MINUTES

**Mountrail County Planning & Zoning Commission**

**August 22, 2022**

The meeting of the Mountrail County Planning & Zoning Commission was called to order at 8:30 a.m. by Chairman Charlie Sorenson with Commissioners Joan Hollekim, Arlo Borud, Roger Hovda, Gary (Fritz) Weisenberger, Trudy Ruland, Zachary Gaaskjolen, and Megan Fritel present. Also present were Planning & Zoning Administrator Melissa Vachal, Planning & Zoning Assistant Malinda Gunderson, Mountrail County States Attorney Wade Enget, Mountrail County Tax Equalization Director Lori Hanson, Mountrail County Property Assessor Kim Savage, and Mountrail County Engineer Jana Hennessy. Absent was Commissioner Douglas Bratvold.

**APPROVAL OF AGENDA**

Moved by Commissioner Borud, seconded by Commissioner Ruland, to approve the agenda. All present voted yes. Motion carried.

**APPROVAL OF MINUTES**

Moved by Commissioner Hovda, seconded by Commissioner Hollekim to approve the Planning and Zoning Commission minutes of the July 25, 2022 meeting as corrected. All present voted yes. Motion carried.

1. **8:35 a.m. Alex & Morgan Craft-Applicant/Landowners (PZ-2022-0174) Conditional Use**

Zoning Request/Conditional Use Permit for the following described property: a tract of land less than 20.00 acres located in the E1/2SE1/4 of Section 26, Township 155 North, Range 91 West and a 1.00 acre tract of land located in the NE1/4SE1/4 of Section 23, Township 155 North, Range 91 West (Purcell Township) (Parcel# 250012200 & 250010300)

The applicant (represented by Jason Wirtz with the ND Department of Agriculture along with Alex and Morgan Craft) is seeking a Conditional Use Permit for the purpose of a medium feeding operation and a dead animal disposal site. Applicant has an approved permit from the ND Department of Environmental Quality (NDDEQ). The feed lot will have a run off containment pond to catch any run off from the operation. Commissioner Weisenberger questioned the need for the dead animal disposal site and Alex Craft explained that NDSU wants the deceased animals composted in the disposal site. Jason Wirtz also clarified that under the ND Board of Animal Health Standards, they are required to have a disposal plan to either compost the animals or have a burial pit. James Enge, adjacent landowner, was present with concerns that he has already spoken privately with the applicant about but wanted on record with the board about the water infrastructure since the applicant will have access to rural water, the possible smell coming from the feed lot during the summer months, and any possible issues with weeds. Mr. Enge has been assured by the applicant that the feed lot will have a new water line installed on the rural water which will insure anyone downstream won’t be impacted and that the smell won’t be an issue during the summer because the animals can and will be moved out after the spring. Marshall Craft, adjacent landowner, was present with a concern about the smell that will come from the feed lot. Mr. Craft feels that Mr. Enge’s place is too close to the feed lot at only 2,900 feet away and would like to know what the applicant plans on doing if the smell does get out of control. Morgan Craft addressed Mr. Craft’s concern stating that the purpose of the run off pond is to help with the smell as well as moving the cattle out at the end of the spring before the summer heat makes the smell worse. Commissioner Hollekim asked if Mr. Craft was experiencing any smell now since there are 750 head of cattle on the property now and he stated that he wasn’t but that the animals aren’t contained right now like they will be if this is approved. Chairman Sorenson addressed the issue of odor control stating that the board can change the setback to control the odor for the sake of public interest. Commissioner Ruland addressed the issue of the odor as well stating that the applicant does have a good nutrient management plan in their plans for this feed lot. Chairman Sorenson asked the board if there should be a weed management plan due to the nutrient management plan’s distribution of the manure. Commissioner Ruland stated the board can place restrictions on the feed lot as far as the number of animals and the months of operation in order to control the odor. Morgan Craft addressed Marshall Craft stating that the property her and Alex Craft live on is less than 1/4 mile away from where this feed lot will be and they aren’t going to want to deal with the smell any more than anyone else and that if it gets out of control, measures will be taken to get it back under control or they will shut down the operation. Mr. Wirtz stated that the setbacks set by the state and county as well as the solid separators that will be in place to separate the solids from the water that will run into the run off pond are all acting to mitigate the odors. The applicant is also planning to plant trees on the north and east sides of the feed lot to also mitigate any possible odors. Mr. Enge addressed the board once more to state that he doesn’t feel the smell is going to be an issue especially because the state is involved, and if it is he feels a phone call to let the owner of the feed lot know the odor is getting out of hand will suffice and he feels that their plans are very well designed. Commissioner Weisenberger mentioned the feed yard in New Town that has been operating in a mostly residential area for years with little to no complaint from the residents. Commissioner Borud expressed a concern about this staying a private feeding operation and not becoming a custom feeding operation. Alex Craft stated it is for private use and he plans to keep it that way. Jason Wirtz did inform the board that their regulations don’t differentiate between personal and custom feed lots and the NDDEQ is only concerned with the number of animals and the water runoff and doesn’t feel anyone can regulate whose cows the applicant is feeding. Mountrail County Tax Equalization Director Lori Hanson asked Mr. Wirtz how often his agency inspects sites like these. Mr. Wirtz stated his agency isn’t regulatory but that the NDDEQ will do regular inspections on them if necessary. Commissioner Hollekim asked when the applicant would be connected to rural water. Commissioner Weisenberger answered that it should be being bid on this fall and should be connected next summer. States Attorney Wade Enget addressed the board concerning the closure plan and financial assurance for the closure plan that is required by the zoning ordinance which he did not see in the application. Mountrail County Tax Equalization Director Lori Hanson asked the board if this would have an expiration date on it or if it would be for the life of the land. Chairman Sorenson stated that it would be permanently attached to the land. States Attorney Enget informed the board that the ND Century Code states the board has 60 days from receiving a completed application to act on it. Commissioner Ruland then suggested tabling this discussion until the closure plan is received.

