

January 2020

Planning and Zoning Commission Minutes

January 13, 2020

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

Members Present: Butch Fleck, Jeremy Olson, Kathy Skarda, Les Haugen, John Irwin, Bethany Devlin.

Members Absent: Kenny Liebel, Gene Veeder

Staff Present: Planning Director Curt Huus, Planning Attorney Ari Johnson, Planner I Sandee Kimpel, Code Enforcement Todd Foster, Planner II Dana Roff, Administrative Assistant Cindy Mecham

Jeremy Olson stated that Board Member Paul Wisness has resigned and thanked him for his long years of service to the County. A new board member is needed and asked that the Director advertise in the local paper for the County

Others see sign in sheet:

Motion to Approve: December 9, 2019 minutes.

Motion To Approve: Kathy Skarda , Second: Les Haugen : Voice Vote: All Ayes.

Code Enforcement: Todd Foster

Violations

Clarence Jore 3051 127th Ave NW: Living in or renting out several RV's. Todd stated he notified him of correct ordinance.

Zachary Wahlstrom 3481 146th Ave NW: Operating a commercial transport company in Ag land. At the time of inspection there were 7 in need of repair commercial trucks onsite and 8 commercial trailers in several different locations on the property. Todd stated he sent notice of correct ordinance and has not had a response returned.

Susan Bradford 4167 Hwy 85 S: Unpermitted commercial pond constructed in 2016. Todd stated there is no permit on file and is unsure if they are using the pond for fracing or the surrounding residential houses.

Lincoln Park, LLC Permit#010-14 (Ken Hartog) No address currently assigned, 42nd and Hwy 85: Abandoned RV Park, property has been vacant for just about a year, was permitted back in 2014 with the possibility of building a truck stop at a later date. Currently has several abandoned RV's and several out buildings. Todd stated that this was permitted through the Township but has had multiple violations through the state. They shut down early spring and

things are being destroyed, the owners put live cameras up to watch incoming trespassers. He stated a notice went out to the owner who lives in New York City to either apply for another permit or vacate the property.

Unfinished Business:

Item#1:

Item#1: 030-19CUP White Horse Water LLC, Rolla Pond/ Sand Creek **TABLED**

Director Huus stated the Board voted at the November 18th, 2019 to Table this to give the applicant time to obtain his Bond, however at this date it still has not been done so we have the option to Table it once again.

Audience, Representatives, Committee and Board comments:

Ari Johnson stated that he met with Duane Sands last week and he feels there is a letter of credit alternative that would allow us the protection just like a bond would without being an unnecessary burden on applicants when they cannot obtain a bond and still conduct business in our county.

Duane Sands stated he wanted to keep Curt aware that he was doing everything he could to obtain the Bonds and in talking with Marella from the Bank she stated that their bonding company did not want to give the bonds due to the nature of the bonds or the terms of the bonds. He stated he was not aware that he needed any bonds.

Kathy Skarda stated that with an open letter of credit there is no way with a letter of credit that you are going to get the money out of someone if they file bankruptcy or leave the area. The applicant has known this was needed since the approval of the first 2 CUPs in 2018, and now is applying for a third CUP. They have made a profit and been in business and here we are with still no Bonds that they agreed to provide 2 years ago.

Director Huus stated that since starting his new employment with the County he has gone back through the bonds and cleaning them up to make sure they were in compliance. There were over a 100 CUP Permits that were not in compliance which the total amount was at \$25 million dollars and on this date we are now down to \$300 thousand dollars. He can show Mr. Sands where he was sent the approval letter dated April 23rd, 2018 with this list of conditions, and once he has met those conditions at least under my watch you would receive a letter of acceptance that you are in compliance.

Butch Fleck had similar concerns as Kathy Skarda and that reclamation would fall back into the hands of the County.

Director Huus stated Staff recommends Tabling until Reclamation Bonds for CUP #0007-19, and 0008-19 are obtained and approved.

This Item will be **Tabled until the February 10, 2020 meeting.**

Item#1 Derek Gohr #032-19 VAR. Location: Parcel#030701700 Lot 17 Falcons Nest Subdivision.

Director Huus stated the applicant is requesting a Variance to place his home within the 133' section line setback. He wishes to place the home at 92' from the section line which correlates to a 41' variance request. The lot is a corner lot, approximately 198' deep and is located in a grandfathered subdivision named Falcons Nest north of Arnegard. A condition of approval is that there are to be no obstructions within the 100' site triangle from the edge of 29th St NW and 133 Q Ave NW.

Audience, Representatives, Committee and Board comments:

Derek Gohr applicant stated he had no issue with the conditions put forth.

Director Huus stated the staff recommends approval of Variance #032-19, Derek Gohr to the County Commission. Adopt the findings and conditions provided in the Staff Report.

Motion To Approve: John Irwin, Second: Kathy Skarda: Voice Votes All Ayes.

Item#2 McKenzie County #0007-19ZC. Location: IT#'S 2207, 2122,2121,2119,3055,2247,2176,2291,2120,2183,2205,2210,2308,2184,2240,2241,2248,2792, 2229,2292,2221,2220,2256,2222,2323,2324,2325,2228,2225,2226,2227,2224,2223.

Director Huus stated reason for the request is to Rezone the area to reflect its current use. Concerns from parcel owners that specific uses are diminishing surrounding property values and affecting their quality of life. Uses that were established prior to 2013 would be grandfathered uses. The uses that were established after 2013 Zoning that were in violation to the Agricultural Zoning placed on the property will need to come into compliance.

Ari Johnson stated that non-conforming uses are use oriented. So they can sale it to someone as long as their use does not change in character or substantially increase then it continues to be grandfathered in. But if they stop running it for 6 months we could claim it abandoned and they would have to terminate the non-conforming use. The sale of land has no bearing on the grandfather status.

Director Huus stated that he received a letter from Winrich Properties LLC, (Wesley and Susan Winrich) which said:

We are writing in reference to the January 13th 2020 meeting regarding Re-Zoning from Agriculture to Residential 1. We are not in favor in rezoning our property. We purchased our property in October 2011 for the sole purpose of housing for us and our employees and parking our trucks and equipment for our business. We have been informed that we are paying commercial real estate taxes and our property is NOT in a subdivision and never has been. We maintain our property to the fullest extent and do not see any benefit to rezone our property. We are unable to personally attend the meeting due to other business commitment, but our key employee and resident Jeff Worthington will be attending and representing our property.

Audience, Representatives, Committee and Board comments:

Nathan Christenson, Chris Christenson, Jennifer Christenson stated that they have had issue with trucks crowding their property line and are concerned for their children's safety.

Marsella Romero stated that her concern is the damage that the trucks are doing to the roads within the subdivision, we have had to change our shocks, our tires. My biggest concern is who is going to fix the roads. If you are going to make this change then can the County come in and bring the roads up to grade then the residents can possibly form an HOA and attempt to maintain the roads, however it is not fair to some of the residents to pay and still allow the trucks to come and go when they clearly are making 90% of the damage. Most of you know I work for the County and have visited with Todd Foster Code Enforcement several times in regards to getting some help.

Jeremy Olson stated these are not county roads, they are private.

Chris Miskin, Dale Leitheiser, Marty Patrick, David Nusz stated that they own and operate trucks in which they have all brought in scoria for the roads which very few of the residents have helped pay for, they have bladed, cleared and tried keeping the roads upgraded. They stated they have children and there has never been a safety concern brought up until this meeting. They stated that without the help they have provided, the roads would not be kept up as there is no HOA in place and the roads are not County owned, the property values have not decreased but in fact have increased in today's market. The roads need cloth under the scoria to help hold the form, as they are nothing but gumbo when it rains and snows. Some of the residents bought their homes thinking it was residential, however several of us bought it believing it was commercial. We moved out there because we believed it was a trucking environment. Ms. Romero drove past those trucks when she came out to the area and bought her home.

Francisco Romero stated that he has no issues with the trucks and would like to see the residents all come together and work this out to benefit everyone. They have their business and families and I personally have no issues with the trucks. I have never seen any children in danger and for the most part we have a good community, I'm grateful for the work the trucking companies have done, I will defend the truck drivers as they have taken care of our roads.

Director Huus stated the Staff recommends approval for this Zone change #0007-18ZC McKenzie County to the County Commission to change the Zoning from Agricultural to Rural Residential. Adopt the findings and conditions as provided in the staff report as well as all other applicable requirements given in the McKenzie County Zoning Ordinance.

Motion To Approve : Butch Fleck , Second: Les Haugen : Voice Vote: All Ayes.

Item#3 Reclamation Bond Waivers-Ordinance Revision:

Ordinance Revisions:

Director Huus stated that he and the Planning/Zoning Attorney Ari Johnson have met and have been working on some changes they are as follows.

Preamble: Some Conditional Use Permits allow the construction of earthworks or other landscaping that will be useful to the landowner even if the conditionally allowed use is later terminated. This amendment would allow for waivers of the requirement to have and maintain reclamation bond for those portions of the conditionally allowed use which the landowner desires to remain after the use itself has terminated. Such waivers will be limited to earthworks and landscaping.

Amendment: New subsection 6 of Section 2.23.2 of the McKenzie County Zoning Ordinance is hereby enacted, as follows:

6) The requirement to reclaim the site at the termination of the conditionally allowed use and the requirement for a reclamation bond may be waived as to portions of the conditionally allowed use which consist entirely of earthworks and landscaping. The waiver request must be signed by the owners of all interests in the surface of the land where the use will be located and submitted with the conditional use permit application. The public notice of the public hearing for the conditional use permit must state that a waiver of reclamation requirements and reclamation bond is requested. The landowner must execute an agreement to release and hold McKenzie County harmless for all damages and claims that arise from the failure to reclaim the site or the lack of a reclamation bond for the site.

Ari Johnson stated this could also be part of the application to amend an existing CUP to remove the current existing water pond. He said it has to be part of the CUP application. If they want the waiver they have to get it to Director Huus and it would then be presented to the board for approval. The word that matters the most here is (may), it gives the County Commissioners the option to decide if it is waived or not.

Director Huus stated that ponds have been the only ones that we seem to have issues with regarding the Bonds.

Butch Fleck stated that not all ponds are good for irrigation and the pond liners end up deteriorating.

Jeremy Olson stated so we need to take out landscaping and add fresh water ponds.

Ari Johnson stated he would match up the correct wording within our ordinance and add that the liners in the ponds need to be pulled out also.

Jeremy Olson stated that would be the 1st hearing changes to be made and published.

Item#4 CUP Revocation Hearing TABLED

Director Huus stated his suggestion to Table this again until next month until the Reclamation Bond waiver ordinance is adopted. We will work with the owners listed on this to get it done, in fact we might have to wait a couple of months

Jeremy Olson stated this will be Tabled until February 10, 2020 meeting so we can get more information.

Discussion:

Skid Unit Fee's

Director Huus stated that this is still an ongoing discussion and he has reached out to other Counties and their process, this has been an ongoing issue since July when it was Tabled several times then dropped. He would like to bring it back to the board at the February 10, 2020 meeting.

Jeremy Olson stated we put together an Ordinance so that people living here would be required to compensate the County for the services they were provided. Skid Units not being occupied were also being counted. That fee should be changed to when they are being occupied. The concern at this time is how do we track them.

Vess Hurley stated that the name needs to be changed to Multi Use Skid Units as he stated he thought the County was trying to get rid of the man camps when this tax came in. We are taking them out to people who have suffered a loss, such as the flood victims, I donated over 30 units and some are still living in them.

Director Huus we need to come up with a way to track where the units are going in case a man camp shows up in a neighbor's field, our biggest issue is not knowing where these places are developed. Right now the fee is \$1.50 per square foot for a year.

John Irwin stated when it's just temporary housing at a drilling site why are we even messing with this, his tanks on a well site are not being taxed, and is not being set up as a man camp, it is not the Hilton.

Director Huus stated it appears it was started by Forsgren as revenue generating project years ago, but now it looks like we have a direction that we need to follow up on. So at this time I agree it should be Tabled at this time.

Alexander Fire Department Jurisdiction/Blue Flame Propane/Ari Johnson

Ari Johnson stated we have a request by Mr. Powell and the Alexander Fire District on the agenda.

Lance Powell the Alexander Fire Chief stated that we do have a problem with Planning and Zoning with the Fire District. Ari's letter here he sets out a bunch of Century Codes, Fire Official Codes Article 10-7-01 he said he couldn't even find a reference to a fire code. It's pretty easy to see 10-7-01 authority having jurisdiction the Bureau Fire Prevention Fire Chief, which means we have jurisdiction. Ari and the Director Curt Huus say no, right in Ari's letter he states his conclusion is that the Rural Fire Protection District does not have a statutory role in administering or enforcing the fire code. That role is handled by the County Fire Official in all

parts of the county where the county has building code jurisdiction, to include organized townships that have transferred that authority to the county.

Lance Powell continues and states the delegation was revoked 8-7-18 and the County does not have a delegate, so now Director Huus and Ari Johnson are making the decisions, I did ask Director Huus to put it on the agenda twice and finally he responded back to me that it had been approved and was a done deal. I sent him pictures of the shop with 4 Semi Trucks parked in front of them today which is against fire code, it's happened twice actually more than that and I have sent them to Todd as well. The problem here is you approved (2) 30 gallon tanks there were (3) brought in and they filled all (3) without any of the conditions being met. There are (21) conditions not being met. I don't know if it was brought back to the board or not, they tell told me they were all fixed. Our District Fire Board voted to have that 3rd tank taken down and put to the side of the property, however they can hook it up at any time.

Under the Fire Code we want a water source for the water trucks to get there and it will take one hour (1) and (45) minutes, I called both companies personally. Not only do they have the tanks on site but they have (4) four semi- trucks which hold 80 thousand gallons each. I turned over jurisdiction for that spot to the Fire District, according to the North Dakota Fireman's Association Board they are now responsible for that since they let them approved it and let them fill it. We did not give them a permit to have them filled, we are not liable.

Director Huus asked Mr. Powell so are you saying you won't fight the fire.

Lance Powell said no we won't, you are liable you're the one that let them fill it, why did you let them fill it.

Director Huus stated first of all you need to understand that the CUP was not approved for (2) thirty thousand gallon tanks, it was approved for 60,000 thousand gallons, it did not say in the approval (2) 30 thousand gallon tanks. I can pull the staff report and show you.

Lance Powell according to North Dakota Fire Code you can go by how much the tanks can hold not the pressure in them, you go by the fluid. It says (2) thirty thousand tanks on the permit.

Director Huus stated his advice from our attorney stated we had jurisdiction so that is why he went with what our fire official said, that's why we went that direction.

Lance Powell stated the Century Code states political subdivision by the Fire District we did not give authority to the County. You told me that because the Township gave their Joint Powers along with fire that is not true. We are voted on by your tax base. The Watford City Fire Department signed off on this but they don't know what we can respond to. That is our area and we don't want to be just a suggestion because according to Planning and Zoning they email us and that is it.

Les Haugen stated that McKenzie County Planning and Zoning needs to work with the Fire District and respect their input. He also cautioned Lance Powell that he has been controversial in his statements here and that we need to work together.

Kathy Skarda stated we need to have safety in mind we have to figure out a solution.

Ari Johnson stated the Century Code Interpretations have been batted around for a couple of months now, I was asked by staff to do legal research with what the Century Code, Attorney General, Case Law have to say about the fire district jurisdiction. My conclusion was the County Fire Inspector for an organized Township that has not delegated it to the County, the Fire Inspections and permitting the fire district has jurisdiction for fire response. That is the way the Century Code spells it out. The States Attorney General reviewed my research and did his own and we reached the same opinion. On the advice of the States Attorney and on my advice on this board and the staff the interpretation that I just informed the board will be used going forward unless and until the Court of Law or the States Attorney says otherwise. The County must rely on advice of the States Attorney if the County disregards the advice of the States Attorney the County can be subject to liability if it is wrong. The County is protected acting under the advice of counsel. If an attorney general's opinion is issued contrary to the opinion of the States Attorney and advice that I have given the county then we will change our tune accordingly but that Attorney General opinion has never been requested and certainly has never been issued. The issue as far as I am concerned legally is a done deal. Jurisdiction is very clearly defined as the County Fire Inspector for inspections and permitting and the Fire District for fire response. If the fire district disagrees with that they have a number of recourses available, it is not my job to advise them but if they disagree they can pay their own lawyer to engage in that recourse.

Lance Powell stated we are an elected board, when did we start now having an office tell us what we can handle, they don't know what we can handle. Not once has any 9 members on our board ever been asked to come in and talk about this. I have been on these types of fires and tell me why when my guys are out there we are just a suggestion. My first safety is for my guys who will be liable for them.

John Irwin stated that he feels if the Fire Department is out of their comfort zone then shame on us for throwing their opinion to the wayside we should all be bring this back to the table and ask ourselves if there is something we can do to put their minds at rest. They are the boots on the ground and I think we need to respect that.

Jeremy Olson asked that an advisory board be formed to further discuss and consult with The Alexander Fire Department and bring it back to the board.

Murex Subdivision- Condition #001-19SUBZC

Kyle Ledbetter came before the board to discuss the conditions of his previous Zone Change.

Director Huus stated the Zone Change came before the board and was approved in September, 2019 and if Mr. Ledbetter would like to come to his office he would be more than happy to go over any questions or concerns that he has.

Board Member Vacancies

Director Huus stated that we have 1 Board Vacancy with Paul Wisness giving his resignation last week. He asked Les Haugen and Butch Fleck if they were staying on for another term and they both stated yes. He said that he would then advertise in the local paper for anyone within the County who might be interested in serving on the Board.

Bloom Properties Reclamation

Director Huus stated that Bloom Properties posted cash security in lieu of a Bond. We hired a company to do the reclamation work E&M Services so we now need a motion by this board to pay that bill.

Motion To Approve: Kathy Skarda, Second: John Irwin. Voice Votes: All Ayes

Meeting adjourned at 9:00PM

MEETING SIGN-IN SHEET

Meeting Date: 1-13-2020

Name PLEASE PRINT NAME LEGIBLE	Phone #	Agenda Item #
Marcella Romero	801-651-8601	
Lance Powell	701-770-1485	
DAVID NUSZ	701 580 6692	
Alfredo Negreiros / J. Log	562-318-8269	
MARTY Patrick	701-339-9585	G2 H3
CHRIS MISKIN	208-403-2609	
Dale L. Leitheiser	406-799-1349	
Andrew Swearingen	715-558-0513	
Huber Swearingen	701-713-0893	
Chris Leitheiser	406-231-6480	
Jeff Worthington	816-504-9474	
FRANCISCO ROMERO	(801) 472-6202	
MARGARITO ROMERO	(701) 651-3381	
Kyle Ledbetter	701 641-6635	H-3
ROBERT Rasmussen	541-619-8814	
LILLY Diana Rasmussen	541-619-6143	
Larry Signalness	701-770-2500	#3
Chris Christensen	701 580 6519	
Lathan Christensen	701 595 4003	

February 2020

Planning and Zoning Commission Minutes

February 10, 2020

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

Members Present: Butch Fleck, Jeremy Olson, Kathy Skarda, Les Haugen, John Irwin, Bethany Devlin, Kenny Liebel.

Members Absent: Gene Veeder

Staff Present: Planning Director Curt Huus, Planning Attorney Ari Johnson, Planner I Sandee Kimpel, Code Enforcement Todd Foster, Planner II Dana Roff, Administrative Assistant Cindy Mecham

Others see sign in sheet:

Motion to Table: January 13, 2020 minutes.

Les Haugen stated I made a statement where this board and the staff and the local Fire Department needs to work together and that was omitted from the minutes.

Director Huus stated that we try to get the main points and we do not do them verbatim.

Kathy Skarda stated she was concerned with us not working with the Fire District more closely. Their voice needs to be heard as well as they are a government entity.

Jeremy Olson stated the minutes are sent out the Wednesday before the Board meeting which is 6 days, so if anyone has an issue with the minutes that should give this board enough time to read them and bring any concerns. How long after this meeting would the minutes be available.

Cindy Mecham stated that she does them at her desk and when she has phone calls or interruptions it does take longer. I listen to the recorder and if people do not talk into their microphones it is hard to hear their comments. She tries to get the minutes done 2 weeks after the Board meeting, that is how it is working right now, but when we get into the busy season that could change the timeline.

Jeremy Olson stated we will table these minutes until they are amended and review them again in the March meeting.

Code Enforcement: Todd Foster

Violations

Director Huus stated that he and Todd Foster have been working together and decided to do these different as he has been uncomfortable in the past with how they have been done. The way it had been done before was Mr. Foster would send out a violation but no warning that it was going to be heard at this Board or put in the minutes which are public record, as well as published in the newspaper. There should be a notification done from Mr. Foster when he gives someone a violation which then would allow a certain amount of time to correct the violation and if they don't correct it in the time frame given then it will be brought to this board.

McKenzie County Zoning Ordinance:

5.10 VIOLATION AND PENALTIES

Each violation of any regulation or restriction of this Ordinance, the Building Code or the Fire Code, by any person shall constitute the maintenance of a public nuisance and shall, pursuant to the provisions of N.D.C.C Ch. 11-33-21, be a class B misdemeanor. Each day that a violation occurs shall be considered a separate punishable offense.

5.10.1 Procedures for Complaints Regarding Violations

If any structure that is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or if any building, structure or land is used in violation of this Ordinance, the Building Code or the Fire Code, or is alleged to have occurred, any person may file a complaint with the Planning Director. Such complaints must state with specificity the causes and basis whereof. The Planning Director shall follow these procedures:

- 1) Make an inspection of the affected site or structure.**
- 2) Notify the person causing the violation and owner of the property. Such notification shall be sent by certified mail.**
- 3) The Planning Director shall outline the findings and explain what actions the violating party must take to correct the violation and the timing of any correction. These actions may include: cease and desist notice, stop work order, or legal remedy afforded by the law. If emergency condition exists as a result of the violation the Planning Director may request that the court enter an injunctive relief. If injunctive relief is requested the Planning Director shall present the matter to the Planning Commission.**
- 4) The violation must be corrected or a violation bond must be in place (see section 2.13) prior to the Planning Department processing any further application(s) for the site.**

Jeremy Olson stated this adds more protection to the County.

Kathy Skarda stated we have a Code Enforcement Officer and he is in charge of all violation, buildings and fire code is that correct. So he is doing all the work and it says here the Planning Director is to outline all the findings and what the actions are. I'm trying to figure out how or why when he is doing all the work.

Director Huus stated it says The Planning Director and Todd works for me the same with The Building Official he works for me. I respect their opinions, interpretations of the code and their abilities. This is the way it is written in the Ordinance.

Jeremy Olson stated the wording on it is fine and as a Director he is responsible for their actions.

Director Huus stated in regards to the last meeting with the Alexander Fire District Review I would like the Code Enforcement Officer Todd Foster to give you an update on his findings.

Todd Foster stated he has reached out to several of the Fire Chiefs and it will be 3-4 months before we can offer an opinion with several meetings. They have all been very responsive and excited about future meetings. It will be a slow process as there is a lot to work in to this.

Unfinished Business:

Director Huus stated that at last month's meeting Mr. Duane Sands had talked about a letter of credit and Ari had done some investigation into that and how a letter of credit with a Bankruptcy would impact us which is a huge concern.

Ari Johnson stated that he did research throughout the country because during the meeting last month I did find some hints about General Rule of Law. The majority rule is that the letter of credit is not an asset of the bank of the estate. Which means it is not subject to the bankruptcy. I wanted to make sure that Majority Rule actually does apply here. In fact the North Dakota District Court had one of the leading questions in 1983 that other courts around the country cited approvingly. Law is that the letter of credit is a contract between the bank and in this case the county the applicant would be a third party to that contract. If the applicant filed bankruptcy it wouldn't have any impact on collectability of the letter of credit. The letter of credit will stand between the bank and the county and therefore protect us. The reason for that is it's a contract between the bank and the county, the county didn't file bankruptcy neither of the parties in the contract have impact on it. Bankruptcy courts have universally said that. The interesting thing about my research is the purpose of a letter of credit and generally the purpose of a bond is to insure the accomplishments of a thing, completion of a contract or project. The letter of credit is to insure the payment of money. The county would make a claim to the bank and the bank would issue a check to the county. Subject to the terms of the letter of credit, the bank is the one that would be at risk and as long as the County takes action when we get a notice we would be protected. This rule would apply to everyone.

We should be making rules that apply to everyone if the bank agrees to give us notice we will be ok. What we want to avoid is a 50 page letter of credit, so if we have a standard one page form for the bank if the applicant can get the bank to sign it.

Director Huus stated we would have to change the ordinance to include letters of credits.

Ari Johnson stated yes we should, we should amend the ordinance to reflect what we will and will not take. I don't want to have the situation repeat itself. It's either acceptable or it's not at the acceptance of the Director.

Kelly Peterson (First International Bank Representative)

He has been employed with First International Bank for 25 years and explaining a letter of credit with our bank is good for (1) year to be renewed every year with a 2% fee usually attached to it. So if you have a \$50,000 bond it's a \$1,000 fee for the bank. Non Negotiable. The letter of credits are backed with an irrevocable letter of credit so if someone calls on that letter of credit we have to cut the check, we don't ask the reason or what happened, who did what the minute you draw on it, it's done. The bank cannot deny those funds. We go through the standard process of a loan with questions such as do they have good credit, do they have collateral to pay it and does the bank want to take a risk on this. We look at repayment ability some are cash secured, real estate, or equipment. When that is approved we write our agreement at any point with a \$50,000 letter of credit if the County called to claim \$10,000 of it we still have to honor that with a balance of \$40,000 left. When that happens it gives us a red flag and we call in the applicant and ask how they are going to repay that to the bank. We have to go through allot of underwriting that the applicant has to qualify for this.

If that customer needs a bond, the bond company will charge another 2% but also with that Bond it needs to be backed by a letter of credit. So every year they are renewable at 2% for the letter and 2% for the bond. The customer is looking at a \$4000.00 fee very year, but that bond is basically a loan that is secured with a letter of credit. You would get your money that same day if you called in a claim for it. We have an expiration date on the letter of credit for (1) year, they have to be renewed each year and that is put on the customer to do that. It would need to be on the Counties radar or create a tickler to ensure 30 days before expiration that those need to be addressed or updated. If a company files bankruptcy the obligee will still get their money, however you are not guaranteed they will renew it every year. That would be on the obligee to keep track of that.

Kathy Skarda stated that is the problem we had before, we had millions of dollars in bonds that we had to go back and have updated or renewed. Another concern I have is the expiration dates, how are those going to be tracked.

Kenny Liebel stated it is the counties responsibility to keep the letter of credits updated.

Director Huus stated that in reviewing a lot of the bonds the Insurance companies state the Bond is good until cancelled and if that happens a 30 day notice will be sent. We are in the process now of setting up our data base to alert us when a CUP and Bonds expire. We are working on a safety net.

Marella Schwan (First International Bank Representative) bonds are continuances as long as they are paid for. The way a bond works is when the applicant applies for it they are required to get an engineering estimate of what that project is worth and then along with that the county drafts up a legal description and what the dollar amount is on the bottom. With the application there are a lot of forms that get sent to a bonding company if the financials are strong for the applicant. Tax returns, balance sheets, business and personal financial information are required, that is why they go for the letter of credit annually but again it is only good if it's paid for. The bonds will take longer if the financials are not strong.

Kenny Liebel asked how many times do you require a bond that doesn't need a letter of credit to go with it.

Marella Schwan stated 90% of the time a letter of credit isn't required. It is a long process but about 50% of the time financials are strong.

Jeremy Olson asked if there are no other comments from the board or audience we will move on.

030-19CUP White Horse Water LLC, Rolla Pond/ Sand Creek TABLED

Director Huus stated the Board voted at the November 18th, 2019 to Table this to give the applicant time to obtain his Bond, however at this date it still has not been done so we have the option to Table it once again.

Audience, Representatives, Committee and Board comments:

Director Huus stated we did not include a staff report because it has not been resolved yet regarding the bond for the 2 ponds that the applicant has not provided. Which we are requiring before this CUP can be approved. I did receive an email from Duane Sands and a letter of credit statement and I believe that if and when the reclamation bond waiver is adopted then he may be going that route. I would recommend tabling it at this time.

Jeremy Olson stated so tonight is the second reading of the ordinance reclamation waiver to be done so it passes tonight then goes to the County Commission board on the 17th of this month so at that point if it is approved then it's adopted.

Duane Sands stated he would like to inform the committee that he has gone to the landowners and all but (1) would like to have the bond in place. I gave Marella Schwan my letter of credit and a check for the bond I am trying to meet the requirements for the bond. I have a letter of credit from my bank for one half million dollars in 48 hours but I spent 10 weeks with Marella in completing the requirements only to be told you can get a bond but you have to have a letter of credit which is strange because in 2016 I got a bond with Marella and we just paid the 2% fee. So I don't mind getting the bonds but a letter of credit has been easier to get. I am just trying to find a bonding company that does not require a letter of credit. So I am asking for this to be tabled again until I can find a bonding company in McKenzie County that will support these bonds or do I still need to go through other states and if the ordinance changed will it allow the landowner to opt out of requiring a bond before I go on and pursue a bond.

Director Huus stated that the ultimate thing for him to do would be to see if the waiver is approved and see if the landowners agree to it, then you would have to do all the steps involved in it.

Duane Sands stated that Rural Firefighters love these ponds we have literally bought and installed fire hydrants or just put 3 inch flanges on a riser for them so we could pressure rise the fire lines. That also is another benefit to having ponds. There is a great value in the ponds, they are an asset to the landowners.

Butch Fleck asked if all the landowners had agreed to that.

Duane Sands stated the landowner I have talked to said yes they would keep the ponds for watering their cattle.

Butch Fleck stated that allot of the water comes across other landowners property do they realize it could be shut off.

Duane Sands stated the ponds are only \$200,000 dollars to construct, the pipelines are millions of dollars, it would be hard to think that the pipeline would go bankrupt but if it did then the property owner would own that part that sits on their property.

Les Haugen stated he thinks Mr. Sands is wrong and he needs to check with the State Water Commission because you can't have those ponds and you have to have an industrial water permit. The ranchers cannot use that without having an agricultural permit and I don't think that is a great possibility.

Duane Sands stated that he lives across the street from John Patch the Director of the water commission and industrial water use permits have an allotment that can go towards agricultural uses.

Kathy Skarda stated I did speak with Bryce at the State Water Department and he told me specifically a water pond or dam that has an industrial permit cannot be transferred to a farmer or rancher use unless they complete a brand new permit. With that permit they have to review the water that has been there and the water that will be going into that dam because a lot of them are piped out through those lines and therefore the dam does not have a lot of water coming in and so therefore it would also have to have all the NRCS review all the soil and aspects to that, the land going to be irrigated can grow things with that type of water. There are a lot of issues, if a landowner just received the water without their own permit, they could be charged with a criminal crime. The liners also have to be removed and the slope has to be changed on those dams/ponds because wild life or cattle cannot get out and will perish.

Duane Sands stated what he said was there is an allotment that you can use for agricultural.

Jeremy Olson stated we will **TABLE** this until the March 9th, 2020 meeting.

Item#1 #02-20CUP Hartel East Reservoir. Location: TS150,R98,S25 in McKenzie County PID#200017500,200027600,200017700,200017800.

Director Huus stated the Applicant is requesting a CUP to construct up to a 695 ac/ft clay lined reservoir to store water for industrial uses. All water stored will be gathered from multiple water sources that have been legally permitted by the State Water Commission. There will also be a 20" pipeline that will run between the existing West Reservoir (#0007-17 Administratively Approved CUP) and this new east reservoir. The reservoir will be lined with the naturally occurring clay that is on site. It has to be built per State Requirements and is contingent upon that approval.

Audience, Representatives, Committee and Board comments:

Kenny Liebel stated that since the applicant has other sites would condition #16 (Reclamation Bond) be possibly waived because the applicant is also the landowner.

John Irwin asked if the company was in good standing and up to date with all the requirements and bonds.

Dana Roff stated to her knowledge they have not submitted a bond.

Director Huus stated as far as what was administratively approved by the past director yes they are in good standing with the county.

John Irwin asked with no bond.

Director Huus stated correct.

Kyle Hartel stated that all the water that is flowing down the valley will continue to flow and this will not impede that, we store the water until it's harvested per the State Water Permit.

Director Huus stated the staff recommends approval of the CUP #02-20CUP, Hartel East Reservoir to the County Commission to allow the construction of up to 695ac/ft clay lined reservoir and 20" pipeline that would connect this new reservoir with their existing Hartel West Reservoir (#0007-17 Administratively Approved CUP) to store water for industrial use.

Motion To Approve Per Staff Recommendations: Kenny Liebel, Second: Bethany Devlin : Voice Votes All Ayes.

Item#2 #034-19 Lemoine Hartel CUP-Temporary Operations Trailer. Location:12148 Hwy 23, Watford City, ND. TS150,R98,SEC23. Parcel#200016500

Director Huus stated they are requesting a CUP for temporary operations trailer at a water depot facility with an anticipated use of 2 years. This will allow the family business Elkan Water, to control operations of the existing water depot, provide office space and meeting rooms. They also provide training for their employees. Their intention is to build a permanent facility in the next two (2) years at that time the temporary office trailer will be removed.

Director Huus stated that this building has been approved as a Manufactured Building Permit with approved inspection as temporary use with the condition of renewal every 6 months for 2 years with the option to renew for another 6 months after which time we expire the CUP.

Audience, Representatives, Committee and Board comments:

Kyle Hartel stated his parents own the property and he is here to represent them. It is not occupied at this time until we have this board's approval.

Director Huus stated the Staff recommends approval for this CUP 034-20 CUP Lemoine Hartel Temporary Operations trailer to the County Commission to allow a temporary operations

trailer at a Fresh Water Depot Facility. Adopt the findings and conditions as provided in the staff report.

Motion To Approve: Butch Fleck, Second: Kathy Skarda : Voice Vote: All Ayes.

Item#3#01-20CUP BNN North Dakota, LLC. Location:TS150N,R97W,S17,NE1/4 of NW1/4 Parcel#130008000 & 130009300. Parcel3 130008000 is listed only as the access crosses that parcel.

Director Huus stated this applicant received notice that this pipe laydown/storage yard needs a CUP per McKenzie County Requirements. This yard has been a storage facility for over two years for pipe and various equipment needed. This is located off Highway 23 and we have the standard conditions, they still need a reclamation bond, they have complied with a lease agreement from the property owner and we recommend approval.

Audience, Representatives, Committee and Board comments:

Les Haugen stated this is a pipe laydown yard and there will not be any tanks stored there correct.

Director Huus stated correct only pipe and valves, no tanks. We are bringing this into compliance at this time.

Director Huus stated the staff recommends approval of CUP 301-20CUP, BNN North Dakota, LLC to the County Commission to allow the continued use of the existing laydown/storage yard. Adopt the findings and conditions as provided in the staff report.

Motion To Approve : Les Haugen, Second: Kenny Liebel : Voice Vote: All Ayes.

Item#4 Reclamation Bond Waivers-Ordinance Revision, 2nd Reading:

Ordinance Revisions:

Director Huus stated that he and the Planning/Zoning Attorney Ari Johnson have met and have been working on some changes they are as follows.

Preamble

Some Conditional Use Permits allow the construction of freshwater storage facilities consisting of earthworks, which will be useful to the landowner even if the conditionally allowed use is later terminated. This amendment defines the term Freshwater Storage Pond, creates a separate Conditional Use Permit for Freshwater Storage Ponds, and allows waivers of the requirement to have and maintain a reclamation bond for Freshwater Storage Ponds which the landowner desires to remain after the use itself has terminated.

Amendment

1. **Section 1.4.2 of the McKenzie County Zoning Ordinance is hereby amended to delete the definition of Freshwater Depot and insert in its place the following three definitions.**

Freshwater Depot: Storage, Collection, or sale of fresh water for industrial or commercial use from surface or groundwater supplies that is not a Freshwater Storage Pond.

Freshwater Pipeline: A pipeline for the transportation of fresh water, whether the pipeline is buried or above-ground and whether it is permanent or temporary, and all mechanical apparatus that is used to operate the pipeline.

Freshwater Storage Pond: Storage, collection, or fresh water for industrial or commercial use from surface or groundwater supplies that is accomplished exclusively with earthworks, landscaping, and/or a liner without any permanently installed mechanical apparatus.

2. **Subsection 16 of Section 3.4.3 of the McKenzie County Zoning Ordinance is hereby amended and re-enacted, as follows:**

- 16) Freshwater Depots, Freshwater Pipelines, and Freshwater Storage Ponds. (See section 4.10 of this Ordinance, for reclamation bond requirement.)

3. **Section 4.10 of the McKenzie County Zoning Ordinance is hereby amended and re-enacted, as follows:**

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:

- 1) A sign, four feet by eight feet (4' x 8'), that identifies the company name, project name, site address, and name and phone number of the emergency contact individual. The sign shall be visible from the public road providing access to the site and shall meet the signage requirements of this Ordinance.
- 2) For Freshwater Depot or Freshwater Storage Pond, the application must include a plan to fence the site so as to prevent livestock and unauthorized persons from accessing it. The owner and operator of the site shall construct and maintain a fence that meets or exceeds the design submitted with the application. 6' Chain Link Fence shall be installed when in close proximity to residential subdivisions, residences, schools, daycare, or other areas at the discretion of the Planning Director. 5 Strand Barbwire Fence shall be installed when adjacent to Agricultural Zoning or when 6' Chain Link Fence is not required.
- 3) The owner and operator of the site shall maintain weed control of the site.
- 4) The owner and operator of the site shall maintain garbage control of the site.
- 5) If the facility will be capable of storing 50 acre-feet of water or more, the applicant must submit proof of approval by the State Water Commission with the application.

- 6) The owner and operator of the site shall maintain dust control on all roads accessing a Freshwater Depot, Freshwater Storage Pond, or staging area of a Freshwater Pipeline. Magnesium chloride must be applied at least one quarter (1/4) mile in each direction of all access points to the site and must be applied before construction begins and each year prior to May 31 and again before August 31. The owner and operator of the site shall submit to the Planning Department receipts or other appropriate proof each time magnesium chloride is applied.
- 7) The owner and operator shall limit sediment runoff from the site by use of a perimeter controls on downslope portions of the site (e.g., a silt fence) and limit channelized erosion in ditches, swales, and adjacent natural water bodies. A Storm Water Pollution Prevention Plan shall be submitted if required by State or Federal regulations.
- 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 and 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 approved 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 the Freshwater Storage Ponds, the requirements of subsections (8), and (9) and (100) may be waived if, along with the application, the applicant must submit written consents of all persons with a record interest in the ownership of the surface of the land where the project is located. 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.

John Irwin, Kathy Skarda stated concerns for the liners, and fencing.

Ari Johnson stated that 20 years is a reasonable expectation for a pond liner, not 100 years.

Kyle Hartel stated that whether you he has a chain link fence or a 5 strand barb wire fence, if cattle or wildlife want to get in the pond area they will find a way.

Jeremy Olson stated that it would be best to specify the dust control does not have to be mag chloride and add that it would only be during the construction period as some people do not like mag chloride and do have water trucks, and since they are the landowners it would be on their land.

Les Haugen, Kathy Skarda stated that as long as the citizens are protected and they understand what they are getting. Buyer beware fact sheet and check the liners.

Director Huus stated each landowner needs to go over each item listed above for their assurance and protection that is why Ari Johnson and I have gone over this and made the changes. The waiver will come before the board for approval, so any loopholes or concerns will be addressed on each one to insure the landowner understands.

Motion to Approve Butch Fleck, Second: Kathy Skarda. Voice Votes All Ayes. Second Reading Passes Goes to County Commissioners.

Skid Unit Fee's

Director Huus stated he has met with Vess Hurley in regards to Skid Units several times and discussed how to address them. There are (3 types of Skid Units:

- 1) Man Camps
- 2) Workforce Housing (drill rigs)
- 3) Mobile Offices

Director Huus stated the owners of the skid units have issues with paying for skid units that are in storage and have never been occupied. They feel that they should pay as you use them, as well as (1) one straight fee of around \$300-\$400 per unit instead of the \$1.50 per square foot which they believe is too high. Mr. Hurley is meeting with other companies that have skid units and he will report back to me with comments or concerns from that meeting. I will write a report and submit it back before this board.

Jeremy Olson stated he and Director Huus talked about this and when the boom started there were Skid Units everywhere and now it's not as much of an issue of them being lived in. They are used now more for office space. There are not a lot of man camps anymore. I think this might be an issue that has passed.

Craig Hystad stated that he has worked in the oilfield for years for Nabors which he recently retired, we had our own camps that we put in for our workers, we provided them water, sewer, electric everything they would need, as well as safety from traveling on the roads to and from work, which many times in the bad weather it takes the county up to 2 hours to clear the roads. I don't understand why the county should be paid rent when the company is providing everything on their own land. There should not be a required permit or a fee. Unlike if they are living in town or an RV park.

Kathy Skarda stated the amount of time and hours of tracking it would require, how would we track them all.

Jeremy Olson stated in the past Skid Units had been a problem but not now.

Director Huus stated it is in the Ordinance but we can eliminate the Skid Unit fees.

Ari Johnson stated the history of this is we had to adopt these Skid Unit fees before zoning as the only control we had over these man camps. We have these on the books and had to do something to throttle the man camps situation. The County Commission passed the fee so we could have some land use control. A lot of the random development of the man camps is controlled through Zoning rather than Skid Units fees. I don't know if it's a solution in search of a problem, it might be a solution to a problem that needs to be addressed through more robust means but it also might be a valuable county resource. I would need to talk to a other county offices about whether the Skid Unit fees make any sense or not.

John Irwin stated that he would move to table this and see what Vess Hurley and the other companies bring back.

Director Huus stated we had been charging and sending out invoices and that's when the issues came about as some of the fees were very substantial. Vess Hurley fees were in the quarter million dollar range. We have a list of Man Camps and it has caused an issue with the Census so we will take a look at that and bring it forward at the next meeting.

Board Member Vacancies

Craig Hystad submitted a letter of interest in the board vacancy, he stated that he was born and raised in McKenzie County and has children, grandchildren growing up here. He had been employed in the oil industry and just retired but would like to have an input in the future of the county.

Jeremy Olson stated any objection if not then all in favor of Craig Hystad: All Aye Votes

Director Huus stated this will go on the agenda for the next County Commission meeting for approval.

Manufactured Housing Tracking

Director Huus stated we have developed a Manufactured Building Permit Application then our Building Official would inspect the anchors, piers, skirting but he would not inspect the interior. I visited with Katie Paulson and between the recorder, the tax accessor and our own permit process I believe we can get a better handle on where Manufactured Buildings are going. We obtained a list of inspectors and installers within the State and we will send them a letter letting them know our intent. We are doing a better job of informing our purpose.

McKenzie County #0007-19ZC-Update

Director Huus stated the County Commission tabled this so we could get the CUP'S with those in violations. There were 4 trucking companies, 2 welding companies. So far we have been

working with these people. 3 of the trucking companies have applied for CUPS, and I did get a letter from an attorney that was hired by a trucking company that does not agree with us in regards to the truck parking at their home as calling it their business, they felt that it is an occupation profession. I have not responded as of this date. We have notified everyone and we are on track, we will evaluate it, we would like some guidance as far as the driving force of the CUPS, we need a base line for the CUP and how it works within our residential zone.

Kathy Skarda asked has he contacted SRF Consulting they may have already done this so we don't need to reinvent the wheel.

Director Huus stated they have until the 15 to get there applications in and we have to do legal notice so we cannot stretch it too far.

Lot Size Reduction/Public Acquisition-Ordinance Amendment

Director Huus stated this is a minor ordinance requirement, the county has a right of way agent and he has run into some problems such as if you own 40 acres in an agricultural area and public acquisition needs to purchase some of that property for a right of way, now all of a sudden it is cut down to 39.5 acre lot which would make it non-conforming, so what I suggest is adding into the ordinance reduction due to public acquisition which would then read this way. This was given to me by the county right of way agent and he stated it has worked in other areas.

If a portion of a legally existing lot in any district is acquired for public use, the remainder of this lot shall be considered a conforming lot.

Jeremy Olson stated if no objections it's a good idea.

Director Huus stated he needs to do 2 readings and he will bring it back on the March meeting agenda.

Les Haugen stated he is giving notice of resignation as a Planning/Zoning Board Member and would like March 9th meeting to be his last. He stated he Cody Knetzger is interested in the position.

Jeremy Olson stated this vacancy needs to be advertised as public notice in the paper.

Meeting adjourned at 7:45PM

MEETING SIGN-IN SHEET

Meeting Date: 2-10-20

Name PLEASE PRINT NAME LEGIBLE	Phone #	Agenda Item #
Jim Talbert	602-403-4521	1+2
Kelly Peterson	701-444-4209	.
Craig Hystad	701-570-4097	
Kyle HARTEL	701-580-1265	6 1+2
Melissa Kilde	701-527-0009	
Grant Stick	218-766-4139	
Marcella Schwager	701-842-7327	
Diane Saul	701-333-9223	

March 2020

Planning and Zoning Commission Minutes

March 9, 2020

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

Members Present: Butch Fleck, Jeremy Olson, Kathy Skarda, Les Haugen, John Irwin, Kenny Liebel. Gene Veeder, (Craig Hystad by phone)

Members Absent: Bethany Devlin

Staff Present: Planning Director Curt Huus, Planning Attorney Ari Johnson, Planner I Sandee Kimpel, Code Enforcement Todd Foster, Planner II Dana Roff, Administrative Assistant Cindy Mecham

Others see sign in sheet:

Motion to Approve: January 13, 2020 minutes and February 10, 2020 minutes. Motion Kathy Skarda, Second Les Haugen. Votes: All Aye

Code Enforcement:

Todd Foster stated on February 24, 2020 he sent a notice to Blue Sky Lodging informing them that they had until March 24th of this year to provide both the state and this office with the documentation that would verify compliance with NDIC 23-09-09 or they would lose their “grandfather” status. If their “grandfather” status is lost, this would mean that they would have to apply for CUP to operate and have to bring the facility up to current county standards plus get a new license from the state allowing them to operate a lodging facility.

Fire Department Review Board:

Todd Foster stated there are ongoing discussions to coordinate.

Unfinished Business:

#030-19CUP White Horse Water LLC, Rolla Pond/ Sand Creek **TABLED**

Director Huus stated the Board voted at the November 18th, 2019 to Table this. The project is to build an underground freshwater pipeline with an above ground storage pond from existing infrastructure. The freshwater pipeline will be primarily built underground except for two above ground riser structures for lay-flat hose attachments.

Director Huus stated that the applicant Duane Sands would like to **TABLE** this indefinitely until the underground pipeline can be approved by the US Forest Service. Mr. Sands also wanted us to mention that we did receive a letter of credit for his 2 previous CUPS in the amount of \$439,200.00 and the property owners have stated they would sign a reclamation bond waiver or a letter of credit if the letter of credit amendment gets approved by the BOCC.

#02-20CUP Hartel East Reservoir. Location: T150,R98,S25 in McKenzie County. PID##200017500,200017600,200017700,200017800.

Director Huus stated the applicant is requesting a CUP to construct up to a 695 ac/ft clay lined reservoir to store water for industrial uses. All water stored will be gathered from multiple water sources that have been legally permitted by the State Water Commission. There will also be a 20" pipeline that will run between the existing West Reservoir (#0007-17 Administratively Approved CUP) and this new east reservoir. The reservoir will be lined with the naturally occurring clay that is on site. This was sent back to this board by the County Commission Board to wait until the applicant could get approved by the North Dakota State Water Commission and Construction Permits. They have obtained the water permits so we are bringing it back before this board for recommended approval. We have also heard from the applicant's bank and they are in the process of obtaining a bond for the West Pond.

Audience, Representatives, Committee and Board comments:

Kyle Hartel stated that he has done over 10 CUP's over the past several years. The West ponds requirement was only a barb wire fence, not a chain link fence in which we have complied with.

Gene Veeder stated that at the time the West Pond Administrative Permit was approved this was a process that was allowed.

Jeremy Olson stated that this CUP (West Pond) was approved by the County, the applicant did it in good faith and we need to move forward with this.

Director Huus stated the staff recommends approval of the Conditional Use Permit #02-20CUP, Hartel East Reservoir to the County Commission to allow the construction of up to 695 ac/ft clay lined reservoir and 20" pipeline that would connect this new reservoir with their existing Hartel West Reservoir (#0007-17 Administratively Approved CUP) to store water for industrial uses.

Motion to Approve: Gene Veeder, Second: Kenny Liebel. Voice Votes All Ayes.

Reclamation Bond Waiver - 2nd Reading

The 2nd Reading of this Amendment was approved at the February 10th P&Z Board Meeting. It was sent back to the Board by the Board of County Commissioners for additional review and discussion.

Reclamation Bond Waivers Proposed Zoning Ordinance Amendment 2nd Reading

Preamble

Some Conditional Use Permits allow the construction of freshwater storage facilities consisting of earthworks, which will be useful to the landowner even if the conditionally allowed use is later terminated. This amendment defines the term Freshwater Storage Pond, creates a separate Conditional Use Permit for Freshwater Storage Ponds, and allows for waivers of the requirement to have and maintain a reclamation bond for Freshwater Storage Ponds which the landowner desires to remain after the use itself has terminated.

Amendment

§ 1. Section 1.4.2 of the McKenzie County Zoning Ordinance is hereby amended to delete the definition of Freshwater Depot and insert in its place the following three definitions:

Freshwater Depot: Storage, collection, or sale of fresh water for industrial or commercial use from surface or groundwater supplies that is not a Freshwater Storage Pond.

Freshwater Pipeline: A pipeline for the transportation of fresh water, whether the pipeline is buried or above-ground and whether it is permanent or temporary, and all mechanical apparatus that is used to operate the pipeline.

Freshwater Storage Pond: Storage, collection, or sale of fresh water for industrial or commercial use from surface or groundwater supplies that is accomplished exclusively with earthworks, landscaping, and/or a liner without any permanently installed mechanical apparatus.

§ 2. Subsection 16 of Section 3.4.3 of the McKenzie County Zoning Ordinance is hereby amended and re-enacted, as follows:

- 16) Freshwater Depots, Freshwater Pipelines, and Freshwater Storage Ponds. (See Section 4.10 of this Ordinance for reclamation bond requirements.)

