

# MINUTES

## Mountrail County Planning and Zoning Commission August 28, 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:** Roger Hovda, Charlie Sorenson, Gary Weisenberger, Bill Klug Arlo Borud, 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, Teresa Captain, Mountrail County Deputy Tax Director and Liz Hollowell, Planning & Zoning Administrative Assistant.

Public attending was Rosella Person, Mike Childs with Dakota Energy Resources Corporation and Marvin Hegstad.

Absent were Linda Wienbar and Tom Bieri.

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### Approval of Agenda

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

Commissioner Ruland moved to accept the agenda as is. Commissioner Klug seconded. Upon roll call, all present voted yes. Motion carried.

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

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**Applicant/Landowner:** Michael D & Karolyn N Moltzan, landowners (*tabled from June*)

**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

Motion to untable: Moved by Commissioner Ruland, Second by Commissioner Weisenberger to untable the hearing. Upon roll call, all present voted yes. Motion carried

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

**Present:** Rosella Person, adjacent landowner.

**Discussion:** Mrs. Person stated she had concerns about where the Moltzan's water was coming from and where is the sewage going to drain? She had concerns about the White Earth River. Mrs. Person also expressed concerns about use of the land. She didn't want any trucks parking there. Mr. Moltzan was not present at the meeting and no landowner notifications were received. It was determined the mobile home was within the age requirements for an area zoned residential. Wade Enget, Mountrail County States Attorney requested Mr. Moltzan bring their septic tank certificate from Upper Missouri District Health Unit and the documents about their well to be added to the application for the next hearing.

**Outcome: Tabled**

**Motion:** Moved by Vice Chairman Sorenson, seconded by Commissioner Borud to table the zoning request filed by Michael D & Karolyn Moltzan, landowners, for a conditional use permit to use land zoned residential for the purpose of placing a mobile home on a 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 as the landowner was not present at the hearing and no notification certified mail receipts have been received. 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:** Bakken Water Transfer Service Inc., with concurrence from Claude Sem, landowner

**Location:** Gov't Lots 1 & 4 of the NE¼ of Section 7, Township 158 North, Range 92 West (Powers Township).

**Number of certified mailing receipts provided:** 6

**North Dakota Temporary Water Permit:** *ND Temporary Water Permit ND 2017-18269 Valid August 24, 2017 to August 23, 2018.*

**Purpose:** To pump lake water for fracking

**Present:** Mike Childs, Bakken Water Transfer Service Inc.

**Also Present:** Marvin Hegstad, adjacent landowner. Mr. Hegstad was concerned about the size of the equipment used to lay the hose and the damage that equipment does.

**Discussion:** Mr. Childs stated they would be using only flat hose and all landowner would be contacted. Vice Chairman Sorenson asked about the requirements for laying flat hose. Jana Heberlie, Mountrail County Engineer of Road & Bridge stated there is an application that must be completed for permission to place a flat hose in County ROW. Mr. Childs





**Applicant/Landowner:** Dakota Energy Resources Corp., with concurrence from Scott Meiers, landowner

**Location:** 320 acre tract of land described as the W½, NE¼ of Section 28, Township 156 North, Range 92 West (**Ross Township**).

**North Dakota Temporary Water Permit:** ND State Temporary Water Permit number ND2017-18224 valid August 25, 2017 to August 24, 2018.

**Number of certified mailing receipts provided:** 2

**Purpose:** pump water from an unnamed slough for fracking

**Present:** Mike Childs, Dakota Energy Resources Corp.

**Discussion:** Mr. Childs stated they would be using flat hose and all landowners would be contacted.

**Outcome:** Approved with contingencies

**Motion:** Moved by Commissioner Borud, Seconded by Vice Chairman Sorenson, to approve the zoning request filed by Dakota Energy Resources Corp., with concurrence from Scott Meiers, landowner, for a variance to pump water from an unnamed slough for fracking on a 320 acre tract of land described as the W½ of Section 28, Township 156 North, Range 92 West (**Ross Township**) contingent upon the terms and conditions of the ND State Temporary Water Permit ND2017-18224 valid August 24 2017 to August 23, 2018 and contingent on Dakota Energy Resources Corp. only using flat hose, landowners being contacted regarding hose placement and adhering to Mountrail County Road & Bridge temporary ROW Use requirements as Dakota Energy Resources Corp. has met all criteria as set forth in Article IV, Section V of the Mountrail County Zoning Ordinance and is further contingent Dakota Energy Resources Corp. 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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8:45 Public Hearing	Variance	35' from section line
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**Applicant/Landowner:** Johnny David Kulczyk, landowner