Moved by Commissioner Hovda, seconded by Commissioner Ruland to table to the call of the chair due to the lack of the closure plan included with the application. After the motion and second, Commissioner Weisenberger asked if the board could consider approving or denying it now contingent on the closure plan rather than tabling it and making the applicant wait longer. Commissioner Hovda withdrew his motion and Commissioner Ruland then withdrew her second of the motion to table.

Moved by Commissioner Weisenberger, seconded by Commisioner Ruland, to approve the zoning request filed by Alex & Morgan Craft, for a Conditional Use Permit for the purpose of a medium feeding operation and a dead animal disposal site on a tract of land less than 20.00 acres located in the E1/2SE1/4 of Section 26, Township 155 North, Range 91 West and a 1.00 acre tract of land located in the NE1/4SE1/4 of Section 23, Township 155 North, Range 91 West (Purcell Township) contingent upon the receipt of a closure plan and financial assurance for the closure plan as Alex & Morgan Craft have met all criteria as set forth in Article IV, Section IV of the Mountrail County Zoning Ordinance and is further contingent upon Alex & Morgan Craft complying with all other terms and conditions of the Mountrail County Zoning Ordinance. All present voted yes. Motion carried.

1. **8:38 a.m. West Dakota Water LLC-Applicant; Jack & Judene Cvancara-Landowners (PZ-2022-0175) Temporary Fresh Water Industrial Use Point of Diversion**

Zoning Request/Temporary Fresh Water Industrial Use Point of Diversion for the following described property: a tract of land 152.77 acres more or less located in the NE1/4 less Outlot 1 of the NE1/4NE1/4 of Section 20, Township 155 North, Range 92 West (Alger Township) (Parcel# 260009400)

The applicant (represented by Lauren Lutz of West Dakota Water LLC) is seeking a Temporary Fresh Water Industrial Use Point of Diversion for the purpose of pumping water via lay flat hose for fracking purposes. Applicant has met all requirements of the Planning & Zoning Board.