§ 3. Section 4.10 of the McKenzie County Zoning Ordinance is hereby amended and re-enacted, as follows:

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:

- 1) A sign, four feet by eight feet (4' x 8'), that identifies the company name, project name, site address, and name and phone number of the emergency contact individual. The sign shall be visible from the public road providing access to the site and shall meet the signage requirements of this Ordinance.
- 2) For a Freshwater Depot or Freshwater Storage Pond, the application must include a plan to fence the site so as to prevent livestock and unauthorized persons from accessing it. The owner and operator of the site shall construct and maintain a fence that meets or exceeds the design submitted with the application. 6' Chain Link Fence shall be installed when in close proximity to residential subdivisions, residences, schools, daycare, or other areas at the discretion of the Planning Director. 4 Strand Barbwire Fence shall be installed when adjacent to Agricultural Zoning or when 6' Chain Link Fence is not required.
- 3) The owner and operator of the site shall maintain weed control of the site.
- 4) The owner and operator of the site shall maintain garbage control of the site.
- 5) If the facility will be capable of storing 50 acre-feet of water or more, the applicant must submit proof of approval by the State Water Commission with the application.
- 6) During construction the owner and operator of the site shall maintain dust control on all roads accessing a Freshwater Depot, Freshwater Storage Pond, or staging area of a Freshwater Pipeline. At the discretion of the Planning Director, after construction and prior to use of facilities that will generate high traffic, dust control measures must be applied at least one-

quarter (1/4) mile in each direction of all access points to the site and must be applied each year prior to May 31 and again before August 31. If the Planning Director determines that dust control measures are required the owner and operator of the site shall submit to the Planning Department receipts or other appropriate proof each time dust control is applied.

- 7) The owner and operator shall limit sediment runoff from the site by use of perimeter controls on downslope portions of the site (e.g., a silt fence) and limit channelized erosion in ditches, swales, and adjacent natural water bodies. A Storm Water Pollution Prevention Plan shall be submitted if required by State or Federal regulations.
- 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.

Discussion regarding the ability for the Planning Director to require certain aspects related to fencing and dust control was brought up by Skarda. Concern was that the Director would have the ability to administratively approve CUP's related to Ponds. It was clarified by Veeder, Olsen and Johnson that according to the ordinance these types of CUP's have to be approved by the Board of County Commissioners.

Skarda highlighted the Zoning Ordinance states that the Board of County Commissioners shall review all applications for Conditional Use Permits. Huus indicated that he will provide a list of administrative approvals from the previous month to the P&Z Board for discussion.

Skarda voiced concern over the requirements for chain link fencing in remote areas where kids would sneak in to go swimming.

Director Huus stated this will go to the County Commission Board on March 17th 2020 for their approval and that since no changes were made there is no need for a motion by this Board to approve the 2nd Reading again.

Public Hearings:

Item#1 #02-20 SUB Dustin Jordan/Dire Wolf Ridge Location: Government Lots 3&4 and S1/2NW1/4 of Section 1, TS 140N,R100W Parcel# 3500005500.

Director Huus stated the applicant is creating a minor subdivision, Dire Wolf Ridge consisting of three, 5.44 acre lots and one 5 acre lot for eventual construction of single

family homes. Total acreage of this parcel is 160 acres. The location of the site is approximately 3.5 miles south of the town of Arnegard, and just off of 133rd Avenue NW. This request will accompany a request for #06-20CUP.

Audience, Representatives, Committee and Board comments:

Director Huus stated staff recommends approval of #02-20SUB to the County Commissioner to allow Dustin Jordan to develop a Minor Subdivision dividing a portion of his 160 acres into three 5.44 acre lots and one 5 acre lot for a total of 4 lots to be located at Section 1, Township 149N, Range 100W. Parcel# 350000550 in McKenzie County, ND. Adopt the findings as provided in the staff report.

Motion to Approve: Kenny Liebel, Second: Kathy Skarda. Voice Votes All Ayes.

Item#2 #06-20CUP Dustin Jordan Location: Government Lots 3&4 and S1/2,NW1/4 of Section 1, Township 140N, Range 100w. Parcel# 350000550.

Director Huus stated the applicant is creating a minor Subdivision #02-20SUB consisting of three 5.44 acre lots and one 5 acre lot for eventual construction of single family homes. The location of the site is approximately 3.5 miles south of the town of Arnegard, and just off of 133rd Avenue NW. This request will accompany a request for #02-20SUB.

Audience, Representatives, Committee and Board comments:

Director Huus stated staff recommends approval of Conditional Use Permit #06-20CUP to the County Commission to allow Dustin Jordan to build one home per lot for a total of four homes within Dire Wolf Subdivision. Located at Section 1, Township 149N, Range 100W, Parcel#3500005500 in McKenzie County, ND. Adopt findings in the staff report.

Motion to Approve: Kenny Liebel, Second: Kathy Skarda. Voice Votes All Ayes.

Item#3 #02-20 VAR Watford City Park District. Location 2429 24th Ave SW Watford City,ND 58854 Parcel#110014200.

Director Huus stated The Watford City Park District is seeking a Variance to waive the requirement to pave the parking area within the McKenzie County Athletic Park. The McKenzie County Athletic Park is located at the corner of 24th Ave SW and 128th Ave NW both of which are dirt roads. The location partially borders the Watford City ETA along the north side. This is an allowed use in the Agricultural District. He read the finding of the facts as follows: All requirements for Public Notification have been satisfied, this is an allowable use in the Agricultural District, the project is not located

within an Organized Township, The McKenzie County Athletic Park is planned for construction this year and current funding is inadequate to construct paved parking surface. Funding for paving the parking lot is being sought through various means, some of which will not be realized until construction of the Athletic Park improvements are completed. Once adequate funds are obtained, the City Of Watford will complete paving.

Audience, Representatives, Committee and Board comments

Jeremy Olson asked if the paving could be put on a time line such as 5 years so it would hold the applicant accountable to do in the future.

Robin Arndt stated depending on the Fairgrounds development this project will be included with that as for paving the roads.

Kenny Liebel asked if **Item#7** the language 'The City of Watford' could be changed and add the Park District as held accountable.

Gene Veeder stated yes that needs changed as we cannot hold someone else accountable other than the applicant. He would like to Amend the motion on grounds of changing **Condition #7** from Watford City to the Park District for a period of 5 years to complete the paving.

Director Huus stated staff recommends the Variance #02-20 for the Watford City Park District to waive the requirement to pave the parking area for the McKenzie County Athletic Park be recommended for approval and additionally, all associated fees be waived by the County Commission. Adopt the findings as provided in the staff report.

Motion to Approve Gene Veeder, Second: Kathy Skarda. Voice Votes All Ayes.

Item#4 #05-20CUP Selland Construction. Location: 4086 119th Ave NW Watford City,ND TS152N,R97W,S8. Parcel#720003750,720003775,720003775,720003700.

Director Huus stated the applicant is requesting a Conditional Use Permit to open an open pit scoria for the use of aggregate sales in related oilfield construction.

Audience, Representatives, Committee and Board comments

Kathy Skarda asked if there was a way for local landowners to be more protected from the dust.

Gene Veeder stated there is adequate dust control in condition#12 with ¼ of a mile each direction from the site. The rest would be on the County with the new rules

adopted. The intent is that any resident can call with a dust complaint and it will be addressed.

Director Huus stated staff recommends approval of Conditional Use Permit #05-20CUP, Selland Construction, to the County Commission to allow the development of the scoria pit. Adopt the findings and conditions as provided in the staff report.

Motion to Approve: Gene Veeder, Second: Kathy Skarda. Voice Votes All Ayes.

Item#5 #07-20CUP Delta Constructors, LLC. Location 12576 Zoe Road Watford City, ND Parcel#633001000 S7,TS149N,R98W.

Director Huus stated this is a grandfathered in workforce housing established early 2013. Applicant is requesting to come into current compliance and replace the aged, dilapidated units with new units. They are going from 112 beds down to 66 beds plus one 60x60 temporary modular office building with an expected duration of the office building of 3-5 years. At the end of this period of use, the office building will be removed from the property.

Audience, Representatives, Committee and Board comments

Director Huus stated staff recommends approval of Conditional Use Permit #07-20CUP, Delta Constructors LLC, to the County Commission to allow the applicant to come into compliance with a CUP and replace the aged, dilapidated workforce housing units with new units. They are going from 112 beds down to 66 beds plus one 60x60 temporary modular office building with an expected duration of the office building of 3-5 years. Adopt the findings and conditions as provided in the staff report.

Motion to Approve: Kenny Liebel, Second: Les Haugen. Voice Votes All Ayes.

Item#6 #01-20ZC Ken Charpentier: Location 2216 126th H Ave NW Watford City, ND Parcel#650006720

Director Huus stated the applicant is requesting a Zone Change in an existing light industrial operation which includes an 1800 square foot shop, one office mobile, one workforce housing mobile all on 13.70 acres. This property had been used for oilfield services since 2012, before McKenzie County Zoning Ordinances were adopted. Finding of facts are: All requirements for public notification have been satisfied. Staff has received written comments on the proposal, per McKenzie County Arc Reader 2011/2012 imagery this site was in existence prior to the creation of the Zoning Ordinance. This property is not located within a Township. The surrounding existing land use is a mixture of residential and light industrial. The Comprehensive Plan

identifies this property as Transition Area which the Zone Change would accommodate conformance to the plan. This falls into the grandfather status.

Audience, Representatives, Committee and Board comments

Todd Foster stated there is nothing on the property so the grandfather status does not apply.

Ari Johnson stated that they have 180 days of discontinuance to resume the grandfathered use of the property but after that time they lose the grandfather status if the grandfathered use is discontinued for 180 days.

Erik Peterson stated that he was hired to list this property in December 2019 and there was still equipment on it at that time, he then went back in January to take picture as they were cleaning it up and again equipment was still on the property which would make it still in use and the grandfather status would not be up. The owner's son is buying the property and a rezone would make more sense and would allow him an easier chance for financing.

Denise Matson stated she lived south of the property and stated the road is hers, so when she first moved there she was told it was never going to be used for anything industrial. When she bought the property, she was told it was strictly residential. Richard Beanes, Raigans, and Sorenson were the only ones out there in 2011.

Jeremy Olson stated there was no zoning so the applicant was there first. But the use may be lost if they broke the grandfather status.

Todd Foster stated the time frame for the grandfather status may be off according to the pictures, so they may still be grandfathered. That area experienced an extremely fast growth rate, it all happened in 2013, 2014. The area has both industrial and residential uses.

Gene Veeder stated this is the same situation we had with the cement plant, so we should try and be consistent with what we did there so at this time he is tending to lean towards taking advantage of the grandfather situation and lean towards residential. That area south of Watford City grew so fast that it harmed allot of people by the growth, but he believes now we have the opportunity to change that and keep it agricultural.

Curt Sorenson stated that he lives south of this property and he is the one that put the original road in and he constructed a new expensive house and there are other homes there as well. There are houses on every side of that property, truck traffic all the time.

Trying to get on Highway 85 is a dangerous intersection so he would like to see that stay agricultural.

Dan Richmond stated he has a lifetime lease on 2 lots in that area and he has been there with a CUP for the housing and he has a grandfather clause for all the industrial. He have been there since 2011 and the housing since 2013.

Director Huus stated staff recommends approval of Zone Change #01-20ZC to the County Commission to allow the Zone Change from Agricultural to Light Industrial. Adopt the findings and conditions as provided in the staff report.

Motion to Deny: Gene Veeder, Second: Kathy Skarda. Voice Votes All Ayes.

Item#7 #02-20 ZC Nodak Oilfield Services: Location: T151N, R98W, S20 Parcel# 640010480 TABLED

Director Huus stated the applicant is requesting a zone change to residential to help them get a mortgage on the existing home on the property. Finding of Fact: All requirements for public notification have been satisfied. We have received one phone call from neighboring landowner in opposition. Current use is not grandfathered. Reason for rezone request is for residential mortgage financing. Current building is a shop with workforce housing. This is a "spot zone" situation which the county is working to avoid. Spot zoning is not the best practice for proper planning and zoning.

Butch Fleck asked if spot zoning was outside of the area marked for a different zone.

Director Huus stated yes for example the Comprehensive Plan shows that area is Rural Residential requiring all 1 acre lots or larger. They want to rezone the lot on the north end of the platted irregular tracts. His suggestion when Planning and Zoning was looking at this was to get the neighbors to agree to change the zone to R1 and not just this subject property.

Erik Peterson stated their business is work force housing, he has shown this property 20 times, and have talked to Planning/Zoning Peyman, Jim Talbert, the interim director, the current director and Todd Foster. He has had numerous conversations so in the end he figured because the Comprehensive Plan identifies this area as Rural Residential. So it made the most sense to try and get it rezoned. He found a buyer who wants to use it for residential purposes. They have followed the rules and have had no complaints. He has been working on this for 17 months. A zone change to R-1 makes it easier to get financed. He is trying to move forward and be proactive, but he should not make the other landowners do something just because it's in his best interest. He agrees spot zoning is not something we want to do, however it fits the Comp. Plan and

intended use. This is a better option for the neighborhood which is really the key. He would much rather have houses and residential use rather than oilfield services.

Howdy Lawlar stated he talked with Jim Talbert when he sold this property. He sold it as a family residential area only. He also owns all the land that surrounds it and has watched the previous owner build the shop with the apartments in it and it went under the radar. There are lots of families in that area so he was a bit taken back as to why this went up, it was designed for families but then the oilfield company came in there. He doesn't agree with the current use as work force housing.

Curt Huus stated that this zone change request matches the Comprehensive Plan as Rural Residential.

Eric Peterson stated the new buyer would like to house his employees in existing dwelling unit. He does not want to park trucks or equipment on site. It will be less of an impact on the neighborhood and far better. 17 months later after he has talked with past Directors and planning department as well as the current ones have told him this use was grandfathered in and now he's being told they do not have grandfather status. The current use is equipment and business.

Clint Hacker CEO for Nodak Oilfield Services stated they still use it for housing employees but they have moved their operations to Williston. Now they are trying to sell it. He uses it now for a storage facility and employee housing. It's not the oilfield use so under the Comprehensive Plan he figured it would be okay to rezone to residential.

Jeremy Olson stated this would definitely not be R1, as R1 is single family residents.

Erik Peterson stated the new buyer is going to purchase a building south of this property. With the shrinking oil prices how do they give their employees a \$1000 per diem a month. With this they can be in the same place. He has been trying to do this the right way but the target keeps moving around all the time. It's hard to advise his clients what path to take when it keeps changing.

Gene Veeder stated he wants to do what's right there and would like to see continued residential use on that property. Since we have agricultural uses around it we wouldn't see industrial uses if we just continue the residential uses there. He's not sure if it was denied if they can continue to use it for work force housing. This board makes a lot of hard decisions based upon residential, industrial, and agricultural and to him this is based upon a lot of factors so he suggests tabling this.

Curt Huus stated the workforce housing would need a CUP in Agricultural District.

Kenny Liebel asked Howdy Lawlar since he sold it for residential housing is he clearly against it being used for work force housing now.

Howdy Lawlar stated he didn't want an influx of people coming and going so he sold it with a handshake that it would be used for single family residential, he should have put a clause in there but he didn't.

John Irwin asked if the existing residences would support rezone of their property to Rural Residential.

Curt Huus recommended that all lots identified as Rural Residential in the Comprehensive Plan be rezoned to R-1 so that workforce housing wouldn't be allowed.

Gene Veeder moved to table the Zone Change request to allow the applicant to investigate and inquire w/ existing landowner of possibility to rezone all lots in this area identified in Comprehensive Plan to R-1.

Item#8 #03-20CUP High Torque Trucking. Location: 2116&2118 129Y Ave NW Arnegard, ND T149,R99W, Parcels# 650009690&650009695.

Director Huus stated the applicant is applying for a CUP to come into compliance for a trucking company. They have up to 15 trucks. There are conditions that have put on this application including one that would limit time for idling their trucks in the winter. They are also required to join an HOA if one becomes established and provide a reclamation bond.

Audience, Representatives, Committee and Board comments

Andrew Swearingen stated he is the owner of this company and he has no issues with any of the conditions except condition #8 the idling of the trucks. When the temperature is below 20-30 below zero and the wind chill factor is 20 mph it is very hard to get the trucks to start, he does everything he can to ensure they will run, he plugs them in, put additives in the fuel tanks but he fights with the below zero temperatures and if he cannot start the trucks then he cannot go to work. He requests that condition#8 be removed. He respects his neighbors and have never had any complaints about the trucks idling in the past winters.

Gene Veeder stated there are a lot of gray areas, a lot of promises that were made to those people that moved down in that area. This was supposed to be a subdivision before Zoning, but people need to make a living also. There are other bigger issue's such as dust, road conditions and how would we enforce the idle issue.

Marty Patrick expressed concerns about the idle hours especially when working during the restricted hours included in the conditions. Also, enforcement would be difficult.

Jeremy Olson stated that is a very good point because the oilfield works 24 hours a day.

Gene Veeder stated if you go and buy a piece of property and see 20 trucks sitting there you can't expect a pristine neighborhood.

Gene Veeder stated if you go and buy a piece of property and see 20 trucks sitting there you can't expect a pristine neighborhood. We need to remove condition #8 and we stay out of that.

Kathy Skarda asked Mr. Swearingen if he had a problem with the reclamation bond.

Andrew Swearingen stated he did not understand the reclamation bond requirements.

Jeremy Olson stated it protects the county from someone leaving a mess on their property and the county then having to go in and clean it up, it's an insurance policy for the county.

Director Huus stated the staff recommends approval of Conditional Use Permit #03-20CUP High Torque Trucking to the County Commission to allow the continued operation of the trucking company. Adopt the findings and conditions as provided in the staff report.

Motion to Approve with the deletion of Condition #8. Butch Fleck, Second: Kathy Skarda. Voice Votes All Ayes.

Item#9 #08-20CUP Chris Miskin-Miskin Mayhem. Location: T149N,R99W,S16.Parcel#650009674, 2113 129W Ave NW Arnegard, ND 58835

Director Huus stated the applicant is applying for a CUP to come into compliance for a trucking company that has been in existence since 2017. With the operation of 2 trucks.

Audience, Representatives, Committee and Board comments

Director Huus stated the staff recommends approval of the Conditional Use Permit #08-20CUP Chris Miskin-Miskin Mayhem, to the County Commission to allow the continued operations of the trucking company. Adopt the findings and conditions as provided in the staff report.

Motion to Approve with the deletion of condition #8. Gene Veeder, Second: John Irwin. Voice Votes All Ayes.

Item#10 #09-20CUP Marty Patrick Location: T149N,R99W,S16 .Parcel #650009672,2124 129th U Ave NW Arnegard, ND. TABLED (1 truck)

Director Huus stated the applicant would like to park a semi-truck on the property at night.

Audience, Representatives, Committee and Board comments

Marty Patrick stated he was forced to apply for the CUP and that he is not operating a trucking company, garage or a shop. He does not believe this applies to our circumstances, he is not a commercial truck parking or truck garage and doesn't have associated structures to service the same. This is his residence. He is not running a trucking business. He was told he needed to apply for a CUP but he was not told of the restrictions. This process has been set up to violate him as landowners and his rights as residents of McKenzie County and prejudice against his employment.

There are many trucks drivers that take their trucks home at night throughout the County. He is asking the Planning and Zoning Board to withhold decision on his property until we can attempt to resolve this matter with all parties not just the County Employees.

Kathy Skarda stated the trailers need addressed.

Marty Patrick stated the wordage is very important in the CUP where it discusses trailers which is condition (#13) because he questions what is the definition referring to trailers or workforce housing.

Director Huus stated we can define a travel trailer by a recreational vehicle and a skid unit.

Marty Patrick stated he would like the redefinition of trailer, delete the idling, delete dust control on a private road, and HOA requirement.

Kathy Skarda stated she was wondering why he would need a CUP or a bond if he doesn't have a trucking business or garage.

Gene Veeder stated we are comfortable tabling this. We don't try and restrict people but we need to straighten out some of these questions presented by Mr. Patrick.

Item#11 #010-19CUP Blue Flame Propane Inc. Par Location: T150N,R101W,S21.Parcel##012400700, 14136 26th V Street NW, Alexander ND. TABLED

Director Huus stated this is an Amendment to original CUP#010-19CUP. The applicant would like to add an additional 30,000 gallon tank to the operation to help promote business growth. This will put a total three (3) 30,000 gallon tanks for the total operation. This will put the storage capacity of 90,000 gallons. This intent to add and additional tank was noted on the original CUP application dated May 7, 2019 and also on the original staff report.

Audience, Representatives, Committee and Board comments

Director Huus stated he and Sandee Kimple and Todd Foster met with the Alexander Fire District about a week ago and the Fire District has some issues they would like addressed. **(1)** The water supply, **(2)** they are stating the concrete barriers are placed wrong in which we disagree. **(3)** blast protection measures. The applicant and I have talked and we would like to **TABLE** this until the applicant and our fire official can work out some of these issues with the Fire District.

Director Huus stated the staff recommends to **Table** until the April 13, 2020 Planning and Zoning Board Meeting.

Item#12 #01-20VAR Reed & Bernadine McCandles, Location: 13752 Hwy 85 Alexander, ND Parcel# 030007700.

Director Huus stated the applicant is requesting a variance to park his Semi and Trailer at his home as he uses it as his personal vehicle when his wife takes the car back to Idaho. The current land use surrounding the parcel is mostly agricultural and light industrial.

Audience, Representatives, Committee and Board comments

Director Huus stated the staff recommends approval of Variance 01-20VAR, Reed and Bernadine McCandles to the County Commission to allow them to park their Semi and Trailer on the property for personal use only. Accept the findings and conditions of the Staff Report.

Motion to Approve: Gene Veeder, Second: Kathy Skarda. Voice Votes All Ayes.

Item#13 #01-20SUB Erick & Trudi Skedsvold Location: 14204 29th St. NW Alexander, ND. Parcel# 010003875.

Director Huus stated the applicants are splitting the 15.33 acres into two lots. They are selling the 5.85 acres with the house to the renter.

Audience, Representatives, Committee and Board comments

Trudi Skedsvold stated this property is next to the Alexander Rodeo grounds and the renter would like to buy the house and 5.85 acres, the other remaining land would not be subdivided due to the creek running through it but could possibly be approved for 1 more home in the future, they plan on selling it at a later time.

Director Huus stated staff recommends approval of #01-20SUB to the County Commission to allow Erik and Trudi Skedsvold to split their current 15.33 acre lot into two (2) lots, selling 5.85 acres to the renter with the house. Adopt the finding and the conditions as provided in the staff report.

Motion to Approve: Butch Fleck, Second: Les Haugen. Voice Votes All Ayes.

Item#14 Letter Of Credit - 1st Reading

**Proposed Zoning Ordinance Amendment
Letter of Credit in lieu of Reclamation Bond – 1st Reading**

Preamble

Some members of the public have indicated that it is impractical to obtain reclamation bonds for certain projects and that it is more practical for them to obtain letters of credit that provide equivalent protections to the county as a reclamation bond would provide. This amendment allows for letters of credit to be used in lieu of reclamation bonds if certain conditions are met. This amendment also clarifies the procedure for McKenzie County to make claims on reclamation bonds.

Amendment

§ 1 Section 2.13.2 of the McKenzie County Zoning Ordinance is hereby amended to add paragraph 6, as follows:

- 6) On or within thirty (30) days after each anniversary of a conditional use permit being issued for which bond is required, the holder of the conditional use permit shall cause proof to be sent to the Planning Department that the required bond or any approved substitute therefor will remain in effect for the following year.

§ 2 Section 2.13.2 of the McKenzie County Zoning Ordinance is hereby amended to add paragraph 7, as follows:

- 7) An applicant may substitute a letter of credit for a reclamation bond, provided that the following conditions are met:

- a) The letter of credit must be in the same amount as the required reclamation bond.
- b) The letter of credit must not be subject to termination, cancellation, or other impairment except by McKenzie County being given actual notice no less than thirty (30) days before such impairment occurs.
- c) The letter of credit must be payable in its full amount upon demand by McKenzie County.
- d) The letter of credit must not be subject to any conditions on payment, priority of other parties for payment ahead of McKenzie County, or other restrictions on McKenzie County's ability to receive full payment of the amount of the letter of credit.
- e) The letter of credit must be enforceable in the District Court of the County of McKenzie, North Dakota, or the United States District Court for the District of North Dakota, and the issuer must consent to one or both of such courts exercising both personal and subject matter jurisdiction as to McKenzie County's demand for payment of the letter of credit.

§ 3 New section 5.8.7 of the McKenzie County Zoning Ordinance is hereby enacted, as follows:

5.8.7 Reclamation Requirements

All conditional use permits other than those issued for single-family dwellings in the agricultural district shall terminate upon the occurrence of the first of the following:

- 1) For a temporary conditional use permit or conditional use permit subject to renewal, the expiration date or the date of the Board of County Commissioners deciding not to renew the same.
- 2) The decision of the Board of County Commissioners, on notice to the holder of the conditional use permit with an opportunity to be heard, to revoke the same.

- 3) One (1) year after the last activity under the conditional use permit, unless the Board of County Commissioners has allowed a longer period of dormancy in light of circumstances specific to the use.
- 4) The termination, expiration, or other impairment of any reclamation bond or substitute therefor that is required for the conditional use permit or the failure of the holder of the conditional use permit to cause proof of the required bond or substitute remaining in effect within thirty (30) days after an anniversary of the issuance of the conditional use permit.

Upon termination of a conditional use permit, the holder of the conditional use permit and the owners and lessees of the surface of the land subject to the conditional use permit shall be jointly and severally liable to McKenzie County to reclaim the surface of the land by removing all above ground structures, all underground structures to a depth of four (4') feet, including but not limited to pipes, wires, and concrete, and gravel, scoria, or other ground cover or fill from the site, re-grade the site so it has a predevelopment appearance, and re-seed the site with native grasses and vegetation.

If the site has not been reclaimed within six (6) months from the termination of the conditional use permit, McKenzie County may, on notice to the holder of the conditional use permit, enter the property and take direct action to cause such reclamation. An application for a conditional use permit shall be deemed consent for such direct action by McKenzie County and such consent shall run with the land. If McKenzie County obtains an injunction to allow such entry and reclamation, the holder of the conditional use permit and the owners and lessees of the surface of the land shall be jointly and severally liable to McKenzie County for all litigation costs including reasonable attorney fees incurred to obtain the same.

McKenzie County may make one or more claims on the reclamation bond or substitute therefor for its (a) estimated costs of reclamation before work has been done, (b) actual costs of reclamation after work has been done, and (c) litigation costs and reasonable attorney fees to obtain injunctive relief either to enter and reclaim the land or to cause the holder of the conditional use permit or the owners or lessees of the surface of the land to reclaim the land. If the amount of the bond or substitute therefor is inadequate to cover all claims, the holder of the conditional use permit and the owners and lessees of the surface of the

land shall be jointly and severally liable to McKenzie County for the shortfall and for all litigation costs, including reasonable attorney fees, incurred to obtain and enforce a judgment for the same.

If the reclamation bond or substitute therefor will terminate, expire, or otherwise be impaired before reclamation is complete, McKenzie County may make a claim for the full amount of the bond or substitute without delay, whether or not the conditional use permit itself has actually terminated at the time of the claim. Otherwise, no claim may be made on the bond or substitute until six (6) months after termination of the conditional use permit.

Kathy Skarda asked if they closed their accounts or shut them down would the County lose the money.

Ari Johnson stated the bank is going to hold the collateral on the letter of credit, maybe the land on the CUP. He doesn't think there is any action that a person could cause the letter of credit to be terminated, and if there is we have required adequate notification to us, with addition of section 5.8.7.

Gene Veeder doesn't see this any different than a Bond. He doesn't want to attack an industry he wants to give them a tool that can work and he would recommend and encourage if you have an objection to letters of credit get some instances where it didn't work.

Les Haugen requested more research into other places that accept Letters of Credit.

Jeremy Olson stated this is the 1st reading so go through this and bring back to **Director Huus** any information or questions that you might have for the 2nd reading on April 13, 2020.

Item#15 Lot Size Reduction / Public Acquisition - 1st Reading

Proposed Zoning Ordinance Amendment

Non-Conforming Use – Lot Size Reduction due to Public Use – 1st Reading

Preamble

When land is required to be purchased for public use from a conforming lot and the loss of the land due to the purchase would change the status of the lot to non-conforming this amendment would keep the status as conforming.

Amendment

§ Section 2.6 NON-CONFORMING USES of the McKenzie County Zoning Ordinance is hereby amended and re-enacted with the addition of a paragraph, as follows:

In the event any portion of a parcel of land is acquired for public use, whether by eminent domain or by the landowner's consent, all existing, lawful uses of the affected parcel of land may, if not otherwise allowed by this ordinance, be continued as non-conforming uses unless and until an independent termination event occurs.

Ari Johnson stated that a person shouldn't lose their conforming use status if lot size is reduced due to public acquisition because this would be giving an incentive to people to refuse to dedicate right of way.

Director Huus stated this is the first reading and the second reading will be on April 13th, 2020 Plan/Zone Board Meeting.

Discussion Items

1. Skid Unit Permit Fee Findings and Recommendations.

Director Huus presented his findings and recommendations related to Skid Unit Permit Fee ordinance. This discussion is to generate ideas then craft the 1st reading for an amendment to the Zoning Ordinance next month. He has had several meetings with Vess Hurley and he stated his main business is supplying skid units to well pads which varies in the length of time, they could stay 2 weeks or longer depending on the demand. We believe man camp usage has gone down considerably. We came up with a sticker that would help identify that they have a permit. We think we will have a hard time policing the units often times they are here or gone tomorrow. We don't have the enforcement to monitor all of these. We are going to be relying on the honesty of the skid unit owners.

Audience, Representatives, Committee and Board comments

John Irwin stated that we aren't providing anything for the skid units on well pads. He believes we need to leave these alone.

Les Haugen stated he thinks there needs to be added verbiage that also waives fees because Vess Hurley provided a lot of housing with these skid units to people when the flood hit a couple of years ago.

Gene Veeder stated the County Commission has the right to waive fees.

Director Huus stated that we will prepare the first reading for the April 13, 2020 meeting with the second reading on May 11, 2020 at the Planning/ Zoning Board Meeting.

2. Board Vacancies

Director Huus stated that the following have sent letters in response to the Board Vacancy and would like to be considered for the position. Present at the meeting were Cody Knetzger, Danial D.Richmond, Warren Hovland, (Lindsey Perisich called and stated she was not feeling well and could not be here).

1. Cody Knetzger
2. Danial D.Richmond
3. Warren W. Hovland
4. Lindsey Perusich

Gene Veeder stated all the commissioners do take phone calls so if you have any questions please call us.

A private written vote was submitted by the board members and given to the Director for tally of the vote with the results appointing Cody Knetzger.

3. #0007-19ZC McKenzie County **TABLED**

Director Huus stated that he would suggest to Table this until the April 21st, 2020 County Commission meeting because he still has a trucking company he is working with and 2 welding users, one sounds like it's more of a hobby however the other one could be welding business home occupation. My recommendation is to Table this until we can come to a decision.

Planner Sandee Kimpel stated that the welder individual purchased the property from a previous business that was on that property so when he moved there he assumed it would be allowed.

Jeremy Olson stated this will be **TABLED**.

4. Call in Board Meeting Attendance.

Jeremy Olson stated there is nothing in the ordinance that states that you can or can't have a board member call into a meeting like this, he talked with Gene on the County Commission side and within reason if there is bad weather. He would like to get your

thoughts and how we handle this, if you have a reason you can call, I'd like to hear your reason for or against.

Gene Veeder stated he has been on 4 County Boards and people have called in and can see it could be an issue although it never has been with the boards that he has served on. We are all volunteers so we don't want people doing it all the time, but if there is an illness then that should be acceptable. Can we say it is not a common occurrence because if someone was calling in 3 or 4 times he thinks the commission would look at that as not a real commitment.

Kathy Skarda stated having more than one way to participate in a meeting is a very good avenue for the members. Our board members try very hard to be here and give their best so she believes we should have that ability to call in due to weather or illness.

Butch Fleck stated he was on a board where all the members were scattered around and they all called in for the meeting and it worked well for them at that time.

Jeremy Olson stated he thanked the board members for their input.

Adjournment

The meeting was adjourned at 8:40 PM

The next meeting of the McKenzie County Planning and Zoning Board will be held on April 13, 2020 at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM

MEETING SIGN-IN SHEET

Meeting Date: 3-9-20

Name PLEASE PRINT NAME LEGIBLE	Phone #	Agenda Item #
Warren Davie	504-338-5609	Tumbleweed
Richard Beane	701 770 2561	
Dan Richmond	269-436-0226	
Scott Patton	701-850-7448	BLUE FRAME
Erik Peterson	406-544-6489	
Clint Hacker	928-978-4326	
Rubin Arndt	701-570-3677	G3
Rusty Briggs	541 206 7616	
ERIC KIRBY	701-609-4935	
Jim Talbert	402-403-4521	
Amy BECKER	701-238-7379	G1+2
Jay Becker	201-429-8969	G1+2
Warren W. Horband	701-570-257	
Shayla Brown	701.203.1865	NO
Trevor Hunter	701 570 2200	6(2)
Curtis Sorenson	701-770-0995	G7
Wyatt Myers	406-283-1859	G4
Denise E Matson	701.580.2041	G4
Andrew Swearingen	715-558-0513	

MEETING SIGN-IN SHEET

Meeting Date:

3-9-20

Name PLEASE PRINT NAME LEGIBLE

Phone #

Agenda Item #

Hond, Cawlan

Kyle Hartel

Shane Peterson

Marty Patrice

MILISSA BENSON

DUSTIN JORDAN

Cody Kretzger

April 2020

Planning and Zoning Commission Minutes

April 13, 2020

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

Members Present: Jeremy Olson, Craig Hystad.

Members Remote: John Irwin, Gene Veeder, Kathy Skarda, Bethany Devlin, Cody Knetzger.

Members Absent: Butch Fleck, Kenny Liebel

Staff Present: Planning Director Curt Huus, Planning Attorney Ari Johnson, Code Enforcement Todd Foster.

Staff Remote: Cindy Mecham, Sandee Kimpel, Dana Roff

Others see sign in sheet:

Motion to Approve: March 9, 2020 minutes. Motion: Craig Hystad , Second Kathy Skarda. Voice Votes: All Aye

Code Enforcement:

Violations: None

Fire Department Review Board - Due to the Covid-19 situation this will be continued until further notice.

Unfinished Business:

Blue Flame-CUP Amendment #10-19 Amend CUP Location: T150N,R101W,S21.Parcel#012400700. 14136 26th V Street NW, Alexander ND **TABLED**

Director Huus stated this item was tabled at the last meeting so the applicant could gather the water agreements and data that we needed for approval. Since that time they have submitted 3 water trucking companies agreements to supply water in case of a fire so he recommends approval. He recommended to remove condition #25 regarding blast protection. In order to completely protect adjacent properties from a blast would require unrealistic construction of berms or mechanical protection. This request is to add a 30,000 gallon tank for the operation and total storage capacity to

90,000 gallons. The additional tank was noted on the original CUP. The fire district has voiced concern over the amendment. We have met with them to discuss and one of the major items was the supply of water. We believe the applicant has satisfied that concern by obtaining 3 different water trucking company agreements. He recommended to approve with condition 25 being removed.

Audience, Representatives, Committee and Board comments:

Scott Patton who is the applicant stated he talked to water trucking companies that were closer to this business. One is adjacent to the property; another company is just down the road so that would provide quicker access should anything occur on the property. Todd Foster (Code Enforcement Officer) came out last week and checked the electrical and shut off valves on the tanks. They are doing everything they can to be a good neighbor. He recognizes the danger and are doing everything they can to make it safe and secure to the public.

Craig Hystad stated concern over only 1 entrance and exit. **Kathy Skarda** asked how long it would take the trucking companies to get the water to the location or will they have a full tank of water ready to go.

Todd Foster stated in theory they should be 20-25 minutes could be sooner or later, there is no real answer to that as timeline, but 1 of those 3 companies will be ready to go. This timeline will be the same as the Alexander Fire District in obtaining the 3 trucking companies.

Director Huus stated the reason we suggested getting more than 1 trucking company was because they cannot guarantee that water can arrive in 15 minutes or up to an hour. So having multiple agreements works better than if you just have 1 and from our conversation with the fire district they sounded like they appreciated that.

Kathy Skarda asked about condition #25 and who suggested it and if the fire district wanted that in there or not.

Director Huus stated it came from our meeting with the Fire District. They wanted us to look into that. We didn't really know what the requirements for blast protection would have required at the time. Further research revealed that it's not something we have done with other similar industries. We thought it would be unfair to do it with Blue Flame because this hasn't been a requirement with others.

John Irwin asked if the Alexander Fire District is satisfied with things now as they will be the first on the scene. We need to know their opinion as they are pretty important in this decision.

Todd Foster stated the Fire District has had their chance to comment and we have gone to them and there have been a lot of phone calls. The notifications have gone out and they have not responded.

Jeremy Olson stated we have been working with the Fire District. Planning and Zoning and the Fire Official have talked to them about their concerns. I think we have done a lot of reaching out and the applicant has been patient through this process. He doesn't want the Fire District out but we have had this business on hold for months.

Todd Foster stated Blue Flame does have a CUP and have been operating the business for several months so this isn't a stop to the process, it's just holding back the process of the additional 30,000 tank.

John Irwin stated he would feel better knowing the Fire District was on board. **Kathy Skarda** said it states in finding of facts #3 the Fire District opposes this amendment. **Sandee Kimpel** stated this notification did go to them and I have not heard from them since our last meeting. **Kathy Skarda** stated if the Fire District didn't submit another one then she assumes they didn't change their position.

Jeremy Olson stated you can't assume that because they have been visited since then and the comment period has been opened. If they had disagreed then it was on them to provide written or oral discussion to that in the comment period and they have not done that so you can't assume anything.

Craig Hystad stated he would like to see a complete cycle for trucks before we approve this as we don't want this major highway to become a traffic jam.

Motion to Table: Craig Hystad, Second: Kathy Skarda, Voice Votes: All Aye

**Marty Patrick CUP #09-20CUP. Location: T149N,R99W,S16. Parcel#6500096722124
129th U Ave NW, Arnegard ND (1truck) TABLED**

Director Huus stated this applicant would like to have this tabled due to the current health crisis and further research required.

**Nodak Oil Field Services #020-20 ZC Location: T151N,R98W,S20.Parcel#640010480
TABLED**

Director Huus stated the applicant would like this Tabled indefinitely until they are ready to move forward.

Public Hearings:

Tim Glover #010-20 CUP Location: T151N,R96W,S24.Parcel#050015600

Director Huus stated that the applicant is planning to purchase 5.1 acres of property from Perry Sorenson to build a single family home. Non-familial relationship.

Audience, Representatives, Committee and Board comments

Director Huus stated the staff recommends Approval of this CUP #10-20CUP to the County Commission to allow Tim Glover to divide off 5.1 acres from the 160 owned by Perry Sorenson so that he may place a home on the property per Section 4.17.1 of the McKenzie County Ordinance.

Motion to Approve: Gene Veeder, Second: Bethany Devlin: Voice Votes All Ayes.

Letter of Credit Ordinance Amendment 1st reading:

**Proposed Zoning Ordinance Amendment
Letter of Credit in lieu of Reclamation Bond- 1st Reading.**

Preamble

Some members of the public have indicated that it is impractical to obtain reclamation bonds for certain projects and that it is more practical for them to obtain letters of credit that provide equivalent protections to the county as a reclamation bond would provide. This amendment allows for letters of credit to be used in lieu of reclamation bonds if certain conditions are met. This amendment also clarifies the procedure for McKenzie County to make claims on reclamation bonds.

Amendment

§ 1 Section 2.13.2 of the McKenzie County Zoning Ordinance is hereby amended to add paragraph 6, as follows:

- 6) On or within thirty (30) days after each anniversary of a conditional use permit being issued for which bond is required, the holder of the conditional use permit shall cause proof to be sent to the Planning

Department that the required bond or any approved substitute therefor will remain in effect for the following year.

§ 2 Section 2.13.2 of the McKenzie County Zoning Ordinance is hereby amended to add paragraph 7, as follows:

- 7) An applicant may substitute a letter of credit for a reclamation bond, provided that the following conditions are met:
 - a) The letter of credit must be in the same amount as the required reclamation bond.
 - b) The letter of credit must not be subject to termination, cancellation, or other impairment except by McKenzie County being given actual notice no less than thirty (30) days before such impairment occurs.
 - c) The letter of credit must be payable in its full amount upon demand by McKenzie County.
 - d) The letter of credit must not be subject to any conditions on payment, priority of other parties for payment ahead of McKenzie County, or other restrictions on McKenzie County's ability to receive full payment of the amount of the letter of credit.
 - e) The letter of credit must be enforceable in the District Court of the County of McKenzie, North Dakota, or the United States District Court for the District of North Dakota, and the issuer must consent to one or both of such courts exercising both personal and subject matter jurisdiction as to McKenzie County's demand for payment of the letter of credit.

§ 3 New section 5.8.7 of the McKenzie County Zoning Ordinance is hereby enacted, as follows:

5.8.7 Reclamation Requirements

All conditional use permits other than those issued for single-family dwellings in the agricultural district shall terminate upon the occurrence of the first of the following:

- 1) For a temporary conditional use permit or conditional use permit subject to renewal, the expiration date or the date of

the Board of County Commissioners deciding not to renew the same.

- 2) The decision of the Board of County Commissioners, on notice to the holder of the conditional use permit with an opportunity to be heard, to revoke the same.
- 3) One (1) year after the last activity under the conditional use permit, unless the Board of County Commissioners has allowed a longer period of dormancy in light of circumstances specific to the use.
- 4) The termination, expiration, or other impairment of any reclamation bond or substitute therefor that is required for the conditional use permit or the failure of the holder of the conditional use permit to cause proof of the required bond or substitute remaining in effect within thirty (30) days after an anniversary of the issuance of the conditional use permit.

Upon termination of a conditional use permit, the holder of the conditional use permit and the owners and lessees of the surface of the land subject to the conditional use permit shall be jointly and severally liable to McKenzie County to reclaim the surface of the land by removing all above ground structures, all underground structures to a depth of four (4') feet, including but not limited to pipes, wires, and concrete, and gravel, scoria, or other ground cover or fill from the site, re-grade the site so it has a predevelopment appearance, and re-seed the site with native grasses and vegetation.

If the site has not been reclaimed within six (6) months from the termination of the conditional use permit, McKenzie County may, on notice to the holder of the conditional use permit, enter the property and take direct action to cause such reclamation. An application for a conditional use permit shall be deemed consent for such direct action by McKenzie County and such consent shall run with the land. If McKenzie County obtains an injunction to allow such entry and reclamation, the holder of the conditional use permit and the owners and lessees of the surface of the land shall be jointly and severally liable to McKenzie County for all litigation costs including reasonable attorney fees incurred to obtain the same.

McKenzie County may make one or more claims on the reclamation bond or substitute therefor for its (a) estimated costs of reclamation before work has been done, (b) actual costs of reclamation after work has been done,

and (c) litigation costs and reasonable attorney fees to obtain injunctive relief either to enter and reclaim the land or to cause the holder of the conditional use permit or the owners or lessees of the surface of the land to reclaim the land. If the amount of the bond or substitute therefor is inadequate to cover all claims, the holder of the conditional use permit and the owners and lessees of the surface of the land shall be jointly and severally liable to McKenzie County for the shortfall and for all litigation costs, including reasonable attorney fees, incurred to obtain and enforce a judgment for the same.

If the reclamation bond or substitute therefor will terminate, expire, or otherwise be impaired before reclamation is complete, McKenzie County may make a claim for the full amount of the bond or substitute without delay, whether or not the conditional use permit itself has actually terminated at the time of the claim. Otherwise, no claim may be made on the bond or substitute until six (6) months after termination of the conditional use permit.

Director Huus stated that this and the next Ordinance Amendments are back as 1st Readings again. This is due to not getting a motion and 2nd with a vote to approve the 1st Reading last month. He explained the process that needs to be followed for 1st and 2nd Readings.

Audience, Representatives, Committee and Board comments

Ari Johnson stated this does not have to be read word for word at this meeting.

Craig Hystad stated in his own opinion he would say no because people are worried about the banks going broke.

Ari Johnson stated if the bank goes broke the letter of credit is no good, if the surety company goes broke then the bond is no good. If the entity backing the obligation disappears then regardless what the obligation is, yes we would lose that assurance.

Gene Veeder stated it has become punitive for companies to start up due to how hard it is to get bonding, so he says it's up to us to find the tools that can actually let them proceed with their business. So, he likes the letter of credit because it is obtainable.

John Irwin stated bond companies are more stringent on their requirements than their banks, the bond companies are tougher.

Motion to Approve: Gene Veeder, Second Bethany Devlin. Voice Votes: Bethany Devlin Aye, Craig Hystad Naye, Cody Knetzger Naye, Kathy Skarda Naye, Gene Veeder Aye, John Irwin Naye. **Motion Fails 4/2.**

Lot Size Reduction Ordinance Amendment 1st Reading

**Proposed Zoning Ordinance Amendment
Non-Conforming Use-Lot Size Reduction due to Public Use – 1st Reading**

Preamble

When land is required to be purchased for public use from a conforming lot and the loss of the land due to the purchase would change the status of the lot to non-conforming this amendment would keep the status as conforming.

Amendment

§ Section 2.6 NON-CONFORMING USES of the McKenzie County Zoning Ordinance is hereby amended and re-enacted with the addition of a paragraph, as follows:

In the event any portion of a parcel of land is acquired for public use, whether by eminent domain or by the landowner’s consent, all existing, lawful uses of the affected parcel of land may, if not otherwise allowed by this ordinance, be continued as non-conforming uses unless and until an independent termination event occurs.

Motion to Approve: Kathy Skarda, Second Craig Hystad. Voice Votes: All Ayes

Skid Unite Fee Ordinance Amendment 1st reading:

**Proposed Zoning Ordinance Amendment
Skid Unit Permit Fee – 1st Reading**

Preamble

The original intention of the Skid Unit Permit Fee zoning ordinance was for the County to have needed controls, accountability, and tracking of Skid Units utilized in Mancamp and Workforce Housing applications. Mancamps and Workforce

Housing were needed to accommodate the shortage of housing for the increased demand resulting from the earlier days of development of the Oil and Gas industry “boom”. Prior to the current ordinance, many Mancamps and Workforce Housing complexes were developed without any restrictions, regulations, or registration.

Since then the demand for Mancamps and Workforce housing has decreased due to development of other more permanent housing options. This has led to an increase of unoccupied stored units which under the current Ordinance are required to be permitted. Another aspect with Skid Units that isn’t addressed in the current ordinance is the placement and use of them for a short term or emergency uses. Instead, a temporary or emergency use is required to be permitted. Policing and tracking this type of use is very difficult and therefore is not being enforced.

Amendment

§ Section 2.16 of the McKenzie County Zoning Ordinance is hereby amended to replace the current Section 2.16 as follows:

2.16 SKID UNIT PERMIT FEE

Pursuant to N.D.C.C. Ch. 57-02.4-4 the County imposes an annual fee of \$400 per unit for all skid units that are occupied in the county. The fee shall be for all units as defined in N.D.C.C. Ch. 57-02.4-01

The fee shall be for units used for housing or a place of business on an extended temporary or permanent basis. The fee shall not be for temporary uses of less than 3 months or emergency temporary uses. The fee shall be placed in the County’s general fund to offset the cost of services provided including but not limited to: policing, road maintenance and construction, social services, and general county services.

Every year each permitted Skid Unit is to display a reflectorized sticker indicating that the current yearly fee has been paid. Every year the permit stickers shall be obtained at the office of the McKenzie County Planning and Zoning Department upon completion of the Skid Unit Permit Fee Application and payment. The sticker shall be applied to the outside of the Skid Unit and be visible from the street access.

The fee is due on January 1st of each year the unit is occupied in the county. The full fee is due for any part of the year the unit is occupied in the county and the fee shall not be pro-rated for partial years.

Director Huus has been working on this with skid unit companies to come up with this ordinance amendment. It has been reviewed by Mr. Hurley at this time but he hasn’t heard back from him. If Mr. Hurley has other comments I would entertain

bringing them back to the second reading. There are a lot of these on oil pads, and the duration varies so we came up with temporary use as 3 months, if they were there longer they would have to get permitted. He stated the nice thing about the sticker is they are covered throughout the year because the units can move to other sites.

Audience, Representatives, Committee and Board comments

Craig Hystad stated the wording on the fee is due January 1st. He would like to clarify so that permits could be obtained other than January 1st.

Kathy Skarda stated how would we know if they would have that sticker, as we have been trying to keep the Salt Water Disposals from having living units on site but if that does happen they would require a permit.

Jeremy Olson stated we are trying to make it better than we had. It will probably clean up 80 to 90% of what have out there.

Gene Veeder stated we have been discussing this for the past 16 months now and we need to get this resolved. This is a good solution.

Director Huus stated he would reword the last paragraph that the fee is due on January 1st and we will have another look at it for the 2nd reading next month.

Motion to Approve: Craig Hystad, Second: Gene Veeder Voice Votes All Ayes

Discussion:

MCKENZIE COUNTY SPORTSMEN'S CLUB APPROVAL

Director Huus stated last year a Planning and Zoning Subcommittee was formed to work with the McKenzie County Sportsmen's Club to get the gun range within the Firearms Overlay District approved. There were several issues that needed to be addressed prior to opening - safety/operation plans, a hold harmless agreement and construction issues related to erosion control, access road width and access to existing properties. The Sportsmen's Club has agreed that the construction issues will be resolved when the frost leaves the ground and no later than June 1st. The operations and hold harmless plans have a few tweaks. Once he has those he is preparing to give final approval in the commencement of the facilities operation. In the agenda packet is the letter he sent to the McKenzie County Sportsmen's Club along with the draft safety operations plan, documentation letters from citizens, including a new letter from Mr.

Jeff Prince with his concerns as a citizen. The goal in working with the Sportsmen's club is an attempt to facilitate an amicable resolution of the concerns and hope that in the end we achieved that.

Jeremy Olson stated this is just a summary at this point. We are waiting on the hold harmless, the safety plan, operations plan but in principal we are ok with it.

Director Huus stated yes that is a fair statement and there are no public comments that need to be read into this.

Audience, Representatives, Committee and Board comments:

Brent Schwan stated we feel like we are in substantial compliance that is requested of us and any questions that you might have.

