

MINUTES

Mountrail County Planning and Zoning Commission July 24, 2017

Mountrail County South Complex 8103 61st St NW Stanley, ND 58784

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

In Attendance

Board members present: Roger Hovda, Charlie Sorenson, Gary Weisenberger, Linda Wienbar, Arlo Borud, Tom Bieri and Trudy Ruland.

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

Public attending was Connie Anderson, Rory Wolter, Doug Peirias, Jim Footh, Max Schriock, Phil Maclellan, Jane Paulson, Brenda Jorgenson, Dan Krieger, Will Kulczyk, Jeff Meyer, Donna Haustveit, Mike Moltzan, Lorin Weisz, Carmen Haugen, Darla Miller, Gary Krieger and Rosella Person.

Absent were Teresa Captain, Mountrail County Deputy Tax Director and Bill Klug.

Approval of Agenda

Chairman Hovda requested a motion to review and approve the current meeting agenda.

Commissioner Wienbar moved to accept the agenda as is. Vice Chairman Sorenson seconded. Upon roll call, all present voted yes. Motion carried.

8:30 Public Hearing Conditional Use Permit Placing a Mobile Home

Applicant/Landowner: Michael D & Karolyn N Moltzan, landowners

Location: 2.16 acre, more or less, tract of land described as the Sublot B of Outlot 1 S½SW¼ of Section 15, Township 156 North, Range 94 West (**Myrtle Township**).

Number of certified mailing receipts provided: None

Purpose: The purpose of placing a mobile home for a residence.

Present: Michael D Moltzan

Discussion: Mr. Moltzan stated he was not able to send landowner notification by certified mail as he only had 2 days to accomplish this requirement. Wade Enget, Mountrail County

Applicant/Landowner: E.S. Krieger, landowner

Location: 160 acre, more or less, tract of land described as the NW¼ of Section 10, Township 154 North, Range 94West (**Unorganized Township**)

Number of certified mailing receipts provided: None required

North Dakota Temporary Water Permit *ND Temporary Water Permit number ND2017-18060* valid August 1 2017 to December 31, 2017.

Purpose: To pump river water for fracking

Present: Dan Krieger, for E.S. Krieger, landowner. Gary Krieger was also present.

Discussion: Mr. Krieger stated they have a permit for section 9 which is expiring and this permit is for section 10. He stated they are working with Select Energy and would be using flat hose with no trucks.

Brenda Jorgenson spoke in objection to the variance. Mrs. Jorgenson stated she lives at the North end of the White Earth River and is concerned about people upstream using the water as it affects more people than those that are notified of this project. She is concerned about the resources of the river never coming back. Chairman Hovda explained the variance procedure and that her concerns should be taken to the North Dakota State Water commission as they are the agency that issues the temporary water permit to use the water. Commissioner Ruland also explained how the process works and encouraged Mrs. Jorgenson to take her concerns to the State Water Commission. Commissioner Borud asked if Mr. Krieger had a ND State water permit. It was confirmed they do. Commissioner Ruland stated the Water Commission will pull a permit if the water becomes too low. Mrs. Jorgenson asked who benefits from taking the water this way. Vice Chairman Sorenson stated he was impacted positively as using flat hose takes the trucks off the road.

Outcome: Approved with contingencies

Motion: Moved by Commissioner Borud, Seconded by Commissioner Ruland to approve zoning request filed by E.S. Krieger, landowner, for a variance permit to use land zoned agricultural for pumping river water under the terms and conditions of *ND Temporary Water Permit number ND2017-18060* valid August 1, 2017 to December 31, 2017 on a 160 acre, more or less, tract of land described as the NW¼ of Section 10, Township 154 North, Range 94West (**Unorganized Township**) contingent on only using flat hose and effected landowners being contacted regarding hose placement 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 vote, Commissioner's Weisenberger, Wienbar, Borud, Bieri and Ruland voted yes. Vice Chairman Sorenson abstained. Motion carried.

8:39 Public Hearing**Variance****Pumping water for fracking**

Applicant/Landowner: Oil Capital Ventures, LLC with concurrence from Marty Jorstad, landowner

Location: 160 acre tract of land described as the SW $\frac{1}{4}$ of Section 10, Township 157 North, Range 94 West (**White Earth Township**)

North Dakota Temporary Water Permit: None

Purpose: To pump river water for fracking

Present: Donna Haustveit was representing Oil Capital Ventures, LLC. Shane Haustveit was on her phone. Mrs. Haustveit spoke with Shane about the water permit.

Discussion: Don Longmuir, Interim Planning & Zoning Administrator stated a comment was received from the Edward L Will Trust opposing the project. Jeff Larson had also sent a comment opposing the project. Commissioner Ruland stated with these comments, the temporary water permit will most likely not be granted. Both comments had been forwarded to the State Water Commission. Chairman Hovda asked if the permit was to take water from a creek or river, why does the permit say “ground water source”? Mr. Haustveit stated Oil Capital Ventures, LLC was told it didn’t matter which is checked. Wade Enget, Mountrail County States Attorney stated Mountrail County application was surface water and the North Dakota temporary water application says ground water source, then the applications do not match. He recommended the application be denied due to the applications being incompatible, due to conflicting entries.

Number of certified mailing receipts provided: 3

Outcome: Denied

Motion: Moved by Commission Ruland, Seconded by Commissioner Wienbar to deny the zoning request filed by Oil Capital Ventures, LLC with concurrence from Marty Jorstad, landowner, for a variance to pump river water for fracking on a 160 acre tract of land described as the SW $\frac{1}{4}$ of Section 10, Township 157 North, Range 94 West (**White Earth Township**) due to the applications being incompatible, due to conflicting entries. Upon roll call, all present voted yes. Motion carried.

8:42 Public Hearing**Conditional Use****Gravel Pit**

Applicant/Landowner: Aggregate Construction, Inc., with concurrence from Dallas & Debbi Moore, landowners

Location: NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, Township 156 North, Range 89 West (**McGahan Township**).

Number of certified mailing receipts provided: 5

Letter of Credit received: Yes.

Road Haul Agreement received: Yes

Purpose: Mining sand & gravel

Present: Max Shriock of Aggregate Construction, Inc.

Discussion: Mr. Shriock stated this pit is already there and they are just renewing the permit. Mr. Shriock outlined the roads that would be used.

Outcome: **Approved with contingencies**

Motion: Moved by Vice Chairman Sorenson, Seconded by Commissioner Wienbar to approve the zoning request filed by Aggregate Construction, Inc. with concurrence from Dallas & Debbi Moore, landowners, for a conditional use permit to use land zoned agricultural for mining sand & gravel, on a 55.8 acre, more or less, tract of land described as the NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, Township 156 North, Range 89 West (**McGahan Township**) for five (5) years contingent upon a \$125,000.00 letter of credit payable to Mountrail County and renewed yearly for the 5 year period including road haul and reclamation agreements with McGahan Township as Aggregate Construction, Inc. has met all criteria as set forth in Article IV, Section IV in the Mountrail County Zoning Ordinance and is contingent upon Aggregate Construction, Inc. complying with all other regulations as set forth in the Mountrail County Zoning Ordinance. Upon roll call, all present voted yes, Motion carried.

8:45 Public Hearing

Ordinance Update

Discuss finalizing Compassionate Care Act - Medical Marijuana Dispensaries Ordinance. Wade Enget, Mountrail County States Attorney stated the ordinance has been updated to reflect what Mountrail County requires. Mountrail County States Attorney Enget outlined the changes and if this Board approves this ordinance, then it becomes a recommendation to the Mountrail County Commissioners for approval.

Motion: Moved by Commissioner Borud, Seconded by Commissioner Wienbar to make a recommendation to the Mountrail County Commissioners for approval of the Compassionate Care Act - Medical Marijuana Dispensaries Ordinance. Upon roll call, all present voted yes, Motion carried.

Approval of Minutes

Motion: Moved by Commissioner Borud, seconded by Commissioner Ruland to approve the June 26, 2017 minutes as presented. Upon roll call, all present voted yes. Motion carried.

Staff Concerns

- Brenda Jorgenson – White Earth River variance opposition - approved 6/26/17 contingent upon water permit SE¼SW¼ 19 -158 - 93 landowner Shayne Mollet. Since then, this application has been denied by the North Dakota State Water Commission; therefore the variance is null and void. Mrs. Jorgensen voiced her concern on so few landowners being notified. Mrs. Jorgensen also voiced her concern on the importance of public notices reflecting the correct information.
- Jensen Brother Construction pit release – Section 8, Township 156 North, Range 90 West – 29.49 acre, more or less. Pit has been reclaimed to landowner's specification and all landowners signed off on the reclamation.

Motion: Moved by Commissioner Borud, Seconded by Commissioner Weisenberger to release Jensen Brother Construction bond on the borrow pit on a 29.49 acre, more or less, tract of land described as Gov't Lot 1 on Section 8, Township 156 North, Range 90 West (Palermo Township) as the pit has been reclaimed to landowners specifications. Upon roll call, all present voted yes. Motion carried.

- Brendle's Bay Subdivisions Concerns – Don Longmuir, Interim Planning & Zoning Administrator stated that Jeff Meyer appeared at the Commissioner meeting 7-5-17 to discuss continued abuse of campers on residential lots. Mr. Meyer asked that if the landowners who have building permits now do not build this year, that they not be allowed to have campers on site next year if they reapply to build again. Mr. Meyer's feels they are purchasing building permits in order to keep their campers and many of them have no intentions of building and will continue to buy building permits each year. Per Wade Enget, Mountrail County States Attorney, this needed to come back to Planning and Zoning before any further action could be taken. Chairman Hovda confirmed building permits were good for one year but remained valid as long as active building is being done. Chairman Hovda stated that he had visited Brendle's Bay and it had the appearance of a party spot with several RV's hooked up to power and water. Wade Enget, Mountrail County States Attorney stated that it would need to be communicated with Brendle's Bay owners that they could only have their RV's for one season while building. Commissioner Ruland stated that active building must be clear for a building permit to be extended. Chairman Hovda asked if there was a map of Brendle's owners. It was confirmed there was. Chairman Hovda stated he spoke with

Gail Brendle, owner/developer the land, and she was clear that Brendle's Bay was to be residential.

Darla Miller was present to speak. Mrs. Miller stated they did not intend or ever intended to use their property in Brendle's Bay as a campground. Mrs. Miller expressed her displeasure with Brendle's Bay home owner association due to the amount of time it has taken them to approve the Miller's building permit. Mrs. Miller stated they applied for, and was granted, a Mountrail County Building permit but must have approval from Brendle's HOA before they can build. She stated at this rate, they will more than likely have their RV there next season as this building season is quickly coming to an end. Chairman Hovda advised Mrs. Miller, lot owner, and Mr. Meyer, Brendle's Bay HOA, to communicate effectively to get the building permit approved. Commissioner Bieri asked for clarification of why the Planning & Zoning Board is involved in Brendle's Bay. Commission Ruland advised the subdivision is zoned residential, which does not allow RV's to be located and/or lived in on the lots. Mrs. Miller asked about the length of a building permit. Wade Enget, Mountrail County States Attorney stated the length of a building permit is up to the Planning & Zoning Board.

- Comprehensive Plan Update - The comprehensive plan grant application has been denied by the Economic Development Authority. Don Longmuir, Interim Planning & Zoning Administrator stated at one time Mountrail County was doing a joint land study with the Minot Air Force base and that might be a way to get help with the Comprehensive Plan but this would still cost Mountrail County approximately \$80,000.00. Chairman Hovda asked if this could be in Planning & Zoning budget next year. Interim Planning & Zoning Administrator Longmuir stated it was. Vice Chairman Sorenson stated it would be beneficial for Mountrail County to have an ongoing account that money was deposited in so that when a Comprehensive Plan needed to be updated, the money would already be there.
- Search for District 2 Board Member is still ongoing and Don Longmuir, Interim Planning & Zoning Administrator stated would be checking on getting that position filled.
- Interviews are scheduled for the new Planning and Zoning Administrator.
- Will Kulczyk appeared before the Board to ask for some time to get his father, Johnny David Kulczyk, water depot infrastructure corrected. Don Longmuir, Interim Planning & Zoning Administrator stated Mr. Kulczyk addressed the Mountrail County Commissioners about not denying their application and lifting the Cease & Desist order. The Commissioners referred the applications back to Planning & Zoning. A Dam Inspection report of the project was given to each Board Member. Mr. Kulczyk stated he

is now the manager of this project and Terry Jones has been severally demoted. Mr. Kulczyk advised the Board of the steps he has taken and asked them what needs to be done to make this project happen. Chairman Hovda had spoken with Mr. Kulczyk on the phone previously and understands it is Mr. Kulczyk's intent to fix the issues. Mr. Kulczyk stated he has spoken with each neighbor and doesn't see how this went so wrong. He asked the Board for a variance to pump water to make money to fix the mistakes that are already there. Mr. Kulczyk stated he paid for a building that is just sitting on the ground rotting and he would like to put it up. Commissioner Ruland stated he would need a building permit. Mr. Kulczyk stated he would look into that. Commissioner Ruland stated that Mr. Kulczyk would need a written plan so the Board would know what he intends to do on the site. Commissioner Ruland asked the findings of the Water District. Wade Enget, Mountrail County States Attorney stated he hasn't heard much about the report, just a little about the classification of the dams. Mountrail County States Attorney Enget stated there is a Cease and Desist on the site and it is Mr. Kulczyk's goal to have it lifted before any work can continue. Vice Chairman Sorenson outlined what would be acceptable for Mr. Kulczyk to do to be able to get a variance to pump water which would include such things as meeting the 75 foot setback requirement, 40 foot from the property line on the upper reservoir and approved by an engineer. A discussion was held on safety of highway 101st Ave NW and its weight limitations. A discussion was held on the 75' setback requirements on sections lines and the need for a Variance if that setback can't be achieved. Commissioner Ruland said the Mountrail County Water Board, of which she was a member at the time, told Mr. Jones he needed to hire a state certified engineer to verify the safety and location of the dams prior to work being commenced and Mr. Jones ignored the request. Commissioner Borud pointed out that Dam Two cannot be used as is because the dam is located on the section line. Altering the existing dam needs to be done by a certified engineer. The dams need to be surveyed to verify their location on the property. Commissioner Ruland stated Mr. Kulczyk would need a business plan that states specifically what you are going to do to show the Board. This plan will need to show it is meeting the requirements of the various ordinances. Once that is approved, the Board could look into a Variance and lifting the Cease & Desist.

Board Concerns

Commissioner Wienbar asked about the status of the JJ Oilfield Services.

Wade Enget, Mountrail County States Attorney gave a report of a proposed Hess project using the White Earth Bay road.

Next Meeting

The next regular meeting of the Mountrail County Planning & Zoning Board is Monday, August 28, 2017 at 8:30 am at the Mountrail County South Complex, 8103 61st St. NW Stanley, ND 58784.

Meeting was adjourned at 10:30 a.m.

Approval

Accepted and approved this 28th day of August 2017

Roger Hovda, Chairman
Mountrail County
Planning & Zoning Commission

Liz Hollowell
Administrative Assistant
Planning & Zoning