Moved by Commissioner Hovda, seconded by Commissioner Ruland, to approve the zoning request filed by West Dakota Water LLC with concurrence from Jack & Judene Cvancara-landowners, for a temporary conditional use permit for a Temporary Fresh Water Industrial Use Point of Diversion to pump water via lay flat hose for fracking purposes on a tract of land 152.77 acres more or less located in the NE1/4 less Outlot 1 of the NE1/4NE1/4 of Section 20, Township 155 North, Range 92 West (Alger Township) contingent upon adhering to the ND State Temporary Water Permit ND2022-21124 valid 6/30/22 through 6/29/23, using lay flat hose, all landowners being contacted regarding any hose placement and adhering to Mountrail County Road & Bridge and/or township(s) temporary ROW use requirements as West Dakota Water LLC with concurrence from Jack & Judene Cvancara-landowners, has met all criteria as set forth in Article II, Section XVI, and Article IV, Section IV of the Mountrail County Zoning Ordinance and is further contingent upon West Dakota Water LLC with concurrence from Jack & Judene Cvancara-landowners, complying with all other terms and conditions of the Mountrail County Zoning Ordinance. All present voted yes. Motion carried.

1. **8:41 a.m.** **Northwest Water Transfer-Applicant; Wallace D. Lee Living Trust-Landowner (PZ-2022-0177) Temporary Fresh Water Industrial Use Point of Diversion**

Zoning Request/Temporary Fresh Water Industrial Use Point of Diversion for the following described property: a tract of land 40.00 acres more or less located the SW1/4SW1/4 of Section 8, Township 154 North, Range 89 West (Oakland Township) (Parcel# 300003500)

The applicant (represented by Molly Reinhart with Northwest Water Transfer) is seeking a Temporary Fresh Water Industrial Use Point of Diversion for the purpose of pumping water via lay flat hose for industrial use. Ms. Reinhart states there is currently no water there as it has dried up but they are hoping there will be water in the spring. Tax Director Hanson noted the application reflects a date of 9/13/22-12/31/22 but the state water permit shows 7/28/22-7/27/23. Chairman Sorenson stated the board would go with the most restrictive expiration date and the applicant could renew the application prior to that date. The board will set the expiration date as 12/31/22 and the applicant will need to renew the application before that date. Applicant has met all requirements of the Planning & Zoning Board.

Moved by Commissioner Ruland, seconded by Commissioner Hovda, to approve the zoning request filed by Northwest Water Transfer with concurrence from Wallace D. Lee Living Trust-landowner, for a temporary conditional use for a Temporary Fresh Water Industrial Use Point of Diversion to pump water via lay flat hose for industrial use on a tract of land 40.00 acres more or less located in the SW1/4SW1/4 of Section 8, Township 154 North, Range 89 West (Oakland Township) expiring on 12/31/22 contingent upon adhering to the ND State Temporary Water Permit ND2022-21159 valid 7/28/22 through 7/27/23, using lay flat hose, all landowners being contacted regarding any hose placement and adhering to Mountrail County Road & Bridge and/or township(s) temporary ROW use requirements as Northwest Water Transfer with concurrence from Wallace D. Lee Living Trust-landowner, has met all criteria as set forth in Article II, Section XVI, and Article IV, Section IV of the Mountrail County Zoning Ordinance and is further contingent upon Northwest Water Transfer with concurrence from Wallace D. Lee Living Trust-landowner, complying with all other terms and conditions of the Mountrail County Zoning Ordinance. All present voted yes. Motion carried.

1. **8:44 a.m. Farden Construction-Applicant; Richard K. Rice-Landowner (PZ-2022-0178) Conditional Use**

Zoning Request/Conditional Use Permit for the following described property: a tract of land 20.00 acres more or less located in the SW1/4NW1/4 of Section 2, Township 157 North, Range 94 West (White Earth Township) (Parcel# 140000600)

The applicant (represented by Todd Farden with Farden Construction) is seeking a Conditional Use Permit for the purpose of using land zoned Agricultural to mine gravel. Chairman Sorenson informed the applicant they will need to fill out a weed management plan and submit it to P&Z Administration. Commissioner Hollekim noted there is an error in the date of the lease with the landowner, the applicant has not finished filling out the checklist and they need a letter of credit. This permit will be approved contingent on administration receiving a completed checklist, the corrected lease, weed management plan, and a letter of credit.