Jeff Prince stated that he submitted a letter but would like the board to keep in mind that he was part of the project when it started back in the fall of 2018 the major concerns to be addressed were the safety berms height, the noise and the road safety. He is asking that we hold to the design that was approved and let the facility be delivered as it was promised.

Eric Kirby stated when this was approved the design compared to what has been constructed needs to hold them accountable for the safety of the citizens.

Nevin Dahl stated he would like to comment about the height of the berm and the soil testing which was never done by the engineers. They ended up spending an additional \$127 thousand to introduce top soil into the material to help us gain the height and it is above and beyond the requirements of the NRA Guidebook.

Kathy Skarda asked if the berms meet the NRA requirement of 8 ft berms?

Brent Schwan stated the minimum height is around 13 feet.

Jeremy Olson stated we have worked with the Sportsmen's Club in good faith and he thinks they have accommodated us. The original application was preliminary plans and the plans change, the soil you can't anticipate some of those things from the challenges of developing the property. Changes are going to happen. The MCSC is going to have a safe facility that the public will use. There are a few things to work out still and they are working with us in good faith and I think we are 90% there. This is an issue that has already been approved.

Director Huus stated the Sportsmen's club wants to get this opened as soon as possible and he can work with them to get a facility that will meet the requirements.

SIVERTSON BUILDING PERMIT- KATHY SKARDA

Director Huus stated that Kathy Sharda brought this forward to discuss.

Kathy Skarda stated that early in December she was asked by Don and Sandy Sivertson to come to their home and help them complete their building permit for a house for their daughter to come live in. They had already started the construction and they have been assessed a double fee of \$2400 for construction without first obtaining a building permit. She was just concerned about that getting paid. Once the documents were completed they paid \$1200 for the permit which was after the fact. She asked if there is a company that will help them to verify the concrete and rebar size. There is a company who has worked in the County before and they were able to submit pictures before.

Director Huus stated Scott has been trying to work with the contractor to get the details of what he actually installed. If he has pictures of the rebar and forms before the concrete was poured they wouldn't need a third-party inspection. Scott did not get the chance to see the rebar and forms because they did not have a building permit before starting construction. We did not know it was being built so our standard practice if the builder proceeds without a build permit is to charge a double permit fee. It's not a fine against the property owner it's against the contractor /builder. Scott has names of 3rd party testing companies that can test foundation and footings via either coring, x-ray, or other methods.

Jeremy Olson asked if the double fee been applied consistently.

Director Huus stated yes, we have charged other contractors the double fee for beginning construction without a permit.

Kathy Skarda asked if we know about any building permits that have not been charged the double fee.

Director Huus stated he can find out. A lot of times the best intentions of the home owners hire a contractor that doesn't follow the rules. He can't say if their contractor hasn't followed the rules in the past.

Jeremy Olson stated it appears the fee has been consistently applied. We don't want to get into the act of forgiveness because that will follow us in the future. It was put in place for a reason.

Todd Foster stated we got a call that the excavation had started so he to the site in September / October so it was prior to all the frost and snow. He advised them they

needed a building permit; the excavation had been completed. Mr. Sivertson immediately got in contact with Scott and Cindy at the building department.

Jeremy Olson asked is there a good reason why the county should not pursue the double fee due to the contractor not complying.

Director Huus stated normally the contractors obtain the building permit.

Kathy Skarda stated she was concerned about the Sivertsons. They are trying really hard to get their daughter moved in. She would like to get their house completed. She would like to have Scott reach out to them.

REQUIREMENTS AND DEFINITIONS FOR TRUCKING COMPANIES

Director Huus stated we have run into this before. Specifically, what constitutes Commercial Truck Parking? The ordinance defines a commercial truck and it has references for conditional uses regarding “commercial truck parking” in Agricultural and allowed use in industrial. The main confusion is if the ordinance intention is to regulate commercial trucking operations anywhere commercial trucks are being parked regardless if it’s one or 50 trucks. Historically we have been interpreting commercial truck parking as parking a commercial truck regardless if it is a full fledge commercial truck operation, multiple trucks, fuel stations, shop, and offices or simply a single commercial truck parked in front of a residence. It’s not clearly defined in the ordinance what is commercial truck parking so it leads to confusion when we have a permit or do a variance or CUP for commercial truck parking. As you have seen in the zone change in Long View Subdivision it has become quite an issue because someone parks a truck at their home at night yet does not have a shop or work on their truck on the property. The ordinance also states commercial truck parking is required to have a reclamation bond. What is the reclamation bond for since you only have a parked commercial truck in front of their home? He would like some direction from the board to stay consistent as a department and follow the rules

Gene Veeder stated we should just get some clarification of terminology because I don’t think the intent was to require a bond just to park a truck.

Director Huus stated he will develop a report and bring it back to the next meeting.

ADMINISTRATIVE APPROVALS FOR CUPS

Director Huus stated these are all of the Administrative approvals (CUP and others) that he has approved for the sake of transparency. Included in the list are all the Administrative approvals since January 1, 2020.

Kathy Skarda stated she would like to see more information included with the list so we can have more checks and balances. It states in the ordinance that all approvals will be reviewed by the Board of Commissioner of conditional use permits.

Jeremy Olson stated his concern that if the Director has no Administrative approval authority that simple, non-controversial items would force the meetings to be overly long. He doesn't want to turn back the clock in reviewing these again. But he can see Kathy Skarda concerns and asked if Director Huus could add an attachment on the report what he has approved and add it to the agenda to be read it into the record, so that this Board and the County Commissioners are aware of the approvals.

Director Huus stated yes, he could provide a record and add the application itself of what he has approved.

Administrative Approvals since 1/1/2020 to Date

03/20SUB Leigh Ann Kirkland Subdividing 5.12 acres from 80 acres for a direct family member. Homes have been on this parcel for years, just legitimizing the lots.

013-20TW Temporary Water Permit

07-20SIGN Sign Permit

05-20SIGN Sign Permit

012-20TW Temporary Water Permit

010-20TW Temporary Water Permit

009-20TW Temporary Water Permit

008-20TW Temporary Water Permit

007-20TW Temporary Water Permit

006-20TW Temporary Water Permit

02-20SIGN Sign Permit

005-20TW Temporary Water Permit

004-20TW Temporary Water Permit

002-20TW Temporary Water Permit

003-20TW Temporary Water Permit

035-19Admin CUP Verizon Wireless Sather Lake Wireless Communications Tower

0039-15Admin/Amend/CUP 299' self-support wireless communications tower-

Amended because it was originally approved in 2015 but they ran out of funding to start it.

001-20TW Temporary Water Permit

NOTIFICATION REQUIREMENTS FOR DEVELOPMENT CHECKLIST

Director Huus stated they changed 3 different requirements in regards to notifications and added 300 feet, ½ mile and 1 mile as well as updated the application itself. The required notification would be determined on an individual basis based on the application circumstance. For example, in a rural application 300 feet might not pick up any notification parcels so we would require further distance. In his opinion he should determine whatever distance notification he feels appropriate. He believes the circumstance should dictate that requirement.

ADMINISTRATIVE APPROVAL KATHY SKARDA

Jeremy Olson stated this was answered in the previous discussion regarding Administrative Approval of CUP's.

ADJOURNMENT

The meeting was adjourned at 7:39 PM

The next meeting of the McKenzie County Planning and Zoning Board will be held on May 11, 2020 at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM

May 2020

Planning and Zoning Commission Minutes

May 11, 2020

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

Members Present: Craig Hystad, Kathy Skarda, Jeremy Olson, Butch Fleck, John Irwin

Members Remote: Gene Veeder, Cody Knetzger

Members Absent: Bethany Devlin, Kenny Liebel

Staff Present: Planning Director Curt Huus, Planning Attorney Ari Johnson, Code Enforcement Todd Foster, Cindy Mecham, Cindy Jensen

Staff Remote: Sandee Kimpel, Dana Roff

Others see sign in sheet:

Motion to Approve: April 13, 2020 minutes. Motion: Kathy Skarda, Second Craig Hystad. Voice Votes: All Aye

Code Enforcement:

Violations: None

Fire Department Review Board - Due to the Covid-19 situation this will be continued until further notice.

UNFINISHED BUSINESS:

Marty Patrick CUP #09-20CUP. Location: T149N,R99W,S16. Parcel#6500096722124 129th U Ave NW, Arnegard ND (1truck) **TABLED**

Director Huus stated this CUP is the last piece of our puzzle to get Longview Subdivision rezoned. This one has been a challenge due to our historic interpretation of the current zoning ordinance regarding commercial truck parking. Marty lives in Longview and he has a single leased truck that he drives for work. He parks it at his residence at night. In our opinion he is not a commercial trucking company, but in the zoning ordinance it does not really distinguish this, it just simply states commercial truck parking and historically we have been applying the commercial truck parking

interpretation regardless if you have 50 trucks or 1 parked at your residence. Later on he will have a discussion item to talk about an ordinance amendment to better define commercial truck parking. In the meantime we are going to change his CUP application to a variance and then bring that forward next month. We recommend tabling this CUP.

Kathy Skarda asked if the variance could be at next meeting. **Director Huus** stated that is what we would like to do. **Skarda** stated she wanted to make sure that the approval process can be done next month rather than 2 to 3 months down the road.

Motion to Table Marty Patrick CUP #09-20CUP: Butch Fleck, Second: Cody Knetzger, Voice Votes: All Aye

Blue Flame-CUP Amendment #10-19 Amend CUP Location: T150,R101,S21.Parcel#012400700. 14136 26th V Street NW, Alexander ND

Director Huus stated this is an amendment to an existing CUP to add an additional 30,000 gallons storage of propane to the approved 60,000-gallon storage facility. This item was tabled at the last meeting to research water truck circulation information on the site during a fire. Todd has looked at this site access and confirmed that circulation will be accommodated, both through the existing interior road system and Hwy 85. In Planning and Zoning's and Fire Official's opinion, it meets our requirement for approval. Those requirements could be weighed against the Fire District's.

Jeremy Olson stated now one of the things in the original permit order that was not in the original application, was sourcing the water, one of them was MBI. Have they updated that? Because MBI no longer supplies water. **Director Huus** stated they have 3 agreements.

Craig Hystad asked about cement block barrier issue. **Todd Foster** stated this is the safety barriers that are around the tanks themselves. NFP Code calls for protection the Fire District interprets this as bollards placed every so often. That is one way to protect it. The minimum criteria is simply protection, so there is no real description to what you could use. There are others of what could be used, but nothing specifically stated. Blue Flame is using concrete "Jersey Barriers." The NFP Code says protection against what is normal traffic. So for instance if this were along a street you would have to have protection against a vehicle traveling at 35 miles an hour. This is in their site so it wouldn't require protection at those speeds. So Blue Flame the barriers spaced out anywhere from 2 to 5 feet.

Craig Hystad indicated concern over the water trucking companies going out of business. **Director Huus** stated that is where the fire district gets their water from now is from trucking companies. **Todd Foster** stated that is what we are using currently. Every fire district out there is doing the same

Director Huus stated if the rural water system was capable of supplying fire protection water that would be a different story. But they cannot pull water off the existing system because there too many lines that are small enough that would create a vacuum to their trucks and you would collapse your lines. So they do not allow firefighting protection through their system. **Jeremy Olson** stated that is one of the reasons Arnegard is upgrading their water system. **Todd Foster** stated the issue is in water delivery response time. We are also exploring that with another option with West Dakota Water too that they currently have a pipeline out there that they operate and there could be a potential of putting hydrants in for use, but there is a lot that goes on with it and a lot that involves it.

Cody Knetzger asked if Blue Flame has submitted standard operating procedures. Is Blue Flame getting them all the information they needed? **Justin Hopes** from Blue Flame stated that they have not requested this and I did not know that they were asking for more information. **Jeremy Olson** asked if the original information requested in February. **Todd Foster** stated yes. I believe this was all met and what you are reading there is based on the original application's process which was in January. Without actually being 100 percent, but he believes they did. In Justin's defense their guy that has been handling this is not around right now, so I believe Justin is trying to pick up the slack for Blue Flame. **Justin Hopes** stated MBI is not one of the contracts anymore. They contracted with Blackshirt.

Kathy Skarda indicated to Todd that the County Commissioners all received an email from Lance Powell regarding a situation that he observed, the same type of activity that you wrote him up on beforehand. If they were written up beforehand how we can approve them. It seems to be they keep doing the same thing over and over again, so please refresh our memories. **Todd Foster** stated initially, after the CUP was approved, in November or end of October last year, the Alexander Fire District and myself, met with Blue Flame to discuss the violation of the filling third tank. When we were there, we saw that they were parking some LP trucks inside the neighbor's building that they were renting. They had a conversation with them at that time, stating that the building was not designed to handle the type of explosion residue that could happen there with an LP truck and there is certain criterion that needs to be met in order to house hazardous material or anything explosive. The building that they were working on the trucks in, was not capable of handling that type of work. The conversation was that he had to remove the trucks from the building and that they needed to be 50 feet away from the buildings at all times. Blue Flame indicated that this was understood. As time went on it has been suggested that there have been a couple more times that this has

happened and this recent time is what Kathy is speaking of. **Foster** stated Lance emailed him stating that they were in the building working on the trucks again. So he called and spoke to Justin of Blue Flame who was the guy he spoke to originally about making sure the trucks were not in the building. He said that they were in fact working on the trucks inside the building again. Todd reminded him of their conversation and told him that they must remain outside. After that he responded to the email that was sent by Lance stating his concerns. **Skarda** stated if they cannot follow the instructions to keep the trucks out of the building and within a certain distance away she has a problem with approving it.

Kathy Skarda stated she had a visit with a commissioner from Williams County and they said that when they have businesses that require water for firefighting they require the business to install water storage on site. **Director Huus** stated that was one of the conditions is either they do that or they provide water trucking contracts. The problem you have with the tank is we can't find formulas for how much water would be required. **Jeremy Olson** stated an issue would be it freezes in the winter. **Todd Foster** stated the way to fight a Propane fire is flooding the adjacent structures with water to prevent spread and to cool the other tanks. Flood as much water as you can onto everything that is around there. This is a large volume of water. **Director Huus** stated we do require that on mobile home parks for example, that they provide on-site water for fire protection but that is a lot less quantity of water. **Foster** indicated NFP Code bases the amount of water needed for water specific for firefighting needs on specific property structures. For this one it is an undetermined amount. It is just large amounts of water, which is all that we are really stating. **Jeremy Olson** stated it is not putting out the fire. It is cooling the tank so they do not burst. **Foster** stated the majority of them are going to burst at some point, it is something that is almost unavoidable, if that ever happens, but 100 percent of the time the fires have been based on adjacent things, never from the LP services. It has always been an adjacent fire that travels to it or something, a bullet or something that is projectile to the tank, or something like that and they do not have direct control.

Gene Veeder asked what the closest residential area is to that site. **Foster** stated it is directly to the south of them about half a mile maybe a little bit farther. **Jeremy Olson** stated the NFP requires an emergency action plan that requires a certain radius. Is the residential area outside of that radius? **Foster** stated that is correct. **Olson** stated from an emergency response standpoint that residential area is outside of the burst radius. **Foster** stated that was correct and the burst radius is pretty small according to Fire Code.

Gene Veeder asked in terms of fire hazards, how many other times have we been consistent with other businesses that were not just based in a residential area. How are they different? **Director Huus** stated there are other propane companies within the area. Maybe not so much storage, but Oneok has a plant pretty close by there where

they are processing at about a mile away. There are other businesses that have that same potential out there. **Kathy Skarda** stated so the other businesses that have that same potential, have any violations or any history of not following rules. **Director Huus** stated no, not that I know of. **Skarda** stated this is the only one that you know of. **Director Huus** stated yes. **Foster** stated Oneok has had a few fires out there related to field fires due to the storage there as well. He does not have records of any out there, but was something that the Alexander Fire District informed him of.

Butch Fleck stated they have a CUP for 2 tanks, so one more tank, in his opinion, if there is an explosion there is not going to be much difference between 2 tanks or 3 tanks. But as far as water problems, Fire Districts have mutual agreements. All the fire districts show up to help fight stuff like that, so there is going to be initial influx of help to give trucking companies time. They have always been good to us if we need them. They always get here if all our initial resources are used. **Todd Foster** stated the mutual aid agreement that we have out there, is we are going to have a flood of water there. Blue Flame is going to have their contracts fulfilled there by 3 service agents and the fire district will be calling in their water responses as well.

Butch Fleck stated as far as if they are in violation with working on their trucks inside a building if it is cold outside he would be driving his truck inside to fix it. If they are leaving it in there he would have problems with that, but not just working on it. **Jeremy Olson** stated to him it seems the violation is a wedge to keep the third tank from being approved. These are 2 different things: 2 tanks versus 3. That is really the decision. But the issue that is being made out of it is to allow it because in the past they have violated these conditions. That is how I see it. **Fleck** stated that is the way he sees it. If these were serious violations that is one thing but if that is all it is, he is not concerned at all about that. **Todd Foster** stated the true violations are associated with the actual property and the storage and distribution system. The issue was filling up a third tank before being approved. The working on trucks in the shop is basically a third violation based on the property which is tied to it. The truck violation is tied to a different company on a different property that is adjacent to it.

Butch Fleck stated when they set that third tank up, it was his understanding that they were not using it. **Todd Foster** stated that was the initial process and they did actually fill it the first time. They quickly removed it though. They followed our recommendation at that point. Blue Flame did say that when they filled out the original application they stated they were going to add a third tank but it was in service in a different county at that time. They were waiting for the third tank but they jumped the gun a little bit but in my opinion it was still all the same as originally applied for.

John Irwin stated he thinks it is wrong that we are side stepping the Fire District. He doesn't think we can meet all of Lance's requirements, but he thinks they need to be communicating. The time of a fire is a poor time to try to be communicating and he

thinks they all need to figure out some things we can live with and some things we cannot. He feels that they are not communicating. **Director Huus** stated I hope you do not think we are trying to side step the Fire District. **Irwin** stated they should not even be here tonight. They have not communicated. Nothing has been done. We have had this conversation for how many months now and this just keeps coming back. If they are not talking and wanting to try and things, why do they keep coming in front of us? **Kathy Skarda** stated we cannot fix it, they have to talk, they have to fix it between the two of them. **Huus** stated it sounds like they are not able to. **Irwin** stated Lance is not going to get everything he wants, but maybe there are a few things there that are kind of important. Blue Flame needs to quit coming to your door and they need to start showing up at the Fire Districts. **Huus** stated yes. We are tired of fighting for Blue Flame or the Fire District. It should be between them. **Foster** stated at several meetings where Blue had tried to get that process completed and we wanted the same thing to actually happen. We are definitely advocates for the same thing and will continue to try to make that happen. **Olson** asked if we were going to have a meeting. **Foster** stated we were. **Skarda** stated they have to come together. Just leave us out of it until they fix it. **Fleck** stated they want us to help them fight it.

Justin Hopes of Blue Flame stated his concern is with the shop use violation. They have never left a truck parked in the shop. It is not something they do. They have had oil changes that had to happen. But they have always been supervised and the door left open. They are getting out of their contract with the shop because of it. They are not going to use that shop anymore due to the fact that they are not allowed to use it. He thought he had worked with Alexander Fire District or tried to. But when he has tried to work with them, he was told pretty bluntly that the Fire District did not want them there. They have been trying to work with them but they do not want Blue Flames business. They do not want anything to do with us or that propane system. **Butch Fleck** asked is that the Fire District or one guy? **Hopes** stated that is the fire chief. They attended a board meeting and they did not want us there. They said they would never approve the third tank. When this whole process started for Blue Flame, they did not know that they would have to deal with the Alexander Fire District as much as they have. They thought we are out in the county. That is what they intended to do. They did a preventative plan and everything else expected. They did not really understand the process. They are not trying to do anything wrong. They are a safe company, they have a safe record. They appreciate all you have done for Blue Flame.

Butch Fleck asked if the township approved the third tank. **Jeremy Olson** stated the township recommended approval. This is not a township district issue. This is a Fire District issue. So that is the holdup. The Fire District goes over several townships of course. But the statement about the Fire Department not wanting one, and never approving everything, he has heard that himself. So in his opinion, when we have something like that, that is when the board needs to be able to make that decision. We have to do the right thing for all the people. Not just a group or someone saying we are

not going to approve it no matter what. We are supposed to be the ones that are unbiased and make a decision based on the facts. **Fleck** stated he knows that if it was in his Fire District, he would not have wanted it to start with. But it is there, it is hard to stop it now. He knows that he would not want to be fighting a fire like that. He does not want some of that oil industry there to fight their fires either, but it is there.

John Irwin stated he would like to try to include the Fire District one more time. He would like to see us table this 1 month. He would like to give the Fire District one more chance to either come to the meeting or get some dialog going as to what the major important issues are that would get them onboard with it. If they do not want to respond we move on. **Jeremy Olson** stated for the record, that Curt did encourage the Fire District to attend or have a representative on the phone for this meeting. I was copied in on the email. They were encouraged to participate tonight, knowing everything that was going on here.

Jeremy Olson stated so at this point, he does not know if there is going to be a resolution between Fire District and Blue Flame. It looks like it has come to an impasse. From what he sees based on the comments by Lance and his email, is that the cement blocks are not approved. There is the standard distance so they can or cannot use blocks. But according to Todd, the barrier is adequate according to his interpretation of the NFP Code. The MBI trucking contract not being valid anymore, Blue Flame amended the agreements to take MBI trucking out of it and added a replacement. He believes we have enough to go on. He does not think we are going to get, based on the last couple of months, some of the emails the he has seen and a couple of the statements that were made, he does not think we are going to get anymore participation from the Fire Department. They were not just advised, but encouraged to come to with some representation tonight.

Todd Foster stated if the oil industry picks back up here we are going to see more of this process taking place. More LP storage companies coming into play. With the new bi-laws and rules by NDIC there is a limit to that in how much this LP processes can do. It is all about storage and all about quick storage and this is the only way to achieve that. There are going to be more of these coming in to play. **Kathy Skarda** stated with that being said we need to look at our ordinances again to make sure we are ready for them. **Jeremy Olson** asked what kind of ordinances we have in place for this kind of facility. **Director Huus** stated we do not have this specific ordinance. **Jeremy Olson** stated basically you go off of industry best practices and go with what some of the oil and gas industry has done recently. **Skarda** stated and with the cooperation with the Fire District. **Foster** stated this might be a good time to further our involvement with some of these Fire Districts and help to expedite the process. **Olson** stated back in February we had begun the process to encourage that. You were able to give us a few of them and some are communicating better than others. **Skarda** stated then COVID happened.

Jeremy Olson entertained a motion. **Gene Veeder** stated please keep in mind that historically we have had authority over townships. Objection from the Fire District should have gone to the township and historically supported the township. He wanted to make sure that we remember that there is not another entity out there that would be closer to the township than the Fire District and they are pretty jealous about us superseding what they present as a recommendation. So let's keep that in mind as we move forward. **Olson** stated that is a very good point and that the Arnegard township had the same issue. **Director Huus** stated to keep in mind that no matter what this board does, regardless of if it goes against the Fire District or if it goes against Blue Flame, it will go to the County Commission and then they will have a chance to plead their case to the commissioners. It is not final here, but it definitely gets to the next level. **Kathy Skarda** asked if the township did approve this. **Olson** stated yes. **Skarda** stated she just wanted to make sure because she does not want to say yes, that they approved it and then find out they did not. And we have not heard from the township in any way, shape or form that would alter what they said. Correct? **Huus** stated I believe so. **Todd Foster** stated he had received a call from Township Supervisor. This is after they did approve the process. Keep in mind the notification went out, they approved it and they approved the second one. However, he did get a call from Township Supervisor asking us to explore some protection. That was the discussion of the steel barrier or the blast. That was a meeting that we had attended, the Township, the Fire District, Curt and I. **Olson** asked so you addressed it then? **Foster** stated we did.

Motion to approve Blue Flame-CUP Amendment #10-19 Amend CUP to the BOCC to allow the addition of an additional 30,000 gallon tank to the current operation bringing the total storage capacity to 90,000 gallons. Adopt the findings and conditions in the staff report:

Motion by Gene Veeder, Second: Butch Fleck, Voice Votes: Hystad No, Knetzger Yes, Skarda No, Veeder Yes, Fleck Yes, Irwin No. Olson (Tie Break) Yes

Motion Passed

PUBLIC HEARINGS:

**Border States Paving CUP #11-20. Location:
T150N,R96W,S22.Parcel#690010500. 11042 HWY 23, Watford City, ND**

Director Huus stated this is a temporary CUP to stockpile aggregate and produce asphalt for the North Dakota DOT paving project from Johnson's corner to 6 miles east on highway 73. Asphalt will be produced for approximately 2 ½ weeks in the August – September time frame and will produce approximately 6,000 tons of asphalt mix and approximately 100,000 tons of base course. The site is located south of Iron Steer Trailer off highway 23 Johnson's Corner. Ingress and egress would be on Hwy 23 outside of the existing approach to Iron Steer Trailer. As such, the Planning and Zoning recommends approval for this conditional use permit.

Kathy Skarda stated she is concerned about the schools being close. **Director Huus** stated the school is pretty close. Border States was awarded the contract with DOT. We are not sure when they are going to start hauling the aggregate, but this is ahead of them moving in.

Jeremy Olson stated this is temporary, just for summer construction and they will be removing it and cleaning up following completion. **Director Huus** stated they would be reclaiming the site in late fall or early spring. That is a requirement from DOT in addition to us. We are requiring for them to obtain a reclamation bond so that we are assured that is going to get reclaimed.

Craig Hystad asked if they are going to tarp all the loads they have coming in? It is the law that they are supposed tarp their loads. **Jeremy Olson** stated every pit that we have approved in the county are responsible for insuring that they tarp their loads. **Director Huus** stated it is not a condition, but we could put it as a condition. **Todd Foster** stated we require signage that states that you must tarp a load before exiting. **Craig Hystad** stated we could put it on there as some kind of reminder.

Kathy Skarda stated that to receive approval by the county engineer and DOT is to negate tracking onto county and state highway. Findings are required to be delivered to planning and zoning before CUP will be granted.

Kathy Skarda stated that turn to the south to Iron Steer Trailers is right below the hill when you are coming from the west. **Jeremy Olson** stated it is about a quarter mile after you hit the 45 mile an hour zone about half a mile from the trucks. When you come over that final hill going east bound, you come over the hill the speed limit is 45 then in about another quarter mile you hit the turnoff. It is about a quarter mile from the crest of the hill to the turn off. **Skarda** asked if that is enough time for trucks to get out of the road.

Kathy Skarda is also concerned about the asphalt fumes if the wind is blowing hard it is going to go all through the school where they have over eighty-some children and the residents right there. **Jeremy Olson** stated that is why they placed it there because of the prevailing winds. It is construction season, it is a construction project and they try

to put it as close to the construction site and that seems like a logical spot. It is at the intersection of 2 major highways and it is temporary. **Director Huus** stated the asphalt would only be produced for 2 ½ weeks. **Butch Fleck** expressed concern about odors and a previous plant that the nearby property owners complained about and got it shut down. **Olson** asked if that was a permanent or seasonal plant. **Fleck** stated it was longer.

Motion to Approve Border States Paving CUP #11-20 to the BOCC to allow a temporary aggregate stockpile and asphalt plant site for the NDDOT Project #SS-7-073 (013) 000, PCN 22329. Adopt the findings and conditions as provided in the staff report with the addition of a condition to tarp the loads:

Motion by Butch Flack, Second: Craig Hystad: Voice Votes All Ayes.

Motion Passed

Stenehjem Reservoir - Reclamation Bond Waiver #0006-19 CUP - RBW

Jeremy Olson stated the last couple of months we went through the first and second readings and the county commission approved to do a bond waiver to do a certain process. These would be the first one that we see for a reclamation bond waiver. **Director Huus** stated all the applicants are property owners. They have made proper public notification. They provided the landowner acknowledgment and the hold harmless agreements. As such we recommend for approval but each one should be approved or denied separately. This first one is the Stenehjem Reservoir that was approved by the board of county commissioners on May 6, 2019. They currently have a letter of credit. We recommend approval.

Craig Hystad expressed concern over the size of lots that a pond could be built on and the impact of subdividing the pond into a small lot. Discussion on the 40 acre rule in Agricultural District was made by several members.

Kathy Skarda asked about taxation of the pond. **Jim Talbert** explained his knowledge of the taxation being placed on the sale of the water and not the land.

Gene Veeder expressed concern that this discussion is revisiting the same conversation we have had for months on what has already been decided. He has issues with this boards move to heavy handedness to control private property rights on their own property. This is a conversation about bonding and we need to get back on track with the issue.

Kathy Skarda stated she was only asking the question regarding taxation. Her intention wasn't to state that we need to start taxing property owners for ponds.

Motion to approve Stenehjem Reservoir - Reclamation Bond Waiver #0006-19 CUP - RBW to the BOCC to allow the waiver of the Reclamation Bond requirement, adopt the findings and conditions as provided in the staff report:

Motion by Butch Fleck, Second: Gene Veeder, Voice Votes: All Aye; John Irwin Nay.

Motion Passed

Hartel East Reservoir - Reclamation Bond Waiver #02-20Amend CUP - RBW:

Motion to Approve Hartel East Reservoir - Reclamation Bond Waiver #02-20Amend CUP - RBW to the BOCC to allow the waiver of the Reclamation Bond requirement, adopt the findings and conditions as provided in the staff report:

Motion by Butch Fleck, Second: Craig Hystad, Voice Votes: All Aye

Motion Passed

Hartel West Reservoir - Reclamation Bond Waiver #0007-17 Amend CUP - RBW:

Motion to Approve Hartel West Reservoir - Reclamation Bond Waiver #0007-17 Amend CUP - RBW to the BOCC to allow the waiver of the Reclamation Bond requirement, adopt the findings and conditions as provided in the staff report:

Motion by Cody Knetzger, Second: Craig Hystad, Voice Votes: All Aye

Motion Passed

Elkan, Inc. Wolff Reservoir - Reclamation Bond Waiver #0014-19 Amend CUP - RBW:

Motion to Approve Elkan, Inc., Wolff Reservoir - Reclamation Bond Waiver #0014-19 Amend CUP - RBW to the BOCC to allow the waiver of the Reclamation Bond requirement, adopt the findings and conditions as provided in the staff report:

Motion by Butch Fleck, Second: Craig Hystad, Voice Votes: All Aye

Motion Passed

Skid Unite Permit Fee - Ordinance Amendment 2nd Reading:

**Proposed Zoning Ordinance Amendment
Skid Unit Permit Fee – 2nd Reading**

Preamble

The original intention of the Skid Unit Permit Fee zoning ordinance was for the County to have needed controls, accountability, and tracking of Skid Units utilized in Mancamp and Workforce Housing applications. Mancamps and Workforce Housing were needed to accommodate the shortage of housing for the increased demand resulting from the earlier days of development of the Oil and Gas industry “boom”. Prior to the current ordinance, many Mancamps and Workforce Housing complexes were developed without any restrictions, regulations, or registration.

Since then the demand for Mancamps and Workforce housing has decreased due to development of other more permanent housing options. This has led to an increase of unoccupied stored units which under the current Ordinance are required to be permitted. Another aspect with Skid Units that isn’t addressed in the current ordinance is the placement and use of them for a short term or emergency uses. Instead, a temporary or emergency use is required to be permitted. Policing and tracking this type of use is very difficult and therefore is not being enforced.

Amendment

§ Section 2.16 of the McKenzie County Zoning Ordinance is hereby amended to replace the current Section 2.16 as follows:

2.16 SKID UNIT PERMIT FEE

Pursuant to N.D.C.C. Ch. 57-02.4-4 the County imposes an annual fee of \$400 per unit for all skid units that are occupied in the county. The fee shall be for all units as defined in N.D.C.C. Ch. 57-02.4-01

The fee shall be for units used for housing or a place of business on an extended temporary or permanent basis. The fee shall not be for temporary uses of less than 3 months or emergency temporary uses. The fee shall be placed in the County's general fund to offset the cost of services provided including but not limited to: policing, road maintenance and construction, social services, and general county services.

Every year each permitted Skid Unit is to display a reflectorized sticker indicating that the current yearly fee has been paid. Every year the permit stickers shall be obtained at the office of the McKenzie County Planning and Zoning Department upon completion of the Skid Unit Permit Fee Application and payment. The sticker shall be applied to the outside of the Skid Unit and be visible from the street access.

The fee is due on January 1st of each year the unit is occupied in the county. The full fee is due for any part of the year the unit is occupied in the county and the fee shall not be pro-rated for partial years.

Director Huus stated this is the 2nd reading of the Skid Unit Permit Fee Ordinance Amendment. At the 1st reading it was requested to clarify when the fee was due, so we added the statement that in addition to the January 1 due date, that the fee is due at the time of occupation if after January 1. He will go into more detail regarding the amendment if necessary otherwise staff recommends approval of the 2nd Reading.

Craig Hystad asked when applicants come in for a CUPs to use it as a skid unit office will we charge them right away? **Huus** stated if they have a skid unit, yes, they will have to have a permit. **Hystad** stated he knows we have approved 2 or 3 already and was just wondering if we had already charged them. **Huus** stated we have not charged anybody this year until this ordinance passes. So when the ordinance passes, we will contact all the skid units companies and tell them that they need to get permits. **Hystad** stated that is companies, but people have their own skid units and they come in and ask if they can put their own skid houses up as an office for 2-3 years until they get one built themselves. **Huus** stated we will have that as a condition of the approval. **Kathy Skarda** stated we have some offices that were made out of skid units that were on some of these CUPs. **Huus** stated that was a temporary office but that was not a skid unit. That was a modular unit. **Skarda** asked how we are going to charge them. **Jeremy Olson** stated it would be going forward.

Director Huus stated the letter was sent to all of the skid unit companies informing them we are delaying the fee now but we are going to require them to get

permitted from January 1 of this year once this ordinance passes. So if there are some man camps out there that are using skid units, they have to get those permitted. **Craig Hystad** stated he understands it is not prorated. **Jeremy Olson** stated whether they use it for a month or if they use it for 10 months it is the same fee. **Huus** stated there is a temporary definition in here that is if they only using it for 3 months the permit will not be required.

Todd Foster stated he thinks that the wording here should include more than just a skid unit itself, as described in the Century Code. Skid units are not just used for housing anymore. **Director Huus** stated the Amendment is for all units as described in the Century Code, Chapter 57-02.4-01.

Motion to Approve Skid Unite Permit Fee - Ordinance Amendment 2nd Reading to the BOCC:

Motion by Kathy Skarda, Second: Craig Hystad, Voice Votes: All Aye

Motion Passed

Director Huus stated that this will now go to the Board of County Commissioners and once it is adopted it will be an ordinance. We will send out the letters to Skid Unit owners after approval by the county commissioners.

Lot Size Reduction/Public Acquisition - Ordinance Amendment - 2nd Reading:

**Proposed Zoning Ordinance Amendment
Non-Conforming Use – Lot Size Reduction due to Public Use – 2nd Reading**

Preamble

When land is required to be purchased for public use from a conforming lot and the loss of the land due to the purchase would change the status of the lot to non-conforming this amendment would keep the status as conforming.

Amendment

§ Section 2.6 NON-CONFORMING USES of the McKenzie County Zoning Ordinance is hereby amended and re-enacted with the addition of a paragraph, as follows:

In the event any portion of a parcel of land is acquired for public use, whether by eminent domain or by the landowner's consent, all existing, lawful uses of the affected parcel of land may, if not otherwise allowed by this ordinance, be continued as non-conforming uses unless and until an independent termination event occurs.

Jeremy Olson asked we had any changes from last month?

Director Huus stated we did not have any changes after the 1st Reading. This is as read at the 1st Reading. I can go into more detail if necessary. I did have a comment by one member of the public with a question regarding if the lot was already non-conforming. There are some 40 acre lots, according to agricultural district. Lots can be smaller than 40 acres, but on the correction line of townships, they can get a little bit smaller, so they are non-conforming to start with. This ordinance amendment keeps it as non-conforming, but it does not violate the zoning ordinance.

Motion to Approve LotSize Reduction/Public Acquisition - Ordinance Amendment - 2nd Reading to the BOCC:

Motion by Kathy Skarda, Second: John Irwin, Voice Votes: All Aye

Motion Passed

DISCUSSION ITEMS:

Commercial Truck Parking Clarification report

Jeremy Olson stated this came from our unfinished business on Marty Patrick. We talked a little bit about this last month.

Director Huus stated he put together a Findings and Recommendations Report as to what constitutes commercial truck parking. Our current zoning ordinance has a very limited amount of references to commercial truck parking. There is a definition of a commercial truck in the definitions. In the Agricultural District it is a conditional use for commercial truck parking. In Light industrial district it is an allowed use. For some reason in the heavy industrial, it is an allowed use and a conditional use. You pick which one you want it to be. So I think there is a mistake in the ordinance so one of my recommendations would be to clean that up too. The issue is, what constitutes commercial truck parking. In my opinion the intention is to regulate commercial trucking operations, not just simply parking a commercial truck. In front of a residence

or even on a commercial property, if it is just one truck that is parked there, they go get their load and they deliver it and they park there the next day. They are not working on their truck. They do not have fuel pumps, stations and a whole trucking operation. So I think that needs to be cleared up so we are not defining the big companies or even small companies the same as with a single truck parked at night. The current ordinance has a requirement for a reclamation bond. If you follow the ordinance even a person parking their truck in front of their residence needs to have a reclamation bond. When we looked at those CUPs out in Longview, the board recommended that we get rid of that requirement because we added it as a condition based on our interpretation on how that ordinance is written. What are they going to tear down or what do they have to restore? We could not answer the question. So my recommendation is to do an ordinance amendment. We develop a definition for commercial truck parking, we develop a definition for commercial trucking operation, and we develop a definition for commercial truck parking non-operation. There are pretty distinct things that need to be defined and then that would fit in with the ordinance. We would clean up the heavy industrial use conflicting language to get rid of the conditional use for commercial truck parking. Also, change the agricultural use and light industrial use from commercial truck parking to commercial truck operation and clarify what needs to be reclaimed in a commercial truck operation. So I will draft a first reading to be heard at our next P&Z board meeting. If you have other things that you think I missed, or a better way to clarify it let me know.

Craig Hystad asked in Longview one guy had a truck, another had couple of them, and how does that fit into this? **Director Huus** stated those ones still had to get a CUP. They are actual operations, with the exception of Marty Patrick. We will do a variance in that case. **Hystad** stated the guy on the other side of the lot is commercial. **Huus** stated that those CUPs have already been approved. We did take out the requirement for reclamation bonds on those. They still have a CUP and they are considered commercial trucking operations. **Hystad** stated it is hard to distinguish because he only has one truck, he is still commercial. Then these other guys are going to complain that just because they have two trucks and the guy with one gets by without. **Jeremy Olson** stated the guy with one is just parking there is one thing, but the guy that has one truck that is his basic operation, that is still commercial. It is what your use is that applies. **Huus** stated if they have a shop or they are working on one or they park trucks there until they wait to work on them, they are running their trucking operation out of there, those would meet the requirement for Commercial Truck Parking. These are just to clarify so that we are not applying those same rules to those that are just parking their truck they use at work in front of their house. However, there will be times in residential that we would not want to grant a variance. A lot of people would not like to have a semi parked in their neighborhood. There are many of them out there that fit the use. The other nice thing about the variance is that we could just have it follow the person, not the land. If Marty Patrick leaves, so does his variance. If someone else moves in, they need to apply for a variance. It does not stay with the

land. **Hystad** stated I guess I did not distinguish that and the truck parking versus the truck operation should clarify it. **Olson** stated that was an unintended consequence of the first ordinance and we did not think of that.

Jeremy Olson stated to give Curt some guidance as far as changing the ordinance to clean up some of the definitions of commercial truck versus truck parking. We have identified some problems.

ADMINISTRATIVE CUP APPROVAL LIST

Director Huus stated he approved one CUP Administratively in April. It was for West Dakota Water. They have an existing CUP for water lines that were approved in 2016, but they did not construct all of the lines. They stopped short by 2 miles of completing the water line. They want to complete the previously approved lines. The applicants submitted all the necessary materials required for a full-blown CUP. Storm water permits, landowner agreements, state water permits, road access permits, emergency management, fire district, all the same requirements that go along with full-blown CUP. He included the application and attached the map. He wants you to know what he's up to. It does bring up another little side issue. He had another one that just came in. It is an existing CUP. They want to add some water lines to it. Those lines were not on the original CUP. The CUP was for a pond and water lines. They want to add additional water lines. When he reads the ordinance 5.8.5, he does have some leeway to approve some of those. It would simply be an underground water line. In his opinion he has the authority to approve that administratively does not want to do anything that is going to get him in trouble.

Kathy Skarda asked does it also have to have a state water permit. **Director Huus** stated yes. What we require when we do even an administrative, we require them to submit the data and information that we require for a full-blown, brand new CUP.

Kathy Skarda asked do you have to have public notice as well. **Huus** stated no, not on an administrative CUP.

Jeremy Olson stated we specifically said in the administrative ordinance where the director and staff can do administratively because these are the things that are part of the original CUP. **Director Huus** stated they have been asked about a pond but he tells them he cannot administratively approve any ponds. Either way I could comfortably approve water lines just like we do above ground layflat lines that are temporary. We approve those administratively, but that is not a CUP, that is just a separate temporary water permit

Director Huus stated Zoning Ordinance 5.8.5. is a CUP amendment to an existing CUP. There are some specific instances it says he cannot approve administratively. If they do not meet those restrictions, theoretically I could approve them. I think the previous director probably interpreted that as ponds also. **Jeremy Olson** stated we have since clarified that.

CONDITION USE PERMIT REVOCATION HEARING

Director Huus stated he would like to start this process back up. When he first started as the new Planning and Zoning Director, one of the first tasks he took on was to establish a status of our current reclamation bonds and establish a tracking procedure. He started this process back in October of last year. It ended being a monumental task. When we had it all sorted out, we found out there was somewhere around 50 CUPs that did not have reclamation bonds. They either did not have them, had bonds that expired or, we did not know the status of them. Those totaled up to about \$25 million dollars of reclamation requirements that we were not getting bonds for. We sent letters out to the companies that were in question and we were able to whittle the list down to about 10 CUPs. Cindy worked diligently on getting this to where it was. Approximately \$500,000 worth of reclamation bond CUPs were remaining. We sent out a revocation letter which stated they had their chance and now we would send them a revocation letter and now revoke their CUPs if they did not get a reclamation bond. That letter got it down even more to 4 left. Throughout these many conversations and correspondence, we decided to put it on hold until we got the Reclamation Bond Waiver and a Letter of Credit in Lieu of Reclamation Bond ordinances approved. We have approval for the reclamation bond waiver and denial of the letter of credit option for the reclamation bond. Now it is time to proceed with revocation of the 4 we have listed, to make sure they do something.

We will start this process, by sending certified letters and the 30 day notification and legal ad requirements. We anticipate the revocation hearing at the July 13 meeting. We are going to have to give them some time to get the bond or go through the Waiver process. If they do not get a Waiver and cannot get a bond we will be bringing them forward for revocation of their CUP. The property owners that have these bonds on their property will not be able to continue using them anymore.

Jeremy Olson stated he spoke with Curt last week and said with this down turn in oil prices and people starting to go bankrupt and leaving we need get a handle on where we are with these bonds. Make sure they are still valid. That is why he is bringing them up because we are expecting companies to leave the area. We do not want to be left holding the bag if there are still bonds that are no longer active. We are at a point

where we start taking action to secure that bond if they intend to leave. We need to be proactive so we do not have to be left holding the bag should reclamation be necessary.

Craig Hystad asked if these were all ponds. **Director Huus** stated yes except the Justice Oil Field is an oil field business. The other 3 are ponds. **Kathy Skarda** stated on Camel Butte she thought that one was not permitted. **Huus** stated the CUP is still active. According to Mr. Singleness, he is not using the pond anymore. **Skarda** stated that he never got to use it because the liner and everything was destroyed. It was vandalized. He has never sold it. He will have to write a response to your letter. **Huus** stated he would have to release the CUP. Maybe he will decide he wants to fix it. It is on his property. He can do a waiver if he does want to keep it. If there is no objection, I am going to start the revocation process.

BUILDING PERMIT PROCEDURES

Kathy Skarda stated she had a gentleman who called her about a breezeway. As he is going through our paperwork and on our website, he was asking where I find this or that. It is a breezeway that is not heated, cooled or has air-conditioning. It is just a walkway to his house and it is less than 200 square feet. He was concerned, looking at these permit fees, where his fee of \$500 came from. When it states at the very bottom here, looking at the State Building Codes, which is 54-21.3 and it says the following buildings are buildings exempt from this chapter, buildings which are neither heated nor cooled. He was wondering why he is paying \$500. He thought it should be full disclosure on the permit schedule, how our penalties are assessed and how building fees are assessed when they are not disclosed on here. She has some concerns that a building official, or whoever could assess a building fee without making sure that was not disclosed to him at the time when he actually fills out the permit. She was wondering if we need to look at that and see if we could fix it so it is more transparent. If you look at the state building code, it says there is no fee, and then there is also an affidavit the he could maybe be asked to fill out because it says the filing exemption to the fee are buildings which are neither heated or cooled. Then when it talks on the backside here, it talks about building evaluations which are derived from the international building code, it actually talks about them and it is electrical, gas, mechanical and plumbing or whatever is done. He had some concerns about the schedule fee and how they are assessed, and who assess' them and more transparency. She was just wondering if that was another thing we could tweak so that it looks a little more transparent when they are getting their building permits and such. I was wondering if that was something that could make it little bit easier to track and to help them understand it better. **Director Huus** stated that a building permit is required if the building is attached to a house. It is not just a non-heated building it is attached to the house, so then it has to meet the requirements for that.

Kathy Skarda stated if we could just be more transparent and if there are going to be penalties. If you do not do this, this is the penalty that will be assessed. **Director Huus** stated he did not get a penalty. What we did on the discrepancy of the cost was \$750 on anything over 200 square feet and then it stops there. Since this was one that the Building Official had to inspect because it was attached to a house, he did not think it was fair to charge him the whole \$750 because it is pretty simple actually. So he reduced the fee based on that. If it would have been over 200 square feet he would have been charged \$750. Nowhere in the Fee Schedule does it say that you do not have to pay a fee. Maybe we should have if it is below 200 square feet \$500.

Kathy Skarda stated so that leads me to the 2nd question that you guys negotiated or were wanting to do what was fair, which I appreciate, referencing the national building code, is that right? It says each permit shall be paid in accordance with the schedule as established by applicable governing authority. Who would that be? **Director Huus** stated that would be the building official. We could show maybe a more stair step fee schedule. Also, put on that fee schedule, if you proceed to building without a permit, there is a penalty to be assessed. **Skarda** stated it does not mention anywhere on the fee schedule. When they have it in their hand and they are reading that, they know there are consequences.

Director Huus stated we have also added a line item for a penalty. One of the things that I have found is that some of these homeowners that are doing construction on their own that they do not know the building permit process because they do not work with it every day like a contractor would. If they come to us and if they try to submit the proper information and they are missing things we tell them what else they need. To them it is difficult that they have to submit more information and did not know that. **Jeremy Olson** stated there is a standard for everybody.

Director Huus stated if a contractor brought in some plans and we said we need to see trusses, they would know what that means. The average homeowner does not know what that means. They state that they gave us the plans from Menards, and they think that should have everything, but it does not. It then delays the process. We are going to be a lot better now that we have Cindy moved over to the Building and Code Enforcement Technician and she is going to be working with those property owners and the building permits as they come in. I have instructed her that we need to do a better job of working with them. Scott does not always have time, if he is unavailable and somebody comes in, they will have someone to talk to. So Cindy will be that cushioning between the homeowner, the contractor and Scott.

NON-PERMITTED RV PARK

Jeremy Olson stated this discussion is based on an email that was submitted by Rusty Briggs and Greg Kimbal.

Director Huus stated this item was requested to be placed on the agenda as a discussion item. A little background before we hear from Rusty Briggs and Greg Kimbal. McKenzie County Engineering is reconstructing County Road 37, south of Watford City. The low bid contractor was CSI, out of Alexandria, Minnesota. Evidently most of their construction crew comes out of Minnesota and they want to reside close to the construction site. So in light of that, CSI proceeded to set up an RV Park without a permit. We got a call from a concerned citizen. I do not know how long it had been in operation. A couple of week's maybe. As soon as we were aware of it, Todd went out, looked at it and issued a notice of violation to contact us. They got ahold of us and I told them that they had to get a CUP to operate an RV Park in McKenzie County. They began the application process to obtain a CUP for work force housing as an RV Park. They have applied for it and we are working on it. Dana is the planner working to get the required information to bring to the June 8 Planning & Zoning Meeting. We took some photos of the site. There are about 30 RVs parked at the site. If you look at the requirements for an RV Park, they are supposed to be 15 feet apart; they are supposed to supply fire protection; water and utilities. They set up this RV Park without consideration of the requirements. They are located about half way between 85 to where Hwy 37 connects onto 23 and directly south of Crestwood (a natural gas plant).

Director Huus stated I have requested that Rusty or Greg be present as well as a CSI representative, to comment and answer questions. They have a generator set up for electrical power. They have connected 3 load panels that the RVs plug into. They have 2 or 3 water tanks containing non-portable water that has a pressure tank with a header for 7 or more garden hoses that serve the individual RVs. There are water lines on top of the electrical lines. There is 2 port-a-potties on site. I imagine they are generating some sewage inside of their holding tanks to those individual RVs and assume somebody is coming out here to pump, I do not know. They have a garbage dumpster that is covered and has a screen.

Rusty Briggs stated that he had sent an email regarding this issue. **Director Huus** stated that it is attached to the agenda. **Rusty Briggs** had a discussion reiterating his email and concerns over safety, the Coronavirus, and competition with legal RV parks.

Ryan Minnerach of CSI stated last year when they started the project they were set up on Warren Hovelands land up north and we worked with Planning and Zoning to get a Temporary Permit. The guys work long hours, 14 hour days. The closer we can keep them to where they work, the less time they spend driving and they have can relax and get ready for the next day. Our crews really appreciate it that we do this for them.

Jeremy Olson stated our job here is not to favor one company over another or make commercial decisions about who should get what, that is not our purpose here. Our job is to look at this as an RV park that should it be there based on safety reasons? Is it within our ordinances or is it not? Looking at the pictures, the zoning, and it is not listed as a legal RV park it is pretty obvious that they are out of compliance. So the question is, what do we do? That is where the discussion should remain.

