

Planning and Zoning Commission Minutes

January 10, 2022

Meeting was held at the McKenzie County Courthouse Commissioner Room in Watford City, ND and called to order at approximately 5:00 pm.

PLEDGE OF ALLEGIANCE AND ROLL CALL

Members Present: Butch Fleck, Cody Knetzger, Craig Hystad, Eva Hepper, John Irwin, Kathy Skarda, Matt Beard, Tim Transtrom

Members Absent: Heidi Brenna

Staff Present: Planning Attorney Ari Johnson, Planner Dana Roff, Planner Candy Lundgren, Code Enforcement Officer Logan Innes, Administrative Assistant Cindy Jensen

Staff Remote: Planning & Zoning Director Sandee Kimpel

Others see sign in sheet at end of minutes.

APPROVE AGENDA

Motion to Approve Agenda. Motion by -----; Second by -----; Voice Votes: All Ayes;

Motion to Approve Agenda as Amended Passes.

ELECT NEW CHAIRPERSON & VICE CHAIR

Motion to nominate Butch Fleck for Chairperson; Motion by Kathy Skarda; Second by Eva Hepper; Move to have nomination cease; Move by Craig Hystad; Second by John Irwin;

Butch Fleck accepts nomination. Voice Votes: All Ayes;

Motion to Nominate Butch Fleck for Chairperson Passes.

Motion to nominate Cody Knetzger for Vice Chair; Motion by Kathy Skarda; Second by Eva Hepper; Move to have nomination cease; Move by Craig Hystad; Second by John Irwin. Cody Knetzger accepted the nomination.

Voice Votes: All Ayes;

Motion to Nominate Cody Knetzger for Vice Chair Passes.

APPROVE MINUTES

Kathy Skarda stated underneath the Approve Agenda where it says 'Director Huus stated I would like to add 1 item under Discussion, it has the word 'and' update on Board openings. Is that all one sentence or is it supposed to have a comma? **Ari Johnson** stated I think it was supposed to be 'Discussion, and update on board openings' because the motion was to approve the agenda with Director Huus's request to add Discussion for updated board opening, so I think you're right to catch that.

Motion to Amend Minutes with Comma Added after the word 'Discussion' under 'Approve Agenda'. Motion by Kathy Skarda; Second by Matt Beard; Voice Votes: All Ayes;

Motion to Approve Amended Minutes Passes.

PRESENTATION

Introduce New Board Member, Code Enforcement Officer and Planner 1

Dana Roff stated she would like to introduce the new Planning & Zoning Board Member, Tim Transtrom; Code Enforcement Officer, Logan Innes; and Planner 1, Candy Lundgren.

Butch Fleck stated Eva Hepper renewed her position as Planning & Zoning Board Member.

CODE ENFORCEMENT:

Logan Innes stated there is no Code Enforcement at this time. Right now, I am just keeping up with things that previous Code Enforcement Officers Todd Foster and Sandee Kimpel, along with some new violations.

Kathy Skarda asked if he would be making reports to the Planning & Zoning Board on a monthly basis? **Logan Innes** stated yes. **Dana Roff** stated he's been all over the County, in the computer and is doing a great job.

UNFINISHED BUSINESS

Dana Roff stated we do not have any unfinished business.

PUBLIC HEARINGS

#034-15AMEND/CONDITIONAL USE PERMIT - Dixon - #0034-15 Amendment and Conditional Use Permit - Dixon - Badlands Trust - Dixon J2K Water Depot - 12583 Long X Road Grassy Butte, ND; Parcel # 400001100.

Dana Roff stated this is #034-15 Amended Conditional Use Permit Dixon Bad Land Trust - Dixon J2K Water Depot. Applicant is proposing to convert the 2 (two) Northwest ponds to 1 (one) Freshwater Containment Pond, not exceeding 49 (forty-nine) acre feet capacity. It is on a parcel of land currently Conditionally permitted for a Water Depot and a Freshwater Holding Pond. The proposed pond will be separate from the depot and will supply water to other operations. The pond will be supplied by permitted water from the Little Missouri River and underground wells. The owner has agreed to allow Emergency Management personnel to use water from this containment pond in case of Emergency.

Ari Johnson asked is this an Amendment to an existing Conditional Use Permit? **Dana Roff** stated yes.

Dana Roff read the Findings of Fact. They are highlighted and attached to the end of the Minutes.

Dana Roff stated staff recommends Approval for this Conditional Use Permit. These are the listed conditions. I do have a little information on these listed conditions as far as the July 27th, 2018, Conditions #6 (six). Number six was approved on January 20th, 2015, by the Board of County Commissioners to allow trucks. The applicant did install a 3 (three) strand barbed wire fence and cattle guard on 14 acres and that was per January 12th, 2015. It was not a requirement at that time, in 2015, that he had a fence. He provides dust control. On his applications, his conditions didn't specify what kind of dust control he is to provide, it just states dust control. He does water it from his parcel out to Highway 85.

Butch Fleck asked there are a couple other ponds there, so is he responsible for maintaining that couple of miles himself? Is that what that condition was? **Dana Roff** stated Candy and I did some investigation and as far as we can tell, the ponds owned by the Helfrich's to the West, which is right up on the road, we don't have very much information on those. This has been ongoing investigation into past permits. Candy is delving deep into that. We can't find a requirement for that. **Fleck** asked on the chain link fence, if that wasn't required, how come it's in the conditions? **Roff** stated it was in the conditions later that it be a chain link fence. Sandee, do you have any more information on that? **Director Kimpel** stated the chain link fence was a part of the 2018 Amendment. That wasn't part of the original Conditional Use Permit, it was only added that latter southernmost part.

Kathy Skarda asked if it was a criterion for the Amendment in 2018, it should have been done in 2018. When we amend the rules at the time, those conditions are the ones that we go by until they amend the conditions again. Just because it was not part of the 2015 original conditions. Things change. It's just like wanting now with this Amendment to get the Reclamation Bond on these ponds, we could stipulate different changes, also as part of it, because he's coming before us to get something, and he needs to meet certain criteria. So, because he did not have the 2015 chain link fence at that time, he came in in 2018 and amended his Conditional Use Permit. At that time, in 2018, the County Commission and the Planning and Zoning Board added the existing condition #5 to that

condition amendment, so then that carries forward until you come now. So that's where I'm at on that.

Tim Transtrom stated there was another outfit that just built a freshwater pond close to my place and they've only got a 4-strand barbed wire fence. It's probably 30 yards from County Road, which I like because it doesn't catch tumbleweeds in that but are there different rules or different time frames?

Craig Hystad stated they've been changed.

Butch Fleck stated they have changed, as long as it is not in a highly populated district with a lot of people around.

Eva Hepper asked there's something with the County Road, also, being so far, right? **Craig Hystad** stated if they are, say half mile within the city limits and or around like a development then they need to be chain link. If they are further out the road, away from people, more than 1/2 mile, then they can go with four-strand barbwire. **Tim Transtrom** asked is that true for this application too then, since he's not close to Watford? **Hystad** stated yes, but this was done in 2018 and he should have had the chain link fence. That was a stipulation at that time, now it's not. But at that time it was, so he's in violation of that.

Butch Fleck stated that's right, but now they're not, so I'm not sure how we straighten that out because there's a pond on the West side of him, right on the road and that doesn't have anything on it. I understand that the Planning & Zoning Board Committee did that Administratively. **Dana Roff** stated the only thing I see in Adoption and Amendments for Fencing is the Amended Administrator (Approval) Freshwater Pond Fencing Amendment, which was done on August 17, 2021. McKenzie County Zoning Ordinance 2.12.7.3 Fences states:

- 3) Fences adjacent to agricultural land may use four (4) strand barbed wire with the approval of the Planning Director

Butch Fleck stated I know we've been going over this for quite a few years and I never heard of the chain link fence until a couple months ago. **Kathy Skarda** stated we didn't have any documentation for 2015, then at that time. **Dana Roff** stated, and I don't have any information in any of our files as to why it was required in 2018 to be a chain link fence. **Eva Hepper** asked does some of that fall under the grandfather if it was done before it was changed or how does the grandfather deal work? **Roff** stated let me show you where he has his fencing currently.

Dana Roff displayed a map showing the fencing detail of the existing fence, and, if approved to convert the two specified ponds to one, how Dixon would change the fence. She also pointed out the portion of existing fence on the map.

Dana Roff stated the Applicant is present. **Tim Transtrom** stated that another pond by that location does not have a chain link fence. **Butch Fleck** stated today was the first time I'd seen that one. I didn't know that it never went through the Planning & Zoning Board, it was done Administratively here. Must have been this year. **Roff** stated no, it's an old one that's been here for a while. We are

trying to find information on that one. **Fleck** stated that one is not John's (Dixon), that is somebody else's.

Michael Wald stated I took over Management Operations at the Dixon Depot. With the fencing requirement, there is a 3-wire on Helfrich's, right next door. There is no 6-foot chain link. They're closer to the road, as you can see, than we are. We're within 1/4 mile of the road, but the current Zoning Ordinance states, 'a paved' County Road as opposed to a graveled County Road. We're further than 1/4 mile from a residence, so I think we would fall outside of the requirement for a 6-foot chain link per the Zoning Code.

Kathy Skarda asked as of now? **Michael Wald** stated correct, as of now. **Skarda** stated but it's never been in compliance then, and that's been the whole thing we've been trying to make sure and work toward getting everything in compliance.

Michael Wald asked so a four-wire would be in compliance now as it stated in the Zoning Code? **Butch Fleck** stated the problem everybody is having is we've had trouble giving people new Conditional Use Permits if they haven't complied in the past. That's where everybody is having a problem right now because they haven't been working with us and keeping everything up to date. So that's the whole problem, and I'm not sure how to straighten that out. **Dana Roff** stated we have a new system we're working on that. It is a work in progress.

Kathy Skarda asked are we going to be having Annual Reviews? **Dana Roff** stated if it calls for an Annual Review. **Skarda** stated if it has a Conditional Use Permit, we must have an Annual Review because a Conditional Use Permit is a Conditional Use Permit based on the conditions that are given out. The lack of any Annual permits, I really, strongly discourage.

Dana Roff stated we haven't had, like Curt Huus explained at one point, we just haven't had the staff to do it, but now we're amping up and we're getting there.

Craig Hystad stated on the Northside of that pond, that proposed new pond, you don't own the Little Missouri River, so where's the property line on the north side? **Michael Wald** stated it would be up to wherever the government survey is. **Hystad** stated that's why I'm asking. **Michael Wald** stated there's not a delineation on that now. **Dana Roff** stated I think I have an approximate. The light blue line that's an approximation. In our GIS it's not perfect but it's close. **Butch Fleck** stated close enough for what we can work with.

Kathy Skarda asked do we have any set back requirements? **Craig Hystad** asked are there set back requirements on farms? **Dana Roff** stated 133 feet from the section line and the other requirements are 25 feet. Now I've just got some information. The Helfrich approval letters were in 2018.

Michael Wald stated that is Dixon's property, though it goes into the river. That's how all those properties are along the river there. It's not owned by the Corps of Engineers. I just want to make that distinction.

Butch Fleck stated this is hard to do because he hasn't been complying. Is there any way a guy can start over here, get into compliance? I hate to shut somebody down all the time, but I don't know how to do this.

Ari Johnson stated starting all over is probably possible, legally possible. My thought is always what do you want to have going on? Give them a permit to do what you want to have going on and then

enforce that permit and give them you know, a timeline to get from point A to where they should be and use the enforcement process to keep them on that timeline rather than you know, scratch the whole thing and start over with a clean slate 'cause there's a lot of reclamation to get to a clean slate that I don't think is realistic. Does that help?

Kathy Skarda asked so if we approve this because, that was on 2015 and we went through 2019 , and 2020, and now in 2015 we have this of compliance still, what 'Can of Worms' are we opening up for other people who are out of compliance?

Ari Johnson stated you're certainly encouraging them to come in and get a Conditional Use Permit that they can comply with by showing that that's something that you'll support, so I think that that is the can of worms is a little more palatable that way. If you want to sick me on him and shut them all down, we can do that but that's a bigger can of worms.

Kathy Skarda stated when we have employees who spend a lot of time and hours reviewing things and a great big, huge manual that we are supposed to follow, I really have a hard time when people come in and say, "I'm bad, I didn't do it and forgive me just for it. Forgive and forget."

Ari Johnson stated one thing we did several years ago because of that scenario is adopted the Reclamation Violation Bond Requirement, where if you apply for a Conditional Use Permit for the purpose of bringing a violation into compliance, and I don't know if that's what's happening here. I don't think it is. This is a change I mean they're not asking for a Conditional Use Permit that they didn't have when they just combined, but could that Violation Bond be used in this scenario, possibly as a requirement for this application? The staff hasn't treated it as such. It would be up to the Board to give direction on that. I think that would be an option though if you if you wanted to hold people's feet to the fire when they have any kind of violation and the need a Conditional Use Permit for the same property. You could certainly ask staff to start doing that. I don't know if that's a policy that the Board wants to go with, but that is an option that we have without changing the ordinance. For what it's worth, my personal preference is that everyone follows every rule all the time, but I've been through a four way stop. I know the world doesn't work that way.

Kathy Skarda stated I just always hesitate at when we have something procedurally and it's documented and we ask everybody to follow it and some people do, and some people don't, and it just really bothers me when we give exceptions and then soon it just becomes 'why do we even have it if we do not follow it?'

Michael Wald asked you mean if every if there's equal application to everyone? So next door Helfrich on the West, they didn't have a requirement for a 6-foot chain link and Marmon to the East didn't have a requirement for a 6-foot chain link and they're both closer to the road. **Butch Fleck** asked when did they have their permits?

Dana Roff stated Helfrich was 2017, 2018. Marmon was in 2014. **Craig Hystad** stated there's problems out there that yeah, there's ponds out there that don't have them, but the fence requirement wasn't part of it at the time. It was later that they said, hey we gotta fence around these. **Kathy Skarda** stated and that's where 2018 came in. **Hystad** stated so, that's when we changed the fence comment. Then we revised it again a year ago with the chain link incorporated.

Michael Wald stated the letter here for Helfrichs is dated September 20th, 2017. **Kathy Skarda** stated that would have been before the 2018 amended Conditional Use Permit for you guys.

Eva Hepper asked so in 2015 there was no fencing deal at all, from what I'm reading here. There was nothing, and then in 2018 it got added and then in 2021 it got amended. **Dana Roff** stated but in 2015 he did put a fence around it on his own volition. He did put 3 strand barbed wire, correct? **Michael Wald** stated correct. **Roff** stated and cattleguard. **Hepper** asked so you wanted him to update that to a chain link in 2018? **Kathy Skarda** stated 2018, there must have been something. **Hepper** stated it says in there (2018-#0034-15CUP AMEND CUP Conditions #5: fence around pond to be completed) within 60 days. **Craig Hystad** stated then everybody started wanting ponds, then the ponds started to show up in public places and we needed to do something. So, chain link fences were added to everything and so last year we put barbed wire stipulations in public areas to be chain link. **Skarda** stated we want to try to work with people, right? **Butch Fleck** stated we didn't change the chain link for everybody, just those within a quarter mile.

Eva Hepper asked did they know they were not in compliance in 2018? Were they notified that they had to put a fence in? **Dana Roff** stated I didn't find anything where this office notified them. **Hepper** asked do you have any letters on file? **Roff** stated I don't have any letter on file. I don't have anything. **Kathy Skarda** stated we can't enforce it if they don't know.

Dana Roff asked have you had any issues of anybody trespassing or going through that barbed wire fence since 2015? **Michael Wald** stated no, we haven't had any problems with these. **Roff** asked no animals, nothing? Okay.

Michael Wald stated the six-foot chain link is operational nightmare too, as far as getting pumps and equipment and doing the maintenance, the weed control. It just poses a problem. It's not easy to work around. The only risk we might have is if a cow might get in there and potentially drown, but that hasn't happened yet. I don't know of an instance of that happening in the county. **Butch Fleck** stated I didn't know about it either and I've been on for quite a while. That might be a moot point that, but anything else that we're not in compliance with. I mean that's something we don't have any right now.

Eva Hepper asked if there's no documentation that they were not in compliance, then how are they to know that they're not? **Kathy Skarda** asked how can we enforce it if they don't know?

Ari Johnson stated to clarify, shouldn't. We can enforce but maybe shouldn't. Yeah, I just want to clarify that. There's a lot that I can do that is a bad idea.

Michael Wald asked Ari, does the duty fall on the County to send out notices as they update the Code? **Ari Johnson** stated no. Amendments to the Code are a public hearing process, so there's a presumption of knowledge of the contents of the Zoning Code by all landowners. Yeah, that's why, like I said can, but maybe shouldn't.

Matt Beard asked would a good compromise be upgrading the fencing to four strand for the area South of the (Missouri) River, or would that be burdensome? **Michael Wald** stated no, not at all. We could definitely upgrade it to a four-wire. That is not a problem on our end.

Butch Fleck stated the fence isn't around the ponds, it's around that area. I don't know how many acres. **Michael Wald** stated 14 acres and we have a cattle guard at the entrance of the Long X (Road). **Matt Beard** asked it's all three strand right now, right? **Wald** stated Correct, yes, sir. Yeah, we would gladly add another wire and upgrade it. **Fleck** stated that would be good, to be with everybody else,

I guess that's something that should be. **John Irwin** stated that would get it in compliance with things now. **Kathy Skarda** stated that would be easy to do.

Eva Hepper asked so then what's to keep from this happening again and the next people that are sitting on this board having to go through it, 'cause when you read through this it sounds like he's out of compliance and we figure out that nobody was notified them. Something needs to be fixed on here so this doesn't have to be rehashed again. **Dana Roff** stated Sandee and I discussed that today and we are going to do that. This week we're we'll be fixing this. **Craig Hystad** stated it was here when they applied for this Amendment, it's in there for chain link. It is their duty, no ours. **Hepper** asked I see it there, that's why I asked the question if they were notified 'cause I see it in there. **Hystad** stated then when they signed this paperwork and submitted it, it was there. **Hepper** stated that's true. **Hystad** stated it's not our responsibility, it's theirs.

Eva Hepper asked do you have the Conditional Use Permit that they signed and this is what they got, what's showing here on. **Dana Roff** stated they just sign their application and then it's our duty to have someone go out and make sure they're in compliance and sign off on it. Back in 2018, that wasn't done. **Hepper** asked but they've seen this. They've seen this little paragraph that says they need a 6-foot chain length within 60 days of the approval. **Roff** stated yeah, John Dixon should have got a copy of his approval. **Kathy Skarda** stated that would have been what the Commissioners also gotten a copy of and as well as the Planning and Zoning Directors did as well.

Dana Roff stated yeah, after it's approved here, it goes to the Board of County Commissioners, which they sign off finally and then we do an Approval Letter, and we send that out to the applicant.

John Irwin stated this is something that needs to be looked at, you know, as everyone coming in and wanting their Waivers for their ponds. This is our opportunity to oversee what's been done and if things have been done. Every meeting there's somebody wanting a Waiver. This would get us back to the location and look at things and make sure that everything is up to snuff.

Dana Roff stated right, and I expect there will be other ponds that the requirements are like that. It's just now going through all of those, fixing this and going forward. **Kathy Skarda** stated reviewing the files of all the Conditional Use Permits. **Roff** stated right. Sandee and I are in agreement this is we have been doing this together for quite a long time and we want this fixed. We want going forward people to come in after us and it not be a problem and it being rectified.

Kathy Skarda stated because years down the road when Kathy is gone, I don't want to have somebody that's new in this chair reviewing all this stuff and then going 'What did you guys do and why did you do it and what the heck was going on?'. **Eva Hepper** stated that's what I'm thinking. If they are going to get the same thing five years from now, they're going to read it and say, 'How was this ever approved in 2022? It hasn't been in compliance. **Skarda** stated because it doesn't say anything, we need to do this more descriptive and make sure we have all that information as well if we do approve it. Otherwise, the history is going to keep repeating itself.

Butch Fleck stated one thing we did get come up with (something) last year for the fencing, got it straightened out, all the fencing. **Kathy Skarda** stated but is this the fact findings we need to make sure that we have everything.

Michael Wald stated in the Zoning Code at least, the way it reads now, it's at the discretion of the Zoning Administrator, I'm probably not using the right term. But if there is a 6-foot chain link to be

installed, am I correct in that, that it's at the discretion or at the discretion of the Zoning Administrator. What brought on, in the first place, for the requirement for a 6-foot chain link around this particular pond?

Kathy Skarda stated it just says in 2018 we don't know. **Eva Hepper** stated that's the reason why every pond in 2018 had it's rules. **Michael Wald** asked every pond? I think that was under the 2017 Amendment, which read, as well, that it's up to the Zoning Code and it didn't seem like it was a definite Zone. **Dana Roff** stated that was for Agriculture. **Wald** asked anything on Agriculture? Because the way it reads now it's at the discretion that says, or at the discretion of the Zoning Administrator, I'm probably not the right term.

Kathy Skarda stated the Zoning Administrator, yes. However, it also has to still come before the board, and then it also still has to be approved by the Board of County Commissioners. **Michael Wald** stated right. **Craig Hystad** stated they're supposed to have a drawing like you guys have on here, to show where you're going to put the fence. We can't say you're going to put in a fence. You might fence in a section, not fence the pond in.

Kathy Skarda stated fence in the whole pasture. That'd be your fence.

Michael Wald stated because fencing in every pond is just tough to work around, when you gotta move ponds and lay flat (waterlines).

Butch Fleck stated actually under the new rules you draw a plan to see for the fence 'cause it's not stipulated that it's got to be 10 foot or 20 feet or whatever it is. It is what is workable.

Dana Roff stated we ask for a fence detail like this like they provided for us. **John Irwin** stated we're trying to remain flexible on it because for your operation nightmares to avoid snowbanks, this and that, you can't really just make a one stamp that fits all that's going to catch (everything). **Michael Wald** stated yeah. **Irwin** stated so I'd like to see that remain flexible that you know we can kind of look at and try to approve or try to head off what we don't like about something if we can. **Butch Fleck** stated we had to be rigid at one time. **Irwin** stated that's when it started to work. **Wald** stated to keep a semi from driving into the lake, kind of thing.

Dana Roff pointed out on the displayed map, the existing fence location (shown in yellow), and where the fence will be located when the ponds are changed. **Eva Hepper** asked but you said some of that already has a chain link, right? **Roff** stated no. **Michael Wald** stated right, you're right on what you said about extending the fence to go around that pond.

Dana Roff stated this is the Conditional Use Permit and the reason for this Amendment is making the pond a 49-acre pond.. **Ari Johnson** asked so that'll be 3 ponds total. **Dana Roff** stated right.

Craig Hystad stated they're actually getting rid of one pond. I guess I'd move to approve it, with four wire barbed wire fence around the pond and then the removal of the chain link in the Amended Conditional Use Permit. **Kathy Skarda** stated also, make sure the Findings of Fact is changed and updated that it was updated. Otherwise, five years from now we might be doing the same thing, scratching our heads.

Motion to Approve with the wording 'four strand barbed wire fence' to replace the wording 'chain link fence' in the "Conditional Use Permit and the Findings of Fact updated that it was updated

#034-15AMEND/CONDITIONAL USE PERMIT - Dixon - #0034-15 Amendment and Conditional Use Permit - Dixon - Badlands Trust - Dixon J2K Water Depot - 12583 Long X Road Grassy Butte, ND; Parcel # 400001100. Motion by Craig Hystad; Second by Tim Transtrom

Voice Votes All Ayes

Motion to Amend Previous Motion for pond to be fenced within 60 days after the pond is in and notifying Planning & Zoning when the pond is done - #034-15AMEND/CONDITIONAL USE PERMIT - Dixon - #0034-15 Amendment and Conditional Use Permit - Dixon - Badlands Trust - Dixon J2K Water Depot - 12583 Long X Road Grassy Butte, ND; Parcel # 400001100. Motion by Craig Hystad; Second by Kathy Skarda; Voice Votes All Ayes;

Motion to Approve As Amended Passes

#0034-15RBW Dixon Badlands Trust- Dixon J2K Water Depot - Dixon - #0034-15 Dixon Badlands Trust - Dixon J2K Water Depot - Reclamation Bond Waiver - 12583 Long X Road Grassy Butte, ND; Parcel # 400001100.

Dana Roff stated the applicant is requesting a Reclamation Bond Waiver to remove the Reclamation Bond requirement in the original required conditions for the Conditional Use Permit #0034-15 Conditional Use Permit, and #0034-15 Amended Conditional Use Permit for a Freshwater Depot for the purpose of providing water for oil and gas development. The reservoirs are lined.

Craig Hystad asked I'd like to hold this until they're in compliance, so that once they get the other pond built and get the fence up so they're not bringing this one back. **Kathy Skarda** asked because it's not even built yet, right? **Michael Wald** stated correct. **Skarda** stated get it built and then taken that way, yeah. **Butch Fleck** asked could I get a motion for that to **TABLE** it?

Eva Hepper asked do they not have to put a bond up before they start. **Butch Fleck** stated they have a Bond on it now. **Craig Hystad** stated but they want to be able to get rid of the bond, waive the bond like we've been doing on the rest. They're trying to rebuild it and until they are in compliance with that one, I'd say have another bond. **Dana Roff** asked Sandee do you have anything to add about, they're willing to approve but not the Reclamation Bond Waiver at this time.

Director Kimpel stated OK, so then we need to talk about this a little bit further, because this was the Reclamation Bond Waiver that they tried to bring before the board in May and it got **POSTPONED** because of the fencing requirements. So, I guess we're talking about it again because their original bond is going to expire in December, which is why they requested a Reclamation Bond Waiver in November. So, we need to figure out if we are going to Approve this or if they need to renew their bond again. **Butch Fleck** asked the Bond is expiring, is that what I got? **Kathy Skarda** stated it already expired in December. **Dana Roff** stated just expired now and it is \$6000 for a new bond.

John Irwin stated this is a lot more than just fencing now. Now we are talking about adding ponds. This is a little bit bigger picture than what we saw in November, right? **Kathy Skarda** stated in November we were told that it was just for the Reclamation Bond and not making and building a brand-new pond. At least that's my understanding. Now he wants to take out 1 (pond) and make it 2

(ponds). Make it one of those big 49 (acre). **Dana Roff** stated he wants to take out two ponds. **Skarda** stated this whole thing is not the same thing as just wanting to put a fence in. **Tim Transtrom** asked when you build, like a pond over by my place, can the Bond be appealed on that right away before they start building, or is it always after? **Irwin** stated it is supposed to be after they're in compliance and everything is done up to all the conditions. **Craig Hystad** stated I guess I'm saying not to give them the Waiver because they were technically out of compliance. But we give them this to get them back in compliance, and if they've been out of compliance once, what is to say they aren't going to stay up? **Irwin** stated no, we can't. Until it's fenced and done you don't really know. **Butch Fleck** asked are we alright with that Ari? **Ari Johnson** stated well, yeah.

Matt Beard asked so this application is to release two bonds? **Dana Roff** stated he had one bond on this property. **Beard** stated I'm just noticing two entries. So, it's just it's one bond, which is just it's covering a couple Conditional Use Permits. **Roff** stated no. It's just covering this property. **Beard** asked same thing we've been talking about. It's several projects. same area overall. **Eva Hepper** asked how much is it, Dana?

Dana Roff stated talking to Mr Dixon, it costs about \$6,000 for the Bond and he will not get a refund. So, if we do this and we do require he get a new Bond, it might just be for one month and it will cost him \$6,000 (six thousand dollars) for one month.

Butch Fleck stated the problem is he's got a history or not staying in compliance, so we have a little trouble of waiving this.

John Dixon stated the Waivers are for the pond on the Northside of the river and a 49.5-acre foot pond on the Southside of the river. There was never a requirement for a Reclamation Bond for the two small ponds that are going into the big pond now. We never had or never were required in 2014 to have a Reclamation Bond for the small ponds we started with. We were only required to have a Reclamation Bond on the pond on the Northside of the river and the 49.5-acre foot one on the Southside. So, the two small ones we are looking at creating into a big one is not what we are asking for the Reclamation. **Craig Hystad** stated I'm still saying it's still the same company and that this isn't even the same deal.

John Dixon stated the Reclamation Bonds we're asking to be waive, was the one on the North side of the river, clear on the North and the larger one on the South. **Craig Hystad** asked you don't have one on the one you are trying to do now. **Dixon** stated not yet. We haven't built it yet. We can't build it until we get a Conditional Use Permit. If it is a requirement to get a Reclamation Bond, we will get a Bond or a Waiver. I believe the Waivers we're asking for, are for the two ponds that are there that we did receive bonds for, and we have now been trying for months to get them waived. Those are the ones, not the new ones, is my understanding what we're asking for.

Craig Hystad stated the number on this one show that that you're asking for a waiver on the ones you're trying to build according to our paperwork right here. That is the same number. **Dana Roff** stated the application just stated parcel number 400001100. **Hystad** stated but these are both for #0034-15. **Butch Fleck** asked is that right Dana?

Dana Roff stated the address given on this Application that I received for this Reclamation Bond Waiver is 12583 Long X Road, Parcel number 400001100. It doesn't state anything about the ones to the Northside. **Craig Hystad** stated this is for the ones that you are trying to build right now. **John Dixon** stated OK, well then that's fine. We don't need a Reclamation Bond I don't believe till they're

built. **Michael Wald** stated you made an attempt in November to get that Reclamation Bond in, but the form was rejected by the County wasn't it? **Dixon** stated correct. **Kathy Skarda** stated it wasn't signed correctly.

John Dixon asked did that one ever get done? **Dana Roff** stated the one that you requested, it wasn't in November that one wasn't, it was **TABLED**. It was not a Reclamation Bond Waiver that went through previously. Sandee, those were **DENIED**, correct, that was **DENIED**? **Director Kimpel** stated they were **POSTPONED** because of the compliance issue with the fencing. **Kathy Skarda** asked weren't we supposed to have new signatures on that couple documents. **Roff** stated I did receive those. **Skarda** asked did we? Where are they at? **Roff** stated right here in the file. **Skarda** stated OK. May I see them?

Butch Fleck stated to be clear this Reclamation Bond is to protect the county. This is on his own private land. It really has nothing to do with us. If he wants to leave it a mess, it's his mess. We don't have to clean it up. So, a Reclamation Bond is kind of a moot point. It's different if somebody else was building this on his land. **Kathy Skarda** stated correct, correct. **Fleck** stated then the County is stuck in it. But now we're not. It's his own property. So, if he wants to screw it up, he's doing it to himself. So, a Reclamation Bond, since we're waiving all of them, I don't see why this one wouldn't be waived. It's not going to be a detriment to us at all. **Craig Hystad** asked isn't that the signatures for these, this one? **Michael Wald** stated the issue was the Trust. Because it's under a Trust and the signature with the Trust. A search of the county records would have shown his deed recorded and John as Trustee.

Eva Hepper asked so now it's the signature of the Trust? **Skarda** stated it is John as Trustee. which was should have been, and there was different. It had John, being the owner of that, is what they had it originally as. **Michael Wald** stated right and that is why it was kicked back. **Skarda** stated that was not correct because it was the Dixon Trust property. **Wald** stated, and John has to sign as Trustee. **Skarda** stated they had him as his own name in there as well. **Wald** stated well, I think John signed but he didn't notice that.

Butch Fleck stated it was kind of messed up too, some of the writing. **Kathy Skarda** stated yeah, there was a bunch of scribbles and different things. **Dana Roff** stated original 2015 Approval Letter didn't require a Bond. It was just brought in in 2018.

Kathy Skarda stated so, we have the Dixon Badlands Trust, that's the paperwork. It doesn't say anything about Dixon J 2K Water Depot on those documents. Is that required to make sure that you guys are OK with it or are you guys just renting it or the land is underneath the Trust and the Dixon J 2K Water Depot is the operation source. Is that how it's set up? **John Dixon** stated yes. **Skarda** stated everything else has been Dixon Badlands Trust and now we have Dixon J 2K there and I was wondering where this comes in. It's not listed as owner on the document. I was just trying to make sure I was following it correctly.

Craig Hystad asked this paperwork is for this pond, right? **Dana Roff** stated for this application. **Butch Fleck** asked yeah, they did a bunch of handwriting on the other one. **Hystad** stated I was looking for the (parcel) number. How we know what this is for?

Matt Beard stated if it's his land, it just seems to make sense. Whatever inspection or enforcement, I don't know how much teeth we would have. For new construction, but it seemed to me to make sense, since he is the Applicant and Landowner, to not incur a \$6,000 (six thousand dollars) cost. I

would move to approve the application, open to comments. **Butch Fleck** asked to get a Bond Waiver on this? **Beard** stated yes. **Tim Transtrom** I'll 2nd. **Craig Hystad** stated we need to have the PID number #400001100. **Fleck** stated for the description on the Waiver. **Dana Roff** stated she would add the Parcel ID #400001100 and the address, 12583 Long X Road, Grassy Butte, ND.

Kathy Skarda stated we moved to do this and, yes, it is on his, but he is building a new pond and we are amending his Conditional Use Permit. Will this in the future cause other people to do the same thing before the pond is even built and building a pond without having any Reclamation Bonds at all. Because he had a Reclamation Bond at the beginning and now, we do not have to have the Reclamation Bonds. For instance, say I decided to write an application out to build myself a great, big pond, then decided I don't want any Bonds at all and I don't have to have one. Is that what we're approving now? **Matt Beard** stated I would ask is that allowed? Somebody comes in and wants to build something on their land. We've probably got that clearly defined. Is a Bond required or not?

John Irwin stated we first started this waiver issue, it was supposed to be on Industrial Use ponds when they were turned back to the landowners. That's how this conversation first started, and now we've gotten to where we're waiving them before they're even built? I think this has gone the wrong way. That's how the very first discussion that Gene Veeder had when he brought this up, was to waive these Bonds when these ponds that have been industrial used are no longer being used and were given back to the landowners to use for whatever they wanted to use for irrigation or this and that. Then it snowballed, and here we are waiving them before they're even built. **Kathy Skarda** stated, and I'm thinking 'this doesn't sound right to me'. **Butch Fleck** stated but you said, give them back to the landowner when some other company is doing it. This is different here when the landowner himself is doing it. So that's a little different than what we started. I remember these up North when some company was using the land on some guy's place. With those, I was skeptical about even waiving it. We've got all the documentation the landowner must file to approve that, so he knows where what his liability is. But here when the landowner is doing it to start with, he knows all the liability, whatever start with, it is his land, his pond. So that's different than what those others.

Eva Hepper asked so when it was written, was it you only needed a Reclamation Bond if somebody else was doing something on your property, not if you were doing it? **Butch Fleck** stated everybody needed them. It got down to where people were complaining if they're doing it themselves on their own ponds. So that's how we got rid of them. If somebody else is doing it on your land, that landowner has a bunch of paperwork he's got to sign just so he knows his liability. If it goes bad, it ain't the County's (responsibility). It takes responsibility away from the County.

Dana Roff read Mckenzie County Zoning Ordinance, Article 4.10.11 and 4.10.12.

4.10 REGULATION OF FRESHWATER DEPOTS, PIPELINES, AND PONDS

The conditions of approval of a conditional use permit for a Freshwater Depot, Freshwater Pipeline, or Freshwater Storage Pond shall include, at a minimum, the following:

- 8) At the termination of the use, the owner and operator must restore and stabilize the site to pre-project conditions.

- 9) The applicant shall submit with the application an estimate for the costs of reclamation of the site to restore and stabilize it to pre-project conditions. Such estimate must be prepared and signed by a registered civil engineer.
- 10) The owner and operator shall, within sixty (60) days after the Board of County Commissioners approves the permit, submit a reclamation bond to the Planning Department that meets the standards set forth in Section 2.13 of this Ordinance. The reclamation bond must be maintained at all times until final reclamation of the site has been approved in writing by the Planning Director.
- 11) For Freshwater Storage Ponds, the requirements of subsections (8), (9), and (10) may be waived if, along with the application, the applicant submits written consents of all persons with a record interest in the ownership of the surface of the land where the project is located. Such written consents shall include acknowledgement from the Planning and Zoning Department that they understand the implications of the waiver to them. The Board of County Commissioners shall consider each request for a waiver individually and determine whether a waiver is appropriate in the circumstances. No waiver may be granted unless:
 - a) The applicant demonstrates that all landowners entitled to notice of the application have been specifically notified of the waiver request.
 - b) The liner of the pond, if any, will have a service life of no less than 20 years.
 - c) The applicant and owners of the land sign an agreement to indemnify and hold harmless the County of McKenzie and all of its agents, departments, successors, and assigns for all claims, liabilities, costs, and attorney fees arising from or related to the pond.
- 12) Within one hundred twenty (120) days after completion of construction, the owner and operator shall provide the Planning Department with an electronic file containing the as-built surveys of all above- and below-ground equipment and pipelines.

Dana Roff stated that is our Reclamation Bond Requirement.

Kathy Skarda stated so if I decided to build upon on Eva's land, I'd have to have a Reclamation Bond. **Dana Roff** stated if you decided that you were fine with that, let's say you want to use the pond later to water cows. **Skarda** asked after it's done? **Roff** stated, that's when you would want to (do that). **Skarda** stated that's when I would come in (for the Waiver). **Butch Fleck** asked but Eva is the one that would have to ask.

Eva Hepper stated I would have to sign, saying I'm releasing the liability **Craig Hystad** stated the liability, even if you are Industrial. **Butch Fleck** stated that's the difference. I wanted to make sure I clarified it. **Kathy Skarda** stated that is exactly the difference because he is the owner and he is also the owner of the company that is doing the Depot and he's the one that is going to have to make sure and stay in compliance.

Dana Roff stated some farmers and ranchers consider these big assets to be able to hold the water and have some water storage.

Motion to Approve with the Addition of the Address 125853 Long X Road, Grassy Butte, ND and the Parcel #400001100 to the Staff Report, #034-15RBW Dixon Badlands Trust- Dixon J2K Water Depot - Dixon - #0034-15 Dixon Badlands Trust - Dixon J2K Water Depot - Reclamation Bond Waiver - 12583 Long X Road Grassy Butte, ND: Parcel # 400001100. Motion by Matt Beard; Second by Tim Transtrom; Voice Votes All Ayes;

Motion to Approve Carries

DISCUSSION ITEMS - NEW BOARD MEMBERS

New Board Members was discussed at the beginning of the Meeting.

DISCUSSION ITEMS - ADMINISTRATIVE APPROVAL

Dana Roff stated we do not have any Administrative Approvals.

DISCUSSION ITEMS - BITCOIN USE ON OIL LOCATIONS

Dana Roff stated we have some questions, the latest by Tim Transtrom, inquiring about Bitcoin mining within McKenzie County. Tim had called our office to ask about it. I did receive a phone call or two several months back asking about it. We don't have anything in our Zoning Ordinance for Bitcoin Mining. Really a lot of us don't even know what it was. Logan Innes has some good information and he's been on sites before. Sandee Kimpel and I did receive some information from Alan Christianson of North Dakota Mineral Resources. That all should be in your packet along with what some other counties are doing.

Craig Hystad stated one thing, I don't know if it's if the NDIC has already approving it for some of those locations. I don't know if we have anything we can change on it. The only thing, I think would be the argument on this, is the landowner that if they come to us, it's going to be their deal on how their lease was wrote. If their lease for that land is wrote for the extraction of oil and gas products, I would say this is not an allowed use. But it's I don't think it's a Planning & Zoning problem being that we have no control over locations and it's all NDIC approved. I don't know if we have any authority there.

Ari Johnson stated what happens on an NDIC regulated well pad, it's questionable whether we have any jurisdiction at all, potentially we do. I've explored a little bit of that in court unfavorably, unfortunately, and that was on a saltwater disposal pad. At the end of the day, the NDIC. I don't think the statute gives them jurisdiction over operations that are not involved in the extraction, production, expektoration, disposal, and so on of oilfield, hydrocarbons, and associated byproducts. But do you really want to go to court on that and find out? I don't know that there's a specific situation that we would even have that would be right to go to court with. If we did, do you really want to fight that one? It is like you say it's kind of up to the landowner. If I give you Surface Use Agreement that allows for you to, you know, do Bitcoin mining, and give me the kickback. I have no

idea what someone's service agreement might say. I would typically write them that they don't allow that, but that's up to the landowner to enforce, it's not a Zoning issue. We regulate the use of land, and this is the use of land, but it's use of land that is NDIC regulated. I'd love to see an NDIC order that expressly allows it. I doubt there is one. I think that if this is happening, it's just happening without the NDIC doing anything about it, but I don't know.

Craig Hystad asked you said you got approval? **Cody Knetzger** stated I can't speak to that, but I do know that a lot of a lot of these, the NDIC is, and I speak loosely here. There's so much infrastructure struggles with gas takeaway right now, so this helps a lot of oil companies, so to speak earn credit towards gas takeaway by using this natural gas turn on these generators to run all these computers to process. **Ari Johnson** stated sure it's not flaring and therefore it is good for NDIC's perspective. **Knetzger** stated and, good for the environment for that matter I guess.

Ari Johnson stated that's debatable, but from the NDIC's perspective, it's not flaring. I think it's up to the landowner to decide what's done with that, and the people that own the gas. Frankly, I mean if that gas belongs to the mineral owners too. There are a lot of people with a stake in that. I don't know that Zoning is one of those people. But if you want to send me to court and fight over it, I guess it would be fine.

Tim Transtrom asked would it be a change of use though? **Ari Johnson** stated the problem is that it's a use of land. If you take the oil well component out of it, it absolutely would be Zoning regulated. Problem is when it happens on a well pad that the NDIC has asserted jurisdiction over, NDIC's jurisdiction is normally exclusive of any county zoning and that has been interpreted by the Supreme Court to include a facility that separates saltwater from solids and hydrocarbons, which you know none of those is a down hole activity. It's all happening on the surface, but the NDIC still has exclusive jurisdiction over it and County Zoning can't do anything about it. I don't see how Bitcoin Mining using natural gas that belongs to mineral owners is an NDIC regulated activity. But it's one of those things like, how we would test that is we would say to someone who's doing it, 'that's not approved, you need a Conditional Use Permit for that activity' and they would either go through a process or not. One way or another someone is going to end up in court, whether we sue them for the Zoning Violation, or they sue for a Declaratory Judgement, saying that they don't need to go through Zoning. Either way, we're going to end up in court and the judge is going to decide what the NDIC's authority is. If the judge decides that the NDIC has jurisdiction, even though I've argued for it, there is no case where a court has said that there's shared jurisdiction between the NDIC and County Zoning. If the court says NDIC jurisdiction, that usually means there's no Zoning jurisdiction at all. At the end of the day, it would have to be decided by a judge and it would have to be a specific situation where we go out and try to enforce Zoning by saying you can't do that without coming to us.

Butch Fleck stated I do not know what Bitcoin is.

Ari Johnson stated I can summarize it. Bitcoin is a distributed type of currency that doesn't have a national government as a backer like the US dollar does, that is generated by computationally difficult math. It takes a lot of computing power to generate a Bitcoin and prove that it is a valid Bitcoin. That is how it is kept scarce, you can't just dig it up or make up a number, it must be a computed number. That takes a lot of computing horsepower to get to and so, idea is you use a lot of electricity to do the computing. You burn the natural gas to generate electricity to do the computing, and so it's a use of natural gas to generate something of value other than just flaring it without

needing a pipeline to the site. There's pictures here of basically they look just like a Conex which has all this computing power and probably an electrical generator in it. It's all natural gas fired and uses that natural gas to create electricity to run a computer to generate Bitcoin, which then has value in the market. Which is probably greater than the natural gas, but that's because we have negative value in some, for example.

Butch Fleck stated I've heard of it, but I just did not know their currency, that's true.

Ari Johnson stated long story short is it's a tremendous waste of electricity, but if you're burning natural gas anyhow, you may as well make Bitcoin back. **Dana Roff** stated in Grand Forks, they do say they currently permit them in Heavy Industrial Zoning and have not put any additional requirements on them. **Johnson** stated yeah, but they don't have any flares. **Roff** stated although I wouldn't mind looking at what Bismarck may be doing. Bismarck came back with, they are writing an Ordinance right now on Data Centers. They're worried they're about the noise as they make quite a bit of noise. **Johnson** stated they're basically a natural gas fired generator, running all the time, so of course they're going to be noisy. I don't know if they're a turbine or if they're a piston engine, but either way they're loud. I don't think those locations have much bearing on it because yes, they may have some portable Bitcoin Mining Systems, but the problem is they don't have the natural gas flaring problem that we have. It's kind of an oilfield centric problem. Also, it's easy to zone things that are not in NDIC regulated. You put one of these in your front yard and it's going to need Zoning approval because you don't have an oil well. You dump it on an oil well pad and suddenly, the NDIC gets involved, and that's where we have the gray area on jurisdiction. Interesting stuff. **Butch Fleck** stated we need to find out what other places are doing so we would have something to model it by.

Kathy Skarda asked do we want to look at forming an Ordinance or not. **Craig Hystad** asked what are we going to base it on if we have no control over it? **Butch Fleck** stated if it's not an oil pad.

Kathy Skarda stated I am saying it is something that we should look at and make sure we can handle the problem before people come behind it.

Eva Hepper asked wonder if we're in compliance or if this guys in compliance, down the road. **Matt Beard** stated just to Kathy's point, like if it was the City of Watford I could see these only being allowed on Industrial Zone because conex aren't allowed for Commercial, only Industrial. So that's the first thing that came to my mind as far as City Zoning. I don't know if the County gets that restrictive.

Dana Roff read an email from Alan Christianson, Production and Measurement Supervisor, Oil and Gas Division for the State of North Dakota., with his answer:

From: Christensen, Allen D. <adchristensen@nd.gov>
Sent: Thursday, January 6, 2022 10:56 AM
To: Sandee Kimpel <skimpel@co.mckenzie.nd.us>
Subject: Bitcoin operations

Hello Sandee, Gunther had forwarded me your question about bitcoin mining operations on oil and gas locations. There isn't a regulation specifically for server farms/bitcoin operations. But there is a regulation that does apply to them. Operators must submit to me a Facility sundry notifying the agency that a bitcoin/server farm is being installed on the location. On the sundry they need to state which wells will be sending gas to the operation, how its set up, and a plat showing where it's located on the location. Once I receive that sundry, I look to see where the custody transfer meter is, how the gas sales is allocated back to each well and make sure they are in compliance with NDAC Section 43-02-03-28 **Safety Regulation** which states that no boiler, electric generator, treater or flare can be placed within 150 feet of a producing well or oil tank. Placement is allowed to 125 feet if a flame arrestor is utilized on the equipment. After the operation is set up field inspectors ensure its in compliance with that regulation and then keep track of it. Once it is removed, the operator needs to notify the agency by a Facility sundry the server farm/bitcoin mining operation has been removed.

Any more questions feel free to send them my way.

Thanks

Allen Christensen

Production and Measurement Supervisor, Oil and Gas Division

701.328.8012 (o) • 701.202.1488 (m) • adchristensen@nd.gov • www.dmr.nd.gov



Dana Roff stated my question was, 'Can we be notified at least of which sites they're on?' To me because they're in a in a conex box and they do generate so much heat, gas, things like that, I would think that our 911 and our EMS people would need, want to know. Can they?

Cody Knetzger stated it's really no different than, a battery full of oil and salt water. **Kathy Skarda** stated it's very interesting. **Dana Roff** stated I've been told there's another one going in outside Alex, but right now we're just we're not verifying. **Craig Hystad** asked have you checked with Williams County 'cause I heard there's a bunch going in up there? **Roff** stated I did and I talked to them and she said she's they're just not sure they're about the same boat we are. **Hystad** stated I feel that it's if the NDIC is running them or approving these, as far as Zoning, we probably don't have nothing to do with it as long as they're on oil well locations. That's between the landowner and the Oil Company.

Dana Roff stated I just need to know who, because if let's say someone put one on a pad next to you. A lot of these are near our houses and the noise level goes off the charts. Do we have any recourse? Do we have any way to help? **Craig Hystad** stated we do have a Noise Ordinance on those things, I do believe, from the NDIC. **Ari Johnson** stated leaning to the side of the NDIC question, it is a valid point not just for Bitcoin mining but any other of these server farms that you know. Different companies have their cloud operations and they're usually looking for a place with cheap electricity, cheap cooling and cheap land, and we aren't necessarily qualified for that last one, but it looks pretty cool to me, and electricity is pretty favorably priced here. If you want to address this through Zoning,

I would do it in a more general fashion that applies to any kind of a computing location, whether it's a data farm or a compute farm or a Bitcoin farm because there are companies well outside the Bitcoin realm that set up these, basically Conex supercomputers to handle their cloud streaming, data storage or other computing horsepower. I don't know if we need a regulation for that, but we should look into if we're going to do it, we should cover the whole thing, not just the flared gas question.

Kathy Skarda stated just see because we don't know what's coming out in the future, of course, but we don't want to have 100 of them and not be able to have grandma have any relief if there's something that's not right because it's our citizens. **Butch Fleck** asked and how do we do it? It's too late after this. **Kathy Skarda** stated that's exactly right. We need to at least look at it, research it, and find out what it is, where it is and how it works so we all are knowledgeable about it.

Dana Roff stated so I would have a request for each of you to maybe do a little research. The more of us researching it, we can come together and talk about it again. Maybe some people you know might have it on their sites. Then we can get a good scope of what it is. This is new. **Kathy Skarda** stated I think that it's something that we should at least review so we're knowledgeable on it.

ADJOURNMENT

The meeting was adjourned at 6:22 PM.

The next meeting of the McKenzie County Planning and Zoning Board will be held on Monday, February 7, 2022, at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM.

McKENZIE COUNTY

Planning and Zoning Commission

#034-15AMENDCUP Dixon Badlands Trust-Dixon J2K Water Depot

Application:	December 12, 2021
Hearing Date:	January 10, 2022
Description:	12583 Long X Road Grassy Butte, ND Parcel #400001100
Owner(s)/Applicant:	Dixon Badlands Trust
Reason for Request:	Applicant is proposing to convert the two (2) northwest ponds to one fresh water containment pond, not exceeding 49 acre-ft capacity, on a parcel of land currently conditionally permitted for a water depot and a freshwater holding pond. The proposed pond will be separate from the depot and will supply water to other operations. The pond will be supplied by permitted water from the Little Missouri River and underground wells. The owner has agreed to allow emergency management personnel to use water from this containment pond in case of emergency.

Comprehensive Plan Land Use: Agriculture

Zoning: Agriculture

Findings of Fact:

1. All requirements for public notification have been satisfied.
2. Applicant is the property owner.
3. Property is not located within an organized township.
4. The original ponds were approved by the Board of County Commissioners in 2015 #0034-15CUP, with an amendment for an additional pond in 2018, which was administratively approved.
5. The pond will have a poly liner with a lifespan of 20 years.
6. The operator of the water depot, J2K is in good standings with the North Dakota Secretary of State.
7. The property is currently fenced. The applicant is adjusting the fence parameters to contain the remaining two (2) ponds along with the proposed, new 49 acre-ft capacity pond. See diagram in attachments.
8. The entrance has a cattle guard.
9. The ponds are contained on a 246.65 acre parcel owned by the applicant.
10. The western most pond is located approximately 409 feet from the property line and approximately 440 feet from the section line.
11. The parcel to the west is not owned by the applicant and also contains a freshwater pond.

Conditional Use Permit Criteria::

No conditional use permit shall be recommended by the Planning Commission or approved by the County Commission unless the applicant shall have met all the following criteria: