

MINUTES

Mountrail County Planning and Zoning Commission June 26, 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, Bill Klug, Arlo Borud and Trudy Ruland. Also present was Amber Fiesel, Mountrail County Assistant States Attorney, Lisa Lee, Planning & Zoning Administrator, Jana Heberlie, Mountrail County Engineer of Road & Bridge, Teresa Captain, Mountrail County Deputy Tax Director, Lori Hanson, Mountrail County Tax Director, Heather Greenlee, Mountrail County Auditor's Office and Liz Hollowell, Planning & Zoning Administrative Assistant. Absent was Tom Bieri.

Approval of Agenda

Chairman Hovda requested a motion to review and approve the current meeting agenda. Lisa Lee, Planning & Zoning Administrator requested to add Steve Cates of Earth Science Technologies and Aggregate Constructions, Inc. (two pit releases). She also requested to add training binders and Brendle's Subdivision Camper violations to Staff Items.

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

8:30 Public Hearing

Variance

Pumping water for fracking

Applicant/Landowner: Eugene & Penny Moe and Ben Miller, landowners

Location: 149.40 acre tract of land described as the N½ of Section 30, Township 156 North, Range 94 West (**Myrtle Township**).

Number of certified mailing receipts provided: 2

North Dakota Temporary Water Permit: ND2017-17897 *Valid* May 19, 2017 to May 18, 2018

Purpose: To pump slough water for fracking

Present: Eugene & Penny Moe and Ben Miller

Discussion: Mr. Moe stated they were getting set up to sell water for fracking. Chairman Hovda asked if water would be moved by flat hose as trucking is not allowed. Chairman Hovda also advised the landowners impacted by the flat hose would need to be notified. Mr. Moe stated they would.

8:36 Public Hearing**Variance****Pumping water for fracking**

Applicant/Landowner: West Dakota Water LLC with concurrence from Norris Weflen, landowner

Location: a 40 acre tract of land described as the NW¼NE¼ of Section 19, Township 153 North, Range 90 West (**Wayzetta Township**)

Number of certified mailing receipts provided: 3

North Dakota Temporary Water Permit: ND2017-18084 *Valid* May 26, 2017 to May 25, 2018

Purpose: To pump slough water for fracking

Present: Brett Brothers, West Dakota Water, LLC

Discussion: Mr. Brothers stated they would be using flat hose with no trucks.

Outcome: **Approved with contingencies**

Motion: Moved by Commissioner Wienbar, Seconded by Commissioner Weisenberger to approve the zoning request filed by West Dakota Water LLC with concurrence from Norris Weflen, landowner, for a variance to pump slough water for fracking on a 40 acre tract of land described as the NW¼NE¼ of Section 19, Township 153 North, Range 90 West (**Wayzetta Township**) contingent on only using flat hose and effected landowners being contacted regarding hose placement. Also adhering to the terms and conditions of the State of North Dakota Temporary Water Permit SWC Project #1400A Permit Number ND 2017-18084 valid May 26, 2017 to May 25, 2018 as West Dakota Water LLC has met all criteria as set forth in Article IV, Section V of the Mountrail County Zoning Ordinance and is further contingent upon West Dakota Water LLC complying with all other terms and conditions of the Mountrail County Zoning Ordinance. Upon roll call vote, all present voted yes. Motion carried.

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

Applicant/Landowner: Northwest Water Transfer with concurrence from Shayne Mollet, landowner

Location: 40 acre tract of land described as the SE¼SW¼ of Section 19, Township 158 North, Range 93 West (**Power Lake Township**).

North Dakota Temporary Water Permit: None

Purpose: To pump river water for fracking

Present: Jerry Shae, Northwest Water Transfer. Also Shayne & Shannon Mollet, landowners

Discussion: Mr. Shae asked if this permit could be approved contingent on him receiving the N.D. State water permit. Mr. Shae stated they would be pumping in late July. Commissioner Weisenberger asked about the amount of water available in the river. Mr. Shae stated he was unsure as he has not been there in a few weeks. Mr. Shae was instructed to provide the N.D. State Water permit to Planning and Zoning for the permit to be approved. Mr. Shae stated he would.

Number of certified mailing receipts provided: 2

Outcome: Approved with contingencies

Motion: Moved by Vice Chairman Sorenson, Seconded by Commissioner Weisenberger to approve the zoning request filed by Northwest Water Transfer with concurrence from Shayne Mollet, landowner, for a variance to pump slough water for fracking on a 40 acre tract of land described as the SE¼SW¼ of Section 19, Township 158 North, Range 93 West (**Power Lake Township**) contingent on Planning & Zoning receiving the approved North Dakota Temporary Water Permit, Northwest Water Transfer using only flat hose and effected landowner being contacted regarding hose placement as Northwest Water Transfer has met all criteria as set forth in Article IV, Section V of the Mountrail County Zoning Ordinance and is further contingent upon Northwest Water Transfer complying with all other terms and conditions of the Mountrail County Zoning Ordinance. Upon roll call vote, all present voted yes. Motion carried.

8:45 Public Hearing	Variance	Pumping water for fracking
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Applicant/Landowner: Bakken Water Transfer Service Inc., with concurrence from Jorn Oulie, landowner

Location: 160 acre tract of land described as the NE¼ of Section 18, Township 154 North, Range 90 West (**Austin Township**).

Number of certified mailing receipts provided: 10

North Dakota Temporary Water Permit: ND2017-17929 *Valid* May 22, 2017 to May 21, 2018

Purpose: To pump slough water for fracking

Motion to un-table application: Moved by Commissioner Ruland, Seconded by Commissioner Klug to remove the zoning request filed by Bakken Water Transfer Service Inc., with concurrence from Jorn Oulie, landowner, for a variance to pump slough water for fracking on a 160 acre tract of land described as the NE¼ of Section 18, Township 154 North, Range 90 West (**Austin Township**) from the table. Upon roll call vote, all present voted yes. Motion carried.

Present: Mike Childs of Bakken Water Transfer Service Inc.

Discussion: Mr. Childs stated they would be using only flat hose when transferring the water.

Outcome: Approved with contingencies

Motion: Moved by Commissioner Borud, Seconded by Commissioner Ruland to approve the zoning request filed by Bakken Water Transfer Service Inc., with concurrence from Jorn Oulie, landowner, for a variance to pump slough water for fracking on a 160 acre tract of land described as the NE¼ of Section 18, Township 154 North, Range 90 West (**Austin Township**) contingent on only using flat hose and effected landowner being contacted regarding hose placement. Bakken Water Transfer must adhere to the terms and conditions of the State of North Dakota Temporary Water Permit SWC Project #1400A Permit Number ND 2017- 17929 valid May 22, 2017 to May 21, 2018 as Bakken Water Transfer Service Inc. has met all criteria as set forth in Article IV, Section V of the Mountrail County Zoning Ordinance and is further contingent upon Bakken Water Transfer Service Inc. complying with all other terms and conditions of the Mountrail County Zoning Ordinance. Upon roll call vote, all present voted yes. Motion carried.

8:48 Public Hearing	Variance	Pumping water for fracking
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Applicant/Landowner: Select Energy Services with concurrence from The Jeffrey Ranch Trust, landowner

Location: 40 acre tract of land described as the SW¼ of Section 22, Township 155 North, Range 94 West (**Unorganized Township**)

Number of certified mailing receipts provided: 3

North Dakota Temporary Water Permit: ND2017-17948 *Valid* April 25, 2017 to December 31, 2017

Purpose: To pump water for fracking

Present: Roger Arredondo, Select Energy Services

Discussion: Mr. Arredondo stated they will be selling water primarily to Hess and using all flat hose as well. Commissioner Weisenberger asked of there was a road to get to the source already there. Mr. Arredondo stated they have used this source before and there is access.