Director Huus stated our process is such that they are not going to get approval, if they get approval; it is not going to happen until our next Planning and Zoning Board Meeting which will be June 8. So the decision is do we let these guys operate until then or do we make them vacate. I talked to Suhail about this and he said they need to follow the rules like everybody else. **Jeremy Olson** stated they will be gone at the end of the summer and that will be the end

Kathy Skarda stated if it is not up to our codes and standards, then that they need to vacate and disband. They can send their workers 1 to 2 miles away to other RV parks that meet the requirements for RV parks. Another thing we need to make sure of it, there is a high fire index and fire danger around this area. She indicated that with all the issues surrounding this that they should disband. **Craig Hystad** stated it would be different if there was no place to go. But there are a lot of campgrounds empty now so it would be easy to move in to a legal RV Park.

It was brought up that there is no 911 address and no one would know where to go. **Jeremy Olson** stated this is construction season and trying to get fire trucks in there is not going to be easy. **Director Huus** stated if you look at the requirements of an RV park, one of the requirements is that there has to be a 911 address in the system.

Jeremy Olson stated it takes a long time to get a legitimate RV Park established. This group is not going to be able to do it in this short time frame. **Kathy Skarda** stated we should not make exceptions. **Director Huus** stated they are welcome to apply but they are going to have to meet regulations, but in the meantime they should vacate. **Jeremy Olson** stated they are absolutely in their rights to apply it would not be received well by me and would probably not receive a favorable vote by this board. I would encourage them to cease operation and find other accommodations. We are not voting here, this is just a discussion. We are saying that the RV park application would probably not pass. **Olson** stated right now they do not meet the requirements and are in violation now. It is on them to be in compliance. **Skarda** stated send them a letter that states that.

Director Huus stated they will send out a notice to them to vacate.

ADJOURNMENT

The meeting was adjourned at 7:45 PM

The next meeting of the McKenzie County Planning and Zoning Board will be held on June 8, 2020 at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM

June 2020

Planning and Zoning Commission Minutes

June 8, 2020

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

Pledge of Allegiance and Roll Call

Members Present: Craig Hystad, Kathy Skarda, Jeremy Olson, Butch Fleck, Gene Veeder

Members Remote: Cody Knetzger

Members Absent: Bethany Devlin, Kenny Liebel, John Irwin

Staff Present: Planning Director Curt Huus, Planning Attorney Ari Johnson, Code Enforcement Todd Foster, Sandee Kimpel, Dana Roff, Cindy Jensen

Others see sign in sheet:

Jeremy Olson expressed concern that over the last few Planning & Zoning meetings he feels that the board may have lost sight of the original intent, as chartered by the Board of the County Commissioners. He gave a brief background of the trials and tribulation of the oil booms unprecedented and unrestrained growth and consequences of landowner decisions that adversely affected their neighbors. He spoke about the description of the McKenzie Planning & Zoning Department's role and that the Board was created to respect landowner rights and keep government intrusion at a minimum. The original intent of the Planning & Zoning Board was to encourage economic development in McKenzie County while protecting the citizens and adjoining landowners from unethical and damaging business practices. The Board is here to be a checkpoint, not a roadblock to citizens and businesses in McKenzie County. He feels that over the last several months the Board has become the latter. The Board is here to review specific applications and to give broad guidance to the Planning & Zoning staff. The Board is not here to micromanage the staff nor second-guess decisions they have made in good faith. The role of the Board is to make recommendations to the County Commissioners based on our life experiences and our collective wisdom. We will not always agree 100%, but we make collective decisions. If a vote does not go the way a member wants it to go, it is inappropriate to go beyond the role as a Committee member and try to influence a commissioner ex parte. That is unprofessional. Our role is to be unbiased and fair. Each applicant should be treated the same way, regardless of whether they are our neighbor, our friend, our relative, or a stranger representing a business. All should be equally treated. The voters of this county through the commission, created this board to regulate land use, not impede it. If we cannot be

unbiased in our business, then we have not done our duty. As a chairman it is my obligation to keep us on track. Senator Dale Patton, one of the McKenzie County Commissioners who chartered the Planning & Zoning Board was asked to give a perspective on the original intent of the Board.

Senator Dale Patton, Former County Commissioner stated Planning & Zoning in McKenzie County was essentially one of the last counties in the state to adopt an Ordinance. He described the lack of Planning and Zoning to be due to declining population from the late 1920's with brief growth periods until around 2008 when the present oil boom began. The planning commission started around that time. It was eventually approved to proceed with a Comprehensive Plan and Zoning Ordinance

Patton explained the process of public meetings all across the County for input. The biggest concern was how would this affect landowners and members of the community. He also described how and why the decisions were made regarding the Watford City Extra Territorial Area (ETA) and the challenges with that.

He discussed the challenges of writing the Ordinance and how not everything was always agreed on by all but in the end the County had a document that everyone supported with the understanding that everyone had issues about certain issues with some of it but collectively it was adopted. The rules were adopted with the understanding that there will be changes throughout the life of the Ordinance.

Patton also explained his understanding of what the role of was for the Commission, the Planning & Zoning Board, and the staff. Ultimately the elected officials are the ones that bear the weight of the responsibility back to the public. The Planning & Zoning Board's responsibility is to develop the rules and regulations. The staffs' role is to implement those rules and regulations, make sure that they are being complied with and report and deal with infractions. The policy should be to imply fairness across the board. He explained the importance of consistency with decisions. Exceptions should be rare and if they happen often maybe the rules need to be changed.

Jeremy Olson stated that we need to make sure that we look back at the original intent that Planning & Zoning was founded to be a gateway not a roadblock and to make sure everybody is treated fairly. **Patton** stated we have a community now that has moved a long way away from the problems that were happening prior to the Ordinance. The intent of the rules was to be rules that people were comfortable complying with, was not overwhelmingly too difficult and allowed for growth to take place in our community. Watford City and McKenzie County has a very good reputation across the state for dealing with all the issues. We are the county that they come and talk to a lot. Our county is well known within the legislature and well known across the state. Presentations and focus has been done for making a good argument for our community

what has worked. Finding the right balance was critical. Being welcoming to the industry but still holding them to an appropriate standard.

Gene Veeder asked Dale to discuss the state's, counties' and townships' responsibilities in regards to energy development. **Patton** stated that at the local authority level the difficult decisions that have supporters on one side and supporters on the other makes it very challenging for local decision making. When you look at some of the roles that the state has taken on like the Department of Mineral Resources, the Industrial Commission, the State Water Commission, some decisions are made on the state level because that ability to remove their decision from the pressures of the community has some value. The other thing that is actually critical with those agencies is how much input is entered. **Jeremy Olson** stated sort of like how we try to take the input of Townships and make the changes if possible but ultimately it is the County that makes the final decision. **Patton** described the jurisdictional roles and authority of Townships.

Kathy Skarda inquired about the final decisions by the Board of Commissioner and about waiving fees. She also asked if the board would be able to review the fee schedule and recommend changes to improve the fee schedule if needed. **Patton** stated yes. He also indicated that it is critical that every level understand their role. If we find that the County Commission is consistently overturning a decision that the Planning & Zoning Board is making, then, why? If the Planning & Zoning Board is not following recommendations from staff, why is that. Did they not comply with the rules and regulations? Then they need to comply. But if the rules and regulations are not fitting into the circumstances, then that needs to be looked at again and some changes need to be made there. There should not be a lot of disagreement between what Planning & Zoning does, what the Board approves and what the Commission always does. If there is, then it would indicate either there is a failure between the process because either you are not being fair or you have a set rules and policies in place that are not meeting the needs of the community.

Gene Veeder explained that fees should cover administration cost, not be punitive or restrict business. **Patton** stated that when you first build a fee structure, you base it on what other counties have done. The ultimate intent is to come as close as possible to make sure that the growth and the cost of monitoring the growth is paid for by those that enjoying the benefit and not being passed on to other taxpayers.

Jeremy Olson asked for clarification on the role of the staff and the role of the director and their flexibility in decision making on the small things as long as they comply with the spirit of the rules set forth by them. **Patton** stated that there should be some flexibility but ultimately should fit within the rules that are adopted. Marginal flexibility is appropriate. If common sense and flexibility are not fitting in, then the rules should be looked at again.

Dale Patton stated he still receives calls questioning the rules we have and respond that we are here to explain what we have done, but we are not here to debate. The debate has already taken place in developing these rules. **Kathy Skarda** stated the rules that we use for Planning & Zoning explain what we have done and why we have done it. It makes it a lot easier if they follow the rules.

Jeremy Olson asked if there were any changes to be made to May's Meeting Minutes. **Craig Hystad** stated that on page 7, the change should be made that John Irwin made the comment to include the Fire District, not Craig Hystad.

Motion to Approve: May 11 Minutes Amended as above. Motion: Craig Hystad, Second: Kathy Skarda. Votes: All Aye

Motion Passed

Note: Later in the meeting the approval of the May 11 Minutes was rescinded so that an additional change could be made. See the motion, second and approval later in these minutes.

CODE ENFORCEMENT:

Todd Foster stated that there are no code issues at this time. He stated that he wanted to bring up the subject of a Fire Code Fee Schedule. He stated that the Fire Code calls for some scheduled fees to be implemented. **Jeremy Olson** asked if there is currently a Fire Code Fee Schedule. **Foster** stated that there was not and that he would like to see how the board felt about this and see what they would like to do. He will present what is common in other counties, present it at the next meeting and then let the board decide whether to address it, adjust it or remove it and to see if this is something that the board thought was appropriate to do. **Kathy Skarda** asked if it would then be forwarded on to the Board of Commissioners for final approval. **Foster** stated that was correct. **Gene Veeder** stated that a Fee Schedule would show a comparison and also help them to justify the fees. **Foster** stated that he would bring the fee schedule to the next meeting.

UNFINISHED BUSINESS:

Blue Flame-CUP Amendment #10-19 Amend CUP Location: T150,R101,S21.Parcel#012400700. 14136 26th V Street NW, Alexander ND

Director Huus stated that this was approved by the Planning and Zoning Board at the May 11, 2020 meeting and then at the May 19, 2020 County Commission meeting was

sent back to Planning & Zoning for further consideration after the Fire District and Township attended the meeting and expressed concerns. Since then Blue Flame has met with Planning & Zoning and discussed a path to move forward. The Fire District concerns were discussed with Blue Flame and their consultant, Paul Briggs with a company called Transendance. We encouraged them to work with the Fire District and come up with acceptable solutions to the concerns of water for fire-fighting. Since that time, they have been working with Todd Foster and the Fire District and it appears that they have come up with some viable solutions. **Director Huus** stated that he had talked to Lance Powell just before this meeting. Lance was unable to attend, but is in complete agreement after working with Briggs. Their plan is to place a frac tank next to the existing rural water hydrant which is a flushing hydrant. He visited with Jeff Shaffer, McKenzie County Water Resource District, about the possibility of using the hydrant and he will have some conditions on using that regarding metering the water but he does not have a problem with using that hydrant for filling a tank. It can be used for filling a frac tank and that would be a suitable buffer between the pumps and the water system. Included in the staff report is Blue Flames crews 24-hour phone coverage sheet, their emergency response phone coverage sheet, and their emergency action plan for your information. Additional conditions are a shut off valve that needs to be placed in a location far enough away so that in the event of a fire, it could be accessed. Depending on where they put the water tank there would probably have to be a variance applied for to the setbacks. The Fire District agrees with the water agreements that have been obtained by Blue Flame and according to Lance, we should be good to go. **Todd Foster** stated that the Fire District is satisfied with all the work so far and are happy with the development with Briggs and the effort he has put forth, and the project so far. Lance called him and thanked us for the process so far. **Director Huus** stated that Blue Flame has come up with another water company that uses mag water. You can use mag water to fight fires, it is not preferable but it is another water source, so Blue Flame actually has four water sources. **Craig Hystad** stated that he did not know if the firetrucks would want mag water in their trucks. **Director Huus** stated that it is a last resort. **Foster** stated that he had brought this up to the Fire District and that is correct that this is not something they would want to use, but it is the fourth and final if it comes to that. Hopefully it never comes to that.

Director Huus stated that before a motion is made there needs to be a couple of conditions added regarding the water requirements: make sure the hydrant and tank location is acceptable, the water district requirements are met, and a variance to the setback may be required for the tank. Also, a shut off valve location would need approval by the Fire District. Todd Foster stated that before the valve placement is approved, he would want to make sure that valve would be in the locked open position. It is going to be the same system as a fire hydrant or a fire retention system so that it could not be turned off by an unauthorized person. **Director Huus** stated that the wording for these conditions will be worked on. **Craig Hystad** asked if there was already a shutoff some place. **Foster** stated that there is a shutoff in place. **Hystad**

asked if this would be the same thing or would they need something completely different? **Foster** stated that it would be essentially the same thing. **Hystad** asked if it would be easy to run. **Foster** stated that it can be locked in the open or closed position and that Lance said that the current version they have works, but they wanted to run it through and make sure it is agreeable to all parties. Also, in addition, there are the barriers. **Director Huus** stated we have that in the conditions already. I believe bollards are going to be used and we did not specify one or the other. **Jeremy Olson** asked if that was at the request of the Fire Department. **Director Huus** stated yes and that he did not think that needed to be added as a separate condition because it is already in there but will add it if necessary.

Motion to Approve with the Additional Conditions Blue Flame-CUP Amendment #10-19 Amend CUP:

Motion by Kathy Skarda, Second: Craig Hystad, Voice Votes: Aye/Naye_Cody Knetzger

Motion Passed

Marty Patrick CUP #09-20CUP. Location: T149N,R99W,S16. Parcel#6500096722124 129th U Ave NW, Arnegard ND (1truck) **WITHDRAWN**

Director Huus stated this is the ongoing issue to get the subdivision south of Longview rezoned to Rural Residential. It was brought up at the January meeting and then was tabled at the County Commission Meeting until the trucking company issues were resolved prior to changing it to Rural Residential. Since then two trucking companies Miskin Mayhem and High Torque have been approved for CUPs. There have been ongoing issues with the Commercial Truck Parking part of the ordinance and has left a lot to be interpreted. We are presenting a first reading of that ordinance to clarify what Commercial Truck Parking is and to define another use we are calling Residential Truck Parking. Marty Patrick uses his truck for his job and parks his truck at his residence. He does not fall into the commercial truck parking like what Miskin Mayhem and High Torque are using right now. The ordinance needs to be clarified so that we are not looking at residential truck parking the same as commercial truck parking. In order for this part to be allowed, the County Commissioners need to approve the Rural Residential zone change and then Marty Patrick's use will fit into that. At the May 11, 2020 Planning & Zoning Board Meeting the idea was to do a variance. But after consulting with Attorney Ari Johnson and seeing how we could make this better, it was decided that a variance would not be the best way to go, but that this would be a much better approach and a more permanent solution to that issue. **Jeremy Olson** asked that if the commercial truck ordinance amendment goes through, Marty Patrick would need neither a CUP nor a variance, he would be an allowed use. That is why we are tabling

it. **Director Huus** stated correct and that he will recommend that the county commission puts the Zone Change on the agenda to move it off the table. This board has already approved the zone change. **Ari Johnson** stated to clarify that, if the county goes through with the zone change, this CUP application cannot be approved. Because it is for conditional use, it would not be a conditional use in the new zone. We are amending the ordinance to make it an allowed use in the new zone, so that we can go through everything and throw this away. We would not want that zone change to happen until this CUP or other solution was in place. Otherwise it would be a balance issue. **Olson** stated that it had already been passed so now it will go to the county commission.

Marty Patrick CUP #09-20CUP: WITHDRAWN : No Action Needed.

PUBLIC HEARINGS:

Bryan Roff Variance Request #03-20VAR. Location: T149N,R98W,S17.Parcel#633701000. 12471 Rolling Cove, Watford City, ND

Director Huus stated this is a variance to the setback ordinance to the Agricultural District from the required 25 feet to 10 feet. The property is located approximately 4 miles south of Watford City and a little bit east of 125th Avenue NW, in the Prairie Woodlands Subdivision. It is currently zoned as Agricultural. The Roffs are putting a shed back along a line of trees that is 10 feet off the back property line. The area to the north of them is not a subdivision currently and is an undeveloped piece of farmland. **Jeremy Olson** stated the normal setback is 25 feet, but at the property line there are trees and they want to back the shed up to the trees and the other side is an alfalfa field. **Director Huus** stated yes.

Motion to Approve Byron Roff Variance Request #03-20VAR

Motion by Gene Veeder, Second: Kathy Skarda: Voice Votes All Ayes.

Motion passed

Lassy Gravel Pit - Conditional Use Permit #12-20CUP. Location: SW1/4 of Section 28, Township 152, Range 103W Parcel# 210024200

Director Huus stated this CUP is to expand an existing grandfathered gravel pit, located just north of Cartwright and along the Missouri River. The applicant wishes to expand the existing 40 acres an additional 30 acres and that it will follow the gravel vein to the west. It is going to expand it out. He read the Findings of Fact to get them into the record:

All requirements for Public Notification have been satisfied. The applicant has a contract with McKenzie County for gravel. The original gravel pit has been in operation since 2012 so the gravel pit has been grandfathered in but this expansion requires a CUP. Todd Foster went out and looked at the site today. **Todd Foster** stated this is one of the cleanest facilities he has seen in operation. Very busy, very direct operation and ran very smoothly and signage was in place already. They seem to be operating under pretty strict operation. **Jeremy Olson** asked if the trucks were tarped on the way out. **Foster** stated no and that is something that he discussed with them there. They have a sign in place. **Director Huus** stated that is one of the conditions of approval. **Jeremy Olson** stated that is a standing condition. **Foster** stated it is a massive operation. He saw 25 trucks and was only there for a half hour and not one of them had a tarp on. **Olson** asked if they have signage. **Foster** stated yes, but that is a hard thing to enforce. The truck operator will be enforced outside of the business. They can put signage in place and we can tell them, but how something can be done beyond that point is the question. **Sandee Kimpel** stated the applicant is here if there are any questions.

Rod Lassy of Lassy Gravel Pit stated he is not running his own trucks there. He believes there are a number on contractors and county trucks as well. **Craig Hystad** asked if they were tarping the trucks from county. **Todd Foster** stated no they were not. **Gene Veeder** asked if Todd Foster would have a conversation with the county people. **Todd Foster** stated that he would as soon as possible and that he will follow up on that. **Kathy Skarda** stated that we (county) need to follow our rules that we have implemented, that is only fair.

Motion to Approve Lassy Gravel Pit - Conditional Use Permit #12-20CUP:

Motion by Gene Veeder , Second: Craig Hystad: Voice Votes: All Aye,:

Motion Passed

Jason Wolla - Zone Change #04-20ZC: Location: SW1/4 of Section 8, T149N, R98W. Parcel #630003662 & #630003664.12480 22nd H Street NW, Watford City, ND 58854 in McKenzie County:

Director Huus stated this is for a rezone of 2 parcels from Agricultural District to Light Industrial to continue to operate a trucking business. The parcels are located approximately 3 miles south of Watford City and a little bit east of 125th Avenue NW. He read the Findings of Fact for the record: *All requirements for public notification have been satisfied. The applicant is currently operating under CUP #0037-13CUP for a maintenance shop and with 2 employee trailer homes. Property is not in an organized township.*

Surrounding area is industrial use. **Director Huus** stated that area in the Comprehensive Plan is Light Industrial. He stated that they are complying with the Comp Plan and this is just another step in getting that whole area redone. He stated that it would be preferable to do the whole area at once, but did not know if it was appropriate to make this guy go after everybody, especially since that is what is happening around there. **Kathy Skarda** stated we are putting it Light Industrial. **Director Huus** stated under the Comprehensive Plan it is currently Light Industrial. **Olson** stated that it might be zoned Agricultural but the use is actually Light Industrial.

Motion to Approve Jason Wolla - Zone Change #04-20ZC:

Motion by Gene Veeder , Second: Kathy Skarda , Voice Votes: All Aye

Motion Passed

Erik Peterson Zone Change - #03-20ZC. Location: S12,T149,R99. Parcel # 650006735. 12621 22ND ST NW, Watford City, ND 58854

Director Huus stated this is a rezone of a property located south of Watford City at the intersection of Highway 85 and 22nd Street NW. The property has been used for oil field services since 2012 and is currently vacated. I will read in the Findings of Fact to get it in the record: *All requirements for the notifications have been satisfied. I did get an opposition by telephone from Rita Squelace and she lives directly west of the subject property. There are no current code violations. Building permits will be required for any additional buildings. Property is located directly off of Highway 85. Highway overlay district will need to be maintained. Engineering requires a Hydrology study to be completed due to excessive drainage issues on the property. If approved, property will have to comply with Light Industrial District zoning requirements. Current workforce housing on site would need a Conditional Use Permit in its current Agricultural Zoning as well as if the request for a rezone to Light Industrial is granted.* Due to the fact that there is not a Hydrology study on that piece of property, Planning & Zoning are recommending that this gets tabled until that gets completed. Conditions cannot be placed on a rezone. Everything has to be right for the rezone. He recommends tabling it until such time that they do a Hydrology Study. Erik Peterson says it is a very expensive proposition, so he is holding off on it until he decides what he wants to do. **Craig Hystad** asked what the property is going to be used for. **Director Huus** stated that its for sale. Erik Peterson would like to get it rezoned to Light Industrial. It is currently for sale and has a shop and some propane tanks. **Todd Foster** stated that Federal Gas Propane services, the two tanks you are speaking of, are currently operating out of there. They were grandfathered in and are currently just a tenant. That is what is currently working on the property. The housing in the back is vacant and that was another thing that was grandfathered in at the time. **Craig Hystad** stated that if the land needs a Hydrology study done, there is really nothing that can be

done with the property at this time and it will have to be tabled until the study is done. **Kathy Skarda** asked did you say that it had housing on there as well. **Director Huus** stated that there used to be and if they wanted to do that again, they would have to go through a CUP process regardless if it stayed Agricultural or rezoned to Light Industrial. Those are conditional uses.

Motion to Table Erik Peterson Zone Change - #03-20ZC

Motion by Butch Fleck , Second: Craig Hystad, Voice Votes: All Aye TABLED

Motion Passed

Cherry Creek Water-Johnson CUP/Reclamation Bond Waiver #020-19CUP/RBW:
Location: S1/2SE1/4,NW1/4SE1/4. S8, T149N, R97W.Parcel #580002300

Director Huus stated this is an application for a Reclamation Bond Waiver for one of 2 Johnson Ponds. We currently have not received an Indemnification Agreement so Planning & Zoning is recommending tabling this until it has been submitted. Prior to voting on tabling, I would like to have a discussion at the request of the County Commissioners regarding Reclamation Bond Waiver concerns. At this time I will refer that to Gene Veeder and Kathy Skarda. **Kathy Skarda** stated that she had a question on the time frame. For the Reclamation Bond Waiver process, with this document when you go to do your reviews, does that start on November 18, 2019 when it was set up or does that come now, at this date. When does the actual review take place? She stated they do not have to have a reclamation bond, but does it state there have to be compliance checks. Is the compliance check going to be on November 18, 2019 or on today's date when we have revisited this. **Director Huus** that it would follow the date of the original CUP and Planning & Zoning is monitoring CUPs a lot better. In the iWorQs data base system, we enter in when that one year inspection and checkup should happen. **Skarda** stated that she was asked what day the inspection would be taking place. **Gene Veeder** stated that once the applicant has their documents, it is a done deal. **Director Huus** stated that the CUP will still be in effect so it would still need to meet all the conditions of the CUP even with the Waiver. **Butch Fleck** asked if they understood that they have to take care of everything. **Director Huus** stated yes and that if you look at one of the applications in the staff report we included the Reclamation Bond Acknowledgement, where the property owner that is going to take it over, has to sign off on all the different things that are still part of that CUP and they still have to maintain even though it is in their ownership. **Craig Hystad** stated that he was unsure if Arlene, is capable of understanding this and realizes this, since it is still under her name and she is signing it. **Director Huus** stated that you have to be of sound mind in order to have your signature legal. **Skarda** stated that if the owner was not of sound mind and signed the document, that then it would end up in court. **Butch Fleck** stated

Arlene's kids just need to realize that if they have to take it over. **Jeremy Olson** stated that at this time, they are getting income off of that. If the property is sold they might not still receive income from that. **Veeder** stated that the intent was to protect the county and how we would be protected should somebody abandon it. There is not a legal question of who can sign it. The document protects us.

Concerns on having a document notarized was brought up. **Ari Johnson** stated that was a separate issue. The notary has to verify if that person signing is that person. The qualifications to sign are not asked by the notary. **Kathy Skarda** asked that this document is not notarized, but there is another one, right? **Jeremy Olson** stated we tabled this. **Director Huus** stated they had issues getting a notary because of Covid, so they will have to start over on that one. I do not know if they are going to move forward on it. There were a number of questions in regard to how we file Indemnification Agreements, and they need to be worked out. **Kathy Skarda** stated we do not want to approve anymore, because we do not want to get into trouble. **Jeremy Olson** stated that was why this was recommended for tabling because they did not have all the answers yet. **Skarda** stated concerns about the ones that were approved. **Director Huus** stated they would stay in place. **Olson** stated they complied with the rules as it was at the time and were approved.

Motion to Table Cherry Creek Water-Johnson CUP/Reclamation Bond Waiver #020-19CUP/RBW:

Motion by Butch Fleck, Second:Kathy Skarda Voice Votes: All Aye

Motion: Passed

**Cherry Creek Water-Saddle Butte CUP/Reclamation Bond Waiver #35-18CUP/RBW:
Location: Section 5, Township 149-N, R97-W. Parcel #580001200**

Motion to **Table Cherry Creek Water-Saddle Butte CUP/Reclamation Bond Waiver #35-18CUP/RBW**

Motion by Butch Fleck, Second: Kathy Skarda, Voice Votes: All Aye

Motion Passed

Commercial Truck Parking Ordinance Amendment 1st Reading:

Director Huus stated this ordinance is our 1st Reading of an Amendment to clarify the Commercial Truck Parking Ordinance. This is based on the Findings and Recommendations Report that was presented at the May 11, 2020 Planning & Zoning Board Meeting. In summary, the Amendment adds definitions for both Commercial Truck Parking and Residential Truck Parking. Neither of those terms were defined. Commercial Truck Parking was referred to in zoning districts as either an allowed use or a conditional use, and there in was the problem. It was decided that we should define both Commercial Truck Parking and Residential Truck Parking. Residential Truck Parking would be an allowed use in Agricultural and Rural Residential Districts. Residential Truck Parking would not be allowed in Urban Residential District because Truck Parking should be more for the larger lots. This also cleans up our Heavy Industrial District. It was mistakenly designated that Commercial Truck Parking is both an allowed use and a conditional use. It would be eliminated from a conditional use because it is an allowed use in Light Industrial. Going back to the Longview rezone and Marty Patrick CUP, this amendment would make his Residential Truck Parking as allowed once we rezone Longview to Residential-1. This is our 1st Reading and will come back again as our 2nd Reading.

Kathy Skarda stated it is intended to regulate a single truck parked in front of a residence but what happens if there are 2 or 3 trucks parked there at some point in time. What are the ramifications if somebody gets a second truck there? **Director Huus** stated that they would not be in compliance and it would be a code enforcement issue. They could try for a variance but he does not think that would be very well supported. It is taking the spirit of the ordinance in that district out of it. **Skarda** stated that sometimes it seems that we try to help and then somebody tries to take advantage of it. **Craig Hystad** stated that the other thing with residential, is if there is room. Some of these places do not have room and how do we determine that. **Director Huus** stated in Rural Residential the minimum lot size is 1 acre and whether that is enough room, he does not know. **Dana Roff** stated that they would have to follow the setbacks requirements for Rural Residential. **Ari Johnson** stated that he thinks setbacks are only required for structures. So maybe we could add Residential Truck Parking within the setback area, within the area allowed for structures or something. He would not just pass this and assume setbacks apply to truck parking. But as far as if there is enough space or not, he doesn't think we want to dive too far into the weeds on that. If they have enough space to park a truck without trespassing on the neighbors or the road or on a road then they are fine. If they do not have enough space then that is their problem and they need to get a different lot to park their truck. But if you want the setbacks to apply to trucking, then we want to add that onto what we have written. **Jeremy Olson** stated that I do not think would want that to be put within the setbacks. If a guy parks on his property line, it is temporary, it is overnight, make it go within 25 feet it might go into his yard. How many of us have our gravel parking lot right at the

edge? As long as it is within the property line and it is not hindering and it is moveable. **Todd Foster** stated that people utilize semi-trailers or commercial trailer structure for onsite storage and for whatever purpose, drive-in trailer parked right at the edge of the property line that has been sitting there for 10 years, that may be considered permanent or mobile. **Jeremy Olson** stated that this is for trucks only and does not apply to trailers. **Foster** asked if trailers were included in this. **Director Huus** stated the way the Residential Truck Parking is defined no more than 1 commercial truck can be parked at a residence. Provided that person operates that truck at a residence. **Foster** asked what our definition of a commercial truck. **Craig Hystad** stated that it would have to state truck and trailer. **Director Huus** stated the definition of commercial truck based on the gross vehicle weight. **Butch Fleck** stated a commercial truck is anything over 26,000 pounds. **Johnson** stated that when we originally wrote this, we stated that a commercial truck is something that is above that because up to 26,000 pounds inclusive you do not need a CDL to drive it unless you are driving it for commercial. He did not recall if it requires the truck to have a tractor unit or maybe just drop the trailer and park the truck somewhere else or drive the truck off or if it has to be hooked up. If that is a concern, we should probably take a look at it in the 2nd Reading. **Jeremy Olson** stated that if it does include a trailer unit, is not to be permanent, to be overnight parking and not a semi-permanent parking. **Foster** stated if that is a concern whether it is for advertising or semi-permanent and not being used regularly as truck, that is outside the intent of what we are doing and we should if possible address that intent. **Skarda** stated the CUP for Marty Patrick is for his truck and trailer. **Johnson** stated that we did not intend to allow that. We did not want to allow people who drop the truck and bobtail off to work and store everything they own in a permanently parked trailer. **Foster** stated some of the regular uses we do see are that this is used as advertisement.

Jeremy Olson asked where an appropriate place to put that would be. **Director Huus** stated that would be to put it in the Residential Truck Parking definition and getting that more narrowly defined. **Olson** stated we will let the staff figure out the proper wording according to intent. **Director Huus** stated we will work on that and we may even have a few little tweaks at the second reading. **Cody Knetzger** asked what if the truck contains hazardous materials? **Director Huus** stated we could include something to prohibit hazardous material. **Foster** stated that DOT currently regulates that. **Director Huus** stated that hazardous materials would have to comply with hazardous material rules.

Motion to Approve the First Reading with the Recommended Changes:

Motion by Gene Veeder , Second: Craig Hystad , Voice Votes: All Aye

Motion: Passed

DISCUSSION ITEMS:

CONDITIONAL USE PERMIT REVOCATIONS

Director Huus stated that he included the same list from the May 11, 2020 Planning & Zoning Board Meeting. Since then White Horse Water and Larry Singleness have submitted Reclamation Bond Waiver applications, so assuming they get approved with their Reclamation Bond Waiver, they should be able to be taken off the Revocation Hearing. The other one is Justice Oilfield and they have since sold their property to Erik Peterson. They desire to have either their CUP revoked or voluntarily terminated. So in light of that, if we can complete the Reclamation Bond Waivers for White Horse Water and Larry Singleness, there will not be a CUP Revocation Hearing next month. **Kathy Skarda** asked if the Board needed to revoke his CUP at this meeting. **Director Huus** stated no and this is only a discussion item. He stated that notices were sent to the owners of the CUPs on that list. The result of that letter was to give Larry Singleness and Duane Sands the chance to submit Reclamation Bond Waiver applications. **Skarda** asked if any signed documents were required from them for the board in regard to Justice Oilfield and what they wanted to do. **Director Huus** stated yes and that they can cancel it voluntarily or we can bring it in to the Revocation. He doubts if that is what they want to do, he thinks they would just want to cancel. **Skarda** stated just so we have documentation signed by them of what they wanted. **Director Huus** stated that is what we do with others. They say they do not want this CUP anymore so we just put a note in the file and it is no longer in existence. **Jeremy Olson** stated so we have one that is going to go away and three that are in the application process of trying to get waivers.

BUILDING PERMIT FEE SCHEDULE REVISIONS

Director Huus stated at the May 11, 2020 Planning & Zoning Board Meeting he had mistakenly indicated that the Building Official had the authority to set building permit fees and have since conferred with our attorney, Ari Johnson. It was concurred that County Commissioners are to set and approve those fees. He added some points to our fee schedule because there were some things not on there that should have been. Also some ways we were interpreting, taking some liberties at how fees were being charged. Through review with our building official and based on conversations with others clarification within the Permit Fee Schedule with both in the Residential Permit Fees and the Commercial Permit Fees were developed. He highlighted in yellow the changes that are being proposed. He did not revise any of the fee amounts. The existing fees were set by the Commissioners in 2018. He is requesting that this Board and the County Commissioners require fee adjustments at this time. As Legislator and former County Commissioner, Dale Patton, stated at the beginning of this meeting, fees

that will pay the Administration of the Planning & Zoning Department should be charged. If we do go to that method, our fees are going to have to go up a lot. He does not know if the county is comfortable doing that or not. It is totally up to you and the County Commissioners on how they want to establish those fees and if they want to adjust. He can make recommendations of what that would have to be to make our department cash flow. **Gene Veeder** stated that was the intent at that time but we did not want it to be cost prohibited either to the customer. Some fees were so excessive that the customers were complaining. He thinks the city went into that but he thinks their fees were pretty strong and that was inhibiting them doing housing in the city limits because the fees were too high. He has not heard from the commission about adjusting the fees. He would just leave it until the commission comes forth and states they are hearing complaints about it.

Kathy Skarda stated that she had a question from Mr. Brian regarding the 200 foot breezeway and being charged \$500 for that attached accessory building. Then Scott's text was that it was the fair and just way to apply for that. After looking at the permits, she saw that 2180 sq. ft. building was charged \$750 and he had a 200 sq. ft. building that was valued at \$4,500 and he was charged \$500. She questions do we want to have a building that is only worth \$4,500 and we are charging him 1/5 of the whole value of the breezeway for a fee to build it? She thinks we need a little more discretion on that. **Director Huus** stated that he did add the attached accessory building. Attached is the key term here. Once it is attached to the building it brings in the whole building inspection criteria because it is part of the dwelling unit structure, so it does require some inspections. He included attached accessory buildings less than 200 sq. ft. and put an example breezeway built at a separate time from the house and set that fee at \$500. He also included a one-story detached accessory that is less than 120 sq.ft., used as a tool and storage shed, playhouses and similar, that no permit is required. That is taken right out of IBC and he wanted to follow IBC. **Skarda** asked if there would ever be a breezeway that would be built that would also be under the unattached the detached accessory with no permit required. **Director Huus** stated a breezeway is typically attached and then would have to be inspected. But these other types, such as toolsheds, playhouses, etc. do not require a building permit. **Skarda** stated that she just questioned the \$500 fee for a \$4,500 valued structure. **Director Huus** stated that he could change that to what the Committee felt was fair. **Jeremy Olson** stated that Skarda had discussed regarding having the flexibility to change fees and questioned Director Huus for using his judgement and flexibility. **Skarda** stated that this would be passed on to the commissioners for approval and they would approve it. She did ask him about it and she was glad she did because the constituent asked her about it. This is very helpful because it would be better to take it and have a less fee or not. If the group concurs this is perfect then she is ok with that. She stated that was not her intent. **Olson** stated my apologies then. **Foster** stated they could research other counties to see what they are charging. **Director Huus** stated that when you look at what other places are charging for building permits, we are pretty close. He stated that he had checked

out Rapid City and we were pretty close to what they charge too and I do not think our fees are a lot excessive one way or the other. **Skarda** stated she appreciated and liked the disclosures on the penalties so that anyone looking at it will know it is right there. **Director Huus** stated that he also added to the residential and commercial side. **Jeremy Olson** asked what the goal of the discussion was. To be discussed, brought forward to the County Commissioners, or have there been any changes in the fees. **Director Huus** stated that he thinks that a motion to revise and accept these recommendations should be made. It would be sent to County Commission at the June 16 meeting for their approval. **Craig Hystad** stated that none of these are based on percent of value, you just have what it is perceived at as the cost for us to inspect it, right. **Director Huus** stated that the commercial ones are based on value. **Craig Hystad** stated that he did not look at that the other day. **Director Huus** stated stick built single family homes are just a flat fee. **Jeremy Olson** stated that residential are just flat fees and commercial is sliding scale based on value. **Director Huus** stated yes and some places do base the fee on the value of that, even residential but we do not do that here. **Craig Hystad** stated that it would be pretty hard to change from that, for example \$500 for this addition that only costs \$7,000. **Director Huus** stated that it would affect the first two, the stick built single family home and the residential. **Craig Hystad** stated that you cannot do just one and not the other. **Director Huus** stated this is going to cover our inspector but it is not going to pay for our planners and other administrative. **Skarda** stated she just wants it to be transparent so that people who look at it can read it can understand it and know the fees. **Jeremy Olson** stated that he had a question from a citizen. Do these building permits apply on an agricultural build greater than 40 acres? My understanding was that it did not, but I did not want to give the person an incorrect answer. **Director Huus** stated that you still have to get a building permit regardless. It depends on what the building is. If it is an unheated uncooled building, you do not need a building permit, if it is detached you have to sign an affidavit. If they are building a house, they still need to get a building permit. **Dana Roff** stated that there is a definition of that. That is a storage shed, pole barn, with no heat, no air conditioning, agricultural use only, the building does not need a building permit, just an affidavit. Any type of agricultural use, barn, shop etc, as long as it does not have a public gathering place in effect, we do not require a building permit.

Motion for Recommendation for Approval by the County Commission

Motion by Kathy Skarda, Second: Butch Fleck Voice Votes : All Ayes

Motion Passes

ADMINISTRATIVE CUP APPROVAL LIST

Director Huus stated there were none in May.

NOTIFICATION REQUIREMENTS (SKARDA)

Kathy Skarda stated on the notification requirements some people had stated that they did not receive the notifications. She stated that she just wanted to verify feet requirements on the development checklist. **Jeremy Olson** stated this was previously discussed a couple of months earlier. **Director Huus** stated that we have changed our development checklist. The planner and I will sit down with the applicant and figure out if it needs to be 300 feet, a half mile or a mile depending on what it is. If we are close to the ETA, if we said a mile, it would include all of Watford City. **Skarda** wondered if fresh water ponds would also be included in that type of consideration. Sometimes it might be in the middle of a field or barnyard, etc. owned by someone else. I just wanted to make sure that was included in here. **Director Huus** asked if she was suggesting that they notify people that are out away a mile from a pond. **Skarda** stated that she was bringing this up, but that Planning & Zoning are working through it. **Dana Roff** stated that as far as legal notice she tries to look off a couple of our maps to get the addresses we have there. She stated that she also goes on the tax website and sends it to their address that is on their taxes to try to make sure that it gets there.

FEE SCHEDULE (SKARDA)

Kathy Skarda stated that this was already touched on.

STAFF ACCOUNTABILITY (SKARDA)

Kathy Skarda stated that as she was reviewing some of the permits given to them from the Board of Commissioners meeting, some of them did not have amounts, some were blank, some were cancelled and that had been upgraded. She just wanted to make sure that we were completing the forms and making sure that we all have information given to us to make sure that everything is going. A couple of years back, we as a commission, had to review a public works permitting process because we ended up with over \$400,000 and you and your staff helped fix that. **Director Huus** stated yes. **Skarda** stated that she would not want that to ever happen again in any of our processes, be it building permits, planning permits for example. We just need to make sure that we have our forms, our summaries that we can submit to Planning & Zoning if asked, to the Board of Commissioners. It helps with our transparency and to make sure that we are doing everything the same for everybody. That was my concern. I was hoping that these forms and making the spreadsheets would help us to make sure that we are doing things right. **Director Huus** stated one of the problems with the spreadsheet is that when we have moved more into iWorQs sometimes there is double accounting, for example and sometimes it is difficult to keep up. I did have a visit with staff about making sure we keep that up to date.

FEES FOR COUNTY PROJECTS (SKARDA)

Kathy Skarda stated that when the landfill did their clean-up day they came to the County Board of Commissioners to make sure that it was okay to waive those fees. If someone has a problem with their taxes, they have a process to go to tax abatement and have a process at the Board of Commissioners to make sure that it is waived or stays the same. I think it is important that if we are going to waive fees for any project, that it comes before this board with a recommendation and then goes on. I just really do not want anybody to say one was approved for one person but not for another person. I want to make that a process, that is a rarity and not a do a work as you proceed. If it is a county project, I really think it should be brought before the Board of Commissioners to make sure that we are onboard with it as well. That is what the other departments do. **Director Huus** stated I agree and I will be the first to admit that I should not have waived that fee on CSI for the one they had, but in my defense, I had been here a month and I did not what my authority was. I did see that in the past we have waived fees on county projects and it was a road project. The county is going to ultimately have to pay that fee anyway, so it is almost like we are charging ourselves. **Skarda** stated that it just needs to be, if I understand right Ari, that the Board of Commissioners are the only ones that can waive fees. **Director Huus** stated I have not been waiving any other fees. **Jeremy Olson** asked if since September have there been any others. **Director Huus** stated not that he could remember. **Olson** stated that is a dead issue then. **Ari Johnson** stated that the Commission sets the fees, that would include any procedures for waivers which I think should be in the ordinance if we are going to be waiving fees at all. We should have a rule on how to do it and whether the applicant can ask for one or not. Regardless it is the County Commission that can make that call. **Skarda** stated that she does not like to see waivers because then that leads to too much gray area.

RECORDING APPROVAL CUP'S (SKARDA)

Kathy Skarda stated we are going to send all these to the Board of Commissioners on Tuesday to get their final approval. After they are presented to us and we approved it, I also think we should send them on to the Recorder's Office to make sure that everything is compliant with any changes in zoning and what that tax implication may be, or GIS.

Discussion regarding recording of CUP's and other applications approved by the Board of County Commissioners and if they should be recorded at the recorders office as an encumbrance on a property and for taxation purposes followed. **Gene Veeder** thought it would be good to record. **Ari Johnson** advised against it and questioned how those records should be maintained. He indicated that they would be on record at the Planning and Zoning Department.

There was also a discussion on public notification for County projects and if they should have to go through the planning process.

PLANNING & ZONING BOARD MEMBER BETHANY DEVIN'S TERM

Director Huus stated Bethany's term is up. So her board position is one of two positions that are appointed by the City of Watford City that comes from their pool of City Counsel people. According to Bethany they will wait until after the election to assign board duties to the City Council. He was hoping she would be here to answer a couple of questions. He believes that the City of Watford City representatives will be selected in time for our July 13, 2020 Planning & Zoning Board Meeting. Gene Veeder stated, because our chairman questioned this. Why we have City Council members on this board is because of the Extra Territorial Area that Dale brought up. We are actually giving up our zoning responsibility to the city. Dale asked why we have city people on the Zoning Board and that is exactly why. **Director Huus** stated that it is stipulated in the North Dakota Century Code. **Veeder** stated in other words they will select that appointment after the election and they might have new members to come out of this.

OTHER BUSINESS

Craig Hystad stated from last meeting we approved the Hartel Water Pond and then it came out as the Elkan Reclamation Bond Waiver. Why did we get it presented as the Hartel and when the Waiver went through it went through as Elkan? **Sandee Kimpel** stated that the way iWorQs, our online system works is that whatever title it was given originally, when Dana or I go to make a new report, no matter what we name it, the system will title it the name it was originally given at the top of that report. So that was her mistake for not noticing that somebody put in Hartel instead of Elkan and changing that because legally it was Elkan. **Craig Hystad** stated we approved the Hartel, we did not approve the Elkan. **Director Huus** and **Kimpel** stated they are the same thing. Hystad stated they are not. One is a corporation and one is private. **Director Huus** stated it is the same CUP. **Hystad** stated they have the same CUP but the waiver was from a different company. **Kimpel** stated that the CUP number was the same on both. It was definitely that mistake between the names but it is the same thing. The legal property owner was the same thing. That does not come through to the Commissioners until we have ownership information. None of that comes through and goes to the Commissioners until we have all of that. If somebody else entered it in 2018 as Hartel, under the Hartel name instead of writing Elkan that is how that happened. The ownership discrepancy was discussed. **Veeder** stated they have an LLC that consists of the Hartel family that is Elkan. **Kimpel** stated that just means that I have to go back

and check to see what somebody previously named it. **Hystad** stated that they approved the Hartel and the next thing is that Elkan going to the County Commissioners was not this one, it was Hartel. It was stated as Elkan in the waiver sent to the commissioners. **Kimpel** stated I see what you are talking about. **Huus** stated the waivers follow the owner of the property not necessarily the applicant. **Hystad** stated the waiver was for Elkan and it was presented to us as Hartel. **Kimpel** stated that she just needs to do a better job of checking that so we can avoid this confusion. **Director Huus** stated that he should have caught that. **Butch Fleck** stated that is Ari's job. **Ari Johnson** stated that he would have to review it in detail but he doubted that there was a problem. **Veeder** stated that in the future we should recognize who the landowner is and they are actually signing the release to the county. In the case because they are one in the same we are going to be able to hold him accountable legally. **Ari Johnson** stated the company is owned by the family and the land is owned by the family. I would have to look at the exact documents and make sure but I doubt there is a problem. If needed, we can review that. **Olson** stated that we just need to approve an addendum stating that they are the same and attach it. We would want to recommend to the name. **Johnson** stated we approved May 11, 2020 minutes at the beginning of this meeting, so we just need to revisit that motion to make that correction to last month's minutes.

Motion to rescind the approval of the minutes so a change can be made: Kathy Skarda; Second Craig Hystad. Voice Votes: All Ayes
Minutes are now open for revision: The previous approved name change from Butch Fleck to John Irwin on page 7. Then on page 12 Motion to Approve Hartel Wolff Reservoir CUP #0014-19 and amend it to reflect Elkan Inc. Reservoir and Hartel Wolff Reservoir, Kathy Skarda, Second: Craig Hystad. Voice Votes: All Ayes

Motion Passes to approve the minutes to reflect those two changes

Director Huus stated we have been putting together an information booklet for the Planning & Zoning Board with different instructions on how to be a Planning & Zoning Board Member. What your duties are, what your expectations are. Dana Roff has been putting a lot of effort into it and she is gathering up information. Things like now that you are on the Board, what is expected; there have been issues in figuring out how to log into your tablet and how to get into Novus Agenda. We are thinking about setting up some kind of formal training to meet with new Board members and just going over what is expected and how to log into your computer, etc. We are working on that and Dana has been doing a very good job. It includes the ordinance, zoning maps, comprehensive plan maps, rules of order, how to make a motion. **Jeremy Olson** stated that is a good idea especially when someone new comes on. **Director Huus** stated when I was on the Rapid City Planning Commission, the planning & zoning staff took us to new members and did a little formal training. It would take an hour or two during the day sometime. It was very helpful. Dana has really been pushing this. Even

for ones who have been on here for quite a while they also might learn something. **Olson** stated I think that is a fabulous idea.

Director Huus stated the only other thing is to wish you board members good luck tomorrow in the County Commission primary election. Good luck to you. The commissioners thanked him.