Moved by Commissioner Hollekim, seconded by Commissioner Hovda, to approve the zoning request filed by Farden Construction with concurrence from Richard K. Rice-landowner, for a Conditional Use Permit to use land zoned agricultural for the purpose of mining gravel on a tract of land 20.00 acres, more or less located in the SW1/4NW1/4 of Section 2, Township 157 North, Range 94 West (White Earth Township) for a period of 5 years expiring on 8/23/2027 contingent upon the receipt of a corrected lease, weed management plan, completed checklist, and letter of credit by administration as Farden Construction with concurrence from Richard K. Rice-landowner, has met all criteria as set forth in Article IV, Section IV of the Mountrail County Zoning Ordinance and is further contingent upon Farden Construction with concurrence from Richard K. Rice-landowner, complying with all other terms and conditions of the Mountrail County Zoning Ordinance. All present voted yes. Motion carried.

1. **8:47 a.m. Mountrail County Land Development Code Revision**

Scott Harmstead was present via phone to present to the board the pages of the LDC that have been changed since the last hearing. Referring to Section 5.6 of the LDC (concerning the wind energy and, more specifically, the table that contained the required setbacks) there will now be 5 categories. The first category which includes residences, habitable structures, public facilities and recreation areas now has a 1/2 mile setback. The second category concerning non-participating property lines and adjoining property lines will now have a 1/2 mile setback. The third category concerning airstrips will have a 1 mile setback. The fourth category concerning public right-of-way and utility easements will have a 1/8 mile setback unless the tower is taller than 660’ and then the setback become 1/4 mile. The fifth category which was not changed is military facilities and those will stay with a 2 mile setback. Referring to Section 6.6 (concerning temporary uses) under 6.6.2 part B, the change made will now reflect that no administrative action can be taken until a 15 day grace period has passed. Should a concern come in front of administration in that 15 day grace period then application would be made public noticed and taken in front of the board at their next meeting.

Moved by Commissioner Hovda, seconded by Commissioner Hollekim to approve the Mountrail County Land Development Code as amended contingent upon final approval by the Mountrail County Board of Commissioners. All present voted yes. Motion carried.

**TEMPORARY WATER PERMIT – NON-TRANSFERABLE RENEWALS**

**Schenk LLC –** Permit Number – State Water Permit ND2022-20902 / PZ-2022-0179 Pumping of industrial water by lay flat hose: Schenk LLC-Applicant. Bartelson Investments LLLP-Landowner. SW1/4SE1/4 of Section 4, Township 152 North, Range 90 West **(Parshall Township)** Period of Authorized usage: 08/01/2022 through 12/31/2022. Parcel # 44-0001500 (Ref# PZ-2022-0037).

**BUILDING PERMITS 2255-2260**

2255 – PZ-2022-0176 – Brian Rice – Applicant/Landowner. Parcel #21-0009900 – NE1/4NE1/4 of Section 18, Township 156 North, Range 94 West (Myrtle Township) 14’x120’ Addition to existing building for Equipment Storage.

2256 – PZ-2022-0180 – Roger Sorenson – Applicant/Landowner. Parcel #26-0004500 – NW/14 of Section 9, Township 155 North, Range 92 West (Alger Township) 48’x60’ Barn to replace barn that had burnt.

2257 – PZ-2022-0188 – Thomas Bieri – Applicant. Mike & Kim Bieri – Landowners. Parcel #16-0004700 – NW/14NW1/4 of Section 10, Township 156 North, Range 89 West (McGahan Township) 50’x80’ Cold Storage Building.

2258 – PZ-2022-0189 - Otto Contracting dba Patriot Homes – Applicant. Ryan & Heidi Nichols-Johnson – Landowner. Parcel #51-0000648 – Lot 9 of Brendle’s Third Subdivision located in the S1/2NE1/4 of Section 10, Township 151 North, Range 91 West (Liberty Township) 3464 sq. ft home with garage.

2259 – PZ-2022-0190 – Creative Woodworking LLC – Applicant. Bill & Janelle Green – Landowner. Parcel #11-0010201 – Outlot 1 of the S1/2SE1/4 of Section 22, Township 157 North, Range 91 West (James Hill Township) New Foundation & enlarging Garage.

2260 – PZ-2022-0195 – Charlie Sorenson – Applicant/Landowner. Parcel #27-0003701 – Outlot 1 located in the SE1/4NW1/4 & NE1/4SW1/4 of Section 9, Township 155 North, Range 93 West (Debing Township) 48’x96’ Storage Building.

Discussion was had on 2258 and whether or not the applicant requested to have a camper on site during construction. Administration confirmed the applicant did not request to have a camper. Chairman Sorenson refrained from voting on the building permits and the following demolition permit.

Moved by Commissioner Hovda, seconded by Commissioner Ruland to approve building permits 2255-2260. All present, excluding Chairman Sorenson, voted yes. Motion carried

**Demolition Permit:** PZ-2022-0196 – Charlie Sorenson – Applicant/Landowner. Parcel #27-0003701 – Outlot 1 located in the SE1/4NW1/4 & NE1/4SW1/4 of Section 9, Township 155 North, Range 93 West (Debing Township) Demolish old shop/storage building.

Moved by Commissioner Hovda, seconded by Commissioner Ruland to approve demolition permit PZ-2022-0196. All present, excluding Chairman Sorenson, voted yes. Motion carried.

**ONGOING BUSINESS**

Gravel Pits- Remains ongoing Administration working on Report

White Earth Bay- Waiting for State’s Attorney Enget’s report for Court Cases

Green Acres Subdivision – No new activity still no Letter of Credit

**STAFF UPDATES**

* Administration has received complaints regarding campers being on lots in Brendle’s Subdivision. Letters have been sent to the lot owners concerning their building permits and informing them the extension for camper use has been removed. Lot owners have been informed they are welcome to come in front of the board to appeal that decision.
* During the last compliance checks, administration did visit with the Wilke family and will be meeting with some of them at 1:00pm today concerning re-zoning part of their property to rural recreational.
* Blaisdell RV Park was removed from ongoing business due to the court hearings being set.

**BOARD CONCERNS**

* Commissioner Hovda informed the board that he will be moving next spring and will be leaving the board at that time.
* Commissioner Ruland had a question concerning the feed lot and whether the board can deem it nontransferable as they do with the CUP for things like gravel pits. States Attorney Enget stated that the ND Century Code restricts the board from doing that.
* Commissioner Weisenberger had a question concerning the feed lot and the zoning ordinances regulating the days they can feed as the wording is very confusing. States Attorney Enget stated that the board’s authority to regulate the feeding operations is very limited by ND Century Code. Administrator Vachal and States Attorney Enget agreed that administration should think about tracking legislation to ensure the zoning ordinances are up to date with the most current legislation.
* Commissioner Hollekim wanted to know if the Craft feed lot is the only concentrated feed lot in the county and Chairman Sorensen believes it is the only one of its kind and while there are probably other feed lots but none with a lagoon like the Craft operation. Chairman Sorenson stated that breeding doesn’t count as a feed lot and that backgrounding cattle is exempt for 4 months.

The Board adjourned at 10:35am. Next regular meeting of the Mountrail County Planning & Zoning Commission is **Monday, September 26, 2022,** at 8:30 am via GOTOMEETING or in the Commissioners room at the courthouse.

Accepted and approved this 26th day of September 2022.

Charlie Sorenson, Chairman Melissa Vachal, Administrator

Mountrail County Mountrail County

Planning & Zoning Commission Planning & Zoning

**\*Electronic recordings of full meetings are kept in the office per NDCC 44-04\***