**Location:** E½ of Section 20, Township 154 North, Range 94 West (**Unorganized Township**).

**Number of certified mailing receipts provided:** 2

**Purpose:** Allow a stock dam to be 35' from section line.

**Present:** Will Kulczyk via the phone.

**Discussion:** Mr. Kulczyk requested the variance to move the dam back 35' from section line due to their pipeline being there and the terrain. Commissioner Ruland stated the water would need to be moved as it cannot be over the section line or someone else's land. Don Longmuir, Interim Planning & Zoning Administrator stated Colin Vachal, adjacent landowner, had expressed to him that he did not want water backed up on his land. Mr. Kulczyk stated he was aware of Mr. Vachal's requirements and that is why he wanted to develop a reservoir on section 17 to help keep the water level down in the stock dams. Don Longmuir, Interim Planning & Zoning Administrator reminded Mr. Kulczyk his application applied to section 20, not section 17. Interim Planning & Zoning Administrator Longmuir showed the picture he had taken of the site to the board. Chairman Hovda asked if the water had always been there due to the terrain. Interim Planning & Zoning Administrator Longmuir stated it had always been there but the dam causes the water to back up. Commissioner Borud stated what needs to be done is to move the dam 35' from the section line and asked Mr. Kulczyk if he understood that. Mr. Kulczyk stated he did. Mr. Kulczyk stated they needed section 17 to make the project work. Commissioner Ruland stated the board is not concerned on how much water the project has. The board is concerned that the section line stays clear. Mr. Kulczyk stated they could work with that and requested the cease and desist be lifted so they can work on that. Chairman Hovda stated a more complete plan needed to be in place. Commissioner Ruland stated the project needs to be done following the guidelines. Mr. Kulczyk stated he can easily move the dam back 35' feet from section line. Commissioner Borud stated the board needs to decide if a variance will be given to move the stock dam 35' from the section line.

**Motion:** Vice Chairman Sorenson motioned to table this hearing until all the applications were discussed and then come back to this one. Commission Borud seconded. Upon roll call, all present voted yes. Motion carried.

**Motion:** Moved by Commissioner Ruland, seconded by Commissioner Weisenberger to remove this application from the table. Upon roll call, all present voted yes. Motion carried.

**Discussion:** Chairman Hovda stated Mr. Kulczyk would need to have this engineered to get the right elevation for the overflow. Commissioner Ruland stated the 35' set back applies to the dam and any water. Mr. Kulczyk agreed. Commissioner Klug asked if this dam was to be used for storage. Commissioner Ruland stated this dam cannot be used for storage; this is just to get the dam off the section line.

**Motion:** Moved by Commissioner Ruland, seconded by Vice Chairman Sorenson to approve a zoning request filed by Johnny David Kulczyk, landowner, for a variance to allow a stock dam to be 35' from a section line in the E½ of Section 20, Township 154 North, Range 94 West (**Unorganized Township**) contingent on all water also being moved 35' and dam not to be used for industrial storage as Johnny David Kulczyk has met all criteria as set forth in Article IV, Section V of the Mountrail County Zoning Ordinance and is further



water. Don Longmuir, Interim Planning & Zoning Administrator advised Mr. Kulczyk that when he pumps water from one source into a holding pond for a non-agricultural use, that requires industrial zoning. Wade Enget, Mountrail County States Attorney reiterated that guideline. Chairman Hovda stated what it boils down to is Mr. Kulczyk can pump out of the S½ of section 20 to the end user; he cannot store it in section 17. Chairman Hovda stated the water must go from point A to point B and be used. Mountrail County States Attorney Enget stated this applies to this application with these facts. Mr. Kulczyk stated the business plan, he wrote and shared with the board, contains the details of what they are trying to do. Wade Enget, Mountrail County States Attorney stated the Planning Commission is saying they will approve the zoning request to pump water from the S½ of section 20, on the lower dam, and he can pump water to an oil company tomorrow if he so chooses. What the Planning Commission can't do, is allow the use of the upper dam in section 20 or the holding pond in section 17. This is a step process and this step is allowing him to pump water on the lower dam. Mr. Kulczyk stated he didn't know this was a step process. Wade Enget, Mountrail County States Attorney reminded Mr. Kulczyk his ND State Water permit was for the S½ of section 20. Commissioner Ruland stated it would be prudent for Mr. Kulczyk to have the area surveyed so he was clear on where the South half was to stay in compliance. Mr. Kulczyk stated he could do that and would talk with Don Longmuir, Interim Planning & Zoning Administrator to get a clear understanding of what is required. Mr. Kulczyk asked about the cease and desist being lifted so they can work on section 20. Wade Enget, Mountrail County States Attorney stated the cease and desist stopped any activity on section 20 and section 17, so the Board has to determine where it will be lifted. Commissioner Ruland asked if conditions could be applied. Mountrail County States Attorney Enget stated yes. Mr. Kulczyk stated when the cease and desist is lifted, he will be working to fix the damn and nothing else. It is his intent to work with Planning and Zoning to get everything fixed. Chairman Hovda stated the Board has several items to consider. Wade Enget, Mountrail County States Attorney stated the cease and desist must be dealt with as well as the two applications. He stated ideally as long as Mr. Kulczyk is in the S½ of section 20 there is a point of diversion Planning and Zoning can approve. As far as the cease and desist, it can be lifted to allow for the point of diversion. The other conditions are to lift the cease and desist for Mr. Kulczyk to move the upper dam 35' from the section line. Wade Enget, Mountrail County States Attorney stated the application for section 17 has been tabled and that if a holding pond was going to be placed there, it would have to be rezoned to industrial. Vice Chairman Sorenson stated if the board does that, they should rezone the whole thing. Wade Enget, Mountrail County States Attorney stated if Mr. Kulczyk gets a ND State water permit for the NE ¼ then that would be easy to grant a variance permit. He stated the project on section 17 will be more difficult since there is not a natural water source, so that project would have to be zoned industrial based on Mountrail County's ordinances.