ADJOURNMENT

The meeting was adjourned at 7:27 PM

The next meeting of the McKenzie County Planning and Zoning Board will be held on July 13, 2020 at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM

I know that the GIS usually does perform everything and review it. They brought down the addresses that are invalid, from 3,000 to less than 90 and they really want to make sure and double-check their work and make sure it is done correctly. I was thinking after it gets approved by the County Commissioners, if we could forward it on to them. We have that approval listing on the cover sheet of the agenda and we could send that on to them so that they know specifically which ones have been approved. I wonder if that would be good enough, Gene Veeder, in case we table something, how would we document that. **Jeremy Olson** stated we should have Gene's perspective on this. **Gene Veeder** stated I guess I was not aware that there was an issue with that. So I do not have a comment on it. **Olson** asked if there was an issue on it. **Veeder** stated I do like the recording part of this. The concern I have is, you brought up is hard to record it and as much as this real estate trades hands, I would like to have a consistent document so people know when they are purchasing a piece of property, whether there are encumbrances. I do not know what that process is. You will wind up with challenges and there is no perfect system but a way for the public to know that there are some encumbrances on it. **Director Huus** stated we do send Katie Paulson all of our CUP and staff reports at the same time we send those, but maybe there needs to be the next step. Because sometimes, some get tabled and it is assumed that they were approved. **Skarda** stated my concern is for example, that I have Agricultural land and it is going to be changed to Industrial. Is Light Industrial taxed differently than Agricultural land? **Director Huus** stated the way Katie taxes is completely different than Planning & Zoning. We have things that are in Agricultural Zone that are taxed at a commercial rate. **Skarda** stated that frequently Katie will get the information with what is called omitted property and then it has greater tax value than with just plain animals. **Veeder** asked what the question is. Is it that she not receiving it or that it needs to be consistently brought before the tax department. **Skarda** stated yes. **Veeder** stated I did not know there was an issue with that. **Veeder** stated that we do not discuss it to death let us find out if we have a problem and let's fix it. **Olson** stated he just want to make sure we are not making a solution in search of a problem. **Veeder** stated I think there is an issue there because we have run into that before. People have come in and said I bought this property and did not know. There is an obligation to publicly notify any changes in that. If there is an issue with that and they are not getting recorded, then we need to find out how we can make it recordable. If I am purchasing a property I think it is an obligation for the seller to disclose any encumbrances on that property. Disclosure is fine, but if there is no public disclosure than how do they know what that is. Maybe Ari can weigh in on that as to what the best way to do that. **Air Johnson** stated I want to weigh in on that, it is in part a policy decision to be made by the commissioner. We also need to recognize the purpose of the County Recorder is to keep a record of documents that affect title to land on deeds, mortgages and things like that. Encumbrances would include easements. The CUP is not an encumbrance, a zoning ordinance is not an encumbrance. When I write a title opinion, I say you are aware there are zoning ordinances that affect the use of the land

as opposed to the title. When you are buying or selling land the permissible uses, existing uses are questions for the buyer or seller to resolve. The title to the land is what the recorder's office is there for. There are frequently things recorded that do not affect the title. The basic requirements are that they have the legal description and even that is negotiable and they need to be notarized and that is not negotiable. If we need to record CUPs or notices, that there are CUPs or the Reclamation Waivers or anything like that, there is a way to get around the notary requirement for somebody to file. This is something you will see with pipeline easements. You will see a pipeline easement that is 50 pages long, one of the terms will be that an operator may record an abstract of the existence of an affidavit of or notice of the easement. That is a one page document that is notarized and gets recorded so that the public is on notice that there is a pipeline through the land, but the 50 pages of terms are kept private. So the Recorder's Office, I do not think they have anything to do with Conditional Use Permits, or Reclamation Waivers or anything like that. We do need to keep a record of that. But I do not think the county Recorder's office is the place to do it. GIS is a good place to show it so that people can easily find out what CUPs exist on their land, and what restrictions there are including Reclamation Bonds or Waivers of that. Also they should be able to go to the zoning office and ask what the zoning for this land is and what CUPs are out there if they are thinking of buying land. It is just like when you buy land with a house on it. There is not a Recorder's Office entry. These are all things that you do not go to the Recorder's Office for. There is not a recorded document that states there was a house on the land. For instance, you go look at the land and you see a house and you ask questions like is that house allowed. Was it before we had building permits or a Certificate of Occupancy. These are all things that you do not go through the Recorder's Office for. The question is how can we maintain those records. Something that the Zoning Office probably be doing and working with GIS so people can easily get that information so someone who is prospectively buying or selling land and find out what the GIS shows is allowed or exists on it. As far as taxation, that is the Tax Equalization Director's job, is to be notified of changes of use and that is where we notify of Conditional Use Permits and there have been zone changes in subdivisions and things like that. It will all go to the Tax Equalization Director. Those are in the same office as the Recorder and that is where some of the confusion comes from. The Recorder automatically notifies the Equalization Director if some land is deeded from one use to another and the deed shows a change in use, it is obviously going to trigger a change in taxation. I think we need to work with the Tax Equalization Director and go through the proper channel to notify of changes in use that do not go to Recorder's Office that CUP, but I do not think that means that they have to be recorded. As someone who has to read abstracts, I personally do not want to look at an abstract with a lot of extra CUPs thrown in it. I am going to ignore those anyway and then in my title opinion, I am going to say follow up on this thing, Bob owns the land be aware that there is zoning. **Skarda** stated the right description and the right department is Tax Equalization. **Johnson** stated that is the main place, you want to get the tax right and that is the right department. They are in the same office and sometimes the same

person but they are different functions. I think that knowing the line between those functions is important in deciding what we do. With that being said, if we need to be recording CUPs, that is the County Commission's decision to make. Same with the Reclamation Bond Waivers. Then if that is the case, then they are going to have to be notarized or have some document that can be notarized to go with them. As far as recording them, I do not think it is necessary. **Jeremy Olson** stated the question I just thought of here, with the Reclamation Bond Waiver that was required to have a notary, was that because you were trying to record it? Is that the only reason you had a notary put on that requirement or is that something else. **Director Huus** stated it is to make sure that whoever signs that is that person. **Johnson** stated a trip to the Recorder's office is what triggered a lot of this discussion. **Veeder** stated that is really helpful because from my perspective it is a big picture perspective. Just so the buyer knows where to go for the information, whether it is recorded or not. In the abstract when you are doing a title opinion you say be aware that there may be other factors and they have to have some responsibility. **Johnson** stated there is a whole CYA on a boiler plate in a Title Opinion and the possibility of zoning restriction is one and the possibility of easement by uses is another one. If I trespassed across your farm for 100 years to get to the lake and you do not stop me, I have acquired an easement by your failure to stop me and that would not be recorded but I might have rights that are not recorded, so I think there are several CYA paragraphs to go in pretty much every title opinion, and zoning is one of them and that is not just zoning restrictions but also the possibility of a CUP. I would point out the Reclamation Bond Waiver will outlive the CUP, that is the whole point of the Waiver, is so that will outlive the CUP. I think something we need to do in the Zoning office is to work on a good way to keep track of those in the long term is because they are a new thing. We do not have other things that outlive the CUP that they are going with, that is something that is a learning curve for the staff and me. I have been working with them on that. **Veeder** stated that on our, the Commission, side we want to eliminate the citizen coming to us and saying the county placed some sort of restriction on his property and I did not know where to locate a document, so I could go back and tell them what their responsibility is. We cannot protect them from everything. **Johnson** stated it is no mystery that McKenzie County has a zoning ordinance that affects what you can and cannot do on your land, is no longer a surprise to people. Seven years ago people were surprised that we did not have ordinances but I do not think it is a surprise anymore. You can drive into this county without finding out we have building permits required because that is a sign the every county order including with the reservation. So these are not shocking things for people to find out and I think that you can find out the we have a Planning & Zoning Office that knows this stuff and that is where you go to find out what you are allowed to do on the land. **Veeder** stated so I think that the point being made if there is a change in taxation, is that as long as this Board gets it to that Office, and that office records it the way they need to, and we have a ready set of documents showing what might be attached to a certain section, then I want to make sure that we are covered so that we do not have to say as a commission say, we should have did that. So I think we might have a process that can

work. **Johnson** stated there is a lot of communication between many offices, to make sure that the people that need information, get it in a timely manner and without overwhelming anyone. **Jeremy Olson** stated as part of your CUP process, do you send it to them now. **Director Huus** stated we send our staff reports to them so they know what is going on. What Katie does with those, I do not know. **Olson** stated that from his understanding, the Planning & Zoning staff is already doing that. **Director Huus** stated correct. We are already doing that but we are probably missing a step. After it gets approved by the County Commission, if it gets tabled, she just assumes that all of them were approved. **Skarda** stated so the ones approved by the County Commissioners are the ones that are sent there. **Olson** stated so the final approval is what we are talking about. **Director Huus** stated that is correct and that is something we could do. **Johnson** stated and the building permits go to the Tax Equalization as well and they know about building permits. **Director Huus** stated I believe so. **Johnson** stated we need to get the tax information to the Tax Director so that the taxes reflect reality. Dana Roff stated that as far as new property, if you purchase new property an approved realtor would use a new document that is a Seller's disclosure statement. That statement the seller has to fill out and anything they know about the property they need to list, but a lot of the realtors around here do not use those. If they would it would stop a lot of that and it would help. **Veeder** stated so do be aware of that and that we may have a problem at the end and that end is at the commission if somebody comes in to challenge. I just want to be at a comfort level that that we have done what we were supposed to do. **Skarda** stated so we have all the documentation on file. **Veeder** stated that you have some responsibility. **Foster** stated in regard to the Arnegard water tower, there was damage to the water tower from the wind and it is something we have questioned. Should it be something that we should have direction on, or do we have it recorded or should we leave it as it is. **Veeder** stated record it. **Olson** stated so guys had nothing to do with the water tower project at all. **Foster** stated it was attempted to but it was decided not to. **Director Huus** stated I disagree that the Water Department needs to get a permit from us to build a water tower. **Skarda** stated I just want the development check list completed correctly and make sure that it is following all the rules and guidelines. If we expect our citizens to take and build something according to our guidelines in this book but the county does not then something happens and county tax dollars that are effected as well. **Foster** stated I do not know if the damage was a result both of the missed inspections. If certain procedures are followed too this could have been stopped from happening, I just want to clarify it and to keep it from happening. That is a big project on a big structure. **Director Huus** asked so are you saying that all county projects should come through Planning & Zoning for approval. **Foster** stated myself, no. This was a big project and a big building. **Skarda** stated maybe we do not need to do approval but maybe they should fill out and complete the same development checklist to make sure they are following all the rules and guidelines to make sure that it is okay. **Olson** asked if there has been a need to. I guess I am going back to are we trying to create a solution to a problem that does not exist. **Director Huus** stated that it seems like we are. **Veeder**

stated I am just saying why we are going back to having this conversation. Who are we protecting from what? **Olson** stated the county from the county. **Veeder** stated exactly. Is an adjacent landowner going to be damaged? It is not taxable so it does not affect the entire space so that is the big question I have. They are inspected by the water authority, the engineers and the civil portion of it has to be inspected. It is not the county that does that. When they build them they have an inspection process that goes through another public entity the water district or laws so there is an inspection procedure there and not only would I double down on that. I can tell you from working on those that they fail all the time. You are not preventing that so we just have to decide whether that is an adequate inspection process. In order to get bonded or funded from the state required inspection from certified engineers. Again, I do not want to find a problem where there is not one. **Roff** stated was there legal notice and is there legal notice that has to be filed on something like that to the surrounding people that live around it. That is a big structure, would you like it next to you. **Butch Fleck** stated the city of Arnegard is the closest and that is a mile each way. **Veeder** stated it is all through the easement process. It is the City of Arnegard's water tower and they are notified of the damage. **Roff** stated there is a house across the road. **Fleck** stated that it has been vacant for a number of years. **Veeder** stated we are dealing with a water district issue but it could be brought up to the water district if you want those properties noticed. **Foster** stated he had received quite a few calls on it and I just wanted to get clarity on it.

July 2020

Planning and Zoning Commission Minutes

July 13, 2020

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

Pledge of Allegiance and Roll Call

Members Present: Craig Hystad, Kathy Skarda, Jeremy Olson, Butch Fleck, Gene Veeder, Heidi Brenna, John Irwin, Matt Beard

Members Remote: Cody Knetzger

Members Absent:

Staff Present: Planning Director Curt Huus, Planning Attorney Ari Johnson, Code Enforcement Todd Foster (arrived at 6p.m.), Sandee Kimpel, Dana Roff, Cindy Jensen

Staff Remote:

Jeremy Olson welcomed and introduced new members Heidi Brenna and Matt Beard. He stated a Board Member orientation was held the previous week. The orientation was led by Director Huus and Dana Roff. **Director Huus** stated members attending were new board members Heidi Brenna & Matt Beard, and current members Jeremy Olson, Craig Hystad and Cody Knetzger. Books prepared by Dana Roff were given to all members, including those not at the orientation. Any members not able to attend the orientation may be scheduled for one if they would like to.

Others see sign in sheet:

June 8, 2020 Minutes change on Page 7, June 8, 2020 minutes. Change Marty Patrick #09-20CUP from TABLED to WITHDRAWN. Motion to Accept the minutes as Amended. Motion: Kathy Skarda, Second: Butch Fleck . Voice Votes: All Aye

Motion Passes

Code Enforcement: Todd Foster – Fire Permit Fee Schedule.

Motion to push Code Enforcement to end of Meeting when Todd is Present.

Motion by Gene Veeder, Second: Craig Hystad. Voice Votes: All Aye

Motion Passes

Violations: None

Fire Department Review Board - Due to the Covid-19 situation this will be continued until further notice.

UNFINISHED BUSINESS:

Cherry Creek CUP/Reclamation Bond Waiver #020-19 Amend CUP Location: S1/2SE1/4,NW1/4SE1/4,S8,T149N,R97W. Parcel #580002300

Director Huus stated that this Reclamation Bond Waiver #20-19 was postponed at the June 8, 2020 meeting to allow the applicant to obtain a completed Indemnity Agreements and Landowner acknowledgments. We have contacted the applicants several times requesting them to give us that information and we have not gotten a response from them. I recommend postponing the Reclamation Bond Waiver Applications indefinitely and begin the CUP Revocation process by sending a letter to them that they have not met the original CUP requirement of a Reclamation Bond. **Jeremy Olson** asked if applicant is referring to Johnson or A2S. **Director Huus** stated the applicant was Cherry Creek Water A2S but we will notify the landowner as well and if there is an agent, we will notify them also. We send the letters registered and give a certain amount of time before we put it on the legal notice for a revocation hearing. **Olson** asked how many months this had been. **Director Huus** stated Conditional Use Permit was approved in November 2019. At that time we were starting to write the ordinance for the Reclamation Bond Waiver and we were giving them some leeway with that process. **Kathy Skarda** asked if we have signed documentation from Mrs. Johnson. **Director Huus** stated that she had signed and initialed the document but it did not get notarized, so we were not able to accept it. **Skarda** asked if Mrs. Johnson or Cherry Creek been contacted. **Director Huus** stated that they had been contacting the agent, Cherry Creek Water, and A2S with that information. He stated that this CUP should postpone indefinitely until the required documents are received.

Motion to Postpone indefinitely until Director Huus has some communication from Cherry Creek-CUP RBW#20-19

Motion by Butch Fleck, Second: John Irwin, Voice Votes: All Ayes

Motion Passes

Cherry Creek CUP/Reclamation Bond Waiver - Johnson E. Pond #035-18 CUP-RBW- Amend CUP Location: S5,T149N,R97W. Parcel #580001200

The discussion for CUP#020-19 Amendment applied to this application CUP#035-18 Amendment.

Motion to Postpone Indefinitely until Director has some communication from Cherry Creek-CUP RBW#35-18

Motion by Butch Fleck, Second: John Irwin, Voice Votes: All Ayes

Motion Passes

Building Permit Fee Schedule Review

Director Huus stated this was approved at the June 8, 2020 Planning & Zoning Board meeting and then went to the Board of County Commissioners for their consideration. They sent it back to us to look into Agriculture Exemptions and some of the fee amounts. Since then we have added a line item for Agricultural District exemption, revised some of the fees for attached accessory buildings less than 200 sq. feet and the deck permit fee was reduced. Before I send it to the Board, I would like Kathy Skarda and Gene Veeder to weigh in on this. **Kathy Skarda** stated that she has received a number of phone calls from property owner in the Agricultural District regarding the proposed changes and would like to review the changes some more. She stated that she would like to wait until the August 10, 2020 Planning & Zoning Meeting so that the property owners can also give their input. **Director Huus** stated that could be possible. There was a discussion on changes that could be done to make the notice in the Farmer Newspaper more visible to the public because at times, the notice is either hard to read, or easily missed. **Jeremy Olson** asked if this was more of a document that would go through a Planning & Zoning Hearing, or a Public Awareness Legal Hearing. **Director Huus** stated that it does not have to go through a Public Hearing Process, but does not mean you cannot. **Olson** stated that he had also been receiving many phone calls from the public and just wanted to make sure this was done properly. **Gene Veeder** stated there is a Planning & Zoning meeting every month and if there is an issue, then those concerned should be talking to the Planning & Zoning Board. For those “hot button” issues, if we wait until the next meeting, then that means that those people will be waiting another month. The Agriculture District, Farming and Ranching wording in the Exemption Structure for Agriculture is what we have been getting calls about. There was a discussion regarding ways to identify and define “Agriculture” structures specifically built for Agriculture and possibly using FSA numbers to help define this. **Veeder** stated that this is the public meeting and interested parties should take some responsibility and attend these meetings. We should find out the right information in the next 30 days and get this moved on. **Skarda** stated that some people who contacted her wanted to have the opportunity to go through this. **Director Huus** stated that any items for Public Notice need to be turned into the paper 2 weeks prior to the meeting, so it would be advertised. **Olson** stated that it states in the fee schedule “farming and

ranching only – not including dwelling units” and that if someone wanted to put dwelling unit on the land, they would still need a building permit. **Director Huus** stated that is correct. There was a discussion what type of buildings require a permit and what kind of buildings do not. **Dana Roff** stated that it would be best to call the Planning & Zoning Department if people have questions regarding this. There was another discussion regarding notifying the public and the size and placement of the public notices in the newspaper. **Dana Roff** stated that she is working with Neil Shipman on some pieces to put in the paper about the different sections of Planning & Zoning. **Olson** stated that the way we are doing the notices is sufficient and Dana was putting together a public information piece, regarding current planning & zoning topics, for Board Members to distribute to people with questions. **Butch Fleck** questioned the exact definition of Used Manufactured Buildings listed in the Fee Schedule. **Director Huus** stated the intent was Used Manufactured used as a dwelling and occupied. **Kerry Thompson** stated that he would recommend against using the FMCA number for identification purposes.

Motion to Postpone Building Permit Fee Schedule until the August 10 P&Z Meeting:

Motion by Gene Veeder, Second: Kathy Skarda, Voice Votes: All Ayes

Motion Passes

PUBLIC HEARINGS:

Bona Son Subdivision -#04-20SUB - Location: T150N, R97W, S28 E1/2 NE1/4 Parcel #130013650. 2591 Beaver Creek Road, Watford City, ND

Director Huus stated both Bona Son Minor Subdivision -#04-20SUB and Bona Son Comprehensive Plan Amendment and Zone #01-20COMP/ZC need to be heard simultaneously because one cannot happen without the other. The Zone Change is a request to change from Agricultural District to Heavy Industrial District. Bona Son wishes to operate a manufacturing facility for oil field materials. The Rezone to Heavy Industrial would permit the roustabout manufacturing operation as an allowed use. The rezone to Heavy Industrial will facilitate the minor subdivision so they could do a lot split to parcel off 25.77 acres out of their 80 acre parcel that is currently zoned Agriculture. With the 40 acre rule they would not be allowed in Agriculture to split off 25.77 acres for anything but a dwelling unit. The rezone would have to happen before they could do the lot split. If the rezone and the comprehensive plan amendment are denied, the minor plat would also have to be denied. We received a letter this afternoon from an adjacent property owner, Ron and Nina Jore in opposition to the rezone. **Jeremy Olson** read their letter in to the record and it is attached at the end of these minutes. **Director Huus** went through the staff report. He stated that due to the lack of other zones besides Agricultural District in the vicinity this would be a spot zone.

The property is currently zoned Agriculture, the comprehensive plan is Agriculture and Bona Son would like to change both to Heavy Industrial. I have included a copy of a new map that is included in our GIS system that shows farm classification areas. This is farmland of statewide importance according to the USDA. I would like to include this in any future rezones to help in your decision making. **Kathy Skarda** inquired about the spot zoning and stated concerns she had regarding the site. **Craig Hystad** stated that they had been trying to stay away from spot zoning, especially with Heavy Industrial. **Nathan Stittleburg** with the Nyhus Law firm, representing Bona Son stated that he would like to clarify that Bona Son did fill out and send in an affidavit for the building structure prior to construction. He explained what they would be doing in the building once the rezone would be approved for is some light cutting, fabricating, sand blasting and painting within that structure. What they do from a manufacturing standpoint is put the platforms around the oil rigs and tanks. They are using the building to park their trucks in and manufacture fences around the tanks. Because this is manufacturing, it falls into Heavy Industrial District. We are also requesting the subdivision so that we can minimize the amount of rezone rather than breaking that down to 40 acres and minimizing the number of acres we are having to address. **Skarda** inquired as to when this building permit was done and what it was used for. **Stittleburg** stated it was signed and notarized March 11, mailed in on March 12 and they were told that they needed to put it in under an Agricultural perspective. He also stated that his understanding was that they would be manufacturing containment racks that are placed around oil tanks. **Director Huus** stated that Bona Son put in the Affidavit which stated that the building would not be heated or cooled and was an allowed exemption based on the Agricultural use of the property. **Stittleburg** stated that if approved, they would then be coming back with the appropriate papers needed so they could heat and cool the building and to classify it as an industrial structure. **Olson** clarified that originally you got a building permit for a building that is permissible in an Agriculture Zone and now they would like to expand it to industrial use, but it has not been started at this time, and there have been no violations. **Stittleburg** stated correct. **Director Huus** stated that they originally got an exemption from a building permit because it was for a farming and ranching building in an Agriculture Zone. **Gene Veeder** stated that the question was whether they wanted to change Agriculture Zoning to Industrial and that there has not been a case yet as to why an Agricultural Zone should be changed to an Industrial Zone. **Director Huus** stated and the comp plan also. He stated that the only manufacturing that is allowed in Agriculture is for agricultural equipment and oilfield equipment does not qualify it. **Olson** stated that this is far from any comp plan, Industrial or Commercial Comp Plan or zoned area. **Butch Fleck** stated his concerns with allowing a spot zone way out and a long way from anything. **Olson** stated that Gene Veeder had stated that spot zoning should be done very reluctantly and very sparingly.

Motion to Deny Bona Son – SUB #04-20

Motion by Kathy Skarda, Second: John Irwin: Voice Votes: All Aye

Motion to Deny Passes

Bona Son Comprehensive Plan Amendment and Zone Change - #01-20COMP/ZC:
Location: T150N, R97W,S28 2591 Beaver Creek Road, Watford City, ND .

The discussion for SUB#04-20 applied to this application #01-20COMP/ZC.

Motion to Deny Bona Son Comprehensive Plan Amendment and Zone Change-
COMP/Zone Change #01-20COMP/ZC:

Motion by Kathy Skarda, Second: John Irwin , Voice Votes: All Aye

Motion to Deny Passes

Skoden Holdings-Comprehensive Plan Amendment and Zone Change- #02-
20COMP/ZC. Location: S27,51R96. Parcel #050017210.
11014 32nd St NW, Keene, ND 58847

Director Huus stated this is a Comprehensive Plan Amendment and Zone Change from Agriculture District to Light Industrial District. The current use has a shop that stores a commercial vehicle and supplies. The current service offerings are hot oil trucking and water hauling. The current use is grandfathered since 2013. The applicant wishes to eventually sell the business and wants to eliminate the grandfather use in favor of an allowed use to Light Industrial. He pointed out the location and stated that there are a number of other similar Light and Heavy Industrial Businesses in the area. He also stated that the Comprehensive Plan shows some Heavy Industrial located in that area. **Kathy Skarda** stated that there some things there from the previous use and the owner said they would clean up before selling the property. She also stated there are safety concerns with the road and has been contacted by some farmers and ranchers who also have safety concerns with the road. She asked if they had talked to the County Engineers regarding the road conditions. **Dana Roff** stated she did and the Engineers stated they did not see an issue with it and that it had been there 7 years. Jeremy Olson stated that this had to do with the zone change and not with the roads. **Director Huus** stated they never put conditions on a Zone Change and that all requirements for a Zone Change must be met before it can be approved. **Kerry Thompson**, owner of residential property adjacent to 11014 32nd St NW, Keene, ND 58847, stated his concerns regarding the well-being of his family should the zone change be approved. He also stated his concerns regarding no buffer zone between both properties and the impacts on his family should the property be rezoned and sold. There was a discussion regarding allowed uses and the required buffer zones between residential and industrial, should the zone be changed to Light Industrial. **Skarda** asked for a recap of the allowed uses. **Dana Roff** read the allowed uses in the Light Industrial and the Mckenzie County

Zoning Ordinance 3.8.1 Light Industrial District (I-1) and 3.8.1.1 Light Industrial District - Allowed Uses are attached to the end of these minutes. Veeder stated the need to set a precedent on how these changes are made because there would be a lot of grandfathered properties coming up for sale. **Jeremy Olson** asked at what point the grandfather disappears. **Director Huus** stated that if vacated for more than 180 days, the grandfather status is lost. Also, if more than 50% of building gets destroyed, if you expand the use, put another building on it, the grandfather status is lost. He also stated that the grandfather status is on the use itself, not on the zoning or who owns it.
Motion to Deny Skoden Holdings LLC - #02-20COMP/ZC

Motion by Gene Veeder , Second: John Irwin, Voice Votes: All Aye

Motion to Deny Passes

Blue Flame Propane Variance -#05-20VAR: Location: S21, T120N, R101W.Parcel #012400700. 14136 26th V Street NW, Alexander, ND

Director Huus stated this is to complete the ongoing CUP#10-19 and Amendment for Blue Flame Propane 90,000 gallon storage facility. One of the requirements to get the last 30,000 gallon tank approved, was the addition of onsite water storage. That storage has to be at a location far enough away from the propane storage, so that if there is a fire, they can actually access the water. They had to push the tank back so that it sits 5 feet into the required 50 feet setback from the property line. One of the conditions we had on CUP Amendment approval was to get the tank and obtain a variance to make it work. **Jeremy Olson** asked that was understood by this group when we discussed it, correct? **Director Huus** stated correct. They would be filling up from a hydrant with water from the McKenzie County Water Resource District. He stated that the conditions of the site would meet the requirements to get the variance.

Motion to Approve Blue Flame Propane Variance #05-20 VAR

Motion by Butch Fleck , Second: Craig Hystad .Voice Votes: All Aye

Motion Passes

Camel Butte/Signalness - CUP/Reclamation Bond Waiver #33-18CUP/RBW Location:: T150,R96W,S8 Parcel#690001950 .2955 Highway 23, Watford City, ND

Director Huus stated this is a reclamation bond waiver for #33-18 Camel Butte/Signalness Water Storage Ponds. The site consists of 3 ponds, one was grandfathered prior 2013 and then relocated to the NE corner of the parcel. They were approved to build 2 more ponds as part of the original CUP. A process we are going to be implementing is, prior to release of the reclamation bond requirement, we will review the site and files to check compliance with the original conditions. For

Signalness, we have all the original conditions listed in the staff report along with additional conditions for the Reclamation Bond Waiver. **Gene Veeder** asked if everything is signed and up to date. **Director Huus** stated yes, they provided the acknowledgement, and hold harmless agreement. He stated that he would send out a letter saying that they had been approved, but would not send that until it was verified that everything has been completed, prior to issuing them a waiver to not have a reclamation bond.

Motion to Accept the Application for Reclamation Bond Waive- Camel Butte/Signalness CUP/Reclamation Bond Waiver #33-18CUP/RBW

Motion by Craig Hystad, Second: Gene Veeder, Voice Votes: All Ayes

Motion Passes

White Horse Water County Road 30 Pond #07-18CUP/RBW. Location: S4,T148, R101W Parcel #170002325 & 170001700

Director Huus stated this is a site that is located along County Road 30, approximately 9 miles south of Alexander. The site consists of a water storage pond located at the east end of the parcel. Prior to the release of the reclamation bond requirement, we will review the site and files to check for compliance with the original conditions. We have the original conditions and new conditions for the Waiver listed in the staff report. **Kathy Skarda** asked how long they take to review, for date of reviewal and release of it, and if there had to be a time frame. **Director Huus** stated that some of the materials might take a little while to get to us; might have difficulty getting notaries. In the original CUP we give 60 days to do the reclamation bond, but some of those have went beyond that. **John Irwin** asked should you go through all of that before it comes to the County Commissioners, before they do the waiver rather than after they do the waiver. **Director Huus** stated that ideally that is how it should happen and will happen from now on. Many of these were done prior to our administration and we did not have all the information that was given. We do not issue them a Waiver until all the conditions have been met. **Butch Fleck** stated that since it is stated that White Horse is not the owner of the land, does the landowner understand the conditions that have been agreed to, and if some of these landowners know what they could be dealing with down the road. **Director Huus** stated the signed Landowner Acknowledgment was submitted and is always required. The Landowner Acknowledgement includes all of the conditions and has to be signed off on. **Dana Roff** stated that one other protection is that it has to be notarized. **Butch Fleck** stated that if the landowner signs off, that is beyond us. **Skarda** asked if the those people sign off on the Landowner Acknowledgement in Planning & Zoning Department if Planning & Zoning visit with the person regarding this. **Director Huus** stated they had not been. **Ari Johnson** stated you do not want to do that because of the concern of the County's liability limitations.

If the zoning office gives advice to people about that kind of thing, it can lead to a finding of a special relationship between the county and the person receiving the advice. If the advice is wrong, then the county would be liable to that person. It is best to maintain some distance there.

Motion to Approve White Horse Water County Road 30 Pond #07-18CUP/RBW

Motion by Butch Fleck , Second: Gene Veeder , Voice Votes: All Aye

Motion Approved

White Horse Water - Kit James Pond Request #07-18CUP/RBW. Location: S9,T147N, R101W Parcel #450000325

Director Huus stated this site consists of a water storage pond located along County Road 27 twenty miles south southwest of Watford City, 15 miles west of Hwy. 85. Prior to the release of the reclamation bond requirement, we will review the site and files to check for compliance with the original conditions. The staff report shows they have submitted the proper Indemnification Agreement and Landowner Acknowledgement. .

Motion to Approve White Horse Water - Kit James Pond #07-18CUP/RBW

Motion by Gene Veeder , Second: Heidi Brenna , Voice Votes: All Ayes

Motion Approved

White Horse Water Mikkelson Ponds CUP/Reclamation Bond Waiver #08-18CUP/RBW. Location: S13,T152 R100W Parcel #340000900 & 340000800

Director Huus stated this site consists of 2 water storage ponds located near the center of section 13, approximately 1 mile south of the Missouri River and 13 miles northwest of Watford City. The original request was for a million barrels which is 128 acre feet storage in one pond, but construction was modified to build two 49 acre foot ponds. Prior to the release of the reclamation bond requirement, we will review the site and files and permits to check for compliance with the original conditions.

Motion to Approve White Horse Water Mikkelson Ponds #08-18CUP/RBW

Motion by Craig Hystad , Second: Kathy Skarda , Voice Votes: All Ayes

Motion Approved

Commercial Truck Parking Ordinance Amendment 2nd Reading

Director Huus stated that at the 1st Reading, there was some conflicting language in the original Commercial Truck Parking Ordinance. For example, someone driving their truck to and from work, was considered as Commercial Truck Parking. Their office was located somewhere else, parking their truck at their residence overnight and then leaving to where they are delivering to. It was all lumped into Commercial Truck Parking because that was the only definition we had within the Ordinance. We wanted to clarify that because the original intent of Commercial Truck Parking was a full blown commercial truck yard that has a shop, fueling stations and not just a guy parking his truck at his residence. This adds a new definition called Residential Truck Parking. It would be an allowed use in the larger lot type Residential Zoning R-1, which is 1 acre lots and bigger. When we did the 1st Reading, we discussed some changes within the description to address questions or concerns such as if someone parks 2 or 3 trucks and where can they park on the lot and duration of parking. We also needed to define what kind of truck, truck and trailer and how much they weigh. There were also concerns of someone hauling in hazardous material. We added language to address those concerns. Ari and I worked on that and came up with the 2nd Reading that you see in front of you. **Jeremy Olson** stated these are living documents and we are always modifying them to make them work. **Kathy Skarda** asked if someone would be non-compliant if they are out of town and leave their truck parked at their residence for two weeks rather than the one week stated in the reading. **Director Huus** stated that according to this, they would be out of compliance and if someone was going to do that then they should find a different place to park. We just wanted to tighten it up to make sure someone was not routinely leaving their truck parked there for weeks and weeks, so we came up with a week. Maybe we should define the week as 7 days. **Olson** stated that in reality it is only going to become an issue if the neighbors complain. He also stated that if someone was doing that all the time it could be addressed, and that what was written here addressed the spirit of the issue. **Craig Hystad** pointed out that most of them are privately owned trucks and rarely go on vacation for two weeks.

Motion to Approve Commercial Truck Parking Ordinance Amendment 2nd Reading

Motion by Kathy Skarda , Second: Gene Veeder , Voice Votes: All Ayes

Motion Passes

DISCUSSION ITEMS:

CUP Revocation Hearing

Director Huus stated that he did not have any currently but wanted to talk about it. When Cherry Creek CUPs were brought up earlier in the meeting, due to non-

compliance of the Reclamation Bond requirements, he was going to start the process. He stated that they found a couple of other CUPs did not do any construction so they didn't get Reclamation Bonds and after reviewing the Ordinance, those can just be terminated without a Revocation Hearing. He stated he would start the Revocation process with Cherry Creek CUP's.

Border States Paving Inc. CUP Amendment -#11-20CUP - Amendment

Director Huus stated this was approved at our June 8, 2020 Planning & Zoning Meeting. They are a contractor working for the ND DOT Road Project on Hwy. 73, east of Johnson Corner. The site itself is located on Hwy. 23 just west of Johnson Corner. We decided to run this CUP through the public hearing process instead of administratively approving it per section 5.8.6 with the Temporary Conditional Use Permit. We thought we should run it through the process because it is an asphalt plant located close to a school, along heavily traveled Hwy 23 and there was concern with the access there. Since we approved it, our Code Enforcement Officer did a site visit and found that they had brought in 2 temporary DOT Lab trailers, and had a couple of temporary fuel tanks set up on site. Rather than making them go through the public hearing process, I would like to just approve those parts of it administratively. According to the original CUP, they will be done with the work by September. **Craig Hystad** stated that after this we should just make sure they have those things listed. **Director Huus** stated that he did not think of it either and from his understanding, the guy that got the location together is no longer there, and there is a new guy working on it. **Dana Roff** stated they would be sending notice to the neighbors and giving them time for feedback and that she just wanted to make sure that they knew there were additional items added to the site. **Todd Foster** stated their fuel tanks for their equipment out there, are actually semi-trailers. Two of them had quite a few fire code violations brought up and we are currently working with them to get the violations corrected so they can move forward. This is a temporary location for a temporary project. **Director Huus** stated that having those tanks there avoids more traffic on the highway because they do not have to go to a gas station to fill up their trucks and it keeps them out of there. As long as they are complying with the fire code, ie: how they store that fuel and have containment around tanks. **Olson** asked if as a discussion item does this require a vote or is it more as a unanimous consent. **Director Huus** stated that if we could just get it on the record that they would allow him to approve it administratively, that is probably all we need. **Gene Veeder** stated that is exactly what the Administrative Approval should be used for. As long as everything is covered, you can move forward.

Motion to Allow Director Huus to Administrative Approval for Border States Paving, Inc. #11-20CUP - Amendment

Motion by Gene Veeder, Second: Kathy Skarda Voice Votes : All Ayes

Motion Passes

CODE ENFORCEMENT

Todd Foster stated it was discussed in the June 8, 2020 meeting about the Fire Fee Schedule. He stated he did create a simple one but a little more time is needed to have everything in order and possibly make some changes to it. He stated they could go over it now or next month. **Jeremy Olson** stated he would rather have it prepared right and go over it in the August 10, 2020 meeting.

TNORM Disposal

Kathy Skarda stated at the Board Commissioner Meeting we asked **Todd Foster** to go over the TNORM and help us educate everybody on what it is and where it could be going. **Todd Foster** discussed the issue of Montana possibly not accepting TNORM waste from oil well drilling and operation and the effect of that to ND and McKenzie County. The acceptable limits and modifications to those limits were discussed. The county has the ability to modify the rules accordingly. Williams County just had the moratorium put on special waste facilities for a TNORM because of a company trying to permit a landfill up there. Now would be the time to look at all this. **Jeremy Olson** stated we had a situation like this years ago, so it was added to the Ordinances and when this went to the state, we already had protections in place. **Foster** stated that one of the proposed options to dispose of this waste is a slurry mixture and injected downhole. We currently have two permitted facilities. One is nearly finished to able to accept product and the other will be fairly soon. It is not accepting a higher limit to what this is, but the limits could be adjusted based on the mixture. **Butch Fleck** asked we are up to 50? **Foster** stated correct. **Fleck** stated he did not know it was that high. We discussed that awhile back. **Gene Veeder** stated that seems like a game changer if they go downhole with it. A lot of the objections to the landfills was dust, airborne smell and that type of thing. So if they can perfect going downhole with it that would seem to be more palatable to the public. Although they have water damage concerns, I think it is a matter to continue to educate the public. We produce the most oil in North Dakota, but we do not take any of the waste. You cannot have it both ways so we have to figure out how to do that. **Craig Hystad** stated his concerns regarding used oil field trash not being disposed of properly and making sure that the disposal sites are constructed properly and operated. **Gene Veeder** asked where we fit administratively on siting a downhole product and if that is a county or an NDIC issue. **Foster** stated that is an NDIC issue. He discussed how new rules have been implemented for siting injection wells for this application. **Olson** asked if there is a company that is getting permitted to do it here in McKenzie County. **Foster** stated correct. **Veeder** stated that injections have generally been done water related and if we can come up with some sort of a recommendation from this Board, then that will carry some weight in the NDIC

and we need some science behind it. **Foster** stated he has been working with NDIC on this process. Gathering information and trying to develop something further would be his recommendation. **Kathy Skarda** asked if the processes are the same or different with both companies. **Foster** stated they are both a little bit different. It could be something that we work with NDIC on. There is a lot of science behind the mixing, grinding of the product and what specific percentages of water are put down the hole. The pressures and time frame are what we are looking at. **Skarda** stated most of the concerns she has heard are with the water, the casings in case something goes wrong and having that second or third barrier to help protect the land and water. It would be good for us to get ahead of this, help inform the people as well as to create the process. **Olson** asked what the goal or intention of this discussion is. **John Irwin** stated that he and other landowners have given some pretty big sacrifices. **Director Huus** asked if they were being directed to look into a response to NDIC. **Veeder** stated that previously some real experts were brought in from areas that this has worked in and the county paid for it. Real experts to say here is what is being done in other states, what is working, what your geology is and what your risks are. The Commission should bring this forward. **Skarda** stated the importance of informing the public and including them in this process and if this is not done, that is where you are going to have the biggest adverse action. She stated the importance of being proactive with getting the information and talking to the experts. **Foster** stated NDIC recognized that this is a problem and could be a future problem for this state. They created a committee to look at this state and what is going on currently, acceptable limits currently and the possibilities for change. We should contact the state committee or this team that the state created and have them do some public talks. The educational process is what is really key here. What we are talking about here are limits, TNORM and radiation. The public needs to understand the numbers are what talk, what we are exposed to every day, the processes and the differences between them. This committee is going to have that information and the way to share it with people. **Olson** stated we will let your staff figure out how you want to deal with this and present it to us in the August 10, 2020 meeting. **Director Huus** stated my recommendation, like Gene's is to get a consultant. **Skarda** inquired if Todd knows any consultants. **Foster** stated he does and talked to a couple of them and that they would be on board with something like that. **Director Huus** stated that we are not going to be able to figure out, on our own, what the requirements would be, so we are definitely going to need some outside help. **Foster** stated that this will be a fast moving process because of the time frame that Montana has and their decision making, so it might be quite aggressive when we come back in here with all the information.

ADMINISTRATIVE CUP APPROVAL LIST

Director Huus stated he has not approved any Administrative CUPs this month. He stated he is currently working on one for Basin Electric. Expanding their Lone Creek Substation is one that would be an Administrative Approval but we are waiting for

more information on that and will report that next month if we obtain the necessary information.

Butch Fleck inquired about the status of the CSI illegal RV Park that was set up for their County Rd 37 construction workers. **Director Huus** explained that they were directed to vacate and that they had done so.

Director Huus stated he is going to be out of town the week of August 10, 2020 when the next Planning & Zoning Board Meeting is scheduled and would like the Board's okay for him to be gone and have Dana Roff run the meeting. She has run meetings before during the transition period between Jim Talbert and myself. There were no objections.

ADJOURNMENT

The meeting was adjourned at 7:00 PM

The next meeting of the McKenzie County Planning and Zoning Board will be held on August 10, 2020 at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM

Sandee Kimpel

From: rnjore@restel.com
Sent: Monday, July 13, 2020 4:00 PM
To: Sandee Kimpel
Subject: Boba Son Zoning Change

To the Commissioners of McKenzie County, North Dakota.

We own property adjacent to the property owned by Bona Son, located at 2591 Beaver Creek Road, Watford City ND, and we are opposed to any change in zoning. Our house, as well as two others, are located within one half mile of this property. We believe in the rights granted to a private land owner to do as he chooses to his own property, however, it seems to us that if Bona Son was intent on developing an industrial property, they should have sought that designation from the commission before starting any construction.

Respectfully, Ron and Nina Jore.

3.8 INDUSTRIAL DISTRICTS

3.8.1 Light Industrial District (I-1)

The intent of the Light Industrial District is to designate areas for wholesale commercial, storage, trucking, and manufacturing, other similar industrial uses, and limited retail sales and service. Processing or fabrication will be limited to activities conducted within a building that does not emit fumes, odor, dust, smoke, or gas beyond the confines of the building within which the activities occur or produce levels of noise or vibration that may impact adjacent property.

3.8.1.1 Allowed Uses

- 1) All uses allowed in C-1.
- 2) Animal hospitals and clinics.
- 3) Warehouse.
- 4) Building and trade contractor shops.
- 5) Dry bulk storage (non-hazardous).
- 6) Electrical and plumbing service and sales.
- 7) Farm related businesses.
- 8) State and county maintenance yard and facilities.
- 9) Grain mills/elevators.
- 10) Motor vehicle repair and services.
- 11) Motor vehicle tire and auto part sales.
- 12) Motor vehicle sales.
- 13) Motor vehicle wash.
- 14) Storage yard.
- 15) Radio and television stations.
- 16) Self-service storage facilities.

- 17) Commercial truck parking and truck garages and all associated structures to service the same. (reclamation bond required, see section 2.13 of this Ordinance)
- 18) Service stations and convenience stores.
- 19) Concrete and asphalt plants. (reclamation bond required, see section 2.13 of this Ordinance)
- 20) Governmental administrative, maintenance, and research facilities.
- 21) Electric transmission facilities.
- 22) Transmission pipelines and associated facilities.
- 23) Freshwater depots and pipelines. (depots require reclamation bond, pipeline do not, see section 2.13 of this Ordinance)
- 24) Exterior non-agricultural storage. (reclamation bond required, see section 2.13 of this Ordinance)

August 2020

Planning and Zoning Commission Minutes

August 10, 2020

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

Pledge of Allegiance and Roll Call

Members Present: Gene Veeder, Craig Hystad, Kathy Skarda, Butch Fleck, Gene Veeder, Heidi Brenna, John Irwin, Cody Knetzger

Members Remote: Jeremy Olson

Members Absent: Matt Beard

Staff Present: Planning Attorney Ari Johnson, Code Enforcement Todd Foster, Planners Dana Roff & Sandee Kimpel, Building Official Scott Twogood, Building & Code Tech Cindy Mecham, Administrative Assistant Cindy Jensen,

Staff Remote:

Staff Absent: Planning Director Curt Huus

Others see sign in sheet:

July 13, 2020 Minutes change on Page 11, July 13, 2020 minutes. Change the sentence "He stated he would the Revocation process with Cherry Creek CUPs" to read "He stated he would start the Revocation process with Cherry Creek CUPs". Motion to Accept the minutes as Amended. Motion: Kathy Skarda, Second: Butch Fleck. Voice Votes: All Ayes

Motion to Accept the Amended Minutes Passes

August 10, 2020 Pull Dixon Properties, LLC #13-20CUP from August 10, 2020 Agenda. Motion to Accept the August 10, 2020 Agenda as Amended to Reflect Dixon Properties, LLC #13-20CUP as Pulled. Kathy Skarda, Second: Butch Fleck. Voice Votes: All Ayes.

Motion to Accept the Amended Agenda Passes

CODE ENFORCEMENT:

Fire Permit Fee Schedule:

Todd Foster stated that to get the Fire Permit Fee Schedule had looked at the Fee Schedules used in the surrounding counties, took an average of the fees charged, reduced the fees and figured what it would take to cover our supplied services. This is a service provided to the public to have things built and built in a safe manner. The Fire Code suggests that we have a significant number of permits that would be approved for this office. A lot of the fees would not be applicable to what our needs are. Through the adoption of fire code, we have the ability to modify, address and adjust the codes to fit local needs. The ones listed on the draft Fee Schedule are what would be appropriate or apply to what is happening in this county and the areas surrounding us. A fire code inspection is a process that is involved with every new structure and existing structure from time to time depending on what the commercial application is there. Violations are first discussed, then options to correct them are discussed and then we move forward. When corrections are not made, it is addressed again administratively. If they are still not, the next option would be to employ our attorney and move forward with a civil case against whoever it may be. If the correction still has not taken place after we go through 2 inspections of the same thing, then on the third inspection of that same issue, after having discussed the problem and agreeing on the correction, and if the correction still has not been made in a reasonable amount of time, then a fee would be charged for that. That is something that would be new here and this board would have to approve that process. The rest of it is the same as every other jurisdiction across the nation. This gives us the option to do more with each one if we need to.

A discussion regarding fireworks guidelines and rules took place.

Todd Foster stated that the inspection forms need to be the same type, descriptive and simple. The first one is an inspection form. The second one is for if there are more items than on the first form. Then there is a supplemental sheet to notify them that if no one was there when we were there, that we made an attempt to make that contact happen and so we could reschedule the inspection for them. The last form is for violations and lists citations that are common across all the areas that he looked into for getting the information for the Fee Schedule. He stated that he had narrowed it down to a significant few that are areas of problem. The form needs to be looked into with our attorney to see that, if something like this happens, if it is something we can commit to or how to move forward on that. **Veeder** stated his concerns of making sure that we are consistent with other counties across the state. **Foster** stated that now is the time for input and the forms can be changed. **Skarda** stated her concerns about this being easily accessible to the public so they can have input. **Foster** stated that he could post it online and state exactly what we are looking for. **Ari Johnson** stated that if it is posted on the website, it would have to be clearly stated that it was a draft and not active. **Glenn Wahus** asked who does your fire inspections now. Is that the Fire Departments or the Fire Districts? **Foster** stated that it depends on the jurisdiction. The jurisdiction the

county has, which is not everything in this county, would be explained as well on the website. That answer could vary. **Wahus** asked if it is through the system then and if different people have to inspect. **Foster** stated absolutely and certain things need to be inspected and some things do not. **Veeder** stated that question has been issued to this board about who has jurisdiction in some townships. Right now the county has jurisdiction throughout the entire county, but we work with township inspectors and townships work with our inspectors and it would be good to clarify that on the discussion points. **Foster** stated he would post something on the website along with this. **Veeder** stated that would be helpful. **Foster** stated tonight is just a discussion and possible option right now. **Veeder** stated we are discussing the Fire Permit Fee Schedule, will keep it open for discussion and welcome public input on this document.

TENORM.

Todd Foster stated about a month ago it was brought up in a Commissioners meeting that TENORM rules could be possibly changing in Montana. Acceptable limits were going to be changed or could change to accept a lower limit of TENORM material. It is a very controversial topic in our state because of what we produce here and do not keep here. Montana since then has adopted some new rules that are equal to what we have in place now. They have a 50-picocurie limit which is the same exact rule we have in place in this state. North Dakota does not have anybody licensed to accept 50-picocuries and the only thing that is licensed in this state to accept at this point is 5-picocurie. When this was brought up to the commission about a month ago there were other oil and gas people that were pretty interested in the topic across the state and in other states. AE2S completed a study which breaks down everything into great detail. After AE2S's study it was suggested that we develop a working relationship with another county to develop some economy rules or some acceptable locations between the oil producing counties. NDIC and the league of counties have suggested the same thing. There are a lot of controversies on TENORM, what can be accepted and what type of acceptance we can take based on the new slurry injections wells that are being used, produced or permitted up here. The processes we take with TENORM and what we would normally put with a salt water disposal and inject it down a hole, are new to the area. The solution would be perfect to get rid of what we created, to put it back down the hole. It has worked in other states, it is very new and we would be the first here. We are almost at the point where NDIC has permitted one and are going through the process to permit two, right now. One is going to more than likely be approved very soon here now. We have the option to create some rules and standards. We need to keep in mind that we are the state that is producing the material and should be the ones developing the rules on how to contain it, dispose of it and do what we need to do with it. Not much is going to change in the disposal location at this point because they are still accepting more than what the North Dakota code is. Until we have anything that is permitted by the state to accept a higher limit, it is going to remain the same way. It will just have to be taken further than just Montana. Other states accept higher limits

but Montana was just the closest acceptable place that would accept something that is above 5-picocuries. The suggestion is that we move forward with trying to create a committee or appoint some staff to work with other counties or at least move forward and try to create a board or a group of people that discuss this on an intelligent level of understanding what it is, what to do with it and how to handle anything that may come of it. We need to make sure we have correct bonds in place or correctional measures and enforceable actions on any of it so, if we find, or if the states inspection process is not taking place, where we can have that open notification between county and state. State does all the inspections at this point. County does not have a lot of involvement, but we can create some rules with acceptable limits to them and the processes. Now is the time to look at them because if we wait too long the state will make their own rules and continue as it is and we will not have the choice or option. **Butch Fleck** asked so we would just be an advisory for the state but the state still sets the rules? **Foster** stated correct but if we are at a point where we are creating this process, especially with other oil producing counties, that information will be the floor in the decision making for new rules here. **Kathy Skarda** stated she thinks it is also important that landowners are also involved with the process and that we make sure that their concerns are addressed as well. **Foster** stated that when this committee or group gets developed they would have the option to discuss having township meetings or local meetings based on what it is and have more community involvement with that. **Jeremy Olson** stated when dealing with the marijuana issue, we did the practical approach of developing our own standards before the state did. That way we are in a position to anticipate anything that might be a disadvantage to us and turn it into an advantage. It would be along the same lines that they are able to take the post where, no matter what we have concerns about at our level, we can bring it to the table or have a better say in going forward when this eventually happens in the state of North Dakota. **Skarda** stated that if any in the audience would like to be on a committee or offer input on how to create this and move forward, we appreciate their input on this as well their friends and neighbors and to have them be able to have a voice in this. It is very important that everybody states their concerns. Working with the townships is a great idea as well but some people who do not have organized townships may also need to be able to have access to a meeting. She asked the board for their thoughts and ideas on how to get this process completed. **John Irwin** stated if Montana has shut down taking it, we need to move fast on this. The state is going to be moving fast and they might not welcome our input on this. **Foster** stated they have definitely stopped accepting what was in the past pretty high limits and even though it was regulated the limits were much higher. Education is the key here and we need to give the information to township supervisors and to people and let their voices be heard. They need to be educated in the processes and what is currently there. This has been described in many different fashions and there is misunderstanding in some cases and a full understanding in others. **Gene Veeder** stated from the commission perspective and from our discussion, we wanted to use planning and zoning for the initial public input. We are willing to provide funding for research to find out what other states are doing, what their regulations are, and even

some of the research they are doing, where it will be coming from and do that quickly. If we do that in the manner of taking public input, putting in the proper research, it shows that our concerns and interests would be taken into consideration when the state decides this. The direction he would like to see as a county is do learning, have input meetings to speed it up. We are looking at our staff to coordinate those things and get the public input in there. This board then can make a recommendation to the commission, this is an advisory board, so the commission may or may not respond the way we want but he would like to see an organized effort rather than being questioned after the fact. He would like to see the board direct our staff to develop some information, develop some public input meetings sooner rather than later and make a recommendation to the Commission. **Glenn Wahus** stated it is okay to get the landowners and mineral owners involved but if you are going to go up against NDIC you need to have a good approach all the way around. **Veeder** stated that is a good suggestion and that is the direction we are going. Last time an expert was brought in from Colorado who brought to the table what they were doing, what works and how it was regulated. The Board is prepared to do that and fund it. **Skarda** stated you need science. **Foster** stated that he had reached out to a couple of consultants and also felt that it is important that we all understand this from the science view versus his view or the view of someone who does not understand. **Michelle Schoenwald** stated we need to have someone who knows how to do their research. **Foster** stated that is one of the reasons why we continue to process it the way we have, is because we tend to be on the latter side of that development stage. **Veeder** stated so the public knows that is what the intent of this board is, what the intent of the commission is and to collect that kind of information. Anybody's input is always welcome and you can provide input to the commission, the planning & zoning board, by letter or email. Written or email documentation is preferred so you have documentation. If you have some of those ideas, put them down and get them to us, then we can forward some of those as documentation when we move to the state. You can start doing that today and we can move from there. It is on the staff to try and figure out a venue to do that. **Foster** stated we could probably post it on the website as well as add some information on the report too.