Outcome: Approved with contingencies

Motion: Moved by Vice Chairman Sorenson, Seconded by Commissioner Ruland to approve the zoning request filed by Select Energy Services with concurrence from The Jeffrey Ranch Trust, landowner, for a variance to pump river water for fracking on a 40 acre tract of land described as the SW¼ of Section 22, Township 155 North, Range 94 West (**Unorganized**

Township) contingent on only using flat hose and effected landowner being contacted regarding hose placement. Also adhering to the terms and conditions of the State of North Dakota Temporary Water Permit SWC Project #1400A Permit Number ND 2017- 17929 valid May 22, 2017 to May 21, 2018 as Bakken Water Transfer Service Inc. has met all criteria as set forth in Article IV, Section V of the Mountrail County Zoning Ordinance and is further contingent upon Bakken Water Transfer Service Inc. complying with all other terms and conditions of the Mountrail County Zoning Ordinance. Upon roll call vote, all present voted yes. Motion carried.

8:51 Public Hearing

Amendment

Water depot with ponds & a well

Applicant/Landowner: Johnny David Kulczyk, landowner

Location: 10 acre, more or less, tract of land located in the NE¼SE¼ Section 17, Township 154N, Range 94W (**Unorganized Township**). Lisa Lee Planning & Zoning administrator reported this application was denied at the January 9, 2016 Planning & Zoning meeting due to no one appearing at hearing. A letter was drafted in January 2016 included all of the requirements from the board at that time. The issues outstanding included adjacent landowner concerns, erosion control, road haul agreements with county and townships, increased traffic on roads, weight limits on roads, needing an engineered plan, a 40 foot set back from property border, approach permits, building permits, drainage study, US Army Corp of Engineer written consent, issue with existing legal descriptions (acreage versus land description on application did not match). Administrator Lee visited the site May 26, 2017 to find new work completed despite a Cease and Desist order being in place. Photos of this have been distributed to the Board. Mountrail County State's Attorney has been notified of these new activities and the case may be reopened. Planning & Zoning is waiting for Sauber Engineering to complete its evaluation as well as an update from the State Water Commission. Staff recommendation is to deny this application unless all issues have been addressed.

Number of certified mailing receipts provided: 3

North Dakota Conditional Water Permit: No. 6833 expires Sept 1 2019

Purpose: To construct a water depot with ponds and a well.

Present: Terry Jones

Discussion: Mr. Jones outlined the plan Mr. Kulczyk had. He stated the water is all well water and explained the flow rate. Mr. Jones stated storage facilities are needed due the source being small. Chairman Hovda stated water depots normally include trucks and asked Mr. Jones how the water was leaving the depot. Mr. Jones stated most of the water will be moved via lay flat hose. Mr. Jones stated there would be some trucks. Commissioner Ruland stated no trucks are allowed and the Planning & Zoning Commission will not approve this plan if it includes trucks. Commissioner Ruland stated the depot is located on one of Mountrail County's busiest roads and it can't handle any more trucks. Jana Heberlie, Mountrail County Engineer of Road & Bridge stated 101st Ave NW has a 6 ton/80000 lb. weight limit. Vice Chairman Sorenson stated there are no provisions in the

Mountrail County Planning & Zoning Ordinances that allow an industrial site in that location. Mr. Jones asked for clarification of that ordinance. Vice Chairman Sorenson stated there is not a paved highway in the area nor is the location connected to another industrial site. Mr. Jones stated Mr. Kulczyk will pursue this project as this is something he wants to do to develop his land. Mr. Jones stated he will read the provisions regarding this issue. Mr. Jones went on to say he was sure there was a way to accomplish this project as all industrial locations cannot be limited to having highway access as discussed. Mr. Jones commented this provision is inappropriate. Lisa Lee Planning & Zoning administrator asked Amber Fiesel, Mountrail County Assistant States Attorney what the process was when a Cease and Desist order is not followed. Mountrail County Assistant States Attorney Fiesel stated criminal charges could be filed. Mr. Jones asked how the Cease and Desist was violated. Lisa Lee Planning & Zoning administrator stated she has pictures of work that has been done since the Cease and Desist order was issued. Vice Chairman Sorenson stated he also has pictures that will show work was continued. Mr. Jones stated any work that was done was only to help with the erosion issues and he asked specifically if things to deal with erosion and dust control could be done with the understanding they could be completed. Vice Chairman Sorenson asked Mr. Jones how discussion with adjacent land owner was going. Mr. Jones explained his interactions with the adjacent land owners. Vice Chairman Sorenson asked Mr. Jones about the progress of getting the property line surveyed. Mr. Jones stated it was completed and the fence is one foot from where the property line is. Vice Chairman Sorenson asked if there were set backs. Mr. Jones stated in the packet he provided is a plan to move the hills back once the Cease and Desist order has been lifted. Mr. Jones stated this is a good project and he hopes the Board would reconsider. He stated this water source would service the oil well close to the location and if there would be a need for any trucks, it would be minimal. Commissioner Ruland stated no trucks would be allowed. Mr. Jones stated it is not appropriate for a Board to not allow trucks on a county road that was built for public use. Commissioner Ruland stated it's a safety concern and that is Planning & Zoning's objective, safety for the public. Mr. Jones stated he spoke to a person in Road & Bridge about a haul route agreement and was told none would be issued and they would be required to haul legal weight. A discussion was held on when a haul route is required and Jana Heberlie, Mountrail County Engineer of Road & Bridge stated she would follow up on this conversation. If Planning and Zoning requires a road haul agreement for a project, a road haul agreement is required.

Outcome: Denied

Motion: Moved by Vice Chairman Sorenson, Seconded by Commissioner Weisenberger to present findings of fact from the June 26, 2017 public hearing and make a recommendation to the Mountrail County Commissioners for denial of the zoning request filed by Johnny David Kulczyk, landowner, for an amendment to change land zoned agricultural to industrial for a water depot with ponds and a well on a 10 acre, more or less, tract of land located in the NE¼SE¼ Section 17, Township 154N, Range 94W (**Unorganized Township**) as this project does not follow the Mountrail County comprehensive plan, it does not maintain the agricultural landscape of the area, it's incompatible with the abutting land use, it does not fit in the county zoning map, and doesn't follow current county zoning ordinances. Also Mr. Jones has not demonstrated extraordinary circumstances for the

justification of this project and it clearly demonstrates spot zoning. Other concerns include existing legal concerns as Mr. Jones has failed to comply with the existing Cease and Desist order. Mr. Jones has also failed to address the concerns outlined in the Planning & Zoning staff letter sent January 2016 and has reconvened work. Additionally Mr. Jones has illegally restricted the use of a section line as well as installed other hazards without adjacent landowners being informed. Upon roll call vote, all present voted yes. Motion carried.

Also present for this meeting was Dan Krieger, Gary Krieger, & Ron Krieger. Mr. Dan Krieger voiced his concerns over erosion and stated he would like the project to not be approved until all the adjacent landowner concerns have been addressed and satisfied.

Mr. Jones was given the public hearing notice with the time and date for the Mountrail County Commissioners hearing. Mr. Jones asked for a copy of the meeting minutes once they were approved.

8:54 Public Hearing Amendment Water depot with ponds & a well

Applicant/Landowner: Johnny David Kulczyk, landowner

Location: 10 acre, more or less, tract of land located in the E½ Section 20, Township 154N, Range 94W (**Unorganized Township**)

Number of certified mailing receipts provided: 3

North Dakota Conditional Water Permit: No. 6833 expires Sept 1, 2019

Purpose: To construct a water depot with ponds and a well.

Present: Terry Jones

Discussion: No discussion was held. Mr. Jones had left the room.

Outcome: Denied

Motion: Moved by Vice Chairman Sorenson, Seconded by Commissioner Weisenberger to present finding of fact from the June 26, 2017 public hearing and make a recommendation to the Mountrail County Commissioners for denial of the zoning request filed by Johnny David Kulczyk, landowner, for an amendment to change land zoned agricultural to industrial for a water depot with ponds and a well on a 10 acre, more or less, tract of land located in the E½ Section 20, Township 154N, Range 94W (**Unorganized Township**) as this project does not follow the Mountrail County Comprehensive Plan, it does not maintain the agricultural landscape of the area, it's incompatible with the abutting land use, it does not fit in the county zoning map, and doesn't follow current county zoning ordinances. Also Mr. Jones has not demonstrated extraordinary circumstances for the justification of this

project and it clearly demonstrates spot zoning. Other concerns include existing legal concerns as Mr. Jones has failed to comply with the existing Cease and Desist order. Mr. Jones has also failed to address the concerns outlined in the Planning & Zoning staff letter sent January 2016 and has reconvened work. Additionally Mr. Jones has illegally restricted the use of a section line as well as installed other hazards without adjacent landowners being informed. Upon roll call vote, all present voted yes. Motion carried.

Approval of Minutes

Motion: Moved by Commissioner Borud, seconded by Commissioner Ruland to approve the May 22, 2017 minutes as presented. Upon roll call vote, all present voted yes. Motion carried.

Approval of Building Permits

Motion: Moved by Commissioner Wienbar, seconded by Commissioner Ruland to approve the building permits #1972 to #1983.

Staff Concerns

Sundre Sand & Gravel Pit Release – Section 12, Township 156 North, Range 93 West in the NE $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ 80 ac +/- . Landowners: Dennis & Barbara Cvancara. Existing permit expires August 26, 2018. There is no bond in place. Sundre Sand & Gravel is done with the pit and requests the conditional use permit be cancelled.

Motion: Moved by Commissioner Wienbar, seconded by Commissioner Ruland to approve the request filed by Sundre Sand & Gravel, for a pit release signed by Dennis & Barbara Cvancara, landowners, releasing the gravel pit on a 80 acre, more or less, tract of land located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12, Township 156N, Range 93W (**Manitou Township**) as the pit has been reclaimed to the owners satisfaction, thereby cancelling the conditional use permit. Upon roll call vote, all present voted yes. Motion carried.

Compassionate Care Act – Medical Marijuana Dispensaries: Mountrail County will need to determine appropriate zoning districts and proper placement for medical marijuana dispensaries (commercial/industrial/agricultural etc.), including setbacks from schools and residential areas. It is better to have an ordinance in place than to be blindsided with no regulations if one is proposed in our area. Staff will be discussing this with neighboring counties and there is an option for a moratorium for more research if one is proposed. Everyone should have a draft from McKenzie County. Staff suggests striking conditional use in agricultural zoning districts and only be conditionally permitted in industrial zones. McKenzie County states all dispensaries must be 2640 ft. from school and 500 ft. from residential or recreational district, with any changes in ownership being approved by County Commissioners. Insurance and bonding requirements (Letter of Credit) will need to

be determined. Lisa Lee, Planning & Zoning Administrator stated she will follow up with States Attorney to develop this ordinance.

J&J Oilfield Services Zoning violation: (from February 2017 meeting) Storage of Rig mats on agricultural land in Outlot 1 of Section 17, Township 156 North, Range 90 West. Lisa Lee Planning & Zoning administrator visited the site June 20, 2017 and found the rig mats still present. She was unable to contact Joe, but did speak with Linda Otteson. Mrs. Otteson stated they have been unable to get burn permits. As of the week prior to the meeting, the U.M.D.H.U. has denied the application for a burn due to trade waste laws. Mrs. Otteson stated they can have the mats moved by July or August but she did not disclose an alternate location. Mountrail County Planning & Zoning will not allow the rig mats to be moved to an alternate storage site in our county. Lisa Lee Planning & Zoning administrator stated J&J Oilfield Services have been in violation for more than a year. Chairman Hovda stated there is no extension as there is no valid permit to do what they have done. Lisa Lee Planning & Zoning administrator stated J&J Oilfield Services has been issued Cease and Desist orders on two separate occasions. It was decided the next step needs to be taken. Amber Fiesel, Mountrail County Assistant States Attorney stated herself and Mountrail County States Attorney Enget, will work on this matter.

Steve Cates of Cates Earth Science Technologies in conjunction with David Hilleren has been in discussion with McLean and Mountrail County regarding requirements for a water depot project proposed in McLean County affecting Howie Township and Mountrail County (Unorganized Township 150-92). Lisa Lee, Planning & Zoning Administrator spoke with Howie Township on May 3, 2017. Wade Enget, Mountrail County States Attorney received an email from the McLean County States Attorney stating that they have no concerns but wanted Mr. Cates to work with Mountrail County first as our roads could be affected. Mr. Cates stated all building is in McLean County and the water will be piped using an existing WPX pipeline. Mr. Cates stated Howie Township has approved his application and gave an overview of what his project was. It was determined that Mountrail County would not need any permits as the project lies in McLean County and the water would be moved via pipeline or lay flat hose. Lisa Lee, Planning & Zoning Administrator requested a letter from WPX giving Mr. Cates permission to use their road. Mr. Cates stated if they needed to lay flat hose in the Mountrail County easement, he would apply for the appropriate permits.

Moved by Vice Chairman Sorenson, Seconded by Commissioner Wienbar to approve the project by pipeline and flat hose only to transport water with landowner approval and a copy of the ND State water permit. Upon roll call vote, all present voted yes. Motion carried.

Brendle's Subdivision - Lisa Lee, Planning & Zoning Administrator stated she received a call from a landowner in Brendle's Subdivision and will be meeting with the County Commissioners due to several campers still being used for seasonal living in the subdivision. Planning & Zoning has received several building permits from landowners in Brendle's Subdivision however no construction has commenced.

Planning and Zoning Training Binder – Each member of Planning & Zoning Board has received a training binder compliments of McKenzie County. These binders have good information for anyone involved in Planning & Zoning. Jim Talbert offered to host a training for anyone that missed the Vision West training.

Aggregate Construction, Inc. Pit Release – 27-153-91 SW¼SW¼ less the SW¼SW¼SW¼ 30 ac +/- . Landowner: Jack Fladeland. Expired May 29, 2017. No bond. Aggregate Construction, Inc. is done with the pit and the landowner has signed off on the reclamation.

Motion: Moved by Commissioner Borud, Seconded by Vice Chairman Sorenson to approve the requested filed by Aggregate Construction, Inc., for a Pit Release signed by Jack Fladeland, landowner, releasing the gravel pit on a 30 acre, more or less, tract of land located in the SW¼SW¼ less the SW¼SW¼SW¼ Section 27, Township 157N, Range 91W (**Crane Creek Township**) as the pit has been reclaimed to the owners satisfaction. Upon roll call vote, all present voted yes. Motion carried.

Aggregate Construction, Inc. Pit Release – 26-156-94 NE¼NE¼, SW¼NE¼ 80 acres, more or less. Landowner: D & R Lalim, LLLP. Expired July 23, 2017. No bond. Aggregate Construction, Inc. is done with the pit and the landowner has signed off on the reclamation.

Motion: Moved by Commissioner Borud, Seconded by Commissioner Ruland to approve the requested filed by Aggregate Construction, Inc., for a Pit Release signed by D & R Lalim, LLLP, landowner, releasing the gravel pit on a 80 acre, more or less, tract of land located in the NE¼NE¼, SW¼NE¼. Section 26, Township 156N, Range 94W (**Myrtle Township**) as the pit has been reclaimed to the owners satisfaction. Upon roll call vote, all present voted yes. Motion carried.

Board Concerns

Commissioner Borud voiced concerns on Mr. Kulczyk project. Commissioner Ruland voiced the same concerns. A brief discussion was held on the project. It was agreed the road this project is located on a very dangerous section of road in Mountrail County.

Vice Chairman Sorenson asked about approving Building Permit twice. Lisa Lee, Planning & Zoning Administrator outline the process that Building Permits are handled. It was

decided that the Building Permits should be approved conditionally administratively but then final approval would be given by the Planning and Zoning Board. Planning & Zoning will update the Building Permit form to reflect this.

Vice Chairman Sorenson discussed the Ward County easement issue and how Mountrail County is similar. A discussion was held on the similarities.

A discussion was held on finding the new Planning & Zoning Administrator.

Next Meeting

The next regular meeting of the Mountrail County Planning & Zoning Board is Monday, July 24, 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 24th day of July 2017

Roger Hovda, Chairman
Mountrail County
Planning & Zoning Commission

Liz Hollowell
Administrative Assistant
Planning & Zoning