**Outcome: Approved with contingencies**

**Motion:** Moved by Commission Borud, seconded by Vice Chairman Sorenson to approve a zoning request filed by Johnny David Kulczyk, landowner, for a variance to use land zoned agricultural for pumping water from a stock dam under the terms and conditions of *ND Conditional Water Permit number 6833 expiring September 1, 2019* on a 10 acre, more or less, tract of land described as the South ½ of Section 20, Township 154 North, Range 94



West (**Unorganized Township**) contingent on Johnny David Kulczyk only using flat hose to pump the water to the end user, landowners being contacted regarding hose placement and adhering to Mountrail County Road & Bridge temporary ROW Use requirements as Johnny David Kulczyk has met all criteria as set forth in Article IV, Section V of the Mountrail County Zoning Ordinance and is further contingent Johnny David Kulczyk complying with all other terms and conditions of the Mountrail County Zoning Ordinance. Upon roll call, all present voted yes. Motion carried.

**Motion:** Moved by Commissioner Ruland, Seconded by Commissioner Weisenberger to remove the cease and desist in the South ½ of section 20, Township 154, Range 94 to allow for pumping water. Upon roll call, all present voted yes. Motion carried.

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[Continued Discussion](#)

[Amendment](#)

[Rezoning Sec 17](#)

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**Applicant/Landowner:** Johnny David Kulczyk, landowner

Wade Enget, Mountrail County States Attorney stated no action was taken on section 17 and it was sent back to Planning and Zoning from the County Commissioners. Mountrail County States Attorney Enget recommended Mr. Kulczyk work with him and Planning & Zoning to continue to talk so we know where we are at now. Mr. Kulczyk has his work cut out for him regarding section 20 and going back to the ND State water commission for a water permit in the NE¼ of section 20. As far as section 17, that would require rezoning and it's best to work administratively to come up with a plan that works with the Mountrail County ordinances and then that plan will be brought back to the Planning & Zoning Board for consideration. Until that time, these amendment applications will remain tabled. The Planning & Zoning Board agreed.

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[Approval of Building Permits](#)

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Wade Enget, Mountrail County States Attorney stated he has received several calls from Jeff Meyer regarding building permits Mr. Meyer is concerned that no building would happen and those affected would come and get another building permit to extend their time to build for another year. Commissioners Ruland stated if they come in with a contract or something purchased, then they could get more time. Vice Chairman Sorenson stated the next one should be for a shorter amount of time. Chairman Hovda asked if there is already a 6 month extension. Mountrail County States Attorney Enget asked if the people in Brendle's Bay that have building permits now, should be told their building permits are only good for 1 year unless significant building is apparent upon inspection. Commissioner's Borud and Ruland stated yes. It was discovered that Mr. Dan Lawson sold his lot last week and now the question is does that give the new lot owner 5 more years to build? Vice Chairman Sorenson stated there is only so much that Planning and Zoning can do and a letter should be sent to the one's known to not be building. After that, then they would just be charged for continually violating the ordinance.

Wade Enget, Mountrail County States Attorney stated it would be best to add to the building permit verbiage letting the applicant know that Planning & Zoning is under no obligation to extend the time on a building permit. It was agreed this would be added.

**Motion:** Moved by Vice Chairman Sorenson, Seconded by Commissioner Borud to add the verbiage to the building permits that “Planning & Zoning is under no obligation to extend the length of the building permit”. Upon roll call, all present voted yes. Motion carried.

Commissioner Ruland asked if there was a time frame for those people that are violating the ordinance to get a building permit. Wade Enget, Mountrail County States Attorney stated there was not and this would be handled administratively. If necessary, those people will be charged.

**Motion:** Moved by Commissioner Borud, Seconded by Commissioner Klug to approved Building Permits #1984 to 1995 excluding 1990 as Dan Lawson does not own the lot. Upon roll call, all present voted yes. Motion carried.

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## Approval of Minutes

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**Motion:** Moved by Commissioner Weisenberger, seconded by Commissioner Borud to approve the July 24, 2017 minutes as presented. Upon roll call, all present voted yes. Motion carried.

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## Staff Concerns

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- Kulczyk' s Business Plan – This concern was discussed earlier.
- Kenton Onstad, Mountrail – Williams Electric Coop ordinance suggestion regarding transmission lines. The Planning and Zoning Board will consider Mr. Onstad's suggestion. Wade Enget, Mountrail County States Attorney stated he looked at the PSC and with this suggestion, there would be a void or gap of who would oversee the project.
- Pit Release - Sundre Sand & Gravel with concurrence from Curt & Summer Meyer, landowners, for a conditional use permit to use land zoned agricultural for mining and stockpiling gravel on a 20 acre, more or less, tract of land described as the S½SW¼ of Section 27, Township 155 North, Range 94 West (**Unorganized Township**)

**Motion:** Moved by Commissioner Borud, Seconded by Commission Weisenberger to release Sundre Sand & Gravel's bond on a conditional use permit to use land zoned agricultural for

mining and stockpiling gravel on a 20 acre, more or less, tract of land described as the S½SW¼ of Section 27, Township 155 North, Range 94 West (**Unorganized Township**) as the pit has been reclaimed to landowners specification and the landowners, Curt & Summer Meyer, have signed the pit/bond release. Upon roll call, all present voted yes. Motion carried.

- Search for District 2 Board Member on – going - Don Longmuir, Interim Planning & Zoning Administrator asked the Board for suggestions and he will contact anyone they suggest. Commissioner Borud suggested Clay Sorenson or Joan Hollekim. Don Longmuir, Interim Planning & Zoning Administrator stated Joan would be conflict of interest as she is a County employee, although be it, part time. Interim Planning & Zoning Administrator Longmuir asked Wade Enget, Mountrail County States Attorney if she would be allowed. Mountrail County States Attorney Enget stated the Board could just appoint her and he doesn't think there is any conflict of interest since Joan is just a part time employee. Don Longmuir, Interim Planning & Zoning Administrator stated he will contact Joan with the offer.
- Release of bond for MBI. MBI has closed their man camp and requests to have their bond released. Don Longmuir, Interim Planning & Zoning Administrator stated he has visited the site and it is clear there is no one living in the trailers as they are not in a livable state. Commissioner Ruland stated if they walk away from the property, then the county would end up having to clean up the area so the bond should remain until the trailers are gone. Don Longmuir, Interim Planning & Zoning Administrator stated he would communicate with MBI about this decision.
- New Planning and Zoning Administrator: Nathan Sem will start on September 1, 2017. Don Longmuir, Interim Planning & Zoning Administrator will take Mr. Sem around to meet people during the next week and outlined the coming weeks plan. Commissioner Borud advised Interim Planning & Zoning Administrator Longmuir if he needs more than 16 hours a week that would be ok.

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## Board Concerns

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Chairman Hovda asked about the landowner notification for the 8:45 hearing. Don Longmuir, Interim Planning & Zoning Administrator stated Mr. Kulczyk had emailed the receipts to Planning and Zoning.

Wade Enget, Mountrail County States Attorney reported that there is a Soil Committee to help review the land use for soil assessments. The committee is made up of one member from all the districts. Lori Hanson, Mountrail County Tax Director is the secretary of that committee. Mike Hynek is the Chairman and Charlie Sorenson is the Vice Chairman. The

first meeting went well and Chairman Hynek will be at the County Commissioner meeting on September 5, 2017 to present their findings.

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### Next Meeting

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Next regular meeting of the Mountrail County Planning & Zoning Board is Monday, September 25, 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 10:17 a.m.

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### Approval

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Accepted and approved this 25<sup>th</sup> day of September 2017



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Roger Hovda, Chairman  
Mountrail County  
Planning & Zoning Commission



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Liz Hollowell  
Administrative Assistant  
Planning & Zoning