UNFINISHED BUSINESS:

Building Permit Fee Schedule/Buildings Exempt Clarification

Scott Twogood, McKenzie County Building Official stated there have been a few changes since our last meeting and we have added some clarification on the last few pages, specifically for more definitions for clarification for those people looking at the building permit fees and exemptions and how it might affect them specifically. He wanted to know if the board had any question and if they felt this document is ready for approval based on changes that have been made.

Kathy Skarda asked do all farmers and ranchers, when they build a building, or a residential, receive or are they required to get a Certificate of Occupancy to get insurance. **Twogood** stated probably not. They are protected from legislature in the North Dakota Century Code. **Skarda** asked so if they are not required to get a valid signed Certificate of Occupancy to get insurance for their farm, ranch and their buildings, why do they have to have all the requirements for the residential building. **Twogood** stated that would be the only one they would need that for. They would only need that for a dwelling unit that is not exempt, all other structures that would be for specific use for farm or ranch would be exempt. **Veeder** asked Skarda, so your question is why does a housing unit need a permit. **Twogood** stated because it is a dwelling unit. **Skarda** asked if they actually have to have an Certificate of Occupancy. **Twogood** stated correct. This would be for a new construction. **Foster** stated this is outside of what the insurance companies may require, but this is based on what the International Building Code says. **Twogood** stated some insurance companies do not require the Certificate. **Skarda** stated she knows that some insurance companies do not require a Certificate of Occupancy so that is not a general rule. If someone's insurance company does not require that, why would people want to pay \$1,400 to have you do that? **Twogood** stated this is the code that was adopted in the past and what was wanted by the commission. **Skarda** stated that she had been asked those questions.

Kathy Skarda stated she would look to Scott as somebody who would assist the citizens in making sure that if someone does not have a permit, or if he does not see a building permit, that he as the Building Official would offer to help them obtain one rather than fine them. This has been very contentious with some of the landowners. Some people do not know that as a farmer or rancher you are required to get a home permit. Longtime citizens here have tried to build homes and have literally been put through the ringer. She hopes that if this is adopted, with all the different permits and fees, then we need to also adopt an attitude that we are here to help not here to fine. **Twogood** stated he has been proceeding that way, has been very professional and has been doing the job put forth for him to move on with these problems. He is trying to help not hinder anybody here and wants everyone to live in a safe home and is sure the board also does. **Skarda** stated we all want that as our goal.

Kathy Skarda stated a lot of people do not know that they have to have a permit to even build a deck on their house and wonder why they have to. **Twogood** stated it depends on the size. It is going to be published in the paper also to get awareness out there and to the rest of the county. Hopefully this will help negate the problems of people either unknowing or just trying to get away with not getting the permits required. **Butch Fleck** stated for a deck on a house that has already been permitted, why do you even need anything for a deck as it is not a hazard. **Twogood** stated you would in that case because it is more of a remodel or improvement. He had a similar experience with a man in Fairview. There was no service fee or permit but, he was more than happy to help the man with his deck. Being the size that we are and he is the

only individual that does that does the inspections. **Skarda** stated it if you have a deck greater than 30 inches high, less than 200 square feet \$100, greater than 200 square feet \$150. **Twogood** stated yes.

John Irwin asked was the intent when all this was drafted, to get involved in people's decks and shop's etc. in agriculture? This has gotten bigger than anyone thought. **Veeder** stated that is what this board does. We did not have Land Use Planning 10 years ago so there were not any rules of any kind. People were screaming for some sort of control because people were living in all kinds of things. That is where this came from. So you have to put it in perspective of why this happened. The public got together and said we need some rules. These are the public's rules so if the public does not want that, they have to remember that if somebody builds a 12 foot deck, have a party on it and ten people get hurt or killed, then there is a safety issue. That is where it came from. People were asking for it at the time. Land use planning was a hot topic back then and people wanted some control over it. Then the issue of why people in the city have to have rules, but the people in Agriculture do not need rules, is another issue. How do you determine what is Agriculture? There are many layers to this discussion and this is the discussion we are having here too. The fees are probably less of an issue that people are concerned with, than whether or not they need to have an occupancy permit in an agricultural area. According to the North Dakota Century Code, a lot of Agriculture rules have been removed from that. Across the state it is common for residential construction in Agriculture to have a permit fee, is not unique to McKenzie County and is part of the discussion that you have to have. **Irwin** stated he feels that it went a little bit further than the original intent.

Gene Veeder stated the only caution he has is that it is never a problem until it is a problem. People want these things until it affects them, then they do not want it. We are simply coming up with a set of rules that everybody can live with. **Foster** stated a lot of this that was created during that time when the oil boom happened, there were a lot of problems that happened. It has taken us a majority of our and other's time to address or correct it. We are starting to close some of those doors on a lot of those problems that come into those areas that would not have normally been looked at in the past because of so many other bigger concerns. Some of these smaller ones are ones that we notice now and they have come up to a discussion topic. **Veeder** stated if this needs to be revisited, this is the place to do it. The question was where did this come from and this is where that came from.

Scott Twogood stated in 2012 when this basic structure was adopted and when it was revised again in 2015 the fees were 2 to 3 times what you are seeing here and were astronomical compared to what they are today. **Veeder** stated he would like to clarify whether it is a fee issue or privacy issue that people do not want to be told what to do. These fees can be adjusted accordingly. **Twogood** stated the argument is if the county has enough money to absorb these fees and not put the burden on the tax payer, but

then it is up to the board. Usually that is how it works in other municipalities and states. It has to help generate revenue for the department so we do not have to tax the tax payers more to pay for those things. **Fleck** stated he thinks it is not the fee, it is the privacy thing. He does not want to be told what to do with a deck. With a house, there are safety issues there. **Twogood** stated that is a safety issue, there are railings and certain things that have to be built for that precaution so that railing does not fall when you are leaning against it. **Veeder** stated so for discussion purposes that could be changed if you have a deck that is more than 6 feet off the ground. **Twogood** stated right now it is if it is higher than 30 inches. **Veeder** stated so that is all within what this board has as a possibility. **Twogood** stated yes. Some decks are exempt just because they are not tall enough to be safety hazards and even the code recognizes it.

Butch Fleck stated with Agriculture if they want to build a house have them get a permit without a fee. The people who have owned the farmland started this county and that is the only reason it is here. Now we are going to make them follow our rules after they have been here and got this county going? If it was not for them, we would not have anything. They got everything started so why should we be charging them and making them follow our rules now after they have been here and got it going. **Twogood** stated that is up to you guys to make those decisions.

John Irwin asked does a township that has not given up its zoning have to follow this schedule and check in with the county at all or does it all stay within the township. **Twogood** stated the township has its own jurisdiction. Some do their own Planning & Zoning and their own building inspections if they do it at all. We do not have any authority or any jurisdiction there whatsoever. Some of them do their own Planning & Zoning but have me do their building inspections for them. It varies from township to township and throughout the whole county if they want our help or if they want us to stay out of it. **Foster** stated the state requires, even if they do not have person to inspect them or to make sure these requirements are met, that township or government has in place that the township is responsible for that to be done and that they follow those rules so that the state minimums are met whether or not they have said inspector. We just have jurisdictional boundaries in some that have relinquished that authority to the county for that process. **Skarda** asked in townships that are unorganized, are they required to take and follow the county's building code. **Foster** stated only the state codes. This county has adopted the International Building Code and modified that to adapt to what our current needs were at the time of the adoption. **Skarda** stated that the State Building Code may be amended by the city's townships and counties to conform to local needs. If a disorganized township wanted to organize and have their own code, they could do so and could encourage this board to change it. **Veeder** stated correct and it is important to remember that this board and the commission did not do anything to anybody. It all came from public meetings and what they want. If that is changing, now is the time to do it. If the township is disorganized because they did not want the responsibility then they handed it over to the county. Some are talking about

reorganizing, but that just means they maintain their own roads and they do their own planning and it is not always easy to get people on board. That is why we are discussing that and why it is on the agenda today. This is where we are at and this is what has to be adopted. Just to clarify, I think the issues that are out there are, what are the fees, are they reasonable, whether they should be reduced and the question of whether Agriculture property should be exempt on the residential side. Those are the two issues we are dealing with and if we agree with that. Scott Twogood is simply administering what boards set aside prior to these two boards.

Marlai Johnston stated our ranch started in 1903 by Andrew Johnston who also started North Dakota's Stockman Association at our place. The Agriculture and old timers started this place. Watford City would not have been here if the Johnstons were not here either. Agriculture should be exempt completely because we still even have 4,300 acres plus or minus more. Agriculture has always been our life and livelihood. When we start taxing and putting fees on things it starts adding up and a lot of us will sell all and be out of it. What is going to keep Watford City going? It is Agriculture and these old timers. Every time we turn around we are getting taxed and getting fees. Agriculture business has been Watford City's livelihood from day one and it needs to be taken care of.

Glenn Wahus stated he applied for a permit at the end of July to build a shop and house. He called in for the permit and filled the permit out. Then drawings of the floor plan were needed. He wants to get the shell up so he can get his materials inside. He is building this building himself and is going to build it by code. He has already built one other house in this county. **Wahus** discussed the requirements for his approach permit from 5 years ago. He filed for an Agriculture number since he produces vegetables. He wanted to put up a shop with living quarters and was required to produce a floor plan with room sizes. He was concerned because he wanted an option to move a wall if necessary. He was also concerned about producing an electric diagram. He also expressed concern that the Building Department had issues with the septic system sizing shown on the site plan. His main concern was that the Building Department contacted the Missouri Health District. **Gene Veeder** stated to clarify, the issue is in how they are enforcing the permit, not the dollar amount. **Wahus** stated no, to me it is not. When building in town you have to get a permit but even in town it is easier to build then it is out in the country. **Veeder** stated so permitting is not the issue and just wanted to be clear on this. **Wahus** stated right and that he just wants to get going and needs his permit. **Skarda** stated you do not have a permit because you do not have the house plans. **Wahus** stated he measured out everything and now more is needed. He just wants to get his permit and get going. **Fleck** asked why do you have to have certain size rooms and everything in the floor building permit? What is the safety feature or anything behind that? **Twogood** stated that is just a clarification for your code that certain rooms have to be a specific size and to be designated as such rooms within a floor plan. There is limited square footage. Walls move and rooms change

and can be changed during construction. Right now it may not even be in code and he cannot approve something if it does not even meet code. Based on what has been received, he does not know what Wahus has because he does not even know how big it is. He is not in any way halting this permit. There is nothing in the code that says that Wahus cannot start excavating, digging holes and even setting the foundation footings in place. But before the permit is even issued he can still install footings and foundation based on the design and what has already been submitted. He has done this numerous times. **Veeder** stated that came from 20 people living in a basement somewhere and that is why they ask for the size of room. **Fleck** stated if you are remodeling on a house it can change from one day to the next. **Veeder** stated it seems like we have communication issues, so let's work on that.

Nevin Dahl stated he wanted to reiterate what Marlai was saying. His family has not always had an official plan for anything they have done on the farm but have survived. He is not in favor of the permit fees or requirements for agriculture. **Veeder** stated for dwellings. We do not have them for other things, just dwellings on Agricultural. **Dahl** stated he can do anything on any dwellings, can do some of his own electrical work, some of his own plumbing work and his insurance still covers it.

Michelle Schoenwald stated she is originally a Signalness so is speaking on behalf of the Signalness family not just her husband and herself. Multiple people wanted to attend tonight but they live in the world of Agriculture and right now have to be in the field. Speaking on behalf of two brothers, her dad and multiple neighbors, none of them want to see fees and all this oversight in Agriculture World. She discussed all of the different fees and taxes that the Agriculture Community have and the impact it has on their business viability. **Veeder** stated so your comment is the Fee Schedule is the biggest issue. **Schoenwald** stated that it is unanimous.

Mark Voll stated he has lived here for about 30 years. He would like to echo that as far as the fees go, he does not think that the fees are, the major driver as far as the opposition to these zoning rules. It is not that they are not significant, they are significant and insult is being added to injury and the fee is on top of it. He recognizes the challenge for the committee to identify what a true farmer or rancher may be. As far as building onto your own residence or ranch, there is not infringement on anybody else's rights, but is only affecting yourself. If someone is going to build a subdivision or something like that, he understands and that is a different situation. **Veeder** stated people do not have to comment just at these meetings, but can do so anytime.

Pete Transtrom stated he was in the process of building his house recently. His understanding was when these zoning rules came about in 2012 that this was not going to affect Agriculture. It was just to stop the mancamps, trucking outfits and get a hold on it. It did not stop them, they are still there and around. It was to clean them up, but what we have now is an over step. He has 160 acres, got his approach permit, it was

\$150, and was told he would get a \$5,000 fine if he got caught without having one. Nobody came out to see anything, they just sent a bill which he paid. He has over 40 acres so he was under the assumption that he was in Agriculture, (he works in the oil field also but makes his living in Agriculture) and because he has over 40 acres he thought he should not need a building permit. He was misinformed. He has 160 acres in the county and feels he should not have to pay a fee when he is building a house on his own private property. He questioned what the \$1,200 dollars used for and said he knows if something happens with his house it is his responsibility and he would be the one paying for it to get fixed.

Steve Rolls stated Agriculture was and still is a big heart of this county. They have relied on the county commissioners and this board to keep an eye out for the Agriculture people. Progress is nice but how many taxes can people afford. **Veeder** stated that board members can be called at any time and comments are always accepted but written is preferred.

Kathy Skarda stated a lot of people wanted to come to this meeting and were not be able to attend. Would they have another meeting because of that or if would they just continue to have correspondence. **Veeder** stated input is always welcome and this is just for discussion anyway. We have to approve these fees here and it has to go through the commission as well. The people need to keep doing what they are doing and tell the Board what they need and want. We have the ability to change this so just continue to comment. This will be revisited at another meeting so he did not think a special meeting should be called just for this.

Dana Roff stated she is working with Neal Shipman of the newspaper and they are going to be doing some articles on what can be done in Agriculture and to create some dialogue. There will be some things in the newspaper about the different departments within Planning & Zoning and in the Public Works Building. They are working on one as far as Agriculture and the Agriculture Zoned.

Gene Veeder stated he is getting from this meeting a pretty strong sentiment against fees for permitting residential in Agriculture and the sentiment for eliminating the need for permits in Agriculture for personal dwellings. **Roff** stated that as far as mortgage loans and if someone was going to get a mortgage loan, they would need a Certificate of Occupancy for that. **Skarda** stated that if it is required, it can be obtained from a private inspector if no one is available to do that. **Veeder** stated you need to remember that this is your call. Nobody is doing anything to the public, this is how the board makes decisions. They are trying to do what people want. They need to get the information out there and will respond accordingly. **Foster** stated this conversation can be continued at the next month's meeting as well. **Veeder** stated they will have another discussion next meeting and will put it on the agenda.

PUBLIC HEARINGS:

Dixon Properties, LLC Conditional Use Permit - #13-020CUP-Location:S2,SW4, Section 31, T148N, R98W, PID#610007800. Lots 2-3, Section 6, T147N, R98W PID# 600000780

August 10, 2020 Pull Dixon Properties, LLC #13-20CUP from August 10, 2020 Agenda. Motion to Accept the August 10, 2020 Agenda as Amended to Reflect Dixon Properties, LLC #13-20CUP as Pulled. Kathy Skarda, Second: Butch Fleck. Voice Votes: All Ayes.

Motion to Accept the Amended Agenda Passes

DISCUSSION ITEMS:

Administrative CUPs

#05-20SUB-Bruins

Dana Roff stated Steven and Shelby Bruins purchased 80 acres from Gary & Betty Bruins. They are subdividing 6.694 acres for Gary and Betty's home. This is based on Ordinance 3.4.4, 4.17 and 6.4.2.

#0041-15 Administrative/Amended/CUP-Basin Electric

Dana Roff stated this is amending the current CUP to add the 3rd turbine which was permitted in 2015 but not completed due to economic reasons. This is based on Ordinance 5.8.5, 2. **Skarda** stated the 3rd turbine was permitted in 2015. Do we have the current documentation and documentation with the current date on file then. **Roff** stated yes we do.

ADJOURNMENT

Move to adjourn by Butch Fleck, Second Craig Hystad.

The meeting was adjourned at 6:40 PM

The next meeting of the McKenzie County Planning and Zoning Board will be held on September 8, 2020 at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM

MEETING SIGN-IN SHEET

Meeting Date: August 10, 2020

Name PLEASE PRINT NAME LEGIBLE	Phone #	Agenda Item #
Milo Lishess	701421 1004	
Aave Craig Wton	701 565-2271	
Mark Voll	701 -565-2253	
Marla Johnston	701 842-2029	
Steve Rolfe	701-842-3821	
Troy Bratcher	701 920 4822	
Scott TwoGood	701-580-2401	F
Kiri Busch	701-565-2224	
Green Wokur	701 770-7585	
Tina Wokur	701 770-2310	
Grant Steck	218-766-4139	
Shane Vettel		
Matt Odegard		
Melissa Kilde	701-527-0009	
Keith Winter	701 828-6728	
Pete Transtrom	701 580-1880	

September 2020

Planning and Zoning Commission Minutes

September 8, 2020

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

Pledge of Allegiance and Roll Call

Members Present: Butch Fleck, Cody Knetzger, Craig Hystad, Jeremy Olson, Gene Veeder, Jeremy Olson, John Irwin, Kathy Skarda, Matt Beard

Members Absent: Heidi Brenna

Staff Present: Planning Director Curt Huus, Planning Attorney Ari Johnson, Planners Dana Roff & Sandee Kimpel, Building and Code Technician Cindy Mecham, Administrative Assistant Cindy Jensen

Staff Absent: Code Enforcement Todd Foster

Others see sign in sheet:

Motion to Approve August 10, 2020 Meeting Minutes as Presented By Kathy Skarda,

Second: Craig Hystad. Voice Votes: All Ayes.

Sandee Kimpel stated she received a last minute call from Dixon Properties stating the Public Hearing for #13-20CUP be postponed until the October 12, 2020 Meeting due to the fact that they were unable to have a representative at the meeting.

Jeremy Olson stated that due to the Dixon call being received too close to the beginning of the meeting, the public was not able to be notified but that those who were attending the meeting in regard to Dixon, were welcome to stay if they wanted.

CODE ENFORCEMENT:

Tumbleweed

Director Huus stated Lance Powell requested Tumbleweed be put on the agenda. P & Z sent a letter to Tumbleweed requiring them to meet some building and fire codes and submit and show that they have a license from the State Department of Health from the Food and Lodging Division. When we receive the needed information they should be able to remain in the east building. As of now they are supposed to vacate until they have those necessary items completed.

Fire Permit Fee Schedule.

Director Huus stated due to the absence of the Code Enforcer Todd Foster, he would like to table this for now. Jeremy Olson stated the purpose of this is to work across the different fire districts to come up with a more common terminology and collaborative use between the county and the fire district so there is less confusion with zoning and fire code issues.

Fire Permit Fee Schedule - **TABLED**

TENORM.

Director Huus stated they are putting together a request for a couple of proposals for a couple of engineering firms. Todd Foster had gathered some information from some previous studies in the area. They would like to put together a proposal for public presentation, information and suggested rules, that they could make recommendations to the Commissioners. He stated that they will get a RFP out in the next week or two.

Jeremy Olson gave a brief recap regarding TENORM and stated Montana is increasing restrictions on the amount of TENORM that Montana accepts so more of it will be staying here in North Dakota. It would be better to do research and get ahead of the issue so a plan is in place and preparations are made if and when changes come to North Dakota.

UNFINISHED BUSINESS:

Building Permit Fee Schedule/Agriculture Exemption Clarification

Director Huus stated the Building Permit Fee Schedule was presented at the August 10 Planning & Zoning Board Meeting. The public input at the meeting included comments and concerns regarding the current Building Permit Fee Schedule. The three major concerns gathered from that meeting were 1) the building permit fees in general, 2) building permit requirements for single family residential in Agriculture and the process of having to get a building permit for Residential in Agriculture, and 3) dissatisfaction with Planning and Zoning on their inspection approval process. The McKenzie County Building official has since resigned. In order to help cover, in addition to the Building Code Tech Cindy Mecham, they have contracted with the city

of Watford City to utilize the City Building Inspector, Steve Williams to do the building inspections. The support from the City of Watford City to utilize Steve Williams, in conjunction to what he already has, is greatly appreciated.

Director Huus stated his suggested changes to the Residential Building Permit Fee Schedule is to eliminate building permit fees for single-family homes including modular homes, not just in Agricultural but in all districts. He went over the recommended changes for fees for 'stick-built' homes, attached and detached accessory buildings, multi-family buildings, and modular homes. He also proposed eliminating building permit fees for decks.

There was a discussion regarding still requiring single-family building permits even if fees are eliminated, and the steps that need to be taken to amend the North Dakota State Century Code Building Code by the Board of County Commissioners.

Director Huus stated the International Building Code and North Dakota State Century Code and Building Code are currently followed. The Board has the option to recommend waiving things about the Building Code and it is up to the County Commission to adopt it. It would be up to the County Commission if they want to eliminate the need for a building permit entirely for single-family residential and whether just in Agriculture. **Jeremy Olson** stated to clarify the state of North Dakota

follows the International Building Code and requires a building permit if it is an occupied building.

Director Huus stated the Agriculture exemption was put in the North Dakota Building Code for certain agricultural use building but that did not include an exception for single-family residential dwellings. They adopted the IBC, which states single-family residential have to have a building permit. The IBC can be waived and we have done some waivers to the building codes that were adopted by the County Commissioners. One waiver in particular is the waiver for some oil and gas structures that are controlled by NDIC and have to meet codes by their regulatory agencies that regulate that. The previous administration put this in place and it was approved by the county commission. **Jeremy Olson** stated to clarify, they are looking at two different options. 1) Follow the state and IBC and have the requirement for building inspections but just do not associate a fee with it or, 2) the county commissioners would make an exception to the state code. **Director Huus** stated they can amend the state code to make an exemption. **Kathy Skarda** stated the County commissioners could eliminate the stick-built single-family home, attached accessory buildings and the decks if they so desire. They can create the exemptions at the county commission level and then people would not have to come to the Planning & Zoning Department to apply for one. They would not have to pay a fee, but if their insurance company or any of their bank lenders required that it be inspected, they would hire an inspector to get it done to obtain a Certificate of Occupancy. **Director Huus** stated that is how that would work and it

depends on how the commissioners want to do that. They could have it for just one district and not do the others or just do a blanket that it would not be required for anyone. He strongly suggested against that. **Jeremy Olson** stated the reason the county put those requirements in the first place was because there was a lot of substandard buildings built prior to the Building Code adoption. **Director Huus** stated the main goal is safety, not to have to have control over everything.

Butch Fleck stated the ranchers in this county have been building their own houses ever since they have been here and there have not been issues with it. When zoning went in, Agriculture was supposed to be exempt. **Gene Veeder** stated there were public meetings at that time and there were a lot of unclear questions of what was happening in Planning & Zoning. There was a lot of public input but they probably did not recognize what was and was not exempt in Agriculture. A few things happening were, what was exempt for Agriculture district residents and also there were non-residential Agriculture in the county. There were meetings for almost a year and there was input from the public.

Kathy Skarda stated most of the input she has received from the public was that people thought Agriculture was exempt from these different codes and regulations. Most people do not want to have to jump through hoops to get their permits to build what they want to build because their families have been building without permits all their lives. **Director Huus** stated in the North Dakota Century Code 54-21.3-04-Exemptions,

there are a lot of exemptions that the North Dakota State Building Code gives exemptions to certain buildings in Agriculture. There is some confusion because there are three steps of exemptions in the exemption chapter. One exemption listed is a building that is neither heated nor cooled. Some applicants are wondering that if they decide to build a barn and heat or cool it, would it be exempt. Then that would be under exemption #3, buildings used for Agricultural purposes.

Director Huus read through #3 in the McKenzie Statement of Clarification for the North Dakota Century Code 54-21.3-04 Exemptions, which includes Planning & Zoning's interpretation of the exemptions. It is attached at the end of these minutes.

Director Huus stated a building permit is needed if building a dwelling unit. Some people do try to skirt the rules. They build a barn and then later want to start using it as a commercial building. Planning & Zoning tries to see through that, but there are still going to be cases where it happens. In each situation they need to be assured that the building is only going to be intended for Agriculture use and not just as a means of dodging getting a building permit. **Kathy Skarda** asked if the accessory building such as a barn is heated or cooled or has a room in it that is only used now and then, would that then be considered a resident structure? **Craig Hystad** stated that would not be a permanent dwelling, it would be a temporary living quarter. If someone came in, bought land in Agriculture and wanted to build a house on it, would that be exempt or would they need a permit because they are in Agriculture? **Jeremy Olson** stated that

even though someone lives on Agriculture land does not make them a farmer. **Director Huus** stated the way the code is written, is if it is used for a dwelling unit even in Agriculture, a building permit is required regardless the quantity of acreage. **Fleck** stated in order to be labeled as a farmer there are stipulations a person needs to meet. **Ari Johnson** stated that in a recent lengthy discussion with Compliance Officer/Fire Inspector Todd Foster and Director Huus, we discussed not to use someone's income as a way to decide if they are a farmer or rancher. We discussed the interpretation per the Statement of Clarification what uses are Agriculture uses are permitted as an allowed use in the Agriculture zone. Single-family dwellings are allowed to be built on certain acreages depending on certain different qualifications, none are income based. We discussed the idea of exempting the building depending on the building permit requirement for houses in the Agriculture District. A few problems with that are 1) How do you decide who is eligible for that? It is impossible to draw the line without resulting in hurt feelings or abuse on one side or the other. All houses need to be built to the same standards regardless of where they are built, who is living in them whether it is a farmer or not and whether it is traditionally Agriculture land or not. The way the Building Department address' this, is that everyone is subject to the building code and has to build according to the current International Building Code which is also the North Dakota State Building Code. Everyone gets the same treatment. They come in, get the permit, build according to the code, get an inspection and a Certificate of Occupancy. Now they will not have to pay for those services. If the commission were to adopt that plan, the county taxpayers as a whole would bear those costs of those

inspections for single-family dwellings regardless of where they are located. The most reasonable plan of action because there is a stated policy at the county commission, is that houses should be built according the building code, for the safety of all future occupants of those houses regardless of who might buy the house, with or without the farm they are sitting on. Also the impossibility of administering an exemption for farmers or agricultural users is to not have to get a building permit. It is just so hard to draw that line in a way that is fair. So the best way to draw the line, is that everyone builds according to the code, but nobody pays a fee for it. It is not Johnson's intention to criticize ideas but rather to prevent having problems as unintended consequences of what is a good intention. The building code was adopted in 2012 prior to the zoning ordinance. It was 9-10, months in advance of the zoning ordinance which took more work than the building code. The zoning ordinance had a lot of public hearings, and a lot of discussion was on what uses are in the Agriculture District and what can be regulated. Agriculture use of the land is generally not regulated land use as a result of those discussions. The county commission had the normal public hearing but it was not done like what was done with the zoning ordinance, where there was a big public hearing, a large attendance and a record of every word spoken at those meetings.

Jeremy Olson stated we had the building code before Planning & Zoning. The building department falls under the Planning & Zoning Administratively although they are two separate functions. **Johnson** stated it was not always that way. When the building code was adopted, there was not a zoning department. Inspection services were provided on contract. In 2012 a building permit for a single-family dwelling cost more than \$1,400.

Then the zoning department was created and the Zoning Ordinance was created a year later in 2013. A subdivision regulation was adopted for the building code created in 2012 and in 2011 for the subdivisions. That whole process took about 1 ½ years to go through and a lot of things got blended together including discussions regarding Agriculture uses in these large public hearings. The job of a zoning department and a zoning council, is to present options and solutions to meet the policy wishes of ultimately the county commissioners, but this Board makes recommendations to the county commissioners. Commissioners set the policy and Johnson does his best to implement it and his job is largely to go through the implementations to make sure that policy is being met without creating more problems or if they are going to create problems with the policy and the implementation and that they know about it when they vote on it. **Gene Veeder** stated for historical clarification purposes the public did come to the commission to ask for a set of rules and standards because people were living in unsafe environments outside of Agriculture that is how the requirement for a building permit outside of Agriculture came about. Maybe times have changed and they can definitely alter the permit fees on Agricultural lands. The public thought all buildings on Agriculture side were exempt. There do remain some issues for general non-agriculture buildings out in the county and whether they should need a permit because if we do not do that, then it opens up the door for anybody to build whatever they want. People did not like it at the time, so be aware of that is that other consequence.

Director Huus read into the record the letter from resident and land owner of McKenzie County, Gina Rolfsrud stating her frustrations and concerns regarding fees and permits in Agriculture. That letter is attached to the end of these minutes.

Dana Roff stated because you are taxed as Agriculture does not mean you are zoned Agriculture. **Director Huus** stated there are residential districts occupations that are taxed as commercial and vice versa. **Les Haugen**, Former Planning and Zoning Board member, stated when he was on the board when it first started in 2012-2013, everything in Agriculture was supposed to be exempt. Over the years different policies have been made and they need to go back through to see what was Agriculture exempt. People say they are Agriculture if they own 20 or 40 acres. Everybody knows who is in it and who is not. It is a common-sense thing but he knows it does not always work that way. He does not think that the building codes were such a big player back then. He would like to see Agriculture stay exempt but the biggest thing is to determine who is and is not considered Agriculture. **Jeremy Olson** stated, just to clarify, are you speaking about family dwellings as well. **Haugen** stated yes. They were initially but as the years went on that changed.

Glenn Wahus stated he started a small produce farm and registered for and received an Agriculture number. He had questions regarding the zoning on his land. **Olson** stated that would be discussed later in meeting.

Daniel Stenberg stated that they are trying to do everything they can to get more quality residential housing in our community and like the idea of waiving the fees. At the Housing subcommittee meeting earlier that day, they wanted to see if there was anything they could do to get more single-family housing and felt that waiving the fees would help with that. **Director Huus** asked if Daniel was also in favor of eliminating the building permit requirement. **Stenberg** stated he would not go that far, but it is up to the board to make that kind of decision.

Merle Jost stated clearly the Commission's original intent when they created this board, was that everything Agriculture was exempt. He was against it because of bureaucratic overreach which is happening now. Zoning does not have a place in Agriculture. His solution to whether people are engaged in farming or ranching, is to have a statement of whether someone is engaged in seasonal or daily Agriculture activities. If they sign that then they are in Agriculture.

Tim Transtrom stated that he is in 100% agreement with eliminating the fees because there are more taxes for less. Costs are higher than needed. No one inspected the homes of the people who founded this county when they built their homes. He understands safety but at some point the over reach has to stop. It is none of the county's business if someone builds a deck on their property nor should they have to pay the county to build a deck on their property. If he was building a deck, it would be for the safety of his family. If someone builds an unsafe deck, that is on them. It

comes down to common sense, it does not have to be detailed out and everybody needs to follow everything, but it does need to be fair for everyone whether they are in agriculture or not. **Gene Veeder** asked Transtrom if he felt we should have non-agriculture permits. **Transtrom** stated for commercial yes but he feels that is residential is already covered by the 40 acre rule. **Veeder** stated right now that is not the case. Under the current rule they would have to get a residential permit. You do not want to do it for one and then have it go the other way with the complaints of the county not doing anything about it. **Butch Fleck** stated that non-agriculture houses should be a little more regulated due to how often they change ownership because of how frequently people change jobs and move. **Jeremy Olson** stated yes, but where do you draw the line.

Ari Johnson stated that all homes in the county need to live up to the same standards for quality housing. The concern is a decrease in quality housing and quality building due to not having the same rules for everyone. If there is not a clear line between who does and does not have to follow the rules some people will take advantage of building and selling houses that do not comply with the building codes because it is cheaper to build a house that does not comply with the building codes than it is to build a house that does. There are frustrations to complying with the building code, but they are there so every house in the county to live up to the exact same standards regardless of where it was built or who built it. The best advice is to enforce the building codes with all single-family dwellings because there is no good way to draw the line and it is just

too hard to enforce. **Jeremy Olson** stated, to clarify, everything in Agriculture is exempt with the exception of dwellings. **Johnson** stated for Agriculture uses. The building someone lives in is not an Agricultural use it is a Residential use and that is why it is not part of the Agricultural exemption. There has been confusion about that for many years, he knows the discussion today will not clear up all of the confusion it has hopefully gotten most people on the same page so they mostly know where they are and so then know where they want to go and how to get there. **Craig Hystad** stated that most of the confusion is with the 40 acre rule and people think that because they have 40 acres they do not need a permit. People need to be informed that they need a permit. **Director Huus** stated that one of the purposes of this meeting is to get the message out to the public, advertise it and hopefully clarify that and then make some changes if that is the direction they want to go.

Director Huus stated the two points from tonight are to recommend eliminating the fee for every dwelling unit and to eliminate the permit or requirement in Agricultural District for over 40 acres. The Board would make a recommendation to adopt the revised fee schedule to eliminate the fees to the County Commission and then to write an amendment to the ordinance to do a building permit exemption in Agriculture District. **Johnson** stated he recommends that the county make no changes to allow building permit exemptions but it is the county commissions' decision to make. The changes are not absolutely mandatory but there seems to be some kind of political pressure to make a change to the current status. The change that he recommends is to

eliminate the building permit fees but keep to building permits for all single-family dwellings. There is the option of finding where to draw that line, but they do not have a recommendation of how to do that yet because he has not found one yet. **Director Huus** stated later in this meeting there will be a discussion on creating an Ordinance Revision Committee to talk about those and come up with an amendment, bring it up here and have you review it. We will talk more about it then. **Jeremy Olson** stated this is a living document that has changed a lot and so have the needs of the county. **John Irwin** stated his concerns regarding if someone was to build a house that did not need an inspection to get it financed and resell their house, he does not see how that would have anything to do with the board.

Gene Veeder stated that this should be dealt with in parts. The first one would be in the form of a motion and to eliminate the fees and permit requirements for Agricultural properties. We are going to have to come up with a determination and do multiple things and we need to use common sense. This is going to have to be an administrative decision and there needs to be something that defines a farmer or rancher even though it is going to create some problems. The process should start with eliminating the fees because the county does not need to be generating fees off of our residents and the public clearly states that. When we did this people thought farmers and farms were exempt from the permitting process. His motion is to eliminate those fees as presented and the permitting for Agricultural based properties. **Director Huus** stated the fees would be exempt across the board, Agriculture and non-Agriculture.

Director Huus stated the fees do not need an ordinance amendment. Exempting the Building Permit for dwellings in Agricultural District would require an ordinance amendment that would have to go through a first and second reading. **Gene Veeder** stated that building permits and inspection needs to be service provided by the county.

Director Huus stated Other Fees List #5 regarding a penalty, needed to be looked at and there should be an incentive to get a permit. **Ari Johnson** stated you are only talking about Agriculture users, not for subdivisions. Therefore someone who is not in Agriculture and builds without a building permit would be subject to the building requirement and therefore the penalty for building without one. **Jeremy Olson** discussed the need for a penalty for commencing construction without a building permit. The old way was to double the permit fee but double of zero is zero. **Gene Veeder** stated that could be a flat fee dollar amount. There would be a penalty based on not obtaining a building permit. It was decided that the fee would be \$500. There would be a penalty for not obtaining a building permit for non-Agriculture. **Dana Roff** stated is it Agriculture zoned or Agriculture taxed. **Director Huus** stated that the taxed use does not matter right now. **Butch Fleck** stated there needs to be a penalty if it needs to be permitted and is not. **Jeremy Olson** stated all fees are being eliminated for building permits for single-family for Agricultural and all other districts. **Director Huus** stated that they will get the consent agenda packet ready for the County Commissioner Meeting. **Gene Veeder** stated more input still needs to be added for

Agricultural exemptions before it goes to the commissioners. Also explain what the process would be is if they wanted to eliminate building permits for agriculture.

Director Huus stated just like any other ordinance amendment there would have to be a first and second reading at public hearings. The first reading could be in October, a second reading in November and then it would become law. They could not vote on a reading tonight because there was not a public hearing notice with that item. **Veeder** asked about the need for a motion. **Director Huus** stated just direction to that and the wording needs to be specific. **Veeder** stated his direction is to clear up the language and eliminate the building permit for dwellings on Agricultural properties. They are going to need some time to clarify that. His suggestion is to have multiple, maybe 2 or 3 criteria, to determine what Agriculture is, and they can do that prior to the reading.

Director Huus stated that they can form a committee to recommend that rather than he and Ari coming up with all the rules themselves. **Veeder** stated there will be complaints on both sides and they need to have something they can defend. They need something they can take out to the public and what is needed to qualify. It needs to be pretty specific otherwise it is unclear and people get preferential treatment.

Johnson stated another question is if someone feels they are exempt from the building code and they want to build a house, do they need to go to Director Huus to get the exemption and if so what does Director Huus give them to show that they are exempt. They are still going to have to go into Director Huus' office and talk about their house, about what they are doing with or without permits and inspections. There still has to

be something Director Huus can give because otherwise if they are going to sell the house and are asked why it was not inspected, why is there not a building permit, why there wasn't a Certificate of Occupancy, their response would be that they did not need one because they were farming at the time. There needs to be official documentation and a file on the project of building a house. They are not eliminating the entirety of the code and people are just going to have to come in. He wants to make sure they know how to administer it so everybody knows how it is supposed to work. **Director Huus** stated they would have to go through it very extensively. Put something in the paper explaining what is going to happen and put together a brochure saying even if you do not need a permit, please stop in. The last thing they want is to have someone who thought they did not need a permit, have an issue that made them need one and meanwhile they have started construction, not told anybody and now they are in hot water. **Veeder** stated speaking from the history of what the commission has been, is we do not want to be an attractant for all substandard housing so people go out into the county and put up below standard housing. People will say that will not happen, but it will and has happened. He wants to make sure everyone remembers that. People do not like rules but they have found out that they can be taken advantage of in this county big time and it is not always like it used to be. **Director Huus** stated he can see that some are going to start building and not tell them, but the more people that know the proper procedure, the less of that they will have. **Kathy Skarda** asked if someone has a house in Agriculture and wants to build a garage, would they just call Director Huus, say they want to build a garage and get a yes. **Director Huus** stated if it would be

attached currently they still need a permit. **Olson** stated unless the exemption is approved. **Director Huus** stated everybody has to comply with this fee schedule. **Olson** stated he wants to be clear to Director Huus and staff that this would be an administrative approval process. **Director Huus** stated that way there is a record. **Skarda** stated and that way there is record the commissioners approved that and why. **Olson** stated there is no motion this is an ordinance change and by the rule it has to go through two different hearings. **Veeder** stated we will come up with a set of guidelines that will clarify what we are trying to get at based on public input. **Olson** stated the staff will prepare something for next month for a first reading, make changes with input from folks over the next month or so, have the second reading and if it is passed then it goes to the county commissioners and it could be implemented as early as November.

Tim Transtrom stated that he would like a clarification for the fees for this and if he just started building a deck does he still have to get a permit or if it is just for a single family dwelling. **Director Huus** stated that right now a permit would be needed until it is approved by the county commissioners. **Jeremy Olson** stated that may change in November. **Transtrom** said his recommendation would be that if you are going to build a house, that is fine, but blueprints should not have to be provided for a deck or a garage. **Olson** stated that is what they would be doing over the next month. **Butch Fleck** stated that people still need to come in and talk to the staff and the staff will let them know what can and cannot be done. **Craig Hystad** stated that Agriculture would

still need an approval. **Director Huus** stated that people request a copy of the first reading, go through it and mark changes on it (it should be done and on the next agenda which is usually ready about 1 week before the next meeting) make comments and come to the meeting. It can be found on the McKenzie County website.

Jeremy Olson stated we are just an advisory board but we need the public input to make a decision. This is a living document that was started in 2012 and is changing all the time. The public demanded it because there was so much garbage going in and up around the county and there were no controls in place. Planning and Zoning was established by the county commissioners to put those controls in place. Things have evolved, the boom has slowed down and it is a little more manageable and civilized than it used to be. Changes are being made because it was recognized what was true in 2013 and 2015 might not be applicable in 2019 and 2020. In order to make changes, they need to get quality input from the citizens through emails, calls to the board members, the staff, and to the county commissioners because that is how this whole system works. This meeting has been successful because of the public input. **Les Haugen** stated he sees what they are trying to get to but most ranchers probably will not call in to let anybody know they are building a deck, they will just build it, even if there is a fine. If they are going to Agriculture exempt it, then they should Agriculture exempt it. He also stated this has all started because of the oil industry which has helped everybody and been good for the county. It always comes back onto the property tax payers and when they leave buildings empty, the county has to clean it up. That is why

the county needs to work with Agriculture people and somehow separate it. The definition of farming given by Merle is accurate: Someone doing farm work almost daily versus someone owning 40 or 20 acres and wanting to live in the country.

Everybody wants to live in the country but that does not mean they are Agricultural.

Director Huus stated that it would be a good idea for some of the public to be on the Subcommittee meeting regardless of what we do or do not do. **Jeremy Olson** stated we now have the direction from the Board for what we want to see next month. This is the time to make the changes and for better or worse, this is where these changes are going to be made.

Motion to Approve the Recommendation to the County Commission to Eliminate the fees on the Residential Building Permit Fee Schedule: line 1 and 2 regarding stick built Single Family Home/Duplex; lines 3, 4 and 5 regarding Attached and Detached Accessory Buildings; lines 7 and 8 regarding Modular Homes; lines 11 and 12 regarding Decks; and revising the penalty for commencing construction before obtaining a Building Permit to \$500. Motion by Gene Veeder, Second By Craig Hystad.

Voice Votes: All Ayes

Motion Passes.

PUBLIC HEARINGS:

Dixon Properties, LLC Conditional Use Permit - #13-020CUP-Location:S2,SW4,
Section 31, T148N, R98W, PID#610007800. Lots 2-3, Section 6, T147N, R98W PID#
600000780

Has been **POSTPONED** to October 12, 2020 Planning and Zoning Board meeting.

#06-20SUB-Wagoner-Minor Subdivision

Director Huus stated this is Benjamin and Teela Wagoner a minor subdivision of 40 acres from 160 acre Agricultural District parcel. The Wagoners are purchasing 40 acres from Joanne Schneiderman to build a home. This purchase encompasses the old farmstead. This is located southwest of Watford City off 130th Ave. NW. In the Comprehensive Plan it is currently Oil and Gas Infrastructure, along the section line off the south edge of the property and it is currently zoned Agriculture. Because it was not a direct family member, we have to do the Minor Subdivision process. Approval is recommended because they meet all the requirements for a Minor Subdivision in the Agricultural District.

Motion to Approve #06-20SUB- Wagoner-Minor Subdivision. Motion by Gene Veeder, Second: Kathy Skarda; Voice Votes: All Ayes

Motion Passes

DISCUSSION ITEMS:

#0001-17PUD Rezone Clarification

Director Huus stated this is a discussion on the way things were recorded and documented in the past and the confusion it has caused in trying to recreate what was

approved and recorded. An area in question is located SE of Watford City, along 24th Street NW and 125th Ave NW. The zoning map shows how it is currently zoned. This was approved as a PUD with R-5 and some R-1 lots. We eventually were able to dig up the reports that were completed by previous administration. Some are R-1 and some R-5. Glen Wahus property is R-5. It was approved back in January 2017 but was recorded just as a PUD. The map we found clarifies how it should be shown. When there is a PUD approved, should they ever do this again, the GIS Administrator Bonnie Foster will add a field to the data showing the file number that it was approved under. Then the approval of that area can be readily found. The Wahus property is listed in the original PUD in 2017 as R-5. There are specific requirements in a PUD including the overall compatibility with the surrounding land uses. The area was originally shown on the zoning map as Industrial, so all the surrounding area is Industrial except for this PUD that was approved. **Jeremy Olson** stated for clarification that when Wahus bought the property, he did not think it was Agriculture. **Director Huus** stated yes and they have the original zoning maps that were prepared with the zoning ordinance. This zoning was overlaid on all the county and according to the map it is shown as Industrial. **Wahus** stated that he purchased the property before it was changed to Industrial. **Olson** stated that he wondered how the land owner would not be part of the process. **Director Huus** stated that the zoning map was put on there before 2017 when the PUD was declared. **Wahus** stated they were talking to the administration then about what we were doing when they changed it to industrial. **Dana Roff** stated the area was industrial on the December 17, 2012 zoning map and the comprehensive

plan shows the same. **Director Huus** stated that map was the only map they were able to find on the history of the original zone overlay that was done with the adoption of the zoning ordinance. **Roff** stated when they change a zone, GIS does not keep historical record of that. So there was no record of that change to this zone. Also, it was not in any of their computer records and there was no file on it, she had to do digging to try to find that. Mrs. Wahus used their own paperwork to help Roff with one of the maps. **Olson** stated apparently this happened even though the Wahus' did not want it to happen, and we need make it right for the Wahus' family. **Mr. Wahus** did state he did know about the PUD and was told that if he wanted to build out there he would need to get signatures from his neighbors and come into the office with an affidavit stating he could do this. Then they never heard anything until he was called and asked if he wanted R-20, R-5, R-1, R-10 to which Wahus stated R-5, because of the reason he has two sons and if he ever wanted to subdivide part of the land to them, his land could be subdivided. **Director Huus** stated it says in the approval letter that the land can be subdivided down to 5 acre lots. **Director Huus** stated the PUD makes sense but Planning & Zoning could not find any record on how that PUD was created. A PUD has to have specific things identified within it. It is made whenever there is an area that does not really fit into a certain zone and they have the ability to recommend a PUD that specifies those different things. Nothing else should have to be done with this zoning. **Director Huus** stated the Tax Assessor will base the taxes on the use not the zone. **Roff** stated that two other lots next to Wahus are R-1 and the rest are R-5, however the space on the east side of them is still industrial and if someone wanted to

put in something industrial right next to Wahus' they could. **Olson** stated a PUD is put in place when it does not fit anything else.

ORDINANCE REVISION COMMITTEE

Director Huus stated he proposes that an Ordinance Revision Committee be set up to discuss and author ordinance revisions. When a first reading is presented to the committee by Ari Johnson and himself, we work out what we interpret the direction follow for the revision and then present again. A Committee for this would be a better use of time for all parties involved by helping to get the first reading right the first time. These would be presented to Planning & Zoning with changes that were done with this committee. It is recommended that the committee have Director Huus, one or two of the staff, Attorney Ari Johnson, a Planning & Zoning Board Member or two, and one or two members of the public to serve on this committee. The public volunteers were Glen Wahus, Lee Geiger, Eva Hepper; The Board volunteers were Craig Hystad, Cody Knetzger; the other volunteers were Planning and Zoning Director Curt Huus and Attorney Ari Johnson.

ADMINISTRATIVE CUP APPROVAL LIST

#11-20CUP-Border States Paving. Administratively approved per Ordinance 5.8.6

Based on discussion at July 13, 2020 P & Z Meeting

Director Huus stated after Border States Paving CUP was approved by the Board in June 2020, Border States Paving added a few things that were outside of the original CUP. Border States Paving was a temporary CUP and he could have been approved it administratively but since it was next to a school and had access onto Hwy 23, he felt it was best to bring it to the board for approval, rather than approving that administratively to start with. In July 2020 he was given the okay to administratively approve the changes on the CUP. Border States have since met the conditions and in the next month or two will be taking their site down.

P & Z Board Vice Chair

Jeremy Olson stated since he was appointed to the Chairmanship, there has not been a Vice Chair. The place of the Vice Chair is if the Chair is not there, the Vice Chair would run the meeting. It is important to have one of the appointed members of the board, not necessarily elected officials from the county or the city or members of the board to be vice chair in the case of the chairman's absence. **Gene Veeder** made the suggestion of Butch Fleck to the position of Vice Chair of the Planning and Zoning Board.

Motion to Appoint Butch Fleck for P & Z Board Vice Chair. Motion by Gene Veeder,

Second by John Irwin. Voice Votes: All Ayes

Motion Passes

OTHER DISCUSSION BROUGHT UP AT MEETING:

Butch Fleck stated that a commercial company that recently moved into Grassy Butte on the end of town has become a mess. The skid units are too close together, there is a sewer next to another lot. Another complaint is titan liner being washed there and possibly contaminating the ground there. He had spoken to Compliance Officer/Fire Inspector, Todd Foster, but did not think it has been looked into it yet. Director Huus will look into it and get the details.

ADJOURNMENT

The meeting was adjourned at 7:30 PM

The next meeting of the McKenzie County Planning and Zoning Board will be held on October 12, 2020 at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM

November 1, 2017

McKenzie County Statement of Clarification

Re: ND State Code regarding Exemption of Building Permit Requirement – NDCC 54_21.3-04.

NDCC 54-21.3-04. Exemptions.

1. *Except as specifically provided in this chapter, the following statewide codes are exempt from this chapter:*
 - a. *The Standards for Electrical Wiring and Equipment, as contained in North Dakota Administrative Code article 24-02.*
 - b. *The State Plumbing Code, as contained in North Dakota Administrative Code article 62-03.*
 - c. *The State Fire Code, as contained in the rules of the state fire marshal as provided in section 18-01-04.*
2. *The following buildings are exempt from this chapter:*
 - a. *Buildings which are neither heated nor cooled.*
 - b. *Buildings used whose peak design rate of energy usage is less than one watt per square foot [929.0304 square centimeters] or three and four-tenths British thermal units an hour per square foot [929.0304 square centimeters] of floor area.*
 - c. *Restored or reconstructed buildings deliberately preserved beyond their normal term of use because of historical associations, architectural interests, or public policy, or buildings otherwise qualified as a pioneer building, historical site, state monument, or other similar designation pursuant to state or local law.*
3. *Any building used for agricultural purposes, unless a place of human habitation or for use by the public is exempt from this chapter.*

McKenzie County Building and Planning Department interprets the exemption found in subsection 2a, which reads, “Buildings which are neither heated nor cooled”, as follows:

A building that does not have a heating unit or an air conditioner unit for the purpose of artificially modifying the temperature of the building shall not be required to have a building permit in McKenzie County. Fans used to circulate air within the building or to introduce outside air into the building or to exhaust air from the building are not considered as either heating or cooling of the building, even though a fan may have the effect of temperature modification in the building.

McKenzie County Building and Planning Department interprets the exemption found in subsection 3, which reads, “Any building used for agricultural purposes, unless a place of human habitation or for use by the public is exempt from this chapter”, as follows:

Any building which is used for agricultural purposes, which is interpreted as buildings that are used in conjunction with the production of agricultural crops, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit and other horticultural products. Property that is zoned Agricultural is not automatically considered an agricultural use but only those properties that

being used expressly for agricultural purposes as described above. Family gardens and group gardens are not considered for agricultural in nature.

Therefore, barns, sheds, detached garages, out buildings, corrals, coops, and shelters that are being used for agricultural purposes as described above are exempt from needing a building permit. However, any home, residence, trailer or structure used as living quarters shall be required to obtain a building permit from the county. There are no exemptions to the requirement of obtaining a building permit for any home, residence, trailer or structure used as living quarters regardless of the size of the parcel of land that the home is occupying.

McKenzie Co. Planning and Zoning,

I would like the county to keep the agriculture exemption for building permits and fees.

I would also like the rule regarding heated structure removed.

Why would I build a machine shed/barn/building in North Dakota if there was no heat source installed?? Where do I work on my agriculture equipment in the winter?? Where do I park my loader tractor so it will start to feed cows?? Where do I keep my chickens, pigs, horses, goats, sheep, baby calves, fruits, vegetables, chemicals and other precious assets??

If your business is agriculture (see schedule F on tax return), no matter what kind or how many acres you own, no matter what kind of structure you build, your building permits and fees should be exempted!!

Thank You,

Gena Rolfsrud

Resident and land owner of McKenzie Co

MEETING SIGN-IN SHEET

Meeting Date: 9/8/2020

Name PLEASE PRINT NAME LEGIBLE	Phone #	Agenda Item #
Virginia Leland	701-565-2248	F 1.
Les Haugeil	701-828-3550	
Tim Transtrom	701-570-7734	
Harry Steverson	701-565-2247	
Glenn Nahus	701-770-7580	
Tina Nahus	701-770-2310	
Everett Johnson	701-770-4850	
Mary Johnson.	701-580-2749	
Bill Macdon	701-565-2245	
Merle Jost	701-863-6985	
Nelson Leland	701-565-2347	
Dane Munn	701-565-2208	
Rachael Hill	701-842-3719	
Howland		
Colleen	701-481-1579	
Wenon W. Howland	701-570-2357	

October 2020

Planning and Zoning Commission Minutes

October 12, 2020

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

Pledge of Allegiance and Roll Call

Members Present: Butch Fleck, Cody Knetzger, Craig Hystad, Jeremy Olson, Jeremy Olson, John Irwin, Kathy Skarda, Heidi Brenna

Members Absent: Gene Veeder, Matt Beard

Staff Present: Planning Director Curt Huus, Planning Attorney Ari Johnson, Planner Sandee Kimpel

Staff Absent: Planner Dana Roff, Administrative Assistant Cindy Jensen

Others see sign in sheet at end of minutes.

Motion to Approve September 8, 2020 Meeting Minutes as Presented By Butch Fleck, Second: Cody Knetzger. Voice Votes: All Ayes.

CODE ENFORCEMENT:

Director Huus stated Sandee Kimpel has stepped up to take over the Code Enforcement duties that were vacated by Todd Foster's departure from that position. Sandee has followed up on the open cases. She has organized them based on priority, sent out letters to violators, conducted site investigations, as well as keeping up with her normal Planning duties. We really appreciate her dedication to provide that service both to the Commission and County. There are currently no Code Enforcement actions to discuss at this time.

UNFINISHED BUSINESS:

TENORM PRESENTATION

Director Huus stated Montana has placed new restrictions on the TENORM that enters and is disposed of in their state. Planning & Zoning was directed by this Board to gather information and do research to look into options for TENORM disposal for McKenzie County. Western Dakota Energy Association contracted with AE2S to do just

that. A copy of the presentation provided to Western Dakota Energy Association was also given to him. He was put in touch with **Brent Bogar**, a Senior Consultant with AE2S who is presenting his report at this meeting and the October 20th Commissioner Meeting. Brent has an extensive background in the oil and gas industry.

Bogar proceeded with his presentation. The slides of the report are attached at the end of these minutes.

Olson stated the whole idea of this workgroup is to have the consistency between the different counties. **Bogar** stated yes, that would be the goal.

Kathy Skarda stated her concerns of the number and types of trucks transporting TENORM through the county. **Bogar** stated MHA Tribes are aware of the study and he would take those concerns back with him to the workgroup as it should be part of the conversation.

Skarda stated her concerns about the depth of the formation and the pressure of the wells being monitored and how important all of this is with the people who work in the oil field. **Bogar** stated that there are two wells drilled on a site. The slurry is pumped down one and they monitor the pressures in the other one (he did not know the max pressure).

Craig Hystad asked if **Bogar** knew how many strings there were going to be. **Bogar** stated he did not know but it would have more than a salt-water disposal well and could get that information. **Hystad** stated his concerns of the aquifers getting contaminated. **Bogar** stated he would have those answers at his presentation at the October 20, 2020 County Commissioners Meeting.

John Irwin stated his concerns of the number of tons and if North Dakota would be handling it the same as Montana would. **Bogar** stated yes, and that basically it is business as usual and that concern with that lower limit did not have an impact. The drill cuttings are dried before they are hauled. There is a time process a cost of shipping and hauling to Montana. **Jeremy Olson** stated the idea behind this is we cannot control what they are going to do in the future, but we want to be able to control our own destiny. **Bogar** stated correct. **Skarda** stated that they would like to have Bogar's contact information in case they need to get ahold of him. **Bogar** stated he would leave a couple of cards with Director Huus.

BJ Lindvig, part of Tri-township stated her concerns on the distance of siting the landfills from the highway. **Bogar** stated the need for enough room for the trucks to turn while at the same time not impeding traffic. **Jeremy Olson** stated that is something that the township or county jurisdiction would mandate. **Lindvig** stated her concerns on the levels of radiation of the TENORM hauled in, if there would be containers to store it and the number of sites. **Bogar** stated if the radiation of a load is too high, it is sent back and all loads need to be kept track of whether they are accepted

or not. There would be containers to store it and the number of sites would depend on the amount of TENORM produced and how much a slurry well could handle. **Bogar** stated this is about supporting industry, not about whether making more money or not. From Western Dakota Energy standpoint, when they looked at this, we asked how do we reasonably support our industry while maintaining what our townships, counties, cities and members want. **Lindvig** stated her concerns on the number of current landfill sites that are permitted to receive 50 picocurie TENORM. **Bogar** stated there is a difference between a TENORM permitted landfill and an Industrial Waste permitted landfill, which only accepts a limit of 5 picocurie.

Wes Lindvig stated his concerns regarding the storage of TENORM and high wind blowing wet TENORM when it is being dumped. **Bogar** stated he only did the study for West Dakota Energy and for what we are looking at is what the process for siting a facility. He suggested, that the operating questions of how the loads are handled be directed to Waste Management or Secure Energy. **Jeremy Olson** stated we are in the very beginning of many steps, want to get in front of this and have a say in how it is going to be done. That is why we have the researchers in here to help us with that.

Bogar stated at the Legislature, industry has got a lot of pull so they could force this through and take the control away. Western Dakota Energy is working with the PSC to determine how to do this as a uniform process and to come up with a process that allows for that local control while making sure that there is some uniformity to it so it does not disappear.

Kathy Skarda stated the need for local members of the community and stakeholders who want to be involved in working on that working committee, express their concerns, and help create a solution of being able to contact Brent. **Brent Bogar** stated contact Geoff Simon, Western Dakota Energy Executive. Doug Nordby is still on the Board for Western Dakota Energy until his Commissioners term expires in November so he can filter that to Doug and Doug can get that to Geoff. That would be his recommendation. He would also be leaving some business cards with Director Huus.

Jeremy Olson stated that he would bring the Commissioners up to speed at the County Commissioners' Meeting, being held on October 20, 2020. **Director Huus** stated that he would get the contact information for Brent to the Board as soon as he gets it.

PUBLIC HEARINGS:

**#13-020CUP - Dixon Properties, LLC - Ponds - Conditional Use Permit - #13-020CUP-
Location:S2,SW4, Section 31, T148N, R98W, PID#610007800. Lots 2-3, Section 6,
T147N, R98W PID# 600000780**
Has been **POSTPONED to November 9, 2020 Planning and Zoning Board meeting.**

#009-19CUP-RBW – Sorenson Badlands Pond – Reclamation Bond Waiver

Director Huus stated this is an amendment to a current CUP that was approved in June 2019. The Pond is located a couple of miles east of Watford City, north of Highway 23 along 120R Avenue NW.

Director Huus read the Findings of Fact. They are attached at the end of these minutes. Prior to releasing the bond requirement, Planning & Zoning will verify compliance with the original conditions as they always do. They recommend approval of the Reclamation Bond Waiver per the suggested motion shown on the Staff Report.

Butch Fleck stated he and Kathy Skarda had concerns about the Dixon location not complying. **Director Huus** stated they check on them before the release of their bonds request. They notified Dixon that they had to cut the weeds down there. The other Reclamation Bond Waivers that have been approved, are not released until all those original requirements of that CUP are met. **Kathy Skarda** asked if a company does not meet the compliance rules issued, how many days do they have to meet the requirements? **Director Huus** stated 60 days.

John Irwin stated his concerns of the Sorenson Badlands Pond needing to be cleaned up and seeded back to grass. **Director Huus** stated they are not abandoning the pond, they want to keep it active. **Irwin** stated that the ponds should be looked at before the commissioners meet, to see if everything is up to code before they decide whether or not to waive the bond on them. **Director Huus** stated that the ponds are required to meet all conditions that have to be met, before the bond is released.

Butch Fleck asked what recourse the county has if they release the bond and then compliance conditions are not met? Does the CUP take care of all that? **Director Huus** stated the applicant still have to comply with the conditions of the CUP throughout the life of it. The bond is to fix their own property. The Reclamation Bond Waiver is just putting it on them so they cannot come back to us if they are not happy with the way the pond looks because it is their own fault. **Jeremy Olson** asked what the process is if a pond is not currently meeting the CUP. **Director Huus** stated it would be a code violation and then eventually Planning and Zoning could revoke their CUP and they would have to stop using it for the use that they had intended in the CUP. **Olson** stated so then it would economically hurt them if they did not comply and they could be shut down. **Director Huus** stated exactly. If they did not want to continue using it for commercial purposes, it can revert to Agricultural purposes and then they can just abandon the CUP because the CUP is for the commercial use of that pond to sell water. **Olson** stated the whole point of the waiver is so landowners don't have to pay to clean up their own stuff.

Motion to Approve #009-19CUP-RBW – Sorenson Badlands Pond – Reclamation Bond Waiver. 12057 Highway 23, Watford City Section 13, T-150N,R98W, Parcel

200009100, Motion to Approve by Butch Fleck, Second: Kathy Skarda; Voice Votes: All Ayes

Motion to Approve Passes

#07-20SUB - Missouri Breaks - Major Subdivision - Preliminary Plat. SW1/4 of NE1/4 of T-153N,R-101W, Section 33 Parcel ID#150047150.

Director Huus stated this is for a Preliminary Plat for a Major Subdivision called Missouri Breaks. It is located approximately 13 miles north of Alexander and 1 mile west of Highway 85. The property is currently zoned R-1 Low Density Residential. There are currently 4 Residential Manufactured Homes on the west side of the property. The basic layout of the subdivision consists of 32 one-acre plus lots and has a park tract in the Northeast corner of the loop Road. It has internal road right-of-way. Domestic Water service is currently supplied by McKenzie County Water Resource District. The manufactured homes are served with a 2" waterline. The existing roadway connection to Highway 85 is via 124th M Avenue and 42nd St. NW. The existing highway roadway system is unpaved and has gravel surfacing and would require paving eventually. According to the Water Resource District, the existing 2" waterline is inadequate to serve the subdivision and would require upsizing to a 6" water main. The waterline would have to tie into the existing 6" waterline. Shown on the map is an existing waterline that goes to a pump house that boosts the water out of the reservoirs and into the system and that has a 3" waterline that would also have to be upgraded to a 6" waterline.

The McKenzie County Ordinance for platting a major subdivision includes 3 basic steps. There is the Preliminary Plat, which is shown on our map right now and there is also an improvement plan step that does not have an Application process but is part of the Preliminary Plat process and then it goes to Final Platting once we agree that everything has been met at the Preliminary Plat Stage. The Preliminary and the Final Plat require an application. This is a Preliminary Plat and there are two options that we consider tonight. We either deny the Preliminary Plat or the Board approves what is called Tentative Approval.

Director Huus read the McKenzie Subdivision Ordinance based on those findings.

6.6.4 Preliminary Plat Tentative Approval

A hearing is held by the Planning Commission on the preliminary plat. The plat shall be reviewed and modified as needed. The Planning Commission shall tentatively approve the preliminary plat or deny it.

If the preliminary plat is recommended for denial, the reasons for that action shall be stated.

If tentatively approved the applicant may proceed with preparing improvement plans. Tentative approval of a preliminary plat by the Planning Commission is not an acceptance of the subdivision plat for record, but is rather a general expression of approval of the preliminary plat as a representation

of the forthcoming final plat.

Director Huus stated that what are doing here would be stating if you can meet all the conditions and the improvement plan meets the approval of the County Engineer and County Commissioners, this could move forward to Final Platting. We are not approving what they have right now for Final Platting. They are not going to put all this effort into all these improvements and into the design if there is no way the plat is going to be approved. It saves them the financial burden of having to do all the planning at this stage before we say you have just wasted all that money. This is a way to say they can proceed but must meet all the conditions. Another point I would like to make this is what our Ordinance calls a Premature Subdivision. The reason it is called a Premature Subdivision, is if the requirements to remove the Plats from Premature status is not met, the Final Plat would be denied. The things that make it a premature subdivision are: it does not have adequate water supply and would have to be upsized to a 6"; and since they Subdivision is more than a half mile away from a paved road they would have to pave to within a half mile of a paved road that makes this subdivision a Premature Subdivision. In their improvement plans they would have to show us improvements to bring the subdivision out of Premature status. If the improvement plans do not show bringing it out of Premature status the Board of County Commissioners has to deny the final plat. The final plat is not being approved or denied, they still have to come into compliance to take it out of the Premature Subdivision. To do that they can either complete construction to come into compliance or they can do a construction bond to assure the County that construction gets completed.

Butch Fleck asked if the water district has the capacity to give them the water. **Director Huus** stated yes they have enough water capacity to supply the quantity of water that a 32 unit subdivision would require if it was at full capacity with a new 6" water main. **Fleck** asked if they were an organized township. **Director Huus** stated that Tri Township is organized, but they have signed a Joint Powers . They make recommendations and the county has the ultimate say in approving or not. They have relinquished their zoning rights.

Jeremy Olson stated organized townships that execute a Joint Powers Agreement with the County meaning that the McKenzie County Zoning Ordinance is applied and enforced by the County process. One part of the process is to get input from the organized township. The township makes recommendation for approval or denial with reason. This board has generally tried to go with what the township recommendations as long as as it was reasonable and defensible. For the new members of the board that is generally how we have done it in the past giving a lot of credence to the township recommendation.

Jeremy Olson read into the record, the Township Recommendation for denial along with the Bruce and Susan Bradford email. Both are attached to the end of these minutes.

Butch Fleck stated they have been down on spot zoning. This different because it is a whole subdivision. **Jeremy Olson** stated this subdivision is already zoned R-1 right now. **Sandee Kimpel** stated this is not a question of a zone change, it a question of the Preliminary Plat for the subdivision itself. **Olson** stated the applicant is stating this is what they want to do and before spending all the money to research it. **Fleck** stated this is really not spot zoning, which

he was concerned about. **Olson** stated it is not spot zoned and is zoned appropriately, just not as a subdivision.

Kathy Skarda stated her concerns regarding how the smell could impact the lives of the people in the presented subdivision that would be located behind IHD. She also stated that this Premature Preliminary Plat started in 2015, and wanted to know the reason it is resurrecting now if nothing had changed. **Director Huus** stated the plat was approved in 2015. They did not move forward so it expired. **Skarda** asked if they did not move through with it, why are there houses built there? **Director Huus** stated he did not know why they were there and did not know if they were there before it was approved or if they were grandfathered in. Someone from the audience stated those were put in without approval and then came back and asked for forgiveness. **Skarda** stated her concerns with them being built to the specs and state regulations, building codes, etc. and being in compliance with all the state rules for sewer and water, etc. **Director Huus** stated they are manufactured homes and asked Sandee Kimple if there are any code violations for that. **Sandee Kimple** stated that she does not currently have anything on that property that she has found or come across but would do more research **Fleck** stated that if they were put in in 2015 that was after Zoning was put in so that should have something. A discussion regarding the original placement of the 4 manufactured houses currently on the property followed. **John Irwin** stated his concerns that it had bypassed the Tri Township because the township had denied their powers. **BJ Lindvig** from the Tri Township stated yes and they have been involved in it. She stated that at the time, zoning was just coming into the area. The 4 homes were put up almost in the middle of winter, and there was one sewer per two houses. They wanted to pave the road with the option that the county would take it over. It is not on a section line and is right behind IHD. There have been numerous complaints from a subdivision just a mile from IHD asking if something could be done with the smell. Many dollars later that is where they are at now. One subdivision that they do have, it is not full, the homeowners association dissolved, so now the roads are bad and the buses have to go there. There is not enough water pressure with the 2" line in there. There are definitely some drawbacks with that. Another thing in their area alone, over 700 houses could be built in that area. There are already 26 homes there now and people moving out. They do not want another subdivision to start and then they are left with cleaning up dirt piles and weed piles that are left to be cleaned up. That was part of the reasoning for denying the subdivision and it is nothing against the applicant.

Jeff Prince, local representative for the applicant, stated he is working with Eric Kirby of Kirby Engineering . In 2014 and 2015 an applicant went through the process for the entire plat and achieved the rezoning. There is a new owner now who wants to pick this back up. As stated in their application, the applicant acknowledges all needed improvements that have to be done in order for this to happen. The staffs' recommendation has a list of what needs to be taking place and if the applicant wants this to happen, it needs to meet every agency and every department's approval including obtaining construction bonds and covenants and establishment of a homeowners association. It also has to go by the attorney's office for their approval. As Director Huus stated this does not bind the planning commission and when this comes back with the final plan, all the I's will be dotted and t's will be crossed.

Butch Fleck stated this location is going to have a lot of problems and there are already other places available. **Skarda** asked **Prince** if he knew who the investor is. **Prince** stated it is JR Bon, LLC.

Wes Lindvig stated his concerns of the placement of the waterline across his property and the Water Department having to be dug up and changed. **Director Huus** stated that the waterline placement shown on the map is just one option showing the easiest route. He stated that easements would be required.

Jeremy Heen, from the Williston Rural Fire Dept. and lives in the area, wondered what the requirements are for water here and for the south end of their district. **Director Huus** stated water cannot be pulled off the resource district waterlines to directly feed hydrants so water tanks would have to be put in to store water to supply their hydrants. **Erik Kirby** stated they reached out to the fire department and did not get a response, but will work with them if this gets approved. They have been working with Karolyn at the Emergency Management Services, and Amber Higgins with the Weed Management Services.

Cody Knetzger asked if there were people living in those 4 houses currently. Someone from the audience stated yes at least a couple of them.

Butch Fleck stated he is not for the subdivision as there will be a lot of problems. **Jeremy Olson** stated the Tri Townships recommendation for denial has some very good points and valid issues and he is very hard pressed to go against the township. **John Irwin** stated they need to regroup with the township and if they can get the township's approval, they can come back and present again. The Township is struggling with the subdivisions they already have.

Motion to Deny #07-20SUB - Missouri Breaks - Major Subdivision - Preliminary Plat for the reasons of location, proximity to ISD, roads, waterlines and for the reasons the Tri Township Board recommended to deny. Motion by Kathy Skarda, Second: Craig Hystad; Voice Votes: All Ayes

Motion to Deny Passed

#14-20CUP - West Dakota Water Pipeline & Johnsrud Pond. T-149N,R-96W Sec 4, PID# 040013000 & 040013400, T-150N, R96W Sec 32PID# 690015800 & Sec 33 PID # 690016500

Director Huus stated this is a Conditional Use Permit for Freshwater Pipeline and a 49.5 acre ft. pond. The project is located east of Watford City along Beaver Creek Road. It consists of approximately 2.5 miles of a combination of 16" and 20" waterlines. It will be installed into an existing previously approved waterline and a new 49.5 acre ft. pond. The project is located on Johnsrud property. Part of the waterline runs through some Parish Property. Agreements from all parcels affected are on file. The Zoning and

Comprehensive Plan designations are Agricultural District so waterlines and ponds are a conditional use. Staff recommends approval per the suggested motion given in the staff report. It will fill up a pond and supply a couple of frac sites that are in the vicinity. The pond will be all piped water directly to the well pads. It will be about 2.5 miles of underground pipe that might connect with overland pipe with another permit, with the total pipeline being 21,000 feet including existing pipeline.

Ryan Waters, Engineer with Western Dakota Water, stated the project is 4 miles long and previously they had 2.5 miles that were approved with a CUP. They have 1.5 miles left plus some extensions for master taps for landowners. The water comes from the Missouri River over by Trenton and comes out and goes across over to Johnson Corner. They have 10,000 acre ft. permit from the state of North Dakota and they can pump about 7,000 gallons per minute. The water makes it to different customers along the way but ultimately it comes from the Missouri River. This is a short extension off an existing line to our customers. The pond itself is purely for water storage and there will put risers up at the end of the pipes to surface transfer short distances to the well pads. **Jeremy Olson** asked if all the landowner easements have been signed. **Waters** stated yes all parties have signed and we just got a notification back from the State Water Commission approving our plans for the pond. Everything in terms of notifications and permits have been put in place. **Craig Hystad** asked if the pipeline will be going past the pond. **Waters** stated the pipeline will go to the end of the Johnsrud property but could potentially extend further.

Butch Fleck asked if this requires a 4-wire fence or if it is out in the open. **Director Huus** stated the condition put on is it would be a 4-strand barbwire. **Waters** stated the landowner wants a 5-strand barbwire corner post with a minimum of 4-strands. **Kathy Skarda** asked if Waters could see any problems in the future for this pipeline maintaining the 7,000 gallons per minute if the drought in the area and the Little Missouri declining water levels continued next year. **Waters** stated basically it comes out of the Yellowstone and Missouri River. So it is before Lake Sakakawea where the water is diverted. It works very well when it is dry like this when the small creeks do not have water but the Missouri and Yellowstone are flowing enough to get water. The water is coming all the way across that county and serving that area. If it ever got down to where the water levels in the Missouri were too low where we could not divert water, the state would shut us off. **Jeremy Olson** stated that is the jurisdiction of the state. **Director Huus** stated the state likes the reservoirs because they can only fill them when the water is high and cannot when the water is low. It is a buffer when there is low flow. Now you have some stored water and you are not drawing off those water permits. **Waters** stated they do have other local farmers and ranchers they get other water from. In the Spring they use the water from Cherry Creek and Tobacco Gardens which is supplemental to what they have for supply. It is coming from the river and is a big water system that is spread all the way across from the county. **Kathy Skarda** stated her concerns of a dire drought situation and a lot of people are very concerned

about the water levels in both the Yellowstone and Little Missouri, for irrigation and wildlife.

Cody Knetzger asked if there were other ponds that Western Dakota Water manages. **Waters** stated yes. He named a number of other ponds they manage. **Knetzger** asked if there were any violations to any of the existing ponds mentioned by Waters. **Director Huus** stated not that he was aware of. **Waters** stated since he started a year ago, they did have some violations but got them taken care of and are very proactive in following Planning & Zoning's direction.

Motion to Approve #14-20CUP - West Dakota Water Pipeline & Johnsrud Pond
Motion by Craig Hystad, Second: Cody Knetzger; Voice Votes: All Ayes
Motion to Recommend Approval Passes.

Building Permit Agriculture Exemption - Ordinance Amendment-1st Reading

Director Huus stated in our last meeting we formed an Amendment Sub-Committee. It consisted of Board Members Craig Hystad and Cody Knetzger; a few property owners; Planning Attorney Ari Johnson and himself. The committee met to discuss and author an amendment to exempt single family dwelling units from the requirements of the North Dakota Century Code and the IBC for requiring a building permit in Agricultural properties of 40 acres or more. At that meeting the committee discussed two possible options. One of them being a blanket exemption of Agricultural property over 40 acres to be exempt from having to require obtaining a building permit. The other option was a waiver process similar to what we do for certain buildings in oil and gas. The applicant would have to come in and request a waiver. Both drafts were written up and sent to the committee for review. The direction was to go in the direction of the waiver rather than a blanket type exemption. The blanket exemption was going to be very difficult to author to have finalized without any loopholes. It would be much safer and manageable to have the director look at each waiver and decide. It is still going to be difficult to determine if it is true Agricultural application, but giving the Director some discretion, would help. If the applicant did not agree with the Director's ruling on it, the ordinance specifies an approval appeal process that starts at the Public Works Director, the Planning & Zoning Board, and finally the Commissioners. The new amendment authored is section 5.11.3.2. This still needs refining with input from the commissioners and the subcommittee. Paragraph 4 is the main part of this. It is going to be pretty tough for an applicant to prove that they have their income for 51%. He talked to Katie Paulson, Tax Assessor and she said there is an application approval process to get a Farm Residence Property Tax Exemption and there is also a Century Code that talks about that and that could be included in there. That is up to discussion. The 40 acres is the requirement for lot size already in the ordinance if it is used solely for Agriculture family or tenant. He also added the definitions written in our ordinance for a Farm, a Farm Related Business, and a Homesteaded Parcel. What the Director

would do, would be to look at if it was a Farm, a Farm Related Business, or a Homestead Parcel, then it would be fairly clear on how they could make that exemption.

Director Huus stated the other point of topic is if this would be a waiver that would run with the land or if it should stay with the applicant. His opinion is that it should stay with the applicant so if the applicant sells the land and the house to somebody else, the new applicant should have to come back and apply for the waiver because it would be a different situation, for instance if they wanted to put an addition on it. The new owner would need to come in and get a waiver for that. **Jeremy Olson** asked so if a farmer retires and sells that to a non-farming family and they want to build another house they would have to apply for a waiver. **Craig Hystad** stated it should stay with the person only while he is on that property. **John Irwin** asked would you need to get a waiver every time you want to build? **Director Huus** stated not if the applicant is the original waiver applicant and the dwelling is the subject of the waiver. **Jeremy Olson** stated right now, in Agriculture, the only thing that is not exempted right now is the dwelling. Everything else is already exempt. You would record it as some sort of acknowledgement. **Director Huus** stated yes. **Ari Johnson** stated right now the way it is worded in subpart 3 does limit it to you submit your description of the property with as well as the structure you are asking for a waiver for and the waiver is specific to the structure. For example if you built four structures on your farm, you would have to come back for 4 waivers and you would probably have to have a good reason why you need four houses. **Kathy Skarda** stated it says in our Comprehensive Plan, 3 or 4 family farm dwellings on the farm. **Johnson** stated he does not know what it says in the Comprehensive Plan and does not think that has anything to do with building permits. **Skarda** stated she thought that means if you were going to build it, that it is already in there that they could. **Director Huus** stated that is just for the subdivision of the property and them having and allowing a dwelling unit on that property. **Butch Fleck** stated to start with, it was just the 40 acres, it was one house, but they changed it so two kids could come back and build two more dwellings. **Jeremy Olson** stated that you could go down to 5 acres. **Director Huus** stated or you could have 3 family members on it. **Fleck** stated that knowing who is a farmer or not would not be too hard, you just get the information from the Recorder's Office because income forms have to be filled out for the household every year. **Jeremy Olson** stated #4 says it has to be 51% or have that Tax Exemption. For a farmer or rancher who has oil money that exceeds that and they are over 51% but have that Tax Exemption Number they are still good to go, correct? **Director Huus** stated they would probably lose that Tax Exemption if that was the case. **Craig Hystad** stated the only way is if you put in there if the oil revenue is pipeline revenue. He suggested that there had to be 2 out of 3 qualifications, one being an FSA Number. **Jeremy Olson** stated the reason was so that it was truly a farmer, not just someone who is trying to get under the radar. **Skarda** stated it is written Farm Related Business so she thought it meant Farm and Ranch Business. **Director Huus** stated the definition of a Farm Related Business is "A business

to promote, sell or enhance the Agricultural products or services of the farm or ranch where it was produced.”

Heidi Brenna stated she was not able to attend the last meeting so would like clarification on what does qualify to waive a building permit and or inspection needed, and what in the process would change. At the meeting she was in, they were really focused on what constitutes a farmer and the cost of a building permit. How does that line item in #4 change? **Director Huus** stated the waiver is so they do not have to have a building permit, inspections by a building inspector, basically do what they want without County interference. **Brenna** stated most people know she is an architect so the idea of the building code is certainly life safety and so to her the question of life safety is every single person whether it is a farmer or rancher or anyone else. So that means she is not in general support of a waiver or exemption and wants the group to understand that. She stated she is not in favor of this for a number of reasons. **Skarda** stated that the consensus of the farmers and ranchers that came to and attended all the meetings, was that they have been building their own dwellings for years and years and have never come to the county for “permission” or “inspection”, they had qualified people build them. Their feeling was that they are in charge of their own family’s safety and do not want to ask permission. **Fleck** stated the farmer would never leave and is there his whole life, whereas these houses that come in and are overturned a few times are not always built like they should be. **Hystad** stated they are still going to have to get their sewer permits, etc. and does not exempt them from those. **Director Huus** stated also electrical inspections, etc. That has to be done by the state or they get fined for that. **John Irwin** asked but Agriculture is going to be exempt for other than dwellings, for instance, a shop. **Director Huus** stated that exemption is already there.

Steve Williams, the Building Inspector indicated that he has been in construction for 50 years, working as the Watford City Building Inspector for 10 of those. He has been a contractor and licensed in 4 states for most of the time and has worked all over the country more or less. He stated he is here to give a perspective on both sides and his insight on building inspections. Everything that we buy, drive, and even our phones are inspected by somebody professional in the field that knows the nuances, the good and the bad, and obviously in this case, safety factors. With construction, the building codes and products are changing and the code books are daunting with a lot of hard to understand information. Most codes are written because of something that has happened and things happen that generate a code change. In this case we are dealing with the International Residential Code. If you look at statistics, most fires occur in a residential home, partially because they are occupied most of the time and there are a lot of things that can go wrong. A business has a lot of things going on. It is good to have a professional set of eyes on any structure or any project. But to put it another way, most farmers are busy farming and ranching as opposed to building houses. When building houses, he does not do all the work. There are electricians, plumbers, HVAC people, concrete guys. Most of these farmers and ranchers most likely do not

have a set of concrete forms or licenses to do electrical, plumbing, etc. When he first started with the city, there were contractors from every state and country in the world and not all of them were all that good. It took 6 months of him being in this position to convince the City to get licensing requirements for the city contractors and the city finally did implement a contractors' licensing requirement. This verifies that they do have a state license, which means they have liability which helps protect the public from fly-by-night contractors. With a home inspection or building inspection, some mortgage companies and banks are going to require a Certificate of Occupancy or at least a Certification of Final Inspection. You are not going to have that if you waiver or do not have building permits and inspections. That has an impact if you were going to try to sell the house later on. The biggest issue is safety. Anybody can build a house, and can have contractors come in there and do what they say they are going to do. He discussed safety issues that have happened and resulted in death or injury. He does not have statistics on deaths but did have a friend who lost a son to carbon monoxide poisoning due to a faulty furnace. A lady in Arnegard called him to come look at her roofs she had replaced by a long-time local contractor. She paid a large sum of money for the poorly done replacements that peeled off in the wind. He is an advocate for inspections but not because that is what he does, but because of what he has seen. **Craig Hystad** stated that he agrees but a lot of old-time farmers feel it is their own business and do not want or need the county's involvement. **Williams** stated he understands, does not want to butt into anybody's business and certainly does not want to tell them what to do and especially when it comes to spending money because you could do something wrong and you could spend another \$10,000 to fix it. He does not want to be the guy telling them that but at the same time he does not want to be the guy that will let it go and then somebody gets hurt. It is a tough call and he does not know if there is a middle road. **Jeremy Olson** stated it is a political decision. **Skarda** stated she has been told over and over by farmers and ranchers that they have the experience in building their houses and different things over the years and know the contractor that they are going to use. Most of the contractors have been family friends forever, have been contracting for 30 years, and licensed so they are confident in their abilities and the ability to give them a safe completed home. **Jeremy Olson** stated it is a political decision.

Director Huus stated at the meetings we basically only had the opinions of the ranchers so Steve Williams gives an opinion and perspective of why we should, and thank you Heidi for speaking up and giving us an architect's perspective. The Board has heard both sides and will have to make the decision. **Craig Hystad** stated we are not stopping them from getting it, they can still get their permits and inspections, but if they opt not to, that is their choice. **Director Huus** stated some have said that they would do it anyway.

Williams stated we are not going to please everybody. He appreciates the opportunity and is just the interim building inspector. **Cody Knetzger** stated that at the end of the

day they have to listen to the people and what they are saying. He himself would go through the inspections and it is a safety value to him. That is his choice, but he is with the old farmers. **Jeremy Olson** stated so this is the First Reading and if there is anything that needs to go back to the subcommittee this is the time to recommend it. Remind me of the procedure, Curt, is this an approval/denial vote? **Director Huus** stated at this point the Board is free to say what additions and deletions to make. He will make those changes in time for the County Commission to see the first reading. He would then bring the second reading to the Board next month if it gets approved here and at the County Commission. He will make any changes that need to be made, and then it would become the rule after approval of the second reading at the County Commission. **Jeremy Olson** asked at this point do we vote or do we make changes? **Director Huus** stated you make changes and then vote on it.

John Irwin stated before this meeting he was leaning one way, but after learning the reasons for some of these, and he tends to agree with the importance of getting the houses approved and the permit process approved. He does not know if he can vote on this yet. His neighbors have been very vocal about this. He would like to absorb a little of what he has learned tonight, take the very valuable information presented, and bounce it off of his neighbors. In the defense of the ranchers that build spur of the moment, sometimes he has been able to get a contractor because the contractor was waiting on a permit We do not always have a lot of foresight into these things and then a lot of times, the situation presents itself and we move on. He does not try to hire a fly-by-night contractor and tries to do something that he thinks is going to work for them in the long run and thinks most everybody does. We are not building these places to sell. **Jeremy Olson** stated his agreement and that if they were to vote right now it would not be a unanimous vote tonight for many reasons. There is a lot of stuff here. Could it be postponed for another month to get some comments from County Citizens. **Director Huus** stated they could postpone it for another month. Since it was on a public hearing and public notice, they would need a motion to postpone.

Craig Hystad stated that about everybody in the Keene area a lot of them south will not qualify with the way it is written because they are not making 51% of their income from Agriculture, it is coming from the oil wells and pipelines. **Ari Johnson** stated that was a concern he had being over-inclusive or under-inclusive. The under-inclusive is a farmer who has a lot of income from other sources like scoria, sand and gravel, oil, pipelines, surface use agreements, water. The over-inclusive side is people who have a lot of Agricultural land that could be anywhere and they rent it out, they are making their money from Agriculture even if they are not farming. It is very hard to define who is a farmer or rancher. It is really hard to put it in writing especially if you want everyone to be happy with it. **Hystad** stated he is doing all the things of a farmer or rancher, putting all the money in there but would probably not qualify because part of his income is oil income. **Kathy Skarda** asked if they could add the FSA Number for some that do not have oil. **Director Huus** stated liking the Tax Exemption Classification and

some people probably have that. He talked to Katie about how many actually had that. With that Tax Exemption that is actually 66% rather than 51%. The numbers of the actual Property Tax Exemption is 45 active Farm Resident Property Tax Exemptions, there are 49 Farm Labor Residences that qualify for it. There are 80 Retired Farmers that qualify for it, 14 Surviving Spouses that qualify for it and 65 vacant Residences that qualify for it. **Director Huus** stated it is not a huge number that have those exemptions relatively speaking. **John Irwin** asked so do they have to have 40 acres. **Director Huus** stated they have to have 40 acres or more. In paragraph 4 he would remove "the 51%" and keep the "property tax exemption". They would really have to lean on the Farm Related Business or Homestead Parcel definitions to qualify it. **Skarda** asked so how would Kathy Skarda's farm qualify under this proposal? **Director Huus** stated the definition of a farm. A farm is a parcel within McKenzie County containing at least 40 acres which is used for the production of Agricultural production of livestock, or raising, feeding or producing livestock, poultry, milk or fruit. It would not include the production of timber, forest products nor does it include a processor or distributor of farm products or supplies. Provides grain, harvesting or farm services, feed lots that are operated shall be deemed commercial feed lots and shall not be construed as farming or incidental farming to a farming operation. Kathy does not have any of that so she would qualify in that case as a farmer and he would not even look at the income she makes off it or what percentage is off of that. **Irwin** stated that is pretty clear. **Olson** asked where the Property Tax Exemption comes in to play. If Kathy has other income that is greater than 51% of her income does that disqualify her? **Director Huus** stated if they had that exemption, he would not even look at all that other stuff. The Tax Exemption is probably more difficult to obtain than what was previously stated. **Olson** stated that clearly defined a farmer. **Hystad** stated then you have to trust the person who gave you the application, to be telling the truth. He asked about a scenario of a guy who owns a lot of land and is still working at his other job. He only owns 15 of those acres, but leases the rest. **Director Huus** stated in that case, if they lease most of it but only live on 15 acres, they would not qualify. **Olson** stated the recourse is to take it to this board. **Director Huus** stated if you own a trucking company and are going to be running it out of there, and you are just saying that you have 40 acres, so you do not need one, you are not going to receive a waiver and would have to go through the steps that were previously mentioned. You could then go to the Public Works Director to appeal it, then it goes to the Board and you could keep appealing it. **Olson** stated if they try to buffalo you and then they have to go a lot higher on the totem pole to try to lie. **Director Huus** stated he has to error on the side of caution. **Irwin** stated the farmer definition **Director Huus** read checks off most of the qualifications. **Director Huus** stated in paragraph 4 and remove the "considered a farmer or rancher that earn fifty-one (51) percent or more from the operation of the farm or ranch or an Application for Farm Residence Property Tax Exemption has been approved. **Hystad** stated leave in "Application for Farm... that has been approved" and that should work. **Director Huus** stated it would read "The Planning Director when they have an application for Farm Residence Property Tax Exemption under NDCC has been approved or the

structure's use is solely used for Agricultural Family or Tenant is for 1 and 2 family dwelling units on lots of 40 acres or more or in Agriculture District and the property by definition is considered a Farm, Farm-Related Business or Homestead Parcel". If they have the Tax Exemption, we stop there. If they do not have that, then we look at those other items to make sure that they fall into Kathy's scenario. **Olson** stated it is simple enough but allows you to say you are really a farmer. **Hystad** stated if we took that and wrote it that way with the changes, we could approve the first reading. By the time we get back we still have to read it a second time. Once they approve it. **Olson** stated if it passes tonight. **Hystad** stated the county commissioners might shut it down right there. **Director Huus** stated he would get it written up, get it out to the Subcommittee for review and have it on the agenda by next Friday, and see if everybody is okay with it there. **Olson** stated at this point we need to decide whether we 1) Postpone this to the next meeting to give them time to consider and talk to constituents, or 2) Approve it with changes or 3) Deny it. **Irwin** stated it is hard to approve something you cannot see and feels like they are moving too fast on this. **Olson** stated he agrees and this is about Farmers' Rights versus safety.

Motion to Approve with Changes in the Writings, Motion by Craig Hystad , Second By Butch Fleck.

Voice Votes: Yeyes: Butch Fleck, Cody Knetzger, Craig Hystad, Kathy Skarda

Nayes: Heidi Brenna, John Irwin

**Proposed Zoning Ordinance Amendment
Building Permit Ag Exemption – 1st Reading**

Preamble

McKenzie County has adopted the most current version of the International Building Code (IBC) as adopted in the North Dakota Century Code. Accordingly, the IBC provisions of the code apply to the construction and alteration of detached one- and two-family dwellings. The intent of the code “is to establish minimum requirements to safeguard the public safety, health and general welfare through affordability, structural strength, means of egress facilities, stability, sanitation, light and ventilation, energy conservation and safety to life and property from fire and other hazards attributed to the built environment, and to provide safety to fire fighters and emergency responders during emergency operations”.

Through public information and input meetings at the August 10, 2020 and September 8, 2020 Planning and Zoning Board Meetings it was the consensus of the public attending that, among other things, the County’s requirement to obtain a building permit for dwelling units was onerous and unfair to the farmers and ranchers who own agricultural district property. The consensus was that these farmers and ranchers have been building their own dwelling units for years without building permits and that they should be allowed to continue as before.

Amendment

§ Section 5.11.3 of the McKenzie County Zoning Ordinance is hereby amended to replace the current Section 5.11.3 as follows:

5.11.3 Amending the Building Code

Pursuant to N.D.C.C. Ch. 54-21.3-03(6) “The governing body of a city, township, or county that elects to administer and enforce a building code shall adopt and enforce the state building code. However, the state building code may be amended by cities, townships, and counties to conform to local needs.”

McKenzie County amends the State Building Code as follows:

- 5.11.3.1 **Building Permit Waiver for Gas and Oil Processing and Storage**

- 1) **Building permits and/or inspections may be waived for structures that are built on-site for gas and oil processing and storage.**
- 2) **Waivers of building permits and/or inspections may only be given in writing.**
- 3) **Each request for a waiver of building permits and/or inspections must include the legal description of the location of the structure and a description of the structure for which a waiver is requested. Each waiver is specific to the structure described therein and does not apply to replacements, expansions, changes in use, or major alterations to the structure.**
- 4) **Waivers of building permits and/or inspections shall be granted by the Planning Director when the Planning Director determines that the structure's safety is adequately regulated by other government agencies, whose enforcement authority and execution the Planning Director deems sufficient, and that the structure is not designed to be occupied regularly by persons (e.g. as an office or housing facility, whether on a temporary or permanent basis).**
- 5) **Waivers of building permits and/or inspections do not exempt the structure from fire and safety inspections. A fire and safety inspection is required prior to commencement of operations within the structure and thereafter on an annual basis or as requested by the County Fire Inspector or Planning Director.**
- 6) **Prior to commencement of operations the facility operator shall certify in writing that American Petroleum Institute construction, safety and operational standards and procedures have and shall be maintained.**
- 7) **The Planning Director's decision to deny a waiver of building permits and/or inspections may be appealed to the Board of County Commissioners.**

This amendment in no way alters or amends any zoning requirement. Prior to any construction, alteration or development of a facility the applicant must meet with the Planning Director to determine the extent of the

exception. It is further the intent of this amendment to limit the number of building to which this applies.

5.11.3.2 Building Permit Waiver for family dwelling units on lots 40 acres or more in Agricultural District

- 1) Building permits and/or inspections may be waived for one- and two- family dwelling units on lots 40 acres or more in Agricultural District, unless a place for use by the public are exempt from this chapter.**
- 2) Waivers of building permits and/or inspections may only be given in writing.**
- 3) Each request for a waiver of building permits and/or inspections must include the legal description of the location of the structure and a description of the structure for which a waiver is requested. Each waiver is specific to the structure described therein and does not apply to replacements, expansions, changes in use, or major alterations to the structure.**
- 4) Waivers of building permits and/or inspections shall be granted by the Planning Director when the Planning Director determines that the applicant is considered a farmer or rancher that earns fifty-one (51) percent or more of his or her annual income from the operation of the farm or ranch or an Application for Farm Residence Property Tax Exemption under NDCC 57-02-08(15) has been approved , the structure's use is solely for agricultural family or tenant, is for one- and two- family dwelling units on lots 40 acres or more in Agricultural District, and the property by definition is considered a Farm, a Farm Related Business, or Homestead Parcel.**
- 5) The Waiver shall be valid for the applicants request only and shall be revoked with a transfer of the subject property.**
- 6) The Planning Director's decision to deny a waiver of building permits and/or inspections may be appealed to the Board of County Commissioners.**

This amendment in no way alters or amends any zoning requirement. Prior to any construction, alteration or

development of a one- or two- family dwelling unit the applicant must meet with the Planning Director to determine the extent of the exception.

DISCUSSION ITEMS:

Administrative CUPs

Director Huus stated there were no Administrative CUPs this month.

ADJOURNMENT

The meeting was adjourned at 7:52 PM

The next meeting of the McKenzie County Planning and Zoning Board will be held on November 9, 2020 at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM

MEETING SIGN-IN SHEET

Meeting Date: October 12, 2020

Name PLEASE PRINT NAME LEGIBLE	Phone #	Agenda Item #
ERIC KIRBY	701-609-4935	3
JEREMY HEAN		
JEFF RINCE	7016516795	3
Wes Lindvig		3
B.J Lindvig		3
Brant Boyer	701 202 7814	1
Ryan Waters	701 609-4582	4
Elmer Nokosten	406-489-8320	4
Eric Sorenson	701-570-4543	2
Steve Wilkin		

MCKENZIE COUNTY

Planning and Zoning Commission

#009-19CUP - RBW - Sorenson Badlands Pond - Reclamation Bond Waiver

Application:	September 14, 2020 - Reclamation Bond Waiver
Hearing Date:	October 12, 2020
Description:	12057 Highway 23, Watford City Section 13, T-150N, R98W Parcel # 200009100
Owner(s)/Applicant:	Larry Sorenson / Eric Sorenson
Reason for Request:	The applicant is requesting the waiver of the Reclamation Bond requirement for their existing reservoir, Sorenson/Badlands Pond #009-19CUP approved by the BOCC on June 18, 2019.

Comprehensive Plan Land Use: Agricultural

Zoning: Agricultural

Findings of Fact:

1. All requirements for public notification have been satisfied.
2. Applicant is not the property owner.
3. The property owner is a direct family member.
4. Applicant has provided the landowner acknowledgement, indemnification and hold harmless agreement.
5. This is not in an organized township.
6. The pond is clay lined with a life span of 20+ years.

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:

- a. **The establishment, maintenance, or operation of the conditional use shall not be detrimental to or endanger the public health, safety, comfort or general welfare.**

Fencing, weed control, garbage control and signage per the original approval are required to be continued.

- b. **The proposed conditional use shall not substantially impair or diminish the value and enjoyment of other property in the area.**

The pond is located on and entirely surrounded by the family property.

- c. **The proposed conditional use shall not impede the normal orderly development of the surrounding property.**

The pond is located on and entirely surrounded by the family property.

- d. **Adequate utilities, access roads, drainage or other necessary site improvements have been or are being provided to accommodate the proposed conditional use.**

Conditions of the original approval regarding access and drainage are required to be continued.

- e. **Adequate measures will be taken to provide ingress and egress to the property without adverse effects on the adjoining properties and traffic congestion in the public street.**

Ingress and egress to the pond are located entirely on the family property.

- f. **The proposed conditional use shall conform to all applicable regulations of the district within which it is located.**

The pond conforms to the conditional use as a Freshwater Storage pond in the Agricultural District.

Comprehensive Plan Consistency:
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The subject land area is designated in the land use plan as Agricultural.

Staff Recommendation:

Staff recommends Approval for this Reclamation Bond Waiver

Suggested motion: "Recommend approval of Reclamation Bond Waiver Request #009-19CUP - RBW, Sorenson/Badlands Pond to the County Commission to allow the waiver of the Reclamation Bond requirement, Adopt the findings and conditions as provided in the staff report."

Conditions:

Original Conditions for #009-19CUP

- | |
|---|
| <ol style="list-style-type: none"> 1. The applicant shall mark the site with address/project identification (4'X8' sign) visible from the road, this must be completed within thirty (30) days from County Commission approval. 2. The applicant shall adhere to the noxious weed containment plan as submitted to the County Weed Control Officer. 3. The applicants shall allow the local fire departments access to water in case of emergencies. 4. The applicant shall adhere to all Federal, State and local laws, regulations and conditions for the operation of the proposed facility. |
|---|

5. The applicant shall provide the County Planning Department with all Federal, State and local approvals or denials, along with any violations relating to the project.
6. The applicants shall fence around the holding pond with a six (6) ft chain link fence to be completed prior to the pond being filled.
7. This site through this Conditional Use Permit shall not be used as a truck depot.
8. The applicant shall maintain a site free of garbage, from with the site and from outside sources, during and after construction.
9. All lay-flat pipes coming to/from the pond will need a separate Temp Waterline permit filed with McKenzie County Planning & Zoning.
10. Any changes in area or volume will require an amendment to the existing Conditional Use Permit per Section 5.8.5 of the McKenzie County Zoning Ordinance.

Additional Conditions for #009-19CUP

11. Applicant shall maintain either earthen or artificially lined pond water containment system.
12. Shall keep current the State Water Permit.
13. The Conditional Use Permit shall be reviewed at least annually to ensure compliance with the listed conditions.

Sandee Kimpel

From: Bruce Bradford <bbradford0412@gmail.com>
Sent: Saturday, October 10, 2020 3:53 PM
To: Sandee Kimpel
Subject: Missouri Ridge subdivision Comments

Hi Sandee,

Thanks for taking the time to talk with me yesterday in regards to the proposed Missouri Ridge Subdivision. As a refresher, our family still owns the adjacent 120 acres to the proposed development. We are proponents to well managed development and growth as McKenzie county has allowed for in recent years. We have just a couple comments.

1. How will developer protect adjacent crop land both during initial development and long term subdivision use?
2. Second we would like to see a HOA established to govern the subdivision during its life cycle. HOA covenants may include but certainly not limited to: allowable family home types, maximum footprint and height of structures, allowable colors, fence types, subdivision road maintenance responsibilities, restrictions of junk vehicles, quantity and types of animals allowed, maintenance of common areas, etc..

Thanks for your help.

Bruce and Susan Bradford

-

Bruce A. Bradford

TRI TOWNSHIP RECOMMENDATION

Tri Township, McKenzie County, N.D.

Project Name/Company: Missouri Breaks Residential Subdivision / Kirby Engineering RPJB Investments LLC
Recommendation requested: Proposed Residential Subdivision Plat
Current Land Use/Zone: Agricultural
Land description: SW 1/4 NE 1/4 Sec 33 T153 N R101W
Representative(s): Jeff Prince, Eric Kirby
Presentation date: September 29, 2020

A presentation was made in the Tri Township Board of Supervisors regarding the above noted information on the above stated date. The following recommendation was made by the Tri Township Board of Supervisors with conditions as noted below:

The following is the recommendation of the Tri Township Board regarding the above stated request:

- Recommend Approval
- Recommend Denial

Tri Township recommends denial of this application based on the following:
Undesirable location of development.
Proximity to HD land disposal,
Concerns about road maintenance and upkeep,
Future reliability of HOA responsibilities,
Desire to prevent further spot zoning in the township.

The approval recommendation is to include:

- Zone Change
- Land Use Change

Conditions/Concerns/Comments:

- Water Supply w/ documentation _____
- Electrical Supply w/ documentation _____
- Sewer System Plan _____
- Proper Road Access w/ documentation (Twp, City, State) _____
- Responsible Party for Road Building and/or Maintenance _____
- Garbage _____
- Safety Issues/Concerns (EMS, Fire, lighting, etc.) _____
- Landscaping, Fencing, Etc. _____

Additional Conditions/Comments:

Signature(s)



Chairman, Tri Township




Project Representative(s)

Supervisors, Tri Township

Date: 9/29/2020

November 2020

Planning and Zoning Commission Minutes

November 9, 2020

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

Pledge of Allegiance and Roll Call

Members Present: Butch Fleck, Cody Knetzger, Craig Hystad, Jeremy Olson, Kathy Skarda, Heidi Brenna, Gene Veeder

Members Absent: John Irwin

Members Remote: Matt Beard

Staff Present: Planning Director Curt Huus, Planning Attorney Ari Johnson, Planner Dana Roff, Planner Sandee Kimpel, Administrative Assistant Cindy Jensen

Others see sign in sheet at end of minutes.

Kathy Skarda stated changes needed to be made on the October 12, 2020 Minutes. Page 2, Paragraph 6: Replace "how many springs..." with "how many strings..."; Page 8, Paragraph 2: Replace "Wes Lindliv stated..." with "Wes Lindvig..."; Page 8, Paragraph 3: Replace "Jeremy Haan," with "Jeremy Heen,"

Motion to Approve October 12, 2020 Meeting Minutes with changes By Kathy Skarda Second: Cody Knetzger. Voice Votes: All Ayes.

Motion to Approve Minutes as Amended Passes.

RETIRING BOARD MEMBER:

On November 30, 2020 Gene Veeder's term on this Board will end. The Planning & Zoning Staff would like to thank Gene Veeder for his many years of service on the Planning & Zoning Board. His insight, knowledge and commitment to our Community is greatly appreciated and he will be missed.

The new board member options will be discussed at the December 7, 2020 Planning & Zoning Board Meeting.

CODE ENFORCEMENT:

Sandee Kimpel stated there is nothing for Code Enforcement at this time.

UNFINISHED BUSINESS:

Director Huus stated there is no Unfinished Business at this time.

PUBLIC HEARINGS:

#08-20SUB - Kreil Subdivision - Location: Township 152, Range 103, Section 25, Parcel # 210022500 and 210022550

Director Huus stated this is a Minor Subdivision to parcel 40 acres from two parcels that are located in Sioux Township in NW McKenzie County. It is located approximately 7 miles west of Hwy 85 and 2 miles south of the Missouri River, and adjacent to 37th St. NW. The existing two parcels are 79.4 acres and 159 acres and they are owned by Steven Erickson. The subdivision of these two parcels will result in each parcel final percentage to be greater than 40 acres. The resulting 40 acre parcel is for non-direct family, being Cody & Emily Kreil to build a home. It is currently zoned Agriculture and the Comprehensive Plan is also Agriculture. All the parcels within the subdivision will meet the Agricultural District requirements and as such, Staff recommends approval of this Minor Subdivision. The survey that was done shows that this encompasses the two parcels.

Director Huus stated that the suggested motion wording be changed from "40 acres from the 79.4 acres" to read "40 acres from the 79.4 acre and 159.4 acre" parcels.

Motion to Approve #08-20SUB - Kreil Subdivision - Location: Township 152, Range 103, Section 25, Parcel # 210022500 and 210022550 to split 40 acres from the 79.4 and 159.4 acre parcels owned by Steven Erickson. Adopt the findings and the conditions as provided in the staff report: Motion to Approve by Cody Knetzger; Second by Craig Hystad. Voice Votes: All Ayes.

Motion to Approve as Amended #08-20SUB Passes.

#13-020CUP - Dixon Properties, LLC - Ponds - Conditional Use Permit - #13-020CUP- Location:S2,SW4, Section 31, T148N, R98W, PID#610007800. Lots 2-3, Section 6, T147N, R98W PID# 600000780

Director Huus stated this CUP was pulled from our August 10, 2020 Public Hearing Agenda and has been postponed at each subsequent Public Hearing due to the applicant request. The Project will consist of a total of four individual 380,000 barrel ponds (49 ac-ft). Two (2) ponds will be located in Section 6 of Township 147N Range 98W and two (2) ponds will be located in Section 31 of Township 148N Range 98W.

The proposed project is a series of independent freshwater ponds that will be utilized for industrial purposes, mainly storing non-potable water from surface and ground water sources and delivering them via lay-flat hose to fracking operations. The ponds will have no pipelines connecting them, instead temporary lay-flat hoses will be used to move water to the ponds, between ponds and delivered from the ponds to the fracking

operations. The work proposed is to construct the ponds and no additional pipelines are proposed with this project. Proposed installation methods are primarily soil stripping in the pond area(s) and grading the sub-surface. The landowner, Dixon Properties, LLC, will own the pond so no additional easement negotiations are required.

Director Huus stated there have been many letters in opposition to the approval of this CUP and they have been included in the Dixon packet. A follow-up letter from Mr. Tinker was received and emailed to the Planning and Zoning Board. The main concerns are regarding the proximity to the Little Missouri and the effects of the construction placement and use on the natural beauty, the floodplain, river flow, weed control, access road conditions maintenance, vehicular usage and the affected water use on the aquifer and the piping of water.

The issues related to water permitting and usage, are regulated by the North Dakota State Water Commission. The NDSWC control quantities extracted from the river, aquifer and the rate of that extraction. They monitor these daily regardless of an extraction or not, and have staff and gauging stations that monitor the stream flow, and groundwater hydrologists that evaluate aquifers. McKenzie County does not have the ability to man or jurisdiction to regulate or monitor the usage of these permits. McKenzie County does not participate in the FEMA mapping for floodplain protection. Without a floodplain ordinance or FEMA maps, they really have no means to enforce floodplain protection. Piping of water is delivered by temporary lay-flat lines but if permanent lines are used either an Amendment to this CUP or a new CUP will be required.

We have control over weed control and garbage control enforcement, signs, and fire department access to water. Conditions required for the CUP are fencing, access and dust control. As such, the staff recommends approval for the construction of 4 ponds for industrial purposes. Adopted findings and conditions are provided in the staff report.

No representation from the applicant was present at this meeting.

Board Comments:

Butch Fleck stated his comments and concerns with Dixon not meeting the previous required conditions regarding one of their current ponds and the weeds, and one of the ponds being very close to the Little Missouri River. **Jeremy Olson** asked if the conditions had been remedied since last summer and if fencing had been a requirement when the first one was put into place. Some of the older ponds had been put in before the requirement for fences had been put in place. **Sandee Kimpel** displayed November 3, 2020 pictures taken of the north side, showing weeds and no fence present.

Craig Hystad stated his concerns with Dixon not having an easement to get to the other ponds. **Butch Fleck** stated he did not know if the road could be used as commercial to get to the property. **Director Huus** stated there is no easement to get to the pond nor stated restrictions on it. **Hystad** stated improvements cannot be made to a road if it is on someone else's private land. **Director Huus** stated the intention was not to improve the road, but to maintain it if need be. **Kathy Skarda** stated the road is not on the Dixon property. **Director Huus** stated that Dixon had informed the Olson family that Dixon would maintain the road if they damaged it. **Skarda** stated that Lance Olson informed her no agreement regarding easement had been reached. **Director Huus** stated that the Olson's and Dixon had been communicating.

Jeremy Olson stated regarding easements, the road has been there for 50-60 years. **Director Huus** stated aerial photos as far back as 1950 show the road is there. **Skarda** stated the poor conditions of the dirt road. Also, it was fenced off and gated with a sign at the entry that said "Private Property. No Access. Call this number" and that someone ran through that sign this summer. It has never been a public road for anybody other than them and the cattle ranchers that have to go through there to get to their property to look for their cows and keys have to be given to access. **Director Huus** stated from his understanding, the Dixons have been using that road to access their property because it is the only means of access to their property.

Ari Johnson stated the laws for legal easement of access across someone else's property are very complicated and fact specific. If legal access needs to be seen, there are two things he would accept. One is a signed and recorded Easement Agreement from the Landowner and another is a Judgement from the District Court. Anything else is going to be subject to argument and interpretation. There are many other types of implied easements that you can acquire, but they are all grey areas until the District Court makes a final judgement. If legal access is a question he advises against accepting anything else.

Jeremy Olson asked if that was the only way to get into the property. **Director Huus** stated yes and that Dixon had gotten permission from the Corp of Engineers to cross the Little Missouri via temporary construction mats to get the construction equipment to the ponds. They would take the mats out after construction vehicle access. There are emails back and forth from the Corp, saying they are okay with that. A pickup, 4 x 4 or side-by-side will be needed to maintain the pond, but as far as the actual construction of the ponds, they would not need the access road. One of the conditions of the CUP is to have adequate ingress and egress. **Jeremy Olson** stated the road and access are relevant.

Gene Veeder stated that access is the issue and is no different than with any other fresh water pond. There needs to be written agreements between the landowners. There are some weeds and they can be controlled, but Dixon should not be held higher than other

areas. The access piece needs to be cleaned up and if Dixon does not have proper stated legal access then he can not support it.

Kathy Skarda asked if there had been any letters of support and thinks most of the neighbors have been all in opposition. **Director Huus** stated they do not have any letters of support on file.

Gene Veeder stated that opposition letters are not the only thing to consider. He would want his property protected from somebody just coming in and making an easement that is not already there. **Jeremy Olson** stated there needs to be a clearly defensible reason to deny this application and road access is a defensible reason. Take the emotion out of it and think of it logically in what things can be controlled, and that are defensible cause. The roads are a requirement of the CUP and there has to be 911 access to it. **Veeder** stated he is not for permitting an application that would be forced to accept access across someone else's property. **Butch Fleck** stated his concerns that they make everybody else fence and control the weeds, but Dixon has not been following this before and are only following it now since they are being forced to. **Veeder** stated Dixon is not complying with the existing permits.

Sandee Kimpel stated that the approval letter of the pond on the north side, #0021-18CUP written in August 2018, states the applicant shall fence around the holding pond with a barbwire fence, but Dixon has not. **Butch Fleck** stated that is not really on the south side either as the fence is a quarter mile or more away from the ponds. There is no fencing around the pond, it is open access. **Jeremy Olson** asked if there is fencing around the pond. **Kimpel** stated there is fencing around the property but not around the individual ponds on the south side. **Olson** asked what the intent was with the last approval letter and if it was specified the pond have fencing around. **Director Huus** stated that he did not think it specified. They have approved others in Agriculture and it is not specified that the fencing has to be directly on the dikes or around the berm. **Kathy Skarda** stated her concern with missing and improper signing. **Kimpel** stated the sign is up on the south side and she did inform Dixon that she could not locate their sign on the north side.

Butch Fleck stated fence specification should be clarified so everybody would be on the same page. **Director Huus** stated the ordinance does specify situations when either 4 strand barb wire or chain-link fence is required, but does not specify the location of the fence. **Kimpel** stated the three ponds that are clustered together on the south side, in the 2015 approval, do not require fencing, but the north pond in the 2018 approval does require fencing. **Jeremy Olson** asked if there was currently fencing around that. **Kimpel** stated there is currently fencing on the south side of the property but not around the individual pond.

Jeremy Olson asked if Dixon is currently in compliance with their CUPs on their existing ponds that they have now. **Sandee Kimpel** stated that there is no sign or

fencing on the north pond. The pond on the north side has been there since 2018. **Jeremy Olson** stated a best practice consistently done in the past is that if an applicant comes with a CUP and are not in compliance with previous CUPs, it is generally not looked on favorably because if they are not in compliance with what they are supposed to be already, why should the application be approved. **Director Huus** stated a precedent has been set of denying CUP applications if conditions of previous CUP applications have not been met. **Fleck** stated Dixon should be complying anyway without having to be checked on all the time. **Olson** absolutely agreed, but they are either in compliance or they are not in compliance. If they are complying they cannot really be held to a higher standard, but if they are not in compliance that can be held against them as far as future applications until they do get into compliance.

Gene Veeder stated his biggest issue is that they do not have stated legal access across someone else's private property. Also, due to them not currently or previously complying, he has a hard time supporting this new CUP. That is the standard that needs to be consistent with all applicants. **Butch Fleck** stated again his concerns regarding the fence. **Veeder** stated there is not a clear picture of the rules for fencing. **Fleck** stated the road issue is between the landowners and Dixon. **Director Huus** indicated the options are denial because all conditions of the previous CUPs have not been met or continue until they meet the conditions of the previously approved CUP's. **Fleck** stated they needed to be complying like everybody else.

Jeremy Olson asked the board members if they felt this was ready to go forward or if it was best to postpone it until the applicant follows the existing CUP conditions?

Matt Beard asked about approvals base on conditions. **Jeremy Olson** stated it is the applicant's responsibility to have everything ready to get approval. It is up to the applicant to work with the landowners for easements. If it was something that was agreed to except for the signatures, we would approve it with that condition. In this case it appears that there has not been significant progress on Dixon's part for the Board to be comfortable that it will go forward. There are 3 choices: approve it; deny it, or postpone it and allow Dixon to continue to work on getting compliant.

Steve Burian stated he owns land in section 5 to the east of this property and is one of the people who submitted comments. He questioned how Dixon was allowed to build the first pond. He requested that the application be postponed. They made ruts into the road and admitted to wrecking the gate and have done nothing to improve the actions or try to repair any of it. In terms of fencing, Dixon owns the fencing on the south side, west side and the north side, but does not own the fence on the east side. Lance Olson has told him he has no intention of granting an easement Dixon.

Butch Fleck asked if Burian owns property on the east side of these ponds and how he accesses his property. **Burian** stated yes and he accesses his property on the same road and has an easement from the landowner for that.

Gene Veeder stated this will likely be challenged. They just have to pay attention to that, especially the road issue. He anticipates there will be a legal challenge here and

wants to make sure the County does not do something that is going to cost a lot of money. **Ari Johnson** stated that McKenzie County has been to the North Dakota Supreme Court before for whether or not a road has public easement McKenzie County and the County Commission do not want to go there again. **Veeder** stated this is the easiest thing for the County to take care of and it might take care of itself. They do not want to make this harder than what it is.

Heidi Brenna asked for clarity a motion, and to help her understand the legal issue. The postponement verses denial. **Jeremy Olson** stated that if they recommend a denial and the County Commission agrees then the application is dead until it is properly reapplied for. With postponement, the application is still alive and the applicant has the opportunity to go back and bring everything into compliance before they come back and present this as a complete application. **Brenna** asked what situation was Ari and Gene referencing that the county has been in this situation before. What are some more specifics of that as it relates to the road and easement. **Jeremy Olson** stated that one of the conditions of this Conditional Use Permit is for that road access and easement. That is our condition for it, so even if it went forward and passed, that condition would still have to be met and put in place before this CUP was enacted.

Gene Veeder stated the main thing is this is not ready to go forward so we can deny it. One of the conditions is to have access to that property and it has not been met. Whether the applicant is given more time to meet it or not, that is the only thing he can pick out that the County can defend, that is different than other fresh water pond approvals.

Steve Burian asked how the first pond got built. **Sandee Kimpel** indicated that an easement was submitted but there never was an agreement to cross other people's properties. During this process she had been asked if the Olson's were notified of the north pond and they were. **Gene Veeder** stated that is where the County's situation was, there was not a whole lot of knowledge whether that road was public or private. Because a landowner has come forward and said it is their private road and is not public, it appears that when the permit was issued it was thought that this was a public road and it is not and the County knows that now. He thinks that is how it got built. **Olson** stated that the issue was when the Olson's were told about it the first time and did nothing about it. **Kimpel** stated they were given public notice when the notice was sent out the first time and never made any comment on that one.

Director Huus stated Kathy Skarda, Lauren Olson, Sandee Kimpel and himself were cc'd an email from the Olson's to Dixon, regarding the access. He read the email that states: "Mr. Dixon, Thank you for your email last week in regards to access across our land. After much consideration, our family has decided to sell all of section 36. This has been a very difficult decision. We are still very concerned that the CUP on the ponds will decrease the value on our property. That being said, we will grant you a

private non-commercial easement before the sale but the construction easement will be a decision for the future landowners.” That is how he based his decision that they were working on getting an easement. This was from the Olson’s and now evidently they have said they are not going grant an easement is news to him. **Gene Veeder** stated that Director Huus did what he was supposed to do and that it does not matter what somebody from the outside says, it is what a document states. That is the answer to the question that was raised of how it got approved. **Jeremy Olson** stated the applicant has a reasonable expectation that they would be able to access this and that construction equipment will be coming in across the river. That was from the Corp of Engineer. Is that correct? **Director Huus** stated yes. **Burian** stated Dixon does not have legal ingress which is needed for fire department conditions and egress in the permit . So that north pond is not only out of compliance on the aesthetic and fencing issues, there is no legal access to that pond.

Gene Veeder stated that is exactly what they are saying, and should it be denied or extended until some of these questions get cleared out.

Motion to Postpone #13-020CUP - Dixon Properties, LLC - Ponds - Conditional Use Permit until Applicant Meets Existing CUP Compliance: Motion by Butch Fleck; Second by Gene Veeder. Voice Votes: Butch Fleck Aye, Cody Knetzger Nay, Gene Veeder Aye, Heidi Brenna Nay, Kathy Skarda Nay, Hystad Nay, Matt Beard Aye 3 Ayes 4 Nays.

Motion to postpone the application Fails.

Motion to Deny #13-020CUP - Dixon Properties, LLC - Ponds - Conditional Use Permit : Motion by Gene Veeder. Second: Craig Hystad; Voice Votes: All Ayes; Recommendation for Denial of #13-20CUP-Dixon Ponds

Building Permit Agriculture Exemption - Ordinance Amendment-1st Reading

Director Huus explained that the 1st Reading of the Building Permit Ag Exemption Ordinance Amendment that this board recommended for approval was denied by the Commissioners due to ambiguity and safety concerns. He suggested postponement so that a public information campaign could be initiated. He proposed the public information process include newspaper ads or articles, mass-mailing to property owners and brochures.

Butch Fleck stated an educational process. would be the way to go. **Gene Veeder** stated the general consensus is this is not ready to move forward. **Jeremy Olson** stated is should this even be something they should pursue to exempt dwellings even though we are not charging for residential building permits. **Director Huus** stated that included in the Agenda packet is an email regarding his concerns about the exemption. His email is attached at the end of these minutes.

Ari Johnson summarized his concerns expressed in the email.

Jeremy Olson stated this idea of exemption for Agriculture dwellings was done in a burst of emotion from some bad information that was given out by a former employee and has caused a lot of emotion to drive this. The idea of having no standards for a group of people and not for the others is a bad idea. The best thing to do is to educate people. He would recommend that the board consider killing this proposed amendment. **Butch Fleck** stated he has heard from quite a few farmers and older guys that will still do what they want to do. **Olson** stated the reality is this standard has been the county standard since being adopted. The rules have always been there whether they break it now, broke it then or break it in the future. **Director Huus** stated it has been there since P& Z adopted the Building Code. **Kathy Skarda** stated it has grown and evolved and probably will continue to do so to meet the different needs as the county changes and evolves. She stated her concern that the consensus of many farmers and ranchers in the community is that they were exempt from the building permits when the comprehensive plan was brought forth and that is one of major complaints she heard. They did not have the correct information that they were required to follow these rules and regulations for their homes so many of them have built their homes without a building permit. The Tax Recorder's Office found out when they went to the property to do an assessment on the property and there were more buildings. There has been a lot of misinformation maybe the best thing to do is to promote it in a positive light that we have removed the fees, but due to being a part of the International Building Code a permit is required. Even if people are given the information on what needs to be done, she is certain that some will still do what they want and it will be discovered after the fact.

Ari Johnson stated the building code was adopted prior to the Comprehensive Plan because the plan took a lot more time to put together, but the county voted to enact the state building code earlier than that and it was sometime in 2012 and in 2015 the state adopted a new building code.

Director Huus stated even if the building permits were somehow waived, that does not waive the state requirements for electrical inspections or septic systems or all the other things that go along with a building.

Cody Knetzger stated there are a lot of rules in construction and they were written and put there for a good reason. Also, he has listened people and how they have gotten by for years. There has been a lot of misinformation given in the past. He would not, in conscience, have voted for the amendment if he had more time to think about it. There needs to be rules for the safety of people.

Craig Hystad stated he understands where the farmers and ranchers are coming from and they have been doing this in the past and he agrees with Cody. They have to do

things right, but they are going to pay the \$500 penalty and build their house or whatever they want to do anyway. He understands where people are coming from but he also understands where Cody is coming from and having the policies. The biggest problem has probably been remedied. Educating the people on existing Ag exemptions can get everybody to understand to call us and ask before it goes forward. There will be feedback no matter what. He suggested they postpone it and educate the people.

Heidi Brenna stated that it is about life safety no matter who it is. The discussion tonight has helped educate her and educating the public also would be very helpful as communication and education can solve a lot of issues.

Gene Veeder stated it is not a popular opinion, but the world does change. Even though he is a rancher himself he does not see why they should get special consideration for safety things. We do not live in a world where there are no rules. He heard a lot of people saying they did not want to pay and he agrees. He also agrees that inspections need to be done timely and have to have the proper answers. Then if they find out people do not like it and think they are unfair, it is then on the county government to make it fair and make it accessible. The world is going to change but the rules still need to be the same for all populations. There needs to be some more public discussion on it and people need to know that there are all kinds of rules in place to protect the public. It is just like a speed limit on the highway, we do not want to drive the speed limit but it is for the public.

Jeremy Olson stated at this point we could postpone it or deny it. If denied it basically dies. If there is not motion it dies automatically. **Kathy Skarda** stated she would like to see it postponed. **Cody Knetzger** stated he is hoping to give those who have done it their own way for years, a little piece of mind. **Skarda** stated they can visit with them about the concerns that the attorney has. She hesitates at not taking into consideration the public's comments and concerns and would like to see them work with the public to help them understand where the Commission is coming from. She will make the motion to postpone it.

Jeremy Olson stated that the staff wait to do anything regarding the Ordinance Amendment until there is some public education on it and because it might dissolve itself in a month or two, then they may decide the problem is solved, or they may decide to kill it. **Director Huus** stated he thinks they have accomplished 2 of the 3 issues (cost and personnel) the farmers and ranchers had and maybe this will help the situation.

Motion to Postpone Action on Building Permit Agriculture Exemption 1st Reading-- - Motion by Kathy Skarda , Second By Butch Fleck. Voice Votes: All Ayes

Motion To Postpone Passes.

DISCUSSION ITEMS:
ADMINISTRATIVE CUPs

Director Huus stated there were no Administrative CUPs since the last meeting.

Director Huus reminded the Board regarding the training that the North Dakota Planners Association is putting on for Planning Commissioners education. It is a free webinar taking place the next week and he encouraged them to attend. He stated that he would resend that email which contains the link for the webinar. **Gene Veeder** stated the good thing about this is every county is dealing with it and you learn what is happening in other areas. The conversation being dealt with right now is on Planning tables all over North Dakota and the County can learn from other people.

ADJOURNMENT

The meeting was adjourned at 6:34 PM

The next meeting of the McKenzie County Planning and Zoning Board will be held on December 7, 2020 at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM

From: [Curt Huus](#)
To: ["Iona hystad"](#); ["Eva Hepper"](#); ["Ariston Johnson"](#); ["gwahus@gmail.com"](#); ["Lee Geiger"](#); ["Knetzger, Cody"](#); ["Jeremy Olson"](#); ["Gene Veeder"](#); ["Butch Fleck"](#); ["Heidi Brenna, AIA"](#); ["Kathy Skarda"](#); ["John Irwin"](#); ["Matthew Beard"](#)
Cc: ["Sande Kimpel"](#); ["Dana Roff"](#); ["Cindy Mecham"](#); ["Williams, Steven W."](#); ["Cindy Jensen"](#)
Subject: FW: Ari's Concerns About Building Permit Exemption
Date: Friday, October 23, 2020 12:23:00 PM

I thought I would forward this onto this group. It's a synopsis of what Ari presented at the Commission meeting. Please review and let me know if you have any questions or comments. We will be discussing this at the P&Z Board meeting on November 9.

Thanks,
Curt

From: Ariston Johnson <ari@dakotalawdogs.com>
Sent: Friday, October 23, 2020 12:11 PM
To: Curt Huus <chuus@co.mckenzie.nd.us>
Subject: Ari's Concerns About Building Permit Exemption

Curt:

As you requested, I am summarizing my concerns with the concept of exempting some subset of lands and/or people in McKenzie County from the requirement to obtain a building permit, allow building inspections, and comply with the building code for single-family dwellings.

While my job is to advise on the legal issues rather than policy issues, this is a place where I feel that the policy justification for the exemption is insufficient to the point that it could become a legal issue. That is, the policy is not supported by a rational basis and would not survive a challenge in court.

My understanding is that there are two stated reasons for this policy:

1. Farmers have been building houses for 100 years so they know what they are doing
2. Farmers build houses to live in, not to sell, and will not build themselves an unsafe house

Regarding the first item, there is no rational basis for this policy. Farmers are not the only people who have built their own houses in the past. Even if they were, none of them are actually building their own houses now. Everyone hires contractors to build houses, whether it is a general contractor or a number of subcontractors. If there is even one example of a farmer who has, since we adopted the building code, built a single-family dwelling in McKenzie County without any contractor assistance, I would be very surprised. And I think, if such a person exists, we should hear from him or her to get input on whether complying with the building code was harmful in the endeavor.

If we exempt farmers from the building code because they know what they are doing when it comes to building houses, why would we not also exempt others whose experience makes them even more qualified to build a house? Why would a general contractor or a carpenter whose entire career has

been building houses have to follow the building code, but a farmer does not because the farmer who has personally never built a house somehow is imbued with skills that the contractor who built six houses last year lacks?

Why would we require people who have built complicated structures to which they entrust their lives (my homebuilt airplane is a good example) to follow the building code, but not farmers who may not have any construction experience at all?

The second item is also not built on a rational foundation. While there are speculative homes and tract housing being built, many single-family dwellings that have been built in McKenzie County were built under contract for the family who will live in that house. I am one of many examples of this. This rationale would apply equally to me as it does to any farmer.

This policy is not rooted in any rational basis to advance a legitimate government interest. What that means in court is that someone who is not exempt from the building code could easily convince the judge that he is just as qualified as any farmer for the exemption. Then we would essentially have no building code at all for single-family dwellings.

That is even before we talk about the legal impossibility of drafting this exemption in a way that can accomplish the policy goals. I will turn to that now.

Our starting point is this: Under our zoning ordinance, who is allowed to build a single-family dwelling in the agricultural district in the first place? Here is the list:

1. Single-family dwelling on at least 40 acres. No restriction on owner or occupant.
2. Single-family dwelling in a previously platted subdivision with lots less than 40 acres. No restriction on owner or occupant.
3. Single-family dwelling and accessory structures on a lot greater than 5 acres under section 4.17. No restriction on owner or occupant.
4. Variance for a homestead parcel of at least 40 acres to be divided into 3 additional (4 total) parcels to build homes for direct family members. After the home is built, there is no restriction on owner or occupant.
5. Administrative CUP for single-family dwelling under section 4.17. No restriction on owner or occupant.

Any exemption for the building code applying to single-family dwellings will need to apply to some subset of those situations.

The zoning and building codes generally regulate land, not people. The policy goal that we are tasked with accomplishing through an exemption to the building code, however, needs to address people at least in part.

If we limit the exemption to a Farm as defined in the zoning ordinance, only item #1 would apply since a Farm by definition must be at least 40 acres. We know that that is not going to satisfy people,

for two reasons. First, the people who complained about the 40-acre rule to the point that we have so many exceptions to it will come in to complain about the “new 40-acre rule.” Second, it would mean that you need a building permit for that smaller parcel that you split off so your son or daughter could build a house and take over the farm without mortgaging the entire place to the bank. I don’t know how much of the new construction and remodeling of farm houses is taking place on the “main” farm house versus on the newly divided parcel, but I do anticipate that this is going to be a problem.

Defining which of the other cases #2 through #5 above requires a building permit and which do not is where we get into regulating people rather than land. The alternative is to simply exempt all single-family dwellings from the building code. But that is a bad idea. So we need to find a way to only exempt the target market without exempting anyone else. (Note that this gets us back to the rational basis test discussed above, and we may end up with no building code as a result. But I am ignoring that problem in my effort to find a good way to write the exemption.)

So now we need to define who is a “farmer” in the sense that he or she would be exempt from the building code for a single-family dwelling.

We cannot use the property tax exemption for three reasons. First, when we suggested that we got pushback from people who did not want to submit income information to the county. Second, there are many career farmers who have too much income from oil, aggregate, and other industry on their land to qualify under any income-based approach. Third, there are many non-farmers whose income source is from agriculture, including agriculture services and renting out farmland. We also need to consider retired farmers, who no longer farm but want to be exempt from the building code when they build the house they have saved up for all those years.

I am not able to find a way to define who is a farmer in a way that would be fair to all farmers in the county or in a way that would be free of loopholes in which an industrial building with living quarters does have to follow the building code but a farmer’s own house does not.

For these reasons, my legal and policy opinion is that writing an exemption of the building code into law for farmers to construct single-family dwellings is a bad idea. That being said, I will, as always, do my best to make the best possible outcome of all policy ideas that the county desires to implement.

Ariston E. Johnson

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December 7, 2020

Planning and Zoning Commission Minutes

December 7, 2020

Meeting was held at the McKenzie County Courthouse Commissioner Room in Watford City, ND and called to order at approximately 5:00pm Livestream was not available for the meeting due to technical difficulties.

PLEDGE OF ALLEGIANCE AND ROLL CALL

Members Present: Butch Fleck, Cody Knetzger, Craig Hystad, John Irwin, Kathy Skarda

Members Absent: Heidi Brenna, Jeremy Olson

Members Remote: Matt Beard – He left the Meeting at 6:00 p.m. due to having to attend the Watford City Council Meeting.

Staff Present: Planning Director Curt Huus, Planning Attorney Ari Johnson, Planner Dana Roff, Planner Sandee Kimpel, Administrative Assistant Cindy Jensen

Others see sign in sheet at end of minutes.

Motion to Approve November 9, 2020 Meeting Minutes By Craig Hystad Second: Kathy Skarda. Voice Votes: All Ayes.

Motion to Approve Minutes Passes

Director Huus stated there are some items are not on the Agenda but will be discussed with the Discussion Items. They are The Building Permit Campaign Brochure, Fire Inspections, Plan Reviews and The Fairgrounds

CODE ENFORCEMENT:

Director Huus stated there is nothing for Code Enforcement at this time.

UNFINISHED BUSINESS:

#13-020CUP - Dixon Properties, LLC - Ponds - Conditional Use Permit - #13-020CUP- Location: S1/2, SW1/4, Section 31, T148N, R98W, PID#610007800. Lots 2-3, Section 6, T147N, R98W PID# 600000780

Director Huus stated Dixon Properties was **DENIED** at this Board Meeting. At the County Commissioners' it was **POSTPONED** rather than **DENIED** in order for Mr.

Dixon to get his access easement established. Mr. Dixon recently stated that it will probably not be done until January at the earliest or possibly February. It will be taken off the Unfinished Business agenda item until Mr. Dixon has everything he needs, and then bring the CUP back.

Kathy Skarda asked regarding the #0021-18 CUP – PM Water-Dixon Ponds, to clarify that this was for the North Pond and was completed at a hearing August 13, 2018. The board approved this CUP, which stated the applicant will access the site on Private Access Easement on Private Road. Because he currently does not have an access agreement for that pond, he is out of compliance for the CUP that he has right now.

Butch Fleck stated his understanding was that they never approved that one and Dixon did that one on his own. **Director Huus** stated that one went through the process. The staff review at that time there was a construction easement given and they interpreted that to be the required access easement. **Skarda** stated in order to operate the pond on the North Side, Dixon does not have an easement that gives him private access onto that private road. The ordinance states that existing violations to CUPs need to be remedied before they can go onto new ones. **Director Huus** stated if Dixon gets the access agreement, he will be in compliance for that one and for the others.

Craig Hystad stated Dixon has never come to the Board for a Bond Release. **Director Huus** stated Dixon has the required Bonds and will probably try for a Reclamation Bond Waiver at some point. Dixon does not have to apply for the Reclamation Bond Waiver and his bonds are current.

PUBLIC HEARINGS:

#15-20CUP - ONEOK Rockies Midstream, L.L.C.-Bison Compressor Station - Location: 11994 34th St. NW, Watford City, ND. T151N, R97W, S18, Parcel #590008500, McKenzie County, ND.

Director Huus stated the applicant is proposing to construct and operate the Bison Compressor Station. It will take natural gas from oil producing wells and then send that gas to ONEOK's natural gas processing plants. It is going to consist of five (5) compressors and ten (10) different tanks for condensate, water and methanol. The site is located on the Southside of County Road 12, 2 miles east of Hwy 1806. There is a well site on that property right now, but the leased portion of it is about 13.77 acres within a 100 acre site and is only using 5 acres. The requirements for Public Notification have been met. They will have to get Building Permits or apply for Waivers if that is appropriate for any buildings added to the site. Setbacks have to be met and there is a setback along the west side of the property line that has to be met and their site plan shows that. The lease with the property owner Robert Omlid is on file and Compressor Stations are a Conditional Use within the Agricultural District. Staff recommends Approval of this Conditional Use Permit.

Kathy Skarda stated her concerns that odorous gases vented from the plant would adversely affect homes close to the plant. **Craig Hystad** stated the only house close to the site belongs to the property owner, Robert Omlid, who ONEOK is leasing the land from and that the noise emitted from the site might also be an issue. **Butch Fleck** stated that nearby adjacent properties need to be notified, but the northwest winds would help to divert the smell and gases to bypass the residence and that people right along 1806 would probably not be affected. **Director Huus** stated there were no objections from the properties notified, but they do need to be cognizant of the siting of compressor stations. **Dana Roff** stated ONEOK was online and waiting to answer any questions.

Motion to Approve #15-20CUP - ONEOK Rockies Midstream, L.L.C.-Bison Compressor Station - Location: 11994 34th St. NW, Watford City, ND. T151N, R97W, S18, Parcel #590008500, McKenzie County, ND. Motion to Approve by Kathy Skarda; Second by John Irwin. Voice Votes: All Ayes.

Motion to Approve #15-20CUP Passes.

#16-20CUP - Steve Sharp Crane & Rigging L.L.C. - Conditional Use Permit - - Location 12590 23rd St. NW, Parcel #630003150, Watford City, ND 58854

Director Huus stated the applicant recently purchased this 11.65 acre site. They would like to bring the one Manufactured Home into compliance to continue using it as workforce housing. The original site was Crestwood Trucking, but they sold this site to the applicant. The site was originally built under “grandfather” status before zoning but have added several additions to that site including workforce housing, which put them out of compliance, so this is to get them into compliance so they can continue using a double-wide trailer as workforce housing. The requirements for public notification have been satisfied. The Manufactured Housing unit is to be used by Steve Sharp Crane & Rigging employees only. No additional housing units are to be allowed on this parcel. 23rd Street NW (County Road 30) has been recently paved so dust and tracking on to county roads and state highway have been drastically reduced. The area is predominantly zoned Heavy Industrial and workforce housing is a Conditional Use in Heavy Industrial District. Aerial imagery shows it has been located in this site since 2014. It is also our recommendation that a Reclamation Bond for this small area is not necessary since they would only have to pull the modular home out to be reclaimed. Staff recommends Approval for this Conditional Use Permit per the Findings and Conditions provided in the Staff Report.

There was a discussion on requiring the applicant to get a reclamation bond in order to meet the criteria and compliance of CUPs as stated in the Ordinance.

There was another discussion regarding replacing the current Workforce Housing that is grandfathered in with newer models. **Dana Roff** stated just because there is a new

owner does not change the fact that the building is still grandfathered in. **Director Huus** stated they lost their grandfather clause by the previous owner making expansions on the site. He stated grandfathering is not affected by owner changes, but is affected by changing, expanding or adding to the use. Trailers can be replaced with new ones and they are encouraged to do so, but more trailers cannot be added. Both parcels are owned by the same owner. **Roff** stated Crestwood removed the old trailers and sold them in an auction. **Director Huus** stated if the trailers are not replaced within 180 days, the grandfather status would be lost. Currently there are 3 left on that site. The applicant has expressed an interest in replacing them with some newer ones. If the board denies this CUP, the applicant would have to take this one out of there but would be able to leave the others that are grandfathered in because they are not part of this CUP. This CUP is to bring the modular and parcel into compliance.

Motion to Approve with revised condition to require a Reclamation Bond #16-20CUP - Steve Sharp Crane & Rigging L.L.C. - Conditional Use Permit - -Location 12590 23rd St. NW , Parcel #630003150, Watford City, ND 58854

Motion by Kathy Skarda; Second by Cody Knetzger. Voice Votes: All Ayes.

Motion to Approve with a Reclamation Bond #16-20CUP Passes.

Director Huus stated before moving onto the rest of the Discussion Items on the Agenda he would like to discuss items that were not on the Agenda.

DISCUSSION ITEMS NOT ON THE AGENDA:

RESIDENTIAL BUILDING PERMIT INFORMATIONAL BROCHURE

Director Huus stated they had put together an informational brochure after the last board meeting. The Agriculture Exemption was brought to the County Commissioners and put on hold, and Planning and Zoning was asked to put together a Residential Building Permit Information Campaign Brochure for 1 and 2 Family Building Permit Requirements. Part of that campaign and education plan is to do a bulk mailing of the Brochure to all of the parcels within the McKenzie County jurisdiction (about 2,000 or so). Also, as part of this campaign to help educate people on what is required for a Building Permit, there will be an article in Wednesday's newspaper. He is also meeting with the Yellowstone Township Board Wednesday (12/9) night. The Yellowstone Board has requested for him to come meet with them and talk to them to give some input on how the building permit process has gotten to where it is today. After this they will see if there is still a need to look at the Agriculture exemption and that will be up to the Planning & Zoning Board and County Commissioners to decide.

We have eliminated 2 of the 3 issues that the farmers and ranchers had with the building permit process. The fees were one and another was for the building inspection process. That has been solved and they are using the City of Watford City Building Inspector. The third issue was giving an exemption to Agriculture use. Ari Johnson,

Planning Attorney, had a presentation at both the County Commission and here with his opinion about how that would or would not work. The whole process is hopefully going to be enough to maybe just continue the same way they are. If they are directed to try to write up an ordinance that is loop hole free, they will do that also. Huus distributed a draft brochure to the Board and has not went to print yet. **John Irwin** stated under the building permit fees for temporary housing and man camps, occupancy for housing should be clarified as to how many months qualifies as temporary housing. The statement looks like they are charged \$400 per year whether occupied or not. **Director Huus** stated he will add in the number of months for "Temporary Housing". He also stated they are going through the process now of sending invoices to all the Skid Units and Man Camps whose permits are due in January.

Butch Fleck stated he thought all fees were omitted, and wondered why there was still a fee of \$250 for Used Manufactured Buildings. **Director Huus** stated that was left in because it is a separate process and is what was voted on by the County Commissioners to be left in and if they want to take it out, it will have to go back to the County Commissioners. He stated it was only the fees for Stick Built homes and Modular stick-built homes that were being omitted.

Kathy Skarda stated that even though there is online access and procedure for Building Permits, the Building Permit Process in the brochure should include the Building Department's phone number in the body rather than the front. **Director Huus** stated we would add the phone number into the body. **Dana Roff** stated she appreciated their input for the brochures. **Director Huus** stated the brochures would be displayed at the front desk in planning and zoning for people for educational information purposes.

Butch Fleck stated that mailing the brochure would really help to inform the public.

Craig Hystad stated that \$250 fee is basically for used Manufactured homes according the brochure. **Director Huus** stated that is because the new manufactured homes are controlled, inspected and permitted through the State Department of Commerce, Planning and Zoning only issues them an address. **Craig Hystad** stated that the brochure should include that other permits are needed even though a Building Permit does not need to be paid for. **Director Huus** stated applicants still need to pay for other permits like septic systems and electrical, even though they are out of Planning and Zoning's jurisdiction.

Skarda stated there should be a cover letter with each application mailed out, informing people that if they have any questions or need help regarding their applications, to please call.

Dana Roff stated only the brochures are being mailed out, not the applications. She stated that 100% of the ones she has sent out in the last two years have been emailed and she goes into detail and lets people know they are free to call and if they do not get an answer back from someone, then to email or call her. **Director Huus** stated they are

trying to get people to call regardless because each application requires quite a bit of information and some people need direction.

John Irwin stated that under 'Building Permit Process', the sentence 'Please call the Building Department for guidance and information for the Building Process' should be highlighted.

FIRE INSPECTION

Director Huus stated we have been working on options for Fire Inspections. The two parts to the duties that our former Fire Official was conducting fire inspections on new and old buildings, retrofits and others and yearly inspections of Daycare Centers. The other part was a plan review looking at commercial buildings, offices and shops that need some kind of fire protection and plan reviewing those plans to make sure they are fire code compliant. Sandee Kimpel has expressed an interest in moving into that part of it and adding that onto her job description, but she is not ready yet. She is studying and will be doing some training for this.

After reaching out to the Fire Districts for help and interest, two people from the Watford City Fire District got back to him. For inspections that have come up, Watford City Fire Chief, Dave Uhlich has volunteered and already conducted some inspections along with working with Summit Counseling on issues that have come up. Rather than having him work as a volunteer, Director Huus has been looking into having Dave work as Seasonal Temporary Employee, a 6 month, hourly position, and Dave is interested. There would probably only be 20 hours a month at the most and that would get them through this. Dave stated that Sandee could go with him on inspections and get some on the job training. Director Huus will be presenting his plan to the Commissioners at the next County Commission Meeting.

FIRE SUPPRESSION SYSTEM PLAN REVIEWS

Director Huus stated he contacted 6 or 7 different fire protection companies to do plan reviews. One got back with him and put together an hourly contract that he sent over to Ty Skarda, State's Attorney to review. If Ty does not have any comments it will be brought to the County Commission Meeting. They will discuss both the Fire Inspection and Plan Review with possibly contracting the Plan Review part. If, in 6 months it will be reviewed, and if it needs to be extended an additional 6 months, he thinks it can be. After that someone would have to be hired. The cost of paying for county benefits exceeds what a part-time employee would be paid, so it does not make sense. **Kathy Skarda** stated if something arises and needs to change right away they do not have to wait.

FAIRGROUNDS APPLICATION AND FEE WAIVER:

Director Huus stated possibly next month the fairgrounds will be applying for a Comprehensive Plan Amendment and maybe a Rezone. Currently in the Comprehensive Plan, that area is Urban-Residential and includes a small section of Highway Commercial. An Amendment to the Comp Plan to Public Institutional Use will better fit the Fairground land use, and would allow Recreational, Residential, and Commercial Uses. The Fairgrounds have not submitted a Master Plan yet, so doing a rezone would be premature at this point. This brings up the recent decision to recommend denial of any Comprehensive Plan Amendments.

Kathy Skarda asked if that was Spot Zoning. **Director Huus** stated due to the expanse of this area, he could not think of any other option. The North Dakota Century Code says that every County must have a Fairgrounds and the City has stated the Fairgrounds needs to be relocated. **Butch Fleck** stated this is a little different than most of the other Spot Zoning as it is a Community Project and not an individual. **Director Huus** stated the new fairground location was chosen as the best place based on a lot of data and good reasons.

Kathy Skarda asked what is allowed on Public Institutional. **Director Huus** stated Public Institution allows for a wide variety of zones, but also does not mean anyone can come in and build whatever they want. That is just the Comprehensive Plan but zoning still needs to be relied on for it to actually go there. **Skarda** stated they are a County Entity and taxes are not paid on that land so how can other Commercial Entities go on there. **Director Huus** stated they would have to sell it.

Craig Hystad stated the Fairgrounds would like a gas station, restaurant and hotel. **Director Huus** stated the Fairgrounds also would like to have ballfields, an arena, concession stands to name a few and a Conditional Use Permit would be required for these in its current agricultural zone. They know where the Fairgrounds location will be, but not where each building will be located. The Master Plan has not been submitted. He would like to bring to the Commissioners a request to waive the fees because it is a County Property.

DISCUSSION ITEMS:

ADMINISTRATIVE CUPS

Director Huus stated there have been no Administrative CUPs approved since the last meeting.

PLANNING & ZONING BOARD MEETING SCHEDULE 2021

Director Huus stated there are 2 (two) meetings that have exceptions from meeting the 2nd Monday of the month. The April 12th Meeting is scheduled for Tuesday and the

June 7th Meeting will be the first Monday due to conflicts. If there are no problems with that it will be published on the website and sent to the County Commissioners as presented.

BOARD VACANCY RECOMMENDATIONS

Director Huus stated we are assuming Craig Hystad and Kathy Skarda will be the County Commission Planning and Zoning Board Representatives. Gene Veeder retired in November, and his position needs to be filled. The three interested parties are Lindsey Perusich, Eva Hepper and Chris Olheiser. If one of these three is selected tonight, it would then go before the Commissioners as a recommendation for approval and potentially the new Board Member's first meeting would be the January 2021 Meeting. If the position is advertised, the selection would be made at the January 2021 Meeting. **Butch Fleck** stated most of the Board Members are Agriculture Farmers and the selection should be someone who is not a farmer, so they would be a different point of view. **John Irwin** stated the different areas of the County need to be represented. **Kathy Skarda** stated it is important to have representatives from different areas of the County so those areas have a voice. **Craig Hystad** stated the position should be advertised.

Chris Olheiser, one of the interested Applicants, presented to the Board his background, schooling, employment, work experience and desire to be a part in helping McKenzie County grow.

Kathy Skarda stated that even though they are not legally required advertise, they set a precedent of advertising previously and advertising this position encourages people to participate in Government.

Motion to Approve Advertising the Board Vacancy Position in the Newspaper; Motion by Kathy Skarda; Second by Craig Hystad. Voice Votes: All Ayes. Motion to Approve Advertising the Board Vacancy Position in the Newspaper Passes.

POLICIES AND PROCEDURE DISCUSSION - KATHY SKARDA

Kathy Skarda stated she wanted to discuss policies and procedures because a citizen called her after receiving a "Bond Expired Letter" and then receiving a "Please Disregard Letter" regarding BioBridge. She had Planning & Zoning Board send her all of the information pertaining to BioBridge so she could look into the issue. A Notice was sent out in September saying the Bond was due on November 19. She was concerned because the letter sent out November 16 states the Bond was expired or never obtained and that this would be the only notice regarding the Revocation Hearing, even though the Bond was still valid until November 19. It is only 3 days, but the notice was sent out illegally to a number of people. People need to be notified but

these letters need to be reviewed to make sure they state the correct information before being sent out so there is not a liability issue.

Director Huus stated they sent out a warning letter, just as they are supposed to, 60 days ahead of time. In most cases there is a response and the bond is renewed. This one never responded so we assumed they were ignoring the warning. Rather than letting the Bond expire, the applicant is put on notice that they have to have a bond and if they do not respond, then the Conditional Use Permit will be revoked.

Butch Fleck asked if this is the protocol for all Conditional Use Permits. **Director Huus** stated yes but normally there is a response to the first letter, but there was no response this time. They took action because the receipt they received is proof the applicant received the certified letter, and because no response was received, it could only be assumed the applicant was going to let the bond expire. **Fleck** stated BioBridge is the one who is at fault because they should have taken care of this ahead of time or contacted Planning and Zoning on it. Planning & Zoning are staying ahead of the bonds, as they should. **Skarda** stated her appreciation of the department's performance, but after receiving so many citizen calls regarding this letter, she wanted to remind them to follow rules and procedures with official documents. **Fleck** stated the letter should have stated "about to expire" rather than "expired". **Director Huus** stated this template letter is mostly used for expired bonds and in this case was a misstatement and after this the letter would be reviewed before being sent out.

Skarda asked Ari to look at the letter. **John Irwin** asked if the statement makes the letter slanderous if it is sent out before they are out of compliance.

Ari Johnson stated he had not reviewed the document but the answer is no because it is a letter sent to the project owner. For it to be slanderous it would have to be sent to a third party who somehow damages the operator based on that letter. If the letter sent out to customers had stated the business was out of compliance and to stop doing business with them, and customers stopped doing business with them that would be slanderous. Just telling someone they are breaking the rules cannot be a slander.

Fleck stated the people with questions should have called Planning & Zoning. **Cody Knetzger** asked about including a statement: "Please let us know by such and such a date or if we do not hear from you by such and such a date, we will assume you are forfeiting your bond."

Sandee Kimpel stated the bond came in the next day. **Skarda** stated this could have all been avoided with a simple phone call to the company. **Ari Johnson** stated it is not our job to chase people down to follow the rules. The actual mistake here is that we should have sued them with days remaining on their existing bond and made a claim on their bond. Had this actually expired 3 days later we would have been in a world of hurt if we could not have made a claim on it. **Skarda** asked if there is something that could be in procedures if we do not hear from someone. **Fleck** asked how long it takes to put in for the bond. **Johnson** stated the 60 day notice should be sent out and should state "If we do not hear from you in 30 days, we assume you are going to let your bond forfeit or expire and we are going to make a claim on your bond for expiration " rather than

sending official notices because we can revoke it after. He is certain the letter sent out had Director Huus' number so people could have contacted him.

ADJOURNMENT

The meeting was adjourned at 6:34 PM

The next meeting of the McKenzie County Planning and Zoning Board will be held on January 11, 2021 at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM

