, for a conditional use permit to use land zoned agricultural for mining aggregate on an 80 acre, more or less, tract of land described as the E½NW¼ of Section 18, Township 152 North, Range 90 West (Parshall Township) for a five year term, requiring a \$50,000 reclamation bond along with a road haul agreement, and dust control as Pinky's Aggregates has met all criteria as set forth in Article IV, Section IV, Paragraph E of the Mountrail County Zoning Ordinance and is further contingent upon

Pinky's Aggregates 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 Hovda called the 8:33 a.m. public hearing to order regarding the subdivision review request filed by BNSF Railway in concurrence with Ralph W Brown, landowner, for a 5.18 acre, more or less, plat to be known as Outlot 1 of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 18, Township 156 North, Range 89 West (McGahan Township). This item was tabled at the October meeting for failure to notify adjacent landowners.

Moved by Commissioner Borud, seconded by Commissioner Ruland to remove this item filed by Ralph Brown from the table. Upon roll call all present voted yes, motion carried.

No one from BNSF was present for this discussion however; two certified return receipt cards and one returned envelope had been received. No further comments were received. Discussion included this is a part of a large land acquisition by BNSF to expand their railway and all required documents had been signed prior to the death of Mr. Brown.

Moved by Commissioner Borud, seconded by Commissioner Ruland to approve the subdivision review request filed by BNSF Railway in concurrence with Ralph W Brown, landowner, for a 5.18 acre, more or less, plat to be known as Outlot 1 of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 18, Township 156 North, Range 89 West (McGahan Township) as Mr. Brown and BNSF has met all of the requirements of the Mountrail County Land Subdivision Resolution. Upon roll call vote all present voted yes, motion carried.

The 8:36 a.m. public hearing was deferred due to an administrative issue.

Chairman Hovda called the 8:39 a.m. public hearing to order regarding the subdivision review request filed by Hess North Dakota Pipelines LLC in concurrence with Omar Industrials LLC, landowner, on a 19.167 acre, more or less, tract of land in the SW $\frac{1}{4}$  of Section 34, Township 156 North, Range 92 West (Ross Township). Present for this discussion was Twyla Thorlaksen Horvath of Omar Industrials LLC, Tom Kalil, attorney for Omar Industrial, and Adam Landstrom and Bruce Mackay of Hess. Mr. Landstrom presented one certified return receipt card from the adjacent landowner. Two letters had also been received from Hess confirming the land had been surveyed and a copy had been forwarded to Ross Township chairman and supervisors. There was also an email received from Lori Hanson of the Mountrail County Tax Equalization Office regarding the name on the plat of the land. Discussion included Hess is in the process of purchasing this land from Omar Industrial LLC, nothing has changed from the preliminary plat, and the corporation has changed its name from Omar Farms Industrial to Omar Industrial LLC, however the corporation never updated the deed for ownership of the land. Mr. Kalil agreed to submit the affidavit of name change to update the name on the plat of the land for County recording purposes.

Moved by Commissioner Borud, seconded by Commissioner Ruland to approve the subdivision review request filed by Hess North Dakota Pipelines LLC in concurrence with Omar Industrials LLC, landowner, on a 19.167 acre, more or less, tract of land in the SW $\frac{1}{4}$  of Section 34, Township 156

North, Range 92 West (Ross Township) as Hess North Dakota Pipelines LLC and Omar Industrial LLC have met all of the requirements of the Mountrail County Land Subdivision Resolution. Upon roll call vote all present voted yes, motion carried.

Chairman Hovda called the 8:42 a.m. public hearing to order regarding the zoning request filed by subdivision review request filed by Hess North Dakota Pipelines LLC in concurrence with Omar Industrials LLC, landowner, on a 10.506 acre, more or less, tract of land in the SW¼ of Section 34, Township 156 North, Range 92 West (Ross Township). Present for this discussion Twyla Thorlakson Horvath of Omar Industrial LLC, Tom Kalil, attorney for Omar Industrial LLC, and Adam Landstrom and Bruce Mackay of Hess. Mr Landstrom provided one certified return receipt card from the adjacent landowner. An email from Lori Hanson had been received addressing title concerns which were discussed in the previous hearing. No further discussion was made.

Moved by Commissioner Borud, seconded by Commissioner Ruland to approve the zoning request filed by subdivision review request filed by Hess North Dakota Pipelines LLC in concurrence with Omar Industrials LLC, landowner, on a 10.506 acre, more or less, tract of land in the SW¼ of Section 34, Township 156 North, Range 92 West (Ross Township) as Hess North Dakota Pipelines LLC and Omar Industrial LLC have met all of the requirements of the Mountrail County Land Subdivision Resolution. Upon roll call vote all present voted yes, motion carried.

Chairman Hovda called the 8:45 a.m. public hearing to order regarding the zoning request filed by Mountrail-Williams Electric Cooperative with concurrence from Van Eeckhout Holding LLLP, landowner, for a Conditional Use Permit to construct an electric distribution substation on a 4.99 acre, more or less, tract of land in the NE¼ of Section 20, Township 152 North, Range 88 West (Plaza Township). No one was present from Mountrail Williams Electric for this hearing.

Moved by Commissioner Sorenson, seconded by Commissioner Wienbar to table this zoning request due to lack of representation and lack of notification to adjacent landowners. Upon roll call all present voted yes, motion carried.

Chairman Hovda called the 8:48 a.m. public hearing to order regarding the zoning request filed by Mountrail-Williams Electric Cooperative with concurrence from Kermont and Joyce Hollekim, landowner, for a Conditional Use Permit to construct an electric distribution substation on a 4 acre, more or less, tract of land in the SW¼ of Section 14, Township 156 North, Range 90 West (Palermo Township). No one was present for this discussion.

Moved by Commissioner Bieri, seconded by Commissioner Weisenberger to table this zoning request due to lack of representation and a lack of notification to adjacent landowners. Upon roll call all present voted yes, motion carried.

Chairman Hovda called the 8:36 a.m. public hearing to order regarding a zoning request filed by Terry Jones of Water Inc., in concurrence with Johnny David Kulczyk, landowner, for an amendment to change land zoned agricultural to industrial for the purpose of building a water depot with one main pump building and two loadout buildings with pit and pipeline on a 5 acre, more or less, tract of land

described as the N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 17, Township 154 North, Range 94 West (Unorganized Township). Present for this discussion was Terry Jones who presented four certified return receipt cards from adjacent landowners. A letter of concern was submitted from Colin and Susan Vachal and also from Freda Vachal regarding truck traffic on 100<sup>th</sup> Ave and the construction of the holding ponds and how it would affect their land if the holding area was breached. A second letter from Freda Vachal mentioned the work started prior to being permitted, a heavy rain could cause runoff to flood their property, and 100<sup>th</sup> Ave is one of the county's busiest roads.

Discussion included a cease and desist order and legal proceedings had already been filed with the State's Attorney's Office due to work started prior to obtaining a permit. Mr. Jones stated that the work started as a center pivot agricultural or dual purpose project and therefore he was entitled to begin work without a Planning and Zoning permit. He stated that he intended to receive Board approval prior to any industrial use of the land. Commissioner Ruland informed the board that there are construction permits required from the State Water Commission at 50 acre feet and larger and from the Mountrail Water Resource Board if under 50 acre feet. Furthermore, after communicating with Dan Farrell of the State Water Commission, the stock dams were supposed to have been removed. Mr. Jones explained that he has applied for a water permit for irrigation but the state is behind on its permits. He also stated that the pond was less than 50 acre feet and he was told that he did not need a permit for that.

Commissioner Sorenson addressed concerns on behalf of Ed Krieger, landowner to the north, who was unable to attend the hearing. Mr. Krieger has concerns regarding the dike flowing underneath the fence onto his property. The dike has moved ten feet, lacks a protective barrier, and is not stable. No erosion control has been done to protect neighboring properties and the dike is right up to the property line. Additionally a 10 acre parcel of land is not a large enough space to place a center pivot of economic value. Mr. Jones explained the pivot will irrigate 80-100 acres west of the pond. Mr. Jones stated that he has been in contact with the Corps of Engineers who approve of his project because it has an agricultural component but he cannot use it for industrial purposes without a permit.

Also discussed was seepage onto Colin and Freda Vachal's land, lack of permits from the state or local water resource board, lack of road haul agreements with the township and county, lack of survey or engineering plan for the water, and the state requirements for permitting will change as of January 1, 2016. This new change would forbid irrigation water being sold for industrial purposes and would no longer allow any dual purpose projects. All projects would have to be either agricultural or industrial only and not both. Planning and Zoning staff were never informed of the agricultural component of this project as the application has been only industrial in nature since its initial application in September 2015. Furthermore, 100<sup>th</sup> Ave is maxed out on truck traffic and cannot handle more traffic safely.

Moved by Commissioner Sorenson, seconded by Commissioner Wienbar to deny the zoning request filed by Terry Jones of Water Inc., in concurrence with Johnny David Kulczyk, landowner, for an amendment to change land zoned agricultural to industrial for the purpose of building a water depot with one main pump building and two loadout buildings with pit and pipeline on a 5 acre, more or less, tract of land described as the N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 17, Township 154 North, Range 94 West due to lack of State Water permits for construction and water usage, lack of site plan, road haul

agreements, and engineered drawings for the project. Upon roll call, all present voted yes, motion carried.

Moved by Commissioner Ruland, seconded by Commissioner Sorenson to untable the two zoning requests originally scheduled for 8:45 a.m. and 8:48 a.m. filed by Mountrail Williams Electric Cooperative as a representative arrived late. Upon roll call, all present voted yes, motion carried.

Chairman Hovda called the 8:45 a.m. public hearing to order regarding the zoning request filed by Mountrail-Williams Electric Cooperative with concurrence from Van Eeckhout Holding LLLP, landowner, for a Conditional Use Permit to construct an electric distribution substation on a 4.99 acre, more or less, tract of land in the NE¼ of Section 20, Township 152 North, Range 88 West (Plaza Township). Present for this discussion was Chris Meiers of Mountrail Williams Electric Cooperative who stated he would email the notification cards from adjacent landowners. Discussion included any action would be pending the presentation of notification cards, this is for an electrical substation in Plaza on the SW corner of ND State Highway 23 with 25KB circuits coming out of it, current set backs on the site plan show 33 ft. but the fence is further back and the structure is 150 ft. from the set back.

Moved by Commissioner Ruland, seconded by Commissioner Borud to approve the zoning request filed by Mountrail-Williams Electric Cooperative with concurrence from Van Eeckhout Holding LLLP, landowner, for a Conditional Use Permit to construct an electric distribution substation on a 4.99 acre, more or less, tract of land in the NE¼ of Section 20, Township 152 North, Range 88 West (Plaza Township) contingent upon receiving green notification cards as Mountrail Williams Electric Cooperative has met all criteria as set forth in Article IV, Section IV, Paragraph E of the Mountrail County Zoning Ordinance and is further contingent upon Mountrail Williams Electric Cooperative 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 Hovda called the 8:48 a.m. public hearing to order regarding the zoning request filed by Mountrail-Williams Electric Cooperative with concurrence from Kermont and Joyce Hollekim, landowner, for a Conditional Use Permit to construct an electric distribution substation on a 4 acre, more or less, tract of land in the SW¼ of Section 14, Township 156 North, Range 90 West (Palermo Township). Present for this discussion was Chris Meiers, Mountrail-Williams Electric Cooperative who stated he would supply the notification cards from adjacent landowners after the meeting. Discussion included this is for a substation in Palermo, any action would be contingent upon receipt of the notification cards.

Moved by Commissioner Bieri, seconded by Commissioner Wienbar to approve the zoning request filed by Mountrail-Williams Electric Cooperative with concurrence from Kermont and Joyce Hollekim, landowner, for a Conditional Use Permit to construct an electric distribution substation on a 4 acre, more or less, tract of land in the SW¼ of Section 14, Township 156 North, Range 90 West (Palermo Township) contingent upon receipt of the notification cards as Mountrail Williams Electric Cooperative Mountrail Williams Electric Cooperative has met all criteria as set forth in Article IV, Section IV, Paragraph E of the Mountrail County Zoning Ordinance and is further contingent upon Mountrail

Williams Electric Cooperative 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 Borud, seconded by Commissioner Wienbar to approve the minutes from the November 23<sup>rd</sup> 2015 meeting with one correction to the adjourn motion. Upon roll call, all present voted yes, motion carried.

Moved by Commissioner Wienbar, seconded by Commissioner Klug to approve the building permits #1917-1919. Upon roll call, all present voted yes, motion carried.

Board concerns include:

- Zoning should coordinate with the State Water Commission on water related projects
- Bonds versus letters of credit – Mountrail County should increase the amount requested on bonds from \$50,000 to \$250,000 to cover cost of reclamation. Letters of credit are easier to collect on than bonds which often require going through insurance companies

Moved by Commissioner Borud, seconded by Commissioner Ruland, to change the verbiage in the Mountrail County Zoning Ordinances to require a \$250,000 letter of credit with any application for a gravel pit beginning January 1, 2016. Upon roll call all present voted yes, motion carried.

- Wildlife and/or grassland easements should be researched because they would prohibit the installation of irrigation systems
- Protection of township roads from unsafe projects
- Section line roads need to be built to county standards for industrial or commercial purposes

Staff concerns included an update on the Seibel waste pit and abandoned campers. Ms. Seibel is working with the State Health Department and Planning and Zoning to clean up the area. Higher Power LLC plans to apply to change their conditional use permit from employee housing to multi-family housing in the future. There have been no updates to Planning and Zoning from Section 18 (now R360 Bottom) regarding their proposed oilfield waste site.

Moved by Commissioner Wienbar, seconded by Commissioner Ruland to rescind the approval given July 28, 2014 regarding a conditional use permit and a variance permit filed by Buell Consulting on the behalf of Verizon Wireless with concurrence from David and Kyle Debertin, landowners for a conditional use permit and variance permit to use land zoned agricultural to locate a 199' communications tower on a 147.59 acre, more or less, tract of land described as NE<sup>1</sup>/<sub>4</sub> Section 20, Township 152 North, Range 90 West (Parshall Township) as Buell Consulting Inc. has cancelled the project. Upon roll call all present voted yes, motion carried.

The next regular meeting of the Mountrail County Planning and Zoning Board is Monday, January 25<sup>th</sup> 2015 at 8:30 a.m. at the Mountrail County South Complex 8103 61<sup>st</sup> street, NW Stanley, ND 58784.

Moved by Commissioner Ruland, seconded by Commissioner Sorenson to adjourn the meeting. Upon roll call all present voted yes, motion carried.

Accepted and approved this 25<sup>th</sup> day of January 2016.

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Arlo Borud, Vice-Chairman  
Mountrail County Planning & Zoning Commission

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Donald W. Longmuir Jr., AICP  
Zoning Administrator