

January 2021

Planning and Zoning Commission Minutes

January 11, 2021

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, Heidi Brenna, Jeremy Olson, John Irwin, Kathy Skarda, Matt Beard

Members Absent: Craig Hystad

Members Remote: None

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 December 7, 2020 Meeting Minutes As Presented By Kathy Skarda Second: Heidi Brenna. Voice Votes: All Ayes.

Motion to Approve Minutes Passes

CODE ENFORCEMENT:

Sandee Kimpel, Code Enforcement, gave an update on the Bakken Base Camp area cleanup and showed numerous pictures. A Judgement was placed on them in 2018 to clean it up but nothing has been done. "An Order to Show Cause" will be filed for not complying with the judge's order. The defendants named in this Legal action will be contacted. **Butch Fleck** asked if there was a Reclamation Bond on the site. **Kimpel** stated this site was put in place before Reclamation Bonds were required. **Kathy Skarda** inquired as to why this site has not been cleaned up. **Kimpel** stated that it appears the clean-up process was started, but was not followed through. There is new and old trash. The doors are open so people have been able to access it at will.

UNFINISHED BUSINESS:

Director Huus stated there is no Unfinished Business at this time.

PUBLIC HEARINGS:

#03-20COMP/ZC - Gary Nottestad - Comprehensive Plan Amendment from Transition Area to Residential Low Density and Zone Change from Agriculture to Residential 1 for Lots 1-11. Location: T150N, R100W, S2, S1/2SE1/4, Parcel #030000750, McKenzie County, ND.

Director Huus stated this is a Comprehensive Plan Amendment and Rezone to change from the Zone District from Agriculture to R-1. It is located about 2 miles north of Arnegard, west of 133rd Avenue NW and along 29th St. NW.

He read a few of the Findings of Fact. They are highlighted and attached to the end of these minutes.

Director Huus stated included with the agenda packet is an explanation on how, in the past, irregular tracts were established and recorded in this area. The determination was made that the irregular tracts that were recorded can be transferred and built on. In the area for the rezone, the irregular tracts that did not get recorded before 2013, are not being accepted as sellable or transferrable. A map showing all irregular tracts that were recorded in 2011 and 2012, but not all are shown on the GIS map because they are not shown until they actually get transferred. On May 3, 2011 this development was denied by the Board of County Commissioners, then in October 2011, the Approach and Utility Permits were approved by the Board of County Commissioners. Those are the only records that have been found in the historic minutes on given approvals. Staff recommends Approval of Rezone as this would clean up the past land use, provide consistency with the surrounding area and reduce workforce housing.

Recent photos of this and the surrounding area were presented.

Director Huus stated Gary Nottestad has been trying to sell property and he can only sell the tracts that are recorded as irregular tracts. Some of the lots did not get recorded so they cannot be sold or transferred unless there is a Zone Change and Major Subdivision approval. Nottestad has been advised not to go further with platting unless the Zone Change and Comprehensive Amendment are approved. If it does not pass, there is no reason for Nottestad to spend a lot of money on the engineering and surveying that would be required for Platting. Platting is not approved right now and will be a separate Application. Planning & Zoning has had a previous issue in a similar area that was zoned Agriculture and was platted as a Subdivision but the zoning did not follow the way it was originally platted resulting in a mixture of trucking companies and residences and causing a lot of issues. This rezone and eventual subdivision should prevent those types of issues in the future. The applicants, Gary Nottestad and Dustin Jordan are present to answer any questions.

Kathy Skarda asked for clarification if a CUP is required to have these platted lots be a Subdivision. **Director Huus** stated the lots that are shown on the map are not platted,

they are just a single parcel and that the subdivision application will plat the individual lots. **Skarda** stated her concerns of issues dealt with previously because of business', trucking and housing being intermingled rather than just for homes. **Director Huus** stated some of the area to the North is already zone Industrial and that this rezone and future subdivision will help alleviate those land use conflicts. **Jeremy Olson** asked what the distance was between the Northern most-part of the area in question and where the Industrial Zone starts. **Dana Roff** stated the lots to the North are $\frac{3}{4}$ of a mile and are zoned Light Industrial per the measurements taken from GIS.

Director Huus stated one suggestion is to expand that zone so that there is not both Rural Residential R-1 and Industrial, but could be filled in with Rural Residential. **Skarda** stated that area is going to be up against the Industrial Zone. **Director Huus** stated it would be a Buffer and the Transition Zone covers that in the Comprehensive Plan. The Transition Zone was originally put in so workforce housing could co-mingle with housing and light industrial. It should be changed over to Rural Residential to minimize the amount of workforce housing.

Skarda stated her concerns of someone putting a lot of money in to a development and then not being able to sell it due to the wells, trucks and businesses around the area. The area needs to be as appealing as possible to the future homeowners and taxpayers as well as to the developers and to be developed in a good way to be beneficial for everybody.

Jeremy Olson stated if it is Residential, only single-family dwellings can go in there, nothing else. If that area to the North could be a buffer to include Industrial, that would have the intent of keeping those separate.

Gary Nottestad, applicant for the site, stated he has recorded at the Recorder's Office, the Covenant that attaches to all the lots permanently. It is Residential only so it gives protection from Commercial, Industrial, and Semis. **Skarda** stated they want Nottestad to have the opportunity to develop it, and to be able to sell it to people who want to purchase it to make a good home for themselves. **Jeremy Olson** stated Nottestad already has the Covenants in place and just needs to make it official.

Butch Fleck asked what the opinion of the Township is. **Olson** stated the Township recommends approval for it for the same reasons that Director Huus explained. It is a Transitional Area and if it is converted from a Transitional Area to a Residential R-1, it can be guaranteed no workforce housing or more Commercial or Industrial is encroaching into that corner of that Intersection, for them it a good thing. It would be cleaning up some of the earlier mistakes. Converting areas like this from Transition area to either Industrial or Residential and keeping the distances between them is a slow process but eventually fills in. It may not look great now, but looked much worse a couple of years ago.

Matt Beard stated his concern in regard to maintaining access, especially to the North, if they move forward with this Application. **Dana Roff** stated Dustin Jordan is present and has been working with Tim Pickering, Road and Bridge Permitting, and there is

talk of a Frontage Road. **Jeremy Olson** stated this Application is just changing the zoning, not approving any kind of development or precluding any kind of access. **Director Huus** stated the Subdivision Application will deal with the specific accesses and the other issues identified in the submittal requirements.

Motion to Approve #03-20COMP/ZC - Gary Nottestad - Comprehensive Plan Amendment from Transition Area to Residential Low Density and Zone Change from Agriculture to Residential 1 for Lots 1-11. Location: T150N, R100W, S2, S1/2SE1/4, Parcel #030000750, McKenzie County, ND.

Motion to Approve by Kathy Skarda; Second by Butch Fleck. Voice Votes: All Ayes.

Motion to Approve #03-20COMP/ZC Passes.

#18-20CUP - GTO Services L.L.C. - Conditional Use Permit - -Location: 12205 31st ST NW, T151, R98, S34 Parcel #640013750, Watford City, ND 58854

Director Huus stated this is a CUP to expand an existing grandfathered water depot. The Applicant wants to erect a 36x48 foot building to house two frack tanks and to heat the water. This expansion removes them from their grandfather status. This CUP is for both the original water depot and the water heating capabilities. It is located at the NW quadrant of Intersection of HWY 1806 and 31st St. NW, approximately 3 miles North of Watford City. There is some Heavy Industrial on the SE end of the quadrant of the intersection and it is zoned Agriculture. A water depot is a Conditional Use in the Agriculture Zone. It is already zoned Heavy Industrial at that SE quadrant and Agriculture on the SW, NW and NE quadrant of that intersection with the site being on the NW quadrant.

He read through a few of the Findings of Fact. They are highlighted and attached to the end of these Minutes.

Director Huus stated staff recommends Approval of the water depot and the ability to erect the storage facility for the purpose of heating water. **Jeremy Olson** stated the only thing being added to this site is a heated shack.

Jeremy Olson asked if there were any violations. **Dana Roff** stated no.

Kathy Skarda stated her concerns with the length of road needed for trucks having to make a hairpin turn coming off the hill on 1806 and the placement of the access. She stated 1806 is very busy and getting onto the road can be stressful. **Cody Knetzger** stated there is not a lot of time on that hill. **Butch Fleck** stated in the last 10 years, it is probably the busiest it has been.

Director Huus stated in the Staff Report there were figures showing the distances for ingress and egress because they knew that could possibly be an issue. Hiland Partners is 0.35 miles South on 1806 and the next one to the North is Laurel Sax which is 0.82 miles to the North. There are no accesses until the intersection of 123rd Avenue all the way to 124th Avenue, so there is almost 2 miles with no accesses other than the intersection.

Motion to Recommend for Approval #18-20CUP - GTO Services L.L.C. - Conditional Use Permit - -Location: 12205 31st ST NW, T151, R98, S34 Parcel #640013750, Watford City, ND 58854

Motion by Butch Fleck; Second by Cody Knetzger. Voice Votes: All Ayes.

Motion to Recommend for Approval #18-20CUP - GTO Services L.L.C. - Conditional Use Permit Passes

#17-20CUP - Cameron Dodge - Aboveground Storage Tank - Conditional Use Permit - -Location: T-149N, R-96W, S2 Parcel #040012400, McKenzie County, ND

Director Huus stated this is a CUP to install an Aboveground Storage Tank to store water for fracking. The tank will not be used as a Truck Depot and Lay flat pipe will be used for water transport. It is approximately 4 miles South of Johnson Corner and is near Bear Den Road which is where Beaver Creek Road changes to Bear Den Road.

Director Huus read a few of the Findings of Fact. They are highlighted and attached to the end of these Minutes.

Director Huus stated the Applicant is present to answer any questions. The staff recommends Approval.

Kathy Skarda stated the staff report says this is a Temporary Water Facility that is going to be there longer than 6 months as the title indicates, but it is indicated that it could still be defined as a Temporary Water Facility. **Director Huus** stated it is not being classified as a Temporary Water Facility. The Poseidon tanks are part of the Temporary Permits for Lay flat Lines and those tanks are also parts of that. Those permits can be approved administratively if they are for 6 months. If any longer, then only 1 (one) Extension of 6 (six) months can be applied for making a total of 1 (one) year. **Skarda** stated for clarification that this is just a plain CUP, not a Temporary Water Facility. **Director Huus** stated that was correct. **Jeremy Olson** stated it is going to be temporary in nature but is expected to be there for a little more than a year.

Jim Talbert, Elkan Inc., stated he has been assisting the Applicant, Cameron. Originally it looked like the fracks that were going to be on Cameron's property were going to be

taking a couple of years and this particular tank is to feed several fracks on that property. With COVID, everything has been pushed back. They were up front with the Planning Department that they did not know the length of time that would be needed and would possibly need to keep coming back for an Extension. Rather than setting up and taking down the tank numerous times, which requires a great deal manpower work and is also much more disruptive to the land itself, Director Huus stated they should apply for a CUP rather than a Temporary permit. **Jeremy Olson** stated the fracks are going to be the choke points out there, because there are not going to be enough of them to go around with all the Industrial. **Talbert** stated the CUP is the 60K Poseidon tank and there is a Lay flat that goes from Cameron's stock pond to the tank. It is all on his property and is just over a half mile. There is already a gate where the stock pond would be. The Stock pond would supply water for the 60K tank. They will get permits for the Lay flat lines. **Sandee Kimpel** stated to clarify, a permit is needed for any other waterlines. The word temporary, specifically applies to the structure of the tank because otherwise, that would just be a temporary structure.

Motion to Recommend Approval to County Commissioners #17-20CUP - Cameron Dodge - Aboveground Storage Tank - Conditional Use Permit - -Location: T-149N, R-96W, S2 Parcel #040012400, McKenzie County, ND

Motion by Kathy Skarda; Second by Cody Knetzger. Voice Votes: All Ayes.

Motion to Recommend Approval to County Commissioners #17-20CUP - Cameron Dodge - Aboveground Storage Tank - Conditional Use Permit Passes

DISCUSSION ITEMS:

ADMINISTRATIVE CUPS

Director Huus stated there have been no Administratively approved CUPs since the last meeting.

TENORM

Director Huus stated he wanted to update the Board on where they are in the process of TENORM. North Dakota needs to be in charge of their own destiny rather than relying on another state because Montana is going to someday cut us off from having a place to put TENORM. He and Craig Hystad have been attending meetings regarding TENORM disposal options for the 4 (four) main Oil-Producing Counties in the Bakken,

Dunn, Williams, Mountrail and McKenzie County. The meetings have been facilitated by the Western Dakota Energy Association. At the last meeting there was a discussion on the various zoning ordinances that each county has and the possibility of creating a consistent CUP process for all 4 (four) of the Counties. Currently the approval process differs with each County and there needs to be consistent zoning ordinance across the area. The last meeting was attended by the 4 (four) Counties along with a couple of the adjacent Counties and the NDDEQ was also represented. Western Dakota Energy Association is currently working on to assemble a sample ordinance. Once it is completed, Ari Johnson, P&Z Attorney, will take a look at it. It will have to be brought to this Board and through an Ordinance Amendment if we so choose to take that path. When this does come about we will probably have to get together again with the Ordinance Revision Subcommittee like we did a few months ago to take a closer look at it.

Jeremy Olson stated if everybody goes with the same united front with consistent standards, it will send a consistent message to those that want to use it.

Kathy Skarda asked when it is brought forth to Planning & Zoning, Ari and the Board, will the Board of Commissioners be able to review it, make comments and have a Public Presentation for people to add their concerns before anything is approved. **Director Huus** stated it would be just like the other Ordinance Amendments process. When it is done, there will be a First Reading, a rough draft, comments from the public and they will hear the Board's concerns. After the First Reading it is filed with the Auditor's Office and available for anybody to comment from the First Reading to the Second Reading so there is that opportunity, in addition to when we actually hear it. **Skarda** stated this may be a "Hot Button" issue.

Jeremy Olson stated if we go through our Reading and make changes and corrections, how does that affect this with other Counties? It seems like it might be getting away from the intent of having a consistency. **Kathy Skarda** stated one size does not fit all for most. **Olson** stated the intent is to have an additional "Blueprint" to be consistent within all Counties, and then they tweak it as they want. **Director Huus** stated the main thought is to make sure it is consistent with DEQ Regulations and to follow the DEQ Guidelines because DEQ is the one who permits. There are other things that could be County specific such as requiring a Buffer Zone, the size of the Buffer Zone and what the ingress and egress has to be. The main focus with the Amendment Ordinance would be to just to make sure that it is consistent for the permitting process with the DEQ Regulations and the North Dakota Century Code. **Butch Fleck** asked what the Buffer Zone is. **Director Huus** stated trees, dikes, etc.

John Irwin asked will there be any weight to this? If the State decides they want to do one, they trump anything that the Counties and Townships try to require. **Director Huus** stated the process is they can get their permit but part of that permit should be complying with the local zoning also. **Kathy Skarda** asked if they can listen to the citizens and be able to put that in our Ordinance according to what our people in our

County have concerns about? **Director Huus** stated he is sure the County has the ultimate say in what the County zoning regulation are. They are looking for some kind of consistency so they are not making it impossible to be here, or be excluded from the possibility of being here. **Skarda** stated everybody needs to work together to make sure they feel comfortable living here and with making a living. **Irwin** stated near Killdeer the people said they did not want it, the Township and County said no, but the State said yes, issued the permit and just let them do it.

FAIRGROUNDS APPLICATIONS

Director Huus stated the Fairgrounds Board is currently working on a Master Plan and it sounds as if it will be completed by January 19. They are trying to figure out the best way to make what they are proposing work with the current zoning. After a recent meeting with the Fairgrounds Board and with Heidi Brenna in the past, they have a better idea of what Fairgrounds wants and the uses. There is not a current zoning designation that fits exactly, so the idea of coming up with a Fairground Zone was suggested. Through further study, we have decided that the best way to approach this, is to wait until the Master Plan is complete, look at what they envision the fairgrounds to include and then do a PUD (Planned Unit Development) instead of a Zone Change to fit it. The underlying zone is Agriculture and would probably still be left as the underlying zone. The PUD would overlay the agricultural zone and include other uses that are not normally included in Agriculture with specific things that are not listed in that zone. **Olson** stated the Fairgrounds will tell us what they want to do, how they want to use it and we can figure out a way to make the zoning fit. **Director Huus** stated the ability to do a PUD is already part of the Ordinance and has been done prior to his Administration. There are very clear guidelines and specifications in Section 3.9 of the Zoning Ordinance for a PUD District, to aid in all the requirements needed. All of that has to get worked out through the process. When the Master Plan is completed, there will be a clearer picture of what is needed. There is no action that has to be done now, he just wanted to let the Board know where they are in this process. There has to be a Public Hearing Process just like any other Application so the Public has input.

Kathy Skarda stated one of the questions she is consistently asked is “Will the City grow around this particular site and if so, will we be asked to leave again?” **Director Huus** stated there is a definite concern of the Watford City ETA encompassing it. He sent Ty Skarda, State’s Attorney, the agreement with the City that stipulated the existing ETA and is looking into that. They are going to try to compose ways to keep that from reoccurring. **Skarda** stated there is a great deal of concern about tax dollars being spent on this and then being spent again within a number of years. **Director Huus** stated it is a huge investment to build this only to have it absorbed by the City and then told by the City nothing else can be done there. There needs to be protection

from this and Ty is looking into it. **Skarda** stated they need to tread slowly and carefully.

NEW BOARD MEMBER SELECTION

Jeremy Olson stated Gene Veeder retired from the County Commissioners and that we have a vacancy on the Zoning Board for an At-Large Member. We have 4 (four) people who have expressed interest in being a Board Member for the Planning & Zoning Commission. They are Chris Olheiser, Eva Hepper, Lindsey Perusich, and Peter Transtrom. They are welcome to address the Commission, but are not obligated to.

Ballots were passed out to the Commissioners.

Chris Olheiser gave a brief history of his background, schooling and extensive Oilfield work experience. He stated his interest in being a part of McKenzie County's growth and to help it go smoothly.

Jeff Skaare, First International Bank, Business Development/Landman, Mineral and Land Services stated his support of Chris Olheiser and gave a brief description of his work with Chris. He stated his strong vote of confidence in Chris's ability to fill the vacant position on the Board.

Eva Hepper gave a brief summary of her place in McKenzie County, her experience in Agriculture and her interest in preserving Agriculture.

Lindsey Perusich did not attend the meeting.

Peter Transtrom gave a brief description of his place in McKenzie County, his background in Agriculture, his work in the oilfield and Agriculture, and his interest in being a part of the growth of McKenzie County growth.

Kathy Skarda stated the Planning Board of Commissioners has always tried to be represented by various parts of McKenzie County and read a portion from what is in the North Dakota Century Code regarding the election of the Planning Commissioners. She stated the areas the other Members of the Commission reside in the County and what trades they represent in their occupations.

Jeremy Olson stated that there should not only be a good cross-section of geography represented from the County but also a good cross-section of trades, talent and representation of the industries within the County.

Matt Beard asked if this Board has always picked the members for this position.

Jeremy Olson stated the Board votes to make a recommendation to the County Commissioners. Ultimately the County Commissioners will decide who they want to appoint to the Board, but like most things there would have to be a pretty good reason to go against what our recommendation is.

The Board Members filled out their anonymous Ballots and submitted them to Dana Roff and Sandee Kimpel. After adding up the votes, **Dana Roff** stated the Candidate chosen was Chris Olheiser. **Jeremy Olson** stated by majority vote Chris Olheiser has been recommended to be approved for the County Commission for the At Large Seat for the Planning & Zoning Commission. He encouraged the other candidates to not be discouraged and apply again. Many times, as in Chris's experience, Candidates apply more than once before being elected for this position.

Director Huus stated to Chris if that is the County Commission's selection, he will attend a New Board Member Orientation and receive a tablet for the meetings. After the County Commission Meeting, he will then be instructed on the next steps.

Jeremy Olson stated the Planning & Zoning Residential Building Permit Brochures were mailed out to all parcels in the County so as to avoid the issues the Board previously faced.

ADJOURNMENT

The meeting was adjourned at 6:14PM

The next meeting of the McKenzie County Planning and Zoning Board will be held on February 8, 2021 at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM

MEETING SIGN-IN SHEET

Meeting Date: Jan 11, 2021

Name PLEASE PRINT NAME LEGIBLE	Phone #	Agenda Item #
Jim Talbert	602-403-4521	3
Chris Olheiser	701-290-8404	H4
Jeff Skaare	701-590-3995	
Vicki Wold	701-842-3863	
Eva Hepper	701 899 9801	
Dustin Jordan	701-523-6583	
Pete JACAS/101M	701 580-1880	

McKENZIE COUNTY

Planning and Zoning Commission

#03-20COMP/ZC GARY NOTTESTAD

Finding of Fact:

1. The applicants property is currently designated as a Transition Area on the McKenzie County Comprehensive Plan and is currently Agriculture on the McKenzie County Zoning Map.
2. The applicant wants to gain approval to establish a residential subdivision after this Comprehensive Plan Amendment and Zone Change.
3. All requirements for public notification have been satisfied.
4. Staff has not received any phone or written comments on the proposal.
5. Approximately one quarter mile to the west of this location, a subdivision of lots at least one acre in size was developed before 2013 zoning.
6. Several lots adjacent to the north and west of this location were recorded as irregular tracts in 2011 and 2012, and are transferable.
7. Transition Areas in the Comp Plan are clusters of light industrial and workforce housing. The existing surrounding residential use is permanent single family dwellings and light industrial. This Comp Plan Amendment will allow consistency with the surrounding lots usage.
8. Lots to the north approximately three quarters of a mile. are zoned Light Industrial with a Comp Plan of Transition Area.

Growth Management Plan Consistency

Subject parcel's Comprehensive Plan Consistency is located within a Transition Area.

Suggested Motion:

Staff recommends Approval of Comprehensive Plan Amendment and Zone Change #03-20COMP/ZC, Gary Nottestad, to the County Commission to Amend the Comprehensive Plan to Residential Low Density and Amend the Zone to Residential 1. Adopt the findings as provided in the staff report.

MCKENZIE COUNTY

Planning and Zoning Commission

#18-20CUP GTO Services, LLC

Application:	December 15, 2020
Hearing Date:	January 11, 2021
Description:	12205 31st ST NW Watford City, ND S34,T151,R98 Parcel #640013750
Owner(s)/Applicant:	GTO Services, LLC
Reason for Request:	Applicant is requesting a Conditional Use Permit to continue use as a water depot and erect a 36x48 foot storage facility for the fresh water depot to heat water. The storage will consist of housing two (2) frac tanks and a heater.

Comprehensive Plan Land Use: Agriculture
Zoning: Agriculture

Findings of Fact:
<ol style="list-style-type: none"> All requirements for public notification have been satisfied. Staff has not received any comments in regards to this application from the public. Project is not in an organized township. Site has been used as a water depot since 2011 and was in Grandfather status. The addition of the 36x48 storage building will remove the Grandfather status from this property. Usage is listed as a Conditional Use within the Agriculture Zone. State of North Dakota Water Permit is held in the name of Thorl and Patricia Sax.

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:
<p>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.</p> <p>The approximate length from the west entrance to the Depot and HWY 1806 is 160 feet which is adequate for trucks entering HWY 1806 off of 31st St NW. Approach permit for this access has been granted by McKenzie County. On HWY 1806 the nearest northern major ingress/egress from 31st St NW is approx .82 miles. HWY 1806 nearest southern major ingress/egress from 31st St NW is approx .35 miles. These distances allow for adequate line of site.</p> <p>b. The proposed conditional use shall not substantially impair or diminish the value and enjoyment of other property in the area.</p>

MCKENZIE COUNTY

Planning and Zoning Commission

#17-20CUP - Cameron Dodge - Aboveground Storage Tank

Application:	December 10, 2020 Conditional Use Permit
Hearing Date:	January 11, 2021
Description:	T-149N, R-96W, Sec 2 Parcel ID # 040012400
Owner(s)/Applicant:	Cameron Dodge - Owner and Applicant
Reason for Request:	The applicant would like to put up a 60K Aboveground Storage Tank (AST) adjacent to their stock pond so they can store water and sell it for FRACS. They anticipate the tank will be up for several years. The AST will not be used as a truck depot nor will trucks fill from the tank. Layflat pipe will be used to transport the water. There will be no building and the tank will be 12' tall.

Comprehensive Plan Land Use: Agricultural

Zoning: Agricultural

Findings of Fact:

1. All requirements for public notification have been satisfied.
2. Project is not in an organized township.
- * 3. Elkan Inc. will be the operator of the AST and is in good standings with the North Dakota Secretary of State.
- * 4. An Aboveground Storage Tank falls under the definition of a Temporary Water Facility which is conditionally allowed in the Agricultural District with an Administrative Permit. This AST will be here longer than the 6 month period allowed to be considered temporary.
- * 5. Per the project description submitted the tank will be up for an indefinite amount of time.

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:

1. The establishment, maintenance, or operation of the conditional use shall not be detrimental to or endanger the public health, safety, comfort or general welfare.

The tank is located in a rural, low population area. The height of the tank is twelve (12') feet tall therefore it will be unlikely that illegal entry into the tank will occur. It will not impede the public health, safety, comfort or the welfare of the surrounding area.

February 2021

Planning and Zoning Commission Minutes

February 8, 2021

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, Eva Hepper, Heidi Brenna, Jeremy Olson, John Irwin, Kathy Skarda, Matt Beard

Members Remote: Craig Hystad

Members Absent: None

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.

Correction to January 11, 2021 Minutes: Page 8 Replace "Go" with "Grow" in Kathy Skarda's Statement: Motion to Approve January 11, 2021 Meeting Minutes As Presented With Correction of "Grow" instead of "Go" As requested by Kathy Skarda Second: Matt Beard. Voice Votes: All Ayes.

Motion to Approve Minutes as Amended Passes

Jeremy Olson presented a discussion of the selection of the most recent P & Z Board candidate. Four applicants were presented to the P & Z Board. Three of them attended the P&Z Board meeting and presented information for where they reside, their talents, and the diversity they could bring to the Board. At that meeting, Chris Olheiser was ultimately voted to fill the vacancy by receiving 4 votes. At the January 19 County Commissioner Board meeting, the County Commissioners at the recommendation of Kathy Skarda voted Eva Hepper to be on the P & Z Board. In December and January, it was stated that having a more diverse industry representation was needed. Back in June, Senator Patton spoke and reminded the Board of their purpose and vision. When the P & Z Board's voice is disregarded, they question why they are investing their time.

Kathy Skarda stated that on April 7, 2020, the Board of County Commissioners were presented with applicants to fill a vacant position on another Board and it was stressed of the importance and desire of representation from all parts of the County.

Jeremy Olson's and Kathy Skarda's exact statements are attached to the end of these minutes.

The following discussions related to Olsen's statement took place at various points of

the meeting but for clarity are compiled here:

John Irwin stated the meeting should have started differently as the statements made regarding Eva were not very welcoming. The P & Z Board vote was overruled by the County Commissioners as has happened before and will happen again. **Olsen** agreed and apologized to Eva for statements directed at her. **Butch Fleck** stated this has happened before. The P & Z Board will vote for something, then it goes to the County Commission and gets changed because no one from the P & Z Board is present and one person can change our decision.

Kathy Skarda stated she lobbied specifically for the change for representation across the County. **Butch Fleck** stated the County Commissioners on the P&Z Board have gone against the recommendation of the P & Z board before. **John Irwin** stated that 2 County Commissioners are required to be on the P&Z Board. **Fleck** stated he does not think it is right for the County Commissioner to go against the voted recommendation of the P & Z board, when the other board members are not present to contradict it. The vote that was made by the P & Z Board should be carried on to the County Commissioners instead of going against it. **Director Huus** stated he was remote at the County Commission Meeting and made the case that the Commissioners should vote on P & Z's recommendation. **Skarda** welcomed Eva to the Board and expressed hope that the Board can continue to move forward.

CODE ENFORCEMENT:

Director Huus stated they have an update on the Bakken Base Camp cleanup. **Ari Johnson, Planning Attorney** stated the Bakken Base Camp, also known as Bakken Holding and Investments, LLC, is located along Hwy 85 and is now for sale. A Judgement was filed in May 2018 stating it needed to be cleaned up. Because the property still has not been cleaned up, an Order to Show Cause was filed against the defendants to explain to the court why it has not been cleaned up. They heard back from several of the defendants, specifically from the Receiver LLC, who they did not know about. The Receiver was appointed by the Garfield County, Colorado Court to manage the property. A very productive meeting took place that morning, with the Representative in charge of the receivership as well as his lawyer from Mandan. There now is an open line of communication with a single point of contact who desires to clean it up and work with the zoning office to decide what levels of information are required and what future development opportunities might be appropriate. That is a very positive move forward. Communication and a desire to fix problems are very valuable and is what planning and zoning looks for.

Sandee Kimpel stated there is no other Code Enforcement at this time.

Director Huus stated he was approached by another County Commissioner as to why fines are not charged for Zoning Violations. Road and Bridge can charge fines for illegal approaches but Zoning works through the court system with their own resources to try to clean up violations, so he did some research. The County Commissioners

voted to allow those fines and at the December 2019 meeting adopted fines for Road and Bridge for illegal approaches.

Ari Johnson stated he does not think they can legally impose a fine for a zoning violation. The way the Century Code is written, a Zoning violation is a Class B Misdemeanor which can be punished criminally through the Criminal Court System. The County can go to Civil Court and get an Order to clean it up, or get an Order allowing for direct action to clean it up and get a Judgement for the cost of doing that. As to whether they can impose a fine or other Civil Penalty, is a difficult question that has been litigated only at the District Court Level. At that level it has been determined that only a county that has a Home Rule Charter can impose Civil Penalties for zoning violations. It has not been decided by the North Dakota Supreme Court to what extent the penalties can be imposed. If Road & Bridge sent a fine out to an Oil Company for building an approach without a permit the Oil Company writes a check for the imposed penalty, they do not typically litigate it. The only time that it was litigated was in Williams County over the calculation of penalty not whether the penalty could be imposed. It is implicit that they can with Home Rule Charter, but it has not been decided. McKenzie County is a non-Home Rule Charter. If they were to go to court for a Zoning Violation and the defendant did not contest it or just writes a check to pay for the fine, that is great. If later on the Supreme Court said the County could not do that, then there would be lawsuits against the County for all those fines collected without Due Process, therefore making them illegal. Historically the County Commission has not wanted to take that risk because of the liability.

Kathy Skarda stated her concerns of having to pay back the collected money and more if zoning violation fines were instituted at the Commission level. **Johnson** stated he did not have a definitive answer, but there could be a definite risk. It is not really a zoning question, it is a liability question, and he would be concerned about that risk. There is the option of Criminal Penalties, but those have to go through the Criminal Justice System, it is not a good fit for Zoning and Planning and traditionally the State's Attorney does not handle the cases that do not have a civil remedy. He and Director Huus do exercise control to clean up violations the best we can.

There was a discussion on situations that do not get remedied even though confronted by the Code Enforcer or receiving a Cease and Desist Order from the court and even having penalties may not make a difference.

Johnson stated he had experience in a different County that lost a case in which a big company went to the Supreme Court over a large penalty. He advised that if there is a specific violation in which they feel that nothing is getting done, to make sure Director Huus Office is fully advised of the violation so they can prioritize their limited resources. They have been working through the back-log of violations to get them corrected.

UNFINISHED BUSINESS:

Director Huus stated there is no Unfinished Business items at this time.

PUBLIC HEARINGS:

Director Huus stated there are no Public Hearing items at this time.

DISCUSSION ITEMS:

ADMINISTRATIVE CUPS

Director Huus stated there have been no Administratively approved CUPs since the last meeting.

OIL & GAS TRANSMISSION LINES & FACILITIES - DETERMINATION OF JURISDICTION

Director Huus stated the next item for Discussion is Oil & Gas Transmission Lines & Facilities and Determination of Jurisdiction. After the approval of a CUP for a compression station in December, the applicant questioned why they are required to have a CUP when it is regulated by NDIC's permitting. Zoning's decision to require a CUP was based on when historically Compressor Stations CUP's have been required. NDIC did not regulate pipelines and the associated facilities until 2017. Gathering lines are regulated by NDIC and Transmission lines are regulated by the Public Service Commission (PSC). Gathering lines are defined as from the well site to the processing plant and includes all the lines between and the facilities that are required, including compressor stations. Unless those above ground facilities are not specifically addressed in the permit, we do not have jurisdiction over those. Planning & Zoning has jurisdiction within processing plants in the Aboveground Facilities on the transmission lines. They have been requiring CUPs on the processing facilities and requiring compliance with all those and the transmission facilities.

Director Huus has a developed a report and standard operating procedure based on what he found through his research. Matt Bohr, zoning's contact at NDIC has forwarded their questions to their legal team. McKenzie County requires a Reclamation Bond for those Aboveground Facilities associated with a Pipeline. NDIC also requires Reclamation Surety Bond, Letter of Credit, or an Escrow Account or other surety for reclamation. Since NDIC is requiring one, we are questioning if the County should also. We have jurisdiction over aboveground facilities for pipelines when they are not regulated or permitted by other permitting entities like NDIC, PSC, or Federal Engineering Regulatory Commission (FERC). Dana Roff compiled a list of the 24 (twenty-four) CUPs that McKenzie County has done on these facilities. When NDIC responds to the questions submitted by Planning & Zoning, they will go through those and see if we need to either take away the requirement for a Reclamation Bond, Amend

the CUP or get rid of the CUP completely. Zoning has instituted in their application process is to get a copy of the Federal, State and Local permit or application so they know what entity is permitting the facility so we can make more accurate determinations as to the jurisdiction requirements.

Dana Roff stated on the development checklist included in all permits is a box asking for State, Federal and Local permits. If no permits are submitted, that means the applicant does not have any. Director Huus stated the checklist now specifically states what is required.

Jeremy Olson stated the legislature and State's rules have changed since 2017. Director Huus stated he is waiting on the NDIC Legal team as to if there is a grandfather type clause with Pre-Century Code or Regulations or if they are grandfathered in and zoning continues that.

Matt Beard stated one of the conclusions in the findings report regarding the PSC notification if we receive information 10 (ten) days prior and if those are done once or annually. Director Huus stated PSC Permit Hearings do not come up annually but they receive a letter from the company that is proposing the permit. It is part of the PSC Permit process that Zoning informs the applicant that Zoning has jurisdiction over aboveground facilities and all regulations must be complied with. The PSC rules allow for Zoning to do this, but it must be done before 10 (ten) days prior to the hearing date.

Sandee Kimpel stated the Development Checklist that was previously mentioned, includes a list of all contacts they are required to contact and get a response from, including one from NDIC. Everything on the list must be turned in to Planning & Zoning to be added in to the Staff Report prior to being presented at the Planning & Zoning Board Meeting. Everything is also kept on file

Heidi Brenna stated she has not necessarily known exactly what to submit. It would be helpful to state exactly what the County is specifically looking for. This along with going through the list with the applicant, would help expedite the process.

Dana Roff explained the Planners process for the applicant's submittal and notification requirements. Director Huus stated the applicant is also asked to submit a site plan. Roff stated she goes through the checklist, circles what information and entities to notify and makes notes next to those. Getting comments are helpful as they are always updating the checklist. Director Huus stated they could include an example of a permit that meets all the requirements and an explanation of what gets sent out to the required entities. Roff stated she wants to make the process as easy as possible for applicants and to let applicants know zoning is readily available to guide and help however needed. This is an ongoing process and is always changing to make the application process better.

P & Z BOARD DISTRICTS

Director Huus stated this discussion came about at the County Commission Meeting with the approval of Eva onto the Board. The discussion was representation of at large board members from all over the County. The Commissioners requested a look at the Districts within McKenzie County. He received from Erica Johnsrud, maps of different districts that the County has. These were Ambulance Districts, Fire Districts, School Districts, and Unorganized Commissioner District Maps. This was approached from two different perspectives - Kathy submitted one and P & Z submitted the other. They are attached to the end of these minutes. Option 1 was based on a little modification of the Road Closure Districts which breaks up the County pretty well. Option 2 was based on Unorganized Commissioner Districts.

McKenzie County has Joint Powers Agreements with some Townships where we do not have zoning jurisdiction. Those townships are shown on the both options in green hatching. Whatever option is chosen could be used in different ways for discussion. As an option for districts, the district map could be used as a guideline when looking at new applicants or to increase representation in less represented areas. Lance Powell was the only comment and he expressed his support for Option 1.

Jeremy Olson stated when Planning and Zoning was first formed, the intent was to have Geographical representation. At-Large means from a large part of the County and by definition At-Large needs to be At-Large. A district map could be a guidance document and if they get an applicant from a certain area not represented we could give preference to that, but to say that they have to have representation from specific areas is a problem. Option 1 could be a guideline for the County Commission to state where they would prefer to see representation from. Another thing to consider is what should be the difference between an At-Large Member versus an appointed Member from the County Commission or Watford City Council because either they have representation in that area or not, regardless if it is a County Commissioner, a City Council member, or an At-Large member.

Ari Johnson stated this is the County Commission's decision to make. The Statute states At-Large members. There is an exception for Counties that have District Commissioner Selections and that they have to have 1 (one) At-Large Member from each District, but McKenzie is not a District County. One of the conflicts here seems to be that the expectations are different between the Zoning Commission and the County Commission. It would be appropriate to ask the County Commission to give some guidelines on what they want to see on the Planning & Zoning Commission for At-Large members. Planning & Zoning would use those guidelines to select the applicant they recommend and each member of this Board would then use those guidelines when making their selection. Those guidelines could certainly include district diversity and industry diversity when possible. The outcome of this discussion should be written and shared expectations and guideline expectations in terms of both geography and of what

the County Commission wants to see on this Board. Traditions change and are remembered differently. They are a valuable source of expectation but if reduced to writing are very helpful. For years his office was in another county that has Districts. What they found was having a strictly defined line was not helpful because then you could have people who are literally neighbors from different districts that are in theory geographically diverse, but they are neighbors so no goal is being accomplished.

Jeremy Olson stated on these maps, the Fort Berthold area would not be included and the Townships that do their own Planning & Zoning should not be included. Skarda asked if some Townships do their own roads but do not do the actual zoning. Director Huus stated yes. The ones that have the green cross-hatch do their own planning and zoning. Matt Beard stated it is great to get representation from different areas in the county. He would like to see it remain At-Large whether it is just a guideline or formality.

Director Huus stated they could put legal ads in the paper that include the area preference, but do not want to discourage applicants. Skarda stated it is always good to have a cross-section of people to represent different opinions and needs and should remain At-Large. She encouraged Community members to talk to the Commissioners. Jeremy Olson stated the importance of having more than just 1 (one) or 2 (two) industries represented as well as geography representation

John Irwin stated geographic representation has always been important to the Board since the beginning. Jeremy Olson stated it is a dangerous precedent to have only one industry represented from all areas of the County. This should be considered and a factor in deciding who to have represent Planning & Zoning.

Director Huus stated parameters should be in place before the next opening, and the applicant selection should be based on the need for geographic representation and diversity. There was a discussion on the need to not limit the type of applicant recommended and getting guidance from the County Commissioners.

OTHER DISCUSSION TOPICS

There was a discussion on Pond fencing and the need for stipulations on the placement of a fence in relation to the Pond it encompasses on the property it is located on. Also discussed was the importance of consistent, safe conditions for Pond fences and getting input from Pond owners on this. **Director Huus** stated parts of the Zoning Ordinance needs revising and clarification and he will meet with the Ordinance Subcommittee to discuss this.

Butch Fleck stated he was questioned as to why Zoning has hired a lawyer when there is already a State's Attorney on the payroll. **Ari** stated the Zoning contract is a separate contract and actually started when they were located at the State Attorney's office. The

State Attorney's office hires lawyers good at Criminal Prosecution and advising the County Commission on liabilities. The Zoning Board has the advantage of a lawyer who specializes in their Zoning Ordinance and enforcing it. Historically the State Attorney's office has not wanted to deal with the Zoning Ordinance and enforcing it. Rather than budget for another full-time salary employee at the State Attorney's office, they contract with outside council to provide a zoning service. The State Attorney's office has not wanted to deal with it. It is cheaper to have the Zoning Attorney under contract.

Director Huus stated he was questioned what his office does when there are no public hearings or unfinished business to prepare for presentation at the Board Meeting. Some of the other tasks and projects his office does are converting old paper files into our electronic data base; fixing past records; conducting building, Code Enforcement and Fire inspections, and maintaining the Inspection report Data Base; Reclamation Bond Maintenance; doing research for assisting zone applications; and answering parcel zoning inquiries. Also, he attends the JDA Board meetings and the McKenzie County Water Resource meetings to aid in coordination of Rural Water Lines. The department is constantly shifting their priorities with what they have to do to make their department and the whole Planning & Zoning Process more efficient. **Butch Fleck** stated he does not think anyone present questions they are not busy, but most of them in fact are wondering how the department can get it all done.

ADJOURNMENT

The meeting was adjourned at 6:21PM

The next meeting of the McKenzie County Planning and Zoning Board will be held on March 8, 2021 at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM

Jeremy Olson stated as the Leader of this Board, I think it is fair to bring up what happened in last month's meeting and I feel that the decisions and recommendations of this Board should never when this process is vandalized, I will bring attention to it. This Board had 4 (four) candidates express interest on being on the P & Z Board. 3 (three) of them were here to introduce themselves and we had the opportunity to get to know them, their talents and their diversity they could bring to the Board. Ultimately, Chris Ohleiser was voted to fill a vacancy, by 4 (four) votes, twice as many as the next highest vote getter. 3 (three) of the Board Members of the County Commissioners felt differently however and Eva Hepper was voted to be on the P & Z Board. Eva Hepper, you are not on the Board, but you are not voted here by your peers. You are here because Kathy Skarda, undermined this Board and allowed her to get her way with through a false narrative. Kathy, your candidate did not get voted in by the Board so you took matters into your own hands. Your actions disrespected the Board and the decisions made by this Board and the trust of this Board by creating a false narrative of why your person should elevated instead of Chris. First you made statements that my vote should not count, that I never vote unless there is a tie. While that is the case for Applications, and Changes in Policy, the Chairman has always voted for Membership, starting with this first one. You have been present for enough Memberships to see this firsthand, but you chose, this time, to object to it. With that you created the false narrative that there is not enough rancher or farmer representation for it. That cannot be more false. The argument made to this meeting in December and then in January, was that this Board was overrepresented by the Agricultural Industry and that having a more diverse industry by this board was needed to prevent thing and biased and to have the understanding of how different industries will affect our County . These actions that you have hijacked that and turned it around for your own purposes. You are stacking this Board with your own people that will agree with you so that your bias can have the monopoly on what happens here. You being on this Board has been unprofessional and this has not been the first time you have been called out. Back in June, when I brought in Senator Patton and he spoke to remind this Board of the purpose and vision of this Board. That event was directed at you because of the behavior and actions that you were taking at that time. All the rest of the Boards remember this. We as a Board are collectively volunteering our time here and striving to make McKenzie County a better place to live, work and prosper. Making an assumption and I believe that most of you prefer a small representative style not one where a leader can just use their own agenda and exploit the biases without regards for the colleagues. When our voice is disregarded and decisions change on a whim then what is the purpose of this Board? Why are we investing our time here? I want you to remember this as we move forward. Curt what is the first order of business tonight?

Kathy Skarda stated I thank you so much for your opinion and in responding with that. I just want to relect here on April 7, 2020, the Board of County Commissioners were presented 3 (three) names to fill the vacant position on our Water Resources Board. The Board of Commissioners discussed the importance of representation from all parts of the County and thanked all the interested persons for agreeing to be considered. That was literally in our minutes from April 7, 2020 where we asked and we wanted to make sure that the importance of having representation from all over the County across the County is very much needed and desired to make sure we have representation from everywhere. So, I am sorry you feel that way and I guess I do not feel that way. I have always tried to take and be the best that I can and represent the people. I am very sorry that you feel that way. Again that is your opinion as well and if I have in any way taken and made anybody feel uncomfortable or representation has not been what it should be, I guess it will reflect in the next election. But I just want to say thank you Jeremy for your comments and I will try to take and make sure that if I am doing something wrong like you think I am, maybe I should not be so vocal. I guess I was put on this Board to ask questions and I will continue to ask questions. If the presentation in June was toward me, I thought it was a great presentation, and towards everybody. So if it was specifically directed toward me then I guess maybe somebody else is doing the targeting. I appreciate everybody's time and hard work, and I really hope we can be a great time, which I thought we were already had going for us. I want to thank you for being here. (She thanked each County Commissioner by name including Craig Hystad, who was remote.) I think it takes all of us and we all need to work together and let's move forward.

MEETING SIGN-IN SHEET

Meeting Date: Feb. 8, 2021

Name PLEASE PRINT NAME LEGIBLE	Phone #	Agenda Item #
Melissa Kilde		

March 2021

Planning and Zoning Commission Minutes

March 8, 2021

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, Eva Hepper, Heidi Brenna, Jeremy Olson, John Irwin, Kathy Skarda, Matt Beard

Members Remote: None

Members Absent: None

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.

Correction to February 8, 2021 Minutes: Page 6, First paragraph, fourth sentence Replace "Johnston" with "Johnsrud", and to include the full Statements of Jeremy Olson and Kathy Skarda on Page 1, first and second paragraphs. Motion to Approve February 8, 2021 Meeting Minutes as Presented with Correction of "Johnston" with "Johnsrud" and to include the full Statements of Jeremy Olson and Kathy Skarda on Page 1, first and second paragraphs, by Craig Hystad Second: John Irwin. Voice Votes: All Ayes.

Motion to Approve Minutes as Amended Passes

Craig Hystad stated he wanted to add to the Agenda the discussion for a Chairman and that the Chairman should be voted on at the first January meeting of every year. The same Chairman can be voted in, but there still has to be a yearly vote the first meeting in January. **Director Huus** stated the Board should vote for the approval of the Agenda at every meeting.

Matt Beard inquired if the proposal to add an item to the Agenda was for discussion about the Chairman. **Craig Hystad** stated that would be talked about later.

Craig Hystad stated Olson just did to this Board what you were saying Kathy Skarda did at the County Commission Meeting. You spoke for this Board without the consent of the Board and the way it came out in the Newspaper looked like we all agreed with you but

we did not. **Jeremy Olson** stated the only 2 (two) statements he made were at February 8 P&Z Board and at the February 16 BOCC meeting. **Craig Hystad** stated the Commissioners were unable to ask you any questions because you walked out. **Olson** stated he made a statement for the record. Did they want to put this at the end of the meeting? **John Irwin** stated they were going to have this discussion and that he had received numerous calls from the public last month regarding the Chairman.

Motion to have Agenda amended to include the Discussion for The Chairman at the End, Motion by Craig Hystad, Second: John Irwin; All Ayes;

Motion to Amend Agenda to include Discussion for the Chairman at the End Passes.

CODE ENFORCEMENT:

Director Huus stated there are no Code Enforcement items to discuss.

UNFINISHED BUSINESS:

#13-20CUP - 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 was a Conditional Use Permit Application that came in on July 15, 2020 and on the August 10 Meeting it was pulled from the Agenda. On September 8, it was pulled from the Agenda again, and then on October 12 it was postponed, and November 9 it was tabled and now is on the Agenda again.

This project consists of a total of 4 (four) ponds that are going to be utilized for industrial purposes and water will be delivered from those ponds to end users or depots via lay-flat lines. The applicant is proposing to access these ponds for construction and maintenance via crossing the Little Missouri River.

Several maps regarding the project were displayed.

Mr. Dixon's proposal is to access along Long X Road to the South end of his property, go through his property and for construction, cross the Little Missouri to construct the ponds. He will put pads down to access the construction equipment and then the pads will be pulled out and he will access the ponds for maintenance via crossing the Little Missouri. When this got tabled before, it was for him to come up with other options to access, and either easements or other means and this is what Mr. Dixon came up with.

Included in the Staff Report are the extensive comments, public opposition and email from the US Army Corps of Engineers, stating they are fine with Dixon Crossing the Little Missouri and constructing the pond. Prior to the meeting an updated packet including

new information and letters was passed out by Sandee Kimpel.

He read the Findings of Fact. They are highlighted and attached at the end of these minutes.

Director Huus stated as such staff recommends approval of this Conditional Use Permit. The applicant John Dixon is present to answer any questions; Kimberly Fischer and Bryce Klasen of the North Dakota State Water Commission are via telephone to answer any North Dakota Water Regulatory questions. There are others in the audience who may have public statements also.

There was a discussion on concerns for having legal access and well-maintained access roads, ingress and egress for emergency vehicles.

Kathy Skarda stated in the Meeting minutes from November 9, 2020, Commissioner Gene Veeder stated he would want his property protected from someone just coming in and making an easement. Road access and 911 access are a requirement of the CUP and Mr. Veeder had stated he is not for permitting an application that would force someone to accept access across someone else's property. The road and easement have been an issue since the start of this project and her concern is if there is not an easement or access to this private road for this project for another private entity, she is not sure that the Board can approve it as it sits. **Butch Fleck** asked for Ari Johnson's advice since Dixon is crossing the river and is not going to use that road. **Ari Johnson** stated access is always complicated and has been discussed in previous meetings. Access for emergency response is required but he does not think the emergency responders will be going across the river. There has to be some kind of land access for emergency responders, and even though it is not written in the requirements, it is something they have normally done. The quality and appropriateness of access is up to the Board of County Commissioners discretion to decide.

John Irwin asked if the access issue has ever been resolved? **Jeremy Olson** stated for the land access, the road was denied so their solution was to go across the river. **Director Huus** stated it has never been worked out. He believes Mr. Dixon has tried to work with the Olson's but he has not had success with that.

Kathy Skarda asked if the State Water Commission has any interest in or know anything about sluffing off the sides of the Little Missouri, or is that all Corps? **Bryce Klasen**, NDSWC Water Appropriation Division, stated he is not aware of what that type of traffic would do to the crossing or the bank. The Little Missouri is not a natural water of the state, so anything up to the high-water mark is not considered sovereign land, and is considered the property of the landowner. **Skarda** asked if the Little Missouri is considered a wild and scenic river and if so, does that designation offer it any protection. **Klasen** stated under Century Code 61--29 the Little Missouri River is considered a North Dakota scenic River. A Wild and Scenic River is some sort of Federal Designation that he

does not believe the Little Missouri has. (This Chapter of the Century Code is attached to the end of these minutes).

Craig Hystad stated his concerns of there being enough water in the Little Missouri to adequately supply all users. **Bryce Klasen** stated when there are dry times they limit the number of industrial water depots that have been put on the Little Missouri River and down through the Long X Bridge. On each depot the Temporary Water Permits have a minimum flow condition. When flows get low enough, in this case, at the Long X Bridge, all withdrawals must be from the water depots downstream of the Bridge. This is to ensure there is some water flow available to all users.

Craig Hystad asked what the existing permits, downstream are for. **Klasen** stated those are Temporary Water Permits just like Mr. Dixon's, which do not accrue water rights and are for Industrial use.

Cody Knetzger stated in Burian's letter dated March 8, 2021 on page 5 in the packet that was handed out (Included at the end of these minutes) it stated, "Be advised that the County has a liability if any emergency services are ever needed at the site if they choose to permit this facility to go forward when it blatantly does not meet the ordinance." Would that fall back on the County if they approve this?

Ari Johnson stated if someone is hurt there and emergency services cannot get there because it was approved without access there are many different kinds of immunity in the Statutes to protect the County. A case could be made for liability, but a case could be made for immunity. As often as those cases come up, it is always very fact specific on what went wrong and why. He would not be comfortable saying the County does or does not have liability for those issues.

Matt Beard asked what the direction and placement of the Lay-Flat route would be, and what would be done if the frac is land-locked. **Sandee Kimpel** stated the direction the Lay-Flat would run depends on where the location of the frac is that they are supplying water to. Temporary Waterline Permits need to be obtained before anything else can be done and are Administratively approved. The application must include a map showing the beginning, ending and placement of the line and completed Landowner Agreements. **Butch Fleck** stated that really does not have anything to do with the permit, if it is land-locked, that is their problem. **Beard** stated he was wondering if it has happened before, since there is a pond there, how easy or hard that is or was. **Director Huus** stated he believes previously approved Lay-Flat lines that go up to the North were given easements, leases or agreements from those property owners to go across their property.

Kathy Skarda asked if there is an easement for the 2018 North side pond, and that the application states "The applicant will access the site on private access easement on private road." **Sandee Kimpel** stated that was done in 2018 prior to the current staff. At that time, Mr. Dixon wrote to the construction company to get access through the property

and what was there at that time, the administration considered an easement. **Skarda** asked is it correct that without a valid ingress or egress, it would be out of compliance? **Director Huus** stated correct.

Grant Slick stated the access from the north is more of a safety issue driving and taking construction equipment down the 600 foot bluff but would be their other option and has not been ruled out. The easement coming in from the south across the Little Missouri is all on Dixon properties, is safer and easier than taking that heavy construction equipment from the north.

Kathy Skarda asked how long the mats would remain and would they be the only access to the pond? **Grant Slick** stated the mats would be removed after completion. **Skarda** asked how they would then access the property? **Slick** stated the mats could be put back in or they could come in from the North.

Craig Hystad asked if they had easements for the one from the North. **Slick** stated they had signed easements, not with him, but on his computer. **Butch Fleck** asked is there a road access from the north? **Slick** stated there is a temporary road. **Kathy Skarda** asked if it was a clay road that would be tough for emergency vehicles to access? **Slick** stated it would be somewhat difficult.

Ari Johnson stated the Little Missouri River has Federal Scenic and Wild Designation only within the National Park not the North Unit and South Unit. So, at this location it would be outside the park and only have the State Designation withstanding.

There was a discussion on how the easements could be submitted as additional helpful information while still keeping private information confidential.

Ari Johnson stated it would certainly be good to have something in writing, signed by the landowner that agreeing at a minimum that County service responders can use the access. The most important thing is permission for emergency access. He would have to see the easements before he could say if they would be helpful or not.

Jeremy Olson asked other than the access issue were there other objections from the Board Members or other concerns from the Board Members with the rest of the application? If it is just about the road thing, it can be returned. If there are other issues then it would be good to let Dixon know rather than coming back and continuing this for several more months.

Craig Hystad stated it was previously rejected because there was no easement, no ingress, egress but now that those are there, he sees no reason why it would not be approved.

Director Huus stated the Staff's opinion is that all Ordinance requirements are now met. If the Board does not accept the crossing of the Little Missouri as a valid option, it either

needs to be tabled so more information is submitted, or approve it and let it go to the County Commission. **Craig Hystad** stated his concern about the condition of the road is if they receive a lot of rain. **Director Huus** stated the Ordinance states it has to be access for the use of the Conditional Use Permit and in their opinion that requirement is met.

Butch Fleck stated they meet all the requirements for the ponds and the river is not always there. **Director Huus** stated for the use of the pond by the applicant, they have legitimate access back and forth and they do not have to use the property to the west or the north.

Matt Beard asked if they would be able to add conditions such as the road needing to be an all-weather road. **Director Huus** stated those conditions could be added but there are to be other properties that access to the east of Olson's and Dixon's and would they be making the same requirement for them too, for their emergency access to their property? **Matt Beard** stated having the route is great but if we are concerned about the emergency access, it probably has to be all-weather. **Jeremy Olson** stated these standards need to be equally applied to all applicants. If an applicant that has met all our requirements, the same as any other applicant for a similar project and we deny them, there had better be a pretty good defensible reason why it is denied.

Director Huus stated we are requiring as one of the conditions that they allow emergency services to pull water from their ponds, but we do not stipulate how they do that. Dixon does have to give permission to fire districts to use that water if they need to pump water to fight a fire.

Craig Hystad asked about fence requirements. **Director Huus** stated a fencing plan has to be submitted. Fence requirements are enforced as a requirement of the CUP and he has the discretion to deem what is required in the future ordinance. **Sandee Kimpel** stated Dixon previously installed a fence just outside the berm on the North side of the river. **Hystad** asked about the south side. **Kimpel** stated the south side encompasses all of those ponds and the water depot. **Jeremy Olson** asked if the applicant has met all of the conditions. **Director Huus** stated Dixon still needs to install a sign and things like that before the CUP can be approved. **Olson** stated his concerns of putting more burden on this applicant than with other applicants with similar projects.

Director Huus stated this is unique because the north side is landlocked unlike the other ponds and is different than any others he has approved or seen. If a precedent is set here, all others are going to have to be done the same and if their adjacent property owners want to shut them down, they will be able to do that based on if they do not want to give that emergency access. **Kathy Skarda** stated Fire Chief, Dave Uhlich's email's only request called for a well maintained road should there be a need for emergency response. She questioned if an ambulance could get down that road or across the mat across the river.

John Dixon stated the west road is sturdy enough to handle heavy loads even if there is a lot of rain and had previously been upgraded and culverts installed in it. He stated his family has used the road for 100 (one hundred years) with no problems. He stated his frustration with having done everything by the book, being treated differently than other applicants, and being limited in ability to take care of his ponds properly. **Butch Fleck** stated his concerns of the conditions of the road being kept up. **Fleck** stated the problem is not for Dixon's personal use, but for his commercial use. **Ari Johnson** stated when parties cannot work it out, he looks to the courts.

Johnson stated there are a number of legal means upon which to claim an easement. Access, prescriptive uses and using it either with or without permission for years then the restrictions on what can be done with that easement vary. He has seen an easement case go through the court system but it took 6 years litigation and a jury trial. **Fleck** stated but you cannot landlock somebody from your personal land. **Johnson** stated you absolutely can landlock someone, you cannot sell someone a landlocked parcel surrounded by your land and deny them access. That is easement by necessity. There are many different ways to get easement and he hesitates to give a black and white answer for any of them. Ultimately if the parties cannot agree, and if there is a genuine dispute it is going to have to be decided by the courts.

Butch Fleck stated people cannot stop fire trucks and he does not know why they would want to stop first responders.

Jeremy Olson stated the Corps of Engineers has given Dixon permission to continually use the river to access and maintain the pond. Is that correct? **Director Huus** stated yes. **Olson** stated for emergency access, the first responders can use a private road to access it. Is that correct? **Johnson** stated no. It depends on the emergency, of course. A private road is a private road and that includes the government. If there is a No Trespassing sign posted, a warrant would be needed for first responders, but you are probably not going to get warrants for first responders unless there is something in writing from a judge or landowner stating that there is access.

Jeremy Olson stated the next steps are passing this with stipulations, postponing or recommending denial. If denied, there should be a very defensible reason for denial and that would delay this.

Steve Burian stated his letter dated March 8, 2021, and that he is a landowner in the proximity of the project. He shared the extensive research he has done. It is attached at the end of these minutes.

Craig Hystad stated Dixon has received permission for egress across the river, he could have a helicopter and would not be crossing Burian's or Olson's property so therefore are doing everything right. **Steve Burian** stated his concerns for legal, adequate access roads per the Conditional Use Permit and McKenzie County Ordinance. **Butch Fleck** stated he

finds it hard to believe that the people would stop first responders under any condition. **Hystad** stated crossing the river is legal access. **Director Huus** stated Dixon also has access on Long X Road, his property and has proposed a route up to the ponds so in his interpretation that satisfies the access to the ponds. **Burian** stated his concern with the inadequate trail to the North.

Director Huus stated they were under the impression that the Olson's were working with Mr. Dixon on an easement. **John Dixon** stated he had the emails he had sent to the Olson's and had cc'd them to Director Huus and Kathy Skarda. He owns both sides of the river and the river bed. The state controls the water. He has a landing strip and can reach the ponds by air or boat. They have driven those roads for many years and have had no problems. The North Dakota Century Code 24-07-01 states "All public roads and highways within this state, which have been open and in use during 20 (twenty) consecutive years, hereby are declared to be Public Roads or highways, are the publics and are confirmed and established as such whether the same have been laid out, established and opened lawfully or not." **Matt Beard** asked if the applicant might be pursuing a prescriptive easement process and that Ari Johnson had stated that the process had taken an extensive length of time.

Ari Johnson stated a prescriptive easement is basically a title action where one person would sue the other asking a judge to quiet title and a lawsuit that would go through the District Court and is a lengthy process.

Kathy Skarda asked you will use mats to cross the Little Missouri to construct the site, will you be using the road on the north, and will not be using the road through Olson's property? **Dixon** stated that is correct. I will for my ranching but not for these ponds, not for industrial use. **Skarda** asked there will be not large trucks or equipment ever? **Dixon** stated no Industrial ever. **Skarda** stated her concerns that sometimes the information like this does not get passed on to everyone working on the project and that they need to be respectful of the landowners. **Dixon** stated he is a private property landowner himself and understands that.

Butch Fleck stated he would like to make a motion to approve this because Dixon has met the conditions. **Craig Hystad** stated he would second with an amendment in there that Dixon does what he has said and stays off the west road. **Jeremy Olson** stated unless he gets an easement. **Ari Johnson** stated we need to add an amendment to the condition and there needs to be a second for the amendment. **Jeremy Olson** asked if Butch withdraws his original motion. **Butch Fleck** stated that is fine. **Olson** stated you made an original motion to be amended. Is there a second? **Cody Knetzger** seconded.

Roll Call vote: Butch Fleck-Aye, Cody Knetzger-Aye, Craig Hystad-Aye, Eva Hepper-Aye, Heidi Brenna-Naye, John Irwin-Aye, Kathy Skarda-Aye, Matt Beard-Naye

Motion to Approve with condition added that the west road not be used for industrial

access unless an easement is obtained #13-20CUP Dixon Ponds, LLC - Dixon Ponds - Passes

PUBLIC HEARINGS:

#01-21SUB- Solid Rock Preliminary Plat - Solid Rock Development Phase II-Gary Nottestad - T150N, R100W, Section 2. S1/2SE1/4 Parcel #030000750, Arnegard, ND

Director Huus stated this is an application for tentative approval of a Preliminary Plat for the Solid Rock Subdivision. The subdivision is to plat 11 (eleven) residential lots. In the previous month's meeting, the Comp Plan Amendment and Zone Change from Agricultural to R-1 Residential was approved in order to coincide with the existing residential land use and prevent conflicting uses within the residential character of the immediate areas.

He read the Findings of Fact. They are highlighted and attached at the end of these minutes.

Director Huus stated the vicinity map shows the location a couple of miles north of Arnegard. The Comprehensive Plan Map shows the property in Transition Area and the areas that have been revised as Residential. The R-1 Zoning Map shows the Agricultural areas around the Tentative Preliminary Plat and shows R-1 Zoning as approved in January. Shown on the other maps are the outlined boundaries of the Preliminary Plat, ownership of the surrounding areas, businesses and uses, the placement of the plat including 10 lots along county road 29th Street and one on the corner of 29th and 33rd Avenue. Another map shows that there is McKenzie County Water Resources District waterline running through the property and is where they would be connecting. Staff recommends tentative approval of this Preliminary Plat per the Staff Report.

Jeremy Olson stated this is Arnegard Township and Arnegard Township recommends approval of this. **Director Huus** stated the applicant is present to answer any questions.

Motion for Tentative Approval of #01-21SUB Solid Rock Development Phase II-Gary Nottestad, T150N, R100W, S2.S1/2SE1/4 Parcel #030000750. Motion Kathy Skarda; Second Butch Fleck. Voice Votes: All Ayes.

Motion to Tentative Approve #01-21SUB Solid Rock Development Phase II Preliminary Plat -Gary Nottestad Passes.

Airport Protection Overlay District Ordinance Amendment – 1st Reading

Director Huus stated this next item is an Ordinance Amendment. It is the 1st Reading of a new section to be included within the Zoning Ordinance. It was brought forward by the Airport Board. The purpose of this amendment to the Zoning Ordinance is to provide protection of the Airport Safety Surfaces and to align the requirements of the County to those of the City. This amendment was sent to the Ordinance Subcommittee who had some comments. One regarding regulations of FAA and the other comments were related to overreach of property owner rights. Keep in mind that this Ordinance Amendment is only establishing the groundwork for an overlay district so it can be applied to any public use airport in the County. What we are approving here is not an overlay of that District, it is simply putting the means to do that now. A Public Hearing would be required for actual adoption as a District change for the affected lands. Public notification and landowner notification would be a part of the application process to actually overlay the district.

Ari Johnson stated this was drafted based on the City's Zoning Ordinance which is also being amended in light of the new runway being built, and the updating of the zoning of the City. It is written in a way so the same map is applicable whether in the City ETA or in the County outside the ETA. This Amendment is to protect the environment and to protect aircraft from hitting structures that are built too high.

Ari Johnson stated he wrote this as an overlay district that could be applied to other airports if other airports are constructed in the County. Information was provided by KLJ, who is doing the engineering for the project. Raw data provided by them has been and is continuing to be helpful to put into Geographic Information Systems to help get a pretty good base layer of what is affected.

Director Huus stated this is just a guideline and once this moves forward for Public Hearing to establish District placement, they will have a more accurate actual overlay. **Johnson** stated this is just very preliminary for the Watford City Airport Board. This is just a general purpose to an overlay district for airports in general and then we would specifically apply that overlay district to the sections for the Watford City Municipal Airport at an appropriate time. We are not talking about where to apply the district today, we are talking about what the overlay district rules should be when it comes time to apply them for a specific airport.

There was a discussion on no-build zones and height restriction zones.

Ari Johnson stated this is a height restriction zone where buildings and trees below a certain height above the ground level are not restricted. This is specifically to protect airplanes. Almost this entire thing is a safety buffer outside of where airplanes should actually be flying. In general, the rule is 500 feet above a roadway, or a person or an

occupied building or a vehicle.

Hystad asked how close are they going to allow residences? **Johnson** stated at this point the airport is not moving and will probably have some noise complaints from some people with their turned runway, but there are no restrictions on where residences can be built.

Matt Beard asked is part of the process that we would have a public hearing? **Jeremy Olson** stated this is the 1st Reading Public Hearing. **Director Huus** stated we will have a 2nd Reading Public Hearing next month. In the interim between we can accept comments from the Public and make revisions for the 2nd Reading as we see fit. Then it will be ready for the 2nd Reading. **Olson** stated then it goes to the County Commission.

Johnson stated the height restrictions being written into the Ordinance is certainly something to check between now and hopefully the 2nd Reading. The intention is not to stop you from building a barn, it is to stop you from putting up a cell tower. Where do you draw the line? He wrote this is the same as the city did, and if the County wants to go a different way with it, he will help write it. **Skarda** stated that is something that she would want to know as a farmer and rancher, because that does go quite a way south of the ETA.

Director Huus stated the approach zone restriction states “No permit shall be required for any structure less than 100 feet”. In the Transition Zone it states “No permit shall be required for any tree or structure less than 100 feet above the vertical, above the natural ground except when such tree or structure because of land contour would extend above the height limit prescribed”.

There was a discussion about the length, width of the approach surface and conical surface.

There was a discussion of places in the district that could or could not be built on, those concerns being addressed at the next meeting.

Jeremy Olson stated questions from this reading can be included in the revision and addressed before the 2nd Reading. **Ari Johnson** stated the 1st Reading is to talk about problems and things that need to be addressed and answer questions that need to be answered, then make changes as needed and come back to the 2nd Reading. At that 2nd Reading you can recommend approval, recommend nothing or table it for further discussion if more changes are needed after the 2nd Reading. Ultimately, they have until October to have this comply to land around the airport but at the same time they do not want to find themselves in an emergency situation in September.

Craig Hystad asked if the landowners that own this know about this? **Ari Johnson** stated

they are just talking about making this an Ordinance amendment so he does not think there will be landowner notifications. He does not know for sure if the City may have done that because all this information comes from the engineering firm that was hired by the City to assist them with zoning for the Airport. **Jeremy Olson** stated this is about setting the rules, not about Watford City Airport. **Johnson** stated but at the same time we are going to try to set the rules and apply them. We certainly want to consider what is going to happen.

Matt Beard stated I would think this is the public's notice. **Jeremy Olson** stated this was in the paper. **Ari Johnson** stated it is a notice but he has had arguments with Dunn County about whether someone was physically present in the room or not, verses someone who was there.

Motion to Approve with Recommendations the Airport Protection Overlay District Ordinance Amendment -1st Reading; Motion by Matt Beard; Second by Butch Fleck. Voice Votes: Butch Fleck-Aye; Cody Knetzger-Aye; Craig Hystad-Aye; Eva Hepper-Naye; Heidi Brenna-Aye; John Irwin-Aye; Kathy Skarda-Aye; Matt Beard-Aye.

Voice Votes: 7Ayes to 1 Naye

Motion to Approve with Recommendations the Airport Protection Overlay District Ordinance Amendment -1st Reading Passes

Freshwater Pond Fencing - Ordinance Amendment - 1st Reading

Director Huus stated this Ordinance Amendment is to establish guidelines for the fencing within the proximity of a freshwater storage pond. We want to be able to approve fencing plans that have consistent location requirements. We have talked about the need to add this into the Ordinance. This Amendment will have language to require fencing location no further from the pond than 10 feet outside the pond toe of fill slopes or cutback slopes. We sent this to the Ordinance Subcommittee for their review. One of the members was going to visit with some pond owners and relay their comments to us. He also sent this to a pond owner for their comments but has not heard anything back yet.

Jeremy Olson stated this is just the 1st Reading so there are updates for changes. **Director Huus** stated they received some comments back and the issues are landowner rights and what they do on their property was the comment he had from one of the Subcommittee members.

There was a discussion on the conditions for fences to follow the National Resources Conservation Service standards, and DOT fencing regulations and applying these to the Dixon ponds. Fencing design parameters should also be included in the Amendment.

Motion to Approve Freshwater Pond Fencing - Ordinance Amendment - 1st Reading with Additions. Motion by Craig Hystad; Second by John Irwin. Voice Votes: All Ayes

Motion to Approve Freshwater Pond Fencing - Ordinance Amendment - 1st Reading with Additions Passes

DISCUSSION ITEMS:

ADMINISTRATIVE CUPS

#01-21ADMIN/CUP Nathan & Lorie Hillstad. Subdiving 15.85 acres from 114.28 acres for a direct family member.

Director Huus stated he had Administratively approved a CUP for Nathan & Lorie Hillstad. They subdivided 15.85 acres from 114.28 for a direct family member. Ordinance 5.9.1 and 3.4.1 allows this Administrative approval. The applicant is wishing to build a house and a shop. The applicant and her husband are helping out on the family farm since their parents passed away. They are currently a co-owner of the land. They want to build a house and a shop and moving out there will make it easier to with chores and haying and any other of the farm business they need to do. He can give them more information if want.

P&Z Board Applicant Selection Criteria

Director Huus presented Draft P&Z Board Applicant Criteria Selection. This is a rough draft of some thoughts he had after visiting with the County Commission and what he interpreted that they were looking for. He welcomed any suggestions, additions or modifications.

The Planning and Zoning Board Member Applicant Selection Criteria is attached to the end of these minutes.

Butch Fleck stated according to the Century Code they cannot have Districts but this is just a recommended use. **Director Huus** stated the District Map is just a guideline they would use, to see if an area needs more representation when advertising for an applicant for the Planning and Zoning Board.

Craig Hystad stated the Planning & Zoning Board can get the applications and interview them but the final decision is made by the County Commissioners. **Director Huus** stated he has been following the examples of other Boards that give only the list of applicants without a recommendation to the County Commissioners and were told to come back with a recommendation. **Jeremy Olson** stated Director Huus should ask the County Commissioners at the next meeting how they want to do this.

Director Huus stated he can add their input for discussion at the County Commission meeting. **Jeremy Olson** stated his question to the County Commissioners is if they want input from the Planning & Zoning Board on new memberships. **John Irwin** stated Planning & Zoning could send the list of applicants to the County Commissioner, have the Commissioner vote, and make the final decision.

Kathy Skarda stated the commission should come up with consistent rules for all Boards.

Craig Hystad stated Planning & Zoning should bring this back to the BOCC and present what they want for criteria at the next meeting. **Director Huus** stated he will bring back what they find at that meeting. **Kathy Skarda** stated they could decide which steps on the Criteria List they will choose to do. **Director Huus** stated he would put in an Agenda request to put it on the Agenda.

BOARD CHAIRMAN DISCUSSION

Craig Hystad stated Jeremy Olson did not have the consent of the Board and did not represent the Board when he read his speech to Kathy Skarda saying she did not represent the Board in her decision of appointing Eva Hepper to the Planning & Zoning Board vacancy. This is not a Jeremy Olson Board, it is a McKenzie County Planning & Zoning Board. **Jeremy Olson** stated he never said it was. **Hystad** stated the same things Olson said to Skarda could also be said to Olson. If Olson had a problem with Skarda, it should have been done in private or one on one, not in a Public. The reason Eva got voted on is because he had received many calls wanting her on the Board verses Olheiser. Kathy's residence in relation to Eva's is no different than Olson's to Olheiser's. Also, since he has been on the Board they have never voted on a Chairman. It should be voted on every year the first meeting in January. **Olson** stated the Chairman preceding him was there until he was appointed. That is not the right way, but that is how it was. **Director Huus** stated he needs some guidance so he knows to put this on the Agenda and if he needs to do this, he needs those rules so he can have a policy. Is it a Robert's Rules saying or is it an exception code? **Hystad** stated the North Dakota Century Code states the Chairman needs to be voted on the first meeting of every year. The Chairman does not have to be changed, but does need to be voted on. **Kathy Skarda** stated this was in our training we attended a couple of weeks ago.

Director Huus stated since we do not have an annual meeting other than our January meeting, this could be a standard thing in our January meeting and at that time go through the officers, the whole board and the terms.

Jeremy Olson asked Craig what he proposes as a solution. **Hystad** stated the Board votes for a Chairman to get it back in the regulations and will have to do it again next January. **Olson** asked are you proposing we do it tonight or put it on the Agenda for next month? **John Irwin** stated he had some things to address. **Olson** asked if they are

addressing the discussion of the position with voting or the cancel culture? **Irwin** stated he would like to address the cancel culture. **Irwin** stated he had wanted it on the Agenda and Olson had not allowed it. People keep calling him and complaining about the way people on the Board are treated. These meetings have become very negative and so full of confrontation that the Board will not function effectively. All the finger pointing has given the Board a black eye and it is embarrassing. Everyone here was embarrassed to sit and listen to Olson's rant the other night and then see what shows up in the McKenzie County Farmer. This Board needs to feel comfortable with asking questions and being able to slow down the process or even pumping the brakes on issues if we are not comfortable or knowledgeable on. Every member should feel comfortable and have the right to ask questions without feeling threatened. After Jeremy's behavior, he questions if Jeremy is an asset to this Board anymore. **Cody Knetzger** stated he agreed with John and that they are representing and a direct reflection of the County. Behaving in such a manner looks poorly on the Board and makes them look incompetent. Everybody is entitled to their opinions, but the Commissioners make the final decision so they have to accept that. They are not always going to agree on things. I am sorry Eva and Kathy, and Eva is a good person and a good fit for the Board. Welcome. **Eva Hepper** stated thank you.

Motion to Vote on a Chairman. Motion by Craig Hystad; Second by Cody Knetzger. Voice Votes: Roll Call vote: Butch Fleck-Naye, Cody Knetzger-Aye, Craig Hystad-Aye, Eva Hepper-Aye, Heidi Brenna-Naye, John Irwin-Aye, Kathy Skarda-Aye, Matt Beard-Aye

Motion to Vote on a Chairman Passes 6 to 2

Cody Knetzger asked if anybody is eligible for nomination on that? **Jeremy Olson** stated it has generally been the At-Large Members and not the County Commissioners or the City Commissioners, but he does not know if that is a rule. **Matt Beard** asked if the 2 (two) County Commissioners and 2 (two) City representative could be the Chairman. He did not read anything in the North Dakota Century Code restricting it, so he would read it that any of the 9 (nine) can do it. **Cody Knetzger** stated he nominates Craig Hystad.

Nominations for Chairman: Jeremy Olson nominated by Matt Beard; Cody Knetzer nominated by John Irwin; Craig Hystad nominated by Cody Knetzger

Votes: Jeremy Olson - 4 votes; Craig Hystad - 3 votes; Cody Knetzger - 2 votes

Jeremy Olson stated he appreciated the input and has taken it to heart. He can work with people, does not hold grudges and hopes the others will not either. This last month has been stressful for a lot of people.

ADJOURNMENT

The meeting was adjourned at 7:15PM

Due to scheduling conflicts, the next meeting of the McKenzie County Planning and Zoning Board will be held on Tuesday, April 13, 2021 at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM

McKENZIE COUNTY

Planning and Zoning Commission

#13-20CUP - Dixon Properties, LLC - Ponds

Application:	July 15, 2020 - Conditional Use Permit
Hearing Date:	August 10, 2020-Pulled from Agenda, September 8, 2020 pulled from Agenda, October 12, 2020 Postponed, November 9, 2020 Tabled, March 8, 2021
Description:	S2,SW4, Section 31, T148N, R98W, PID# 610007800 Lots 2-3, Section 6, T147N, R98W PID# 600000780
Owner(s)/Applicant:	#13-20CUP - Dixon Properties, LLC
Reason for Request:	The Project will consist of a total of four (4) 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 fracing 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 fracing 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 access the ponds via Dixon Properties, LLC property.

Comprehensive Plan Land Use: Agriculture

Zoning: Agriculture

Findings of Fact:

1. Requirements for public notification have been satisfied.
2. Pubic comment in opposition has been received.
3. Applicant is the property owner.
4. Project is not in an organized township.
5. The surrounding area has 5 existing permitted ponds. 1 on the north side of the Little Missouri River and 4 on the south side.
6. Freshwater ponds are conditionally allowed in the agricultural district.

7. The proposed ponds are less than fifty (50) acre feet each.
8. North Dakota State Water Commission has jurisdiction for approval, regulation and enforcement of surface and ground water permits.
9. The US Army CORPS of Engineers responded that the Little Missouri River crossing is ok and Mr. Dixon has been granted permission to access his north property via placement of temporary mats to cross the river for construction. access for routine maintenance will be crossing the river also.
10. No state construction permit is required per North Dakota State Engineer on December 17, 2020.

:

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.

Per condition number 6 the ponds shall be fenced and shall not be detrimental to or endanger the public health, safety, comfort or general welfare.

b. The proposed conditional use shall not substantially impair or diminish the value and enjoyment of other property in the area.

The surrounding area is owned by the applicant and has existing ponds so additional ponds should not diminish the value and enjoyment of the other property in the area.

c. The proposed conditional use shall not impede the normal orderly development of the surrounding property.

The surrounding area is owned by the applicant and has existing ponds so additional ponds should not impede development of the surrounding property.

d. Adequate utilities, access roads, drainage or other necessary site improvements have been or are being provided to accommodate the proposed conditional use.

Surrounding property owners have denied access to ponds, therefore access to accommodate the surrounding proposed conditional use is being provided on the applicants property, which has access from Long X Road . Application dated March 10, 2020 for Storm Water discharge is in process.

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 will not impede the public roadway as access will be crossing the Little Missouri River via Long X Road.

TO: McKenzie County Planning Commission
FROM: Steve L. Burian
Re: Objection to Dixon Ponds CUP
Date: March 8, 2021

This documents the objections I presented in person to the McKenzie County Planning Commission on March 8, 2021.

1. After the meeting last August, I didn't realize Dixon was continuing to seek a CUP, until I recently received a letter advising of this Hearing. Reportedly, based on County Planning staff correspondence, there is no new information or no new staff report for this new hearing other than plans by Dixon to access the site using mats over the Little Missouri River for construction and using a boat to otherwise access the site for operations and maintenance.

2. In 2016, the Watson ranch was sold in a number of parcels to a number of people, for rural residential, agricultural or recreational purposes. I bought one of the land-locked parcels 2.25 miles east of Highway 85. I more recently entered into a purchase agreement to purchase the Olson property, which is directly between the Dixon land at issue and Highway 85. As such, I will have scenic badlands ranchland on both sides of Dixon's industrial development. I testified in opposition to this CUP permit last August.

3. **INSUFFICIENT ACCESS:** The initial application made it quite clear that Dixon assumed he would have access through the Olson/my land for the purposes of building, accessing, repairing and maintaining his industrial water pond development. This is a small, largely unmaintained trail. There is a gate that remains closed just off Highway 85, where the trail enters the Olson property. This is by no means any kind of public road. The Dixon CUP was denied last summer because of lack of access. Dixon got creative and decided he could drive bulldozers and other equipment over mats through the Little Missouri River, accessing the property from the south, then he wouldn't need to get the adjacent landowners' approval. That is simply not sufficient.

The record is clear that this industrial development needs adequate, well maintained road access for ingress and egress. Mr. Dixon has not even attempted to obtain an easement from Olson's to obtain any right to use the road for commercial purposes. It is noteworthy that Basin Electric and Bakken Link understood that they needed to negotiate an easement with landowners across private land in order to obtain access to Basin Electric's facility and Bakken Link's pipeline. Landowners largely had no choice, since Basin Electric has the power of eminent domain and could obtain the access easement for their purposes whether the landowner wanted to grant them or not. Bakken Link also maintained that they had the power of eminent domain as a common carrier. The landowners agreed to the terms of an easement, and Basin Electric and Bakken Link have legal access for their powerline and pipeline with any conditions or restrictions discussed and planned for. Dixon, on the other hand, is trying to ram this CUP through without negotiating or paying neighbors for any access easements. He wants free access to support his industrial venture, which must be incredibly lucrative, since he is adding exponentially more ponds in order to store water he takes for free from the Little Missouri River, to sell to oil companies for a huge profit. Where is the consideration of the neighbors' private property rights here?

Dixon chose to buy a land-locked parcel with no legal access for industrial purposes. He now expects his neighbors to simply allow his development to push ahead without even asking his neighbor if he can obtain an easement across their land, or have permission to improve or maintain the trail across their land. This trail is not a road. It is a private trail through a clay, low-lying area that frequently floods when the river is high. There are insufficient culverts to provide adequate drainage. I've had multiple times when I've not been able to access my land because of major muddy washouts. I've personally added trailer loads of rocks to access my property. There is no way this trail is sufficient to handle any commercial traffic.

4. YOUR CUP REQUIREMENTS ARE MANDATORY

Your Ordinance is mandatory, stating any CUP application "shall" comply with your ordinance. (Ordinance 2.2). The ordinance requires, as mandatory, **adequate access roads** are provided to support the use, as well as adequate ingress and egress. (Ordinance 5.8.1(d, e)). Dixon is contemplating boating across the river for any need to access the ponds. PLEASE BE CLEAR: A boat across the river is not "adequate access roads." Your CUP requirements are mandatory. One of the reasons that adequately built and maintained roads are required for a CUP use is they need access for emergency services. How is a boat across the river going to get a Fire Truck to the site if the industrial pumps start a fire? How is an ambulance supposed to get to the site if an excavator operator is pinned under a piece of equipment during construction? The State Statute at 11-33-03 specifically recognizes that the purpose behind planning and zoning requirements are for counties to provide for emergency management with any new permitted uses in the county.

Your staff advises me that he interprets the ordinance as only applying if there is someone living on the property. That is an incredulous reading of the statute. The County Planner's representation that your Ordinances do not apply if there unless someone lives on the property is not supported by North Dakota statutes. There are many references to the "occupation of land or structures" and nowhere does this only mean as a residence. In fact, the County Planning statute begins with a discussion of what the County can regulate, which specifically includes the "occupancy of lands for residence, recreation and other purposes." There is no way this can be read in a way that your Ordinance will only apply to regulate uses that include a person occupying a structure of land as a personal residence. See the statute:

"11-33-01. County power to regulate property.

For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county may regulate and restrict within the county, subject to chapter 54-21.3, the location and the use of buildings and structures and the use, condition of use, or **occupancy of lands for residence, recreation, and other purposes.**"

Clearly the regulations are to provide the control of land uses within the county, whether the land or structures are used for residences, a concrete crushing facility, a wind farm, a water depot, a gun range, or any other use of land. It is nonsense to read your ordinance any other way.

Following that logic, any other industrial or commercial use where a person doesn't reside can skate by without complying with your planning and zoning ordinance.

5. EMERGENCY SERVICES NEED A WELL MAINTAINED ROAD FOR ACCESS

Your Fire Chief makes it clear in his email that they need “a well maintained road for access for emergencies.” That doesn’t mean getting a mat laid across the river for a fire truck. That does not mean using a boat to access the site. That doesn’t mean driving on a muddy trail through the flood plain and getting stuck in the fat clays if it has rained recently.

Jeannie Schultz

From: Dave Uhlich <daveu@rtc.email>
Sent: Wednesday, July 15, 2020 9:41 AM
To: Jeannie Schultz
Subject: RE: Dixon Properties Freshwater Ponds Project

These project should not be a problem. My only request is that there is a well maintained road for access should there be a need for emergency response.

Thank You
Dave WCFD Chief

In addition, the staff report last summer advised that a condition would include that access on the private roadway must be maintained for 911 purposes.

There is no such well maintained road.

The Staff report recommends approval of the CUP, subject to the County Engineer’s recommendation on ingress and egress. That is far too vague. There needs to be much clearer requirements on what type of road access is needed. The County cannot simply assume an easement exists. Olson’s have not provided an easement to Dixon.

6. THE 2018 CUP IS NOT IN COMPLIANCE, SO NO NEW CUPS CAN BE GRANTED

Be careful trusting the applicant’s representations. Dixon’s engineers try to gloss over the lack of legal access in connection with the 2020 application suggest that “no additional easements would be required” in the email below.

From: Jeannie Schultz <Jeannie.Schultz@A1:25.com>
Sent: Wednesday, July 15, 2020 9:36 AM
To: daveu@rtc.cnop
Subject: Dixon Properties Freshwater Ponds Project

Good morning,

This email is to describe a proposed project applying for a Conditional Use Permit in McKenzie County North Dakota. The proposed project will consist of four individual 380,000 barrel ponds (49 ac-ft) located in Section 6 of Township 147N Range 98W and 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 fracing 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 fracing operations. The work proposed is to construct the pond 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.

At this time we ask that you review the attached exhibit and provide written comments or recommendations relative to the impact of this project on lands or services within your management. Due to the timing of the project and necessity of submitting a complete application package to McKenzie County for a Conditional Use Permit, we request that the comments be emailed or forwarded to our office as soon as possible.

Your comments will be incorporated as part of the application package to the county. Please do not hesitate to contact me with any questions or if you require further information. Thank you for your time and consideration.

Jeannie Schultz Mock
Permitting Specialist



Yet if you revisit the 2018 CUP Application, Dixon's previous engineer is very candid that there is no recorded legal access easements, per the email below, with Dixon's engineer's responses in pink:

From: Tim Pickering <tpickering@co.mckenzie.nd.us>
Sent: Wednesday, June 20, 2018 12:03 PM
To: Brady Bertram <bradyb@broszengineering.com>
Subject: RE: McKenzie County CUP Application - Dahl & Dixon Fresh Water Containment Pond

1

at a couple locations and a gate between the Dixon property where the pond is located and the Olson property west of there to Hwy 85. It is my understanding that they have permission to use this road as long as the gate is kept (Do)

Dixon's engineer advised the County that he couldn't find any documents to establish an easement for ingress/egress for the properties to the west. The Dixon engineer states it is his understanding that Dixon can use the road across Olson's property so long as the gate stays closed. That is a far cry from having legal access. I understand that the County (never Dixon) called the Olsons and were very blatantly told that there is no easement and none would be granted for an industrial use. It's hard to understand why we are here today considering this.

Dixon was issued the 2018 CUP because no one showed up to point out that there was no legal access. I won't let that happen again. Yet they still push on here today, assuming somehow magically there is going to be "adequate road access" when they plan to boat across the river. Meanwhile, they have not once asked Olson for an easement.

Be advised that the County has liability if any emergency services are ever needed at the site if they choose to permit this facility to go forward when it blatantly does not meet the ordinance.

Section 5.8.1 of your Ordinance suggests that if there are violations, a CUP should be terminated and no new Application for CUP should be granted. The 2018 CUP was clearly granted when it should not have been. There is no legal access for an industrial use. The County staff report included a misrepresentation that there is a private access easement for the private roadway. See below:

d. Adequate utilities, access roads, drainage or other necessary site improvements have been or are being provided to accommodate the proposed conditional use.

The applicant will access the site on private access easement on private road

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.

The site will be by lay flat only so there should not be any traffic congestion in the public street.

Clearly, there was no such private access easement at that time, or ever obtained.

Dixon clearly trespassed on Olson land with scrapers and heavy equipment to support this industrial use. Dixon continues to trespass as he operates and maintains the existing pond. There is not current legal access or an adequately maintained access road. In short, the 2018 CUP should be terminated.

The 2018 CUP requires an emergency plan must have been submitted by Dixon in 2018, with annual updates. Have you seen them? Do they rely on a private trail across flooded lowlands for emergency vehicles?

In conclusion, the current CUP Application should be denied. In addition, this Planning Commission should demand that the 2018 CUP be suspended since I have demonstrated that there is no easement for legal access and the current trail is inadequate for industrial uses and emergency services. There should also be an investigation into whether the CUP is otherwise in compliance with all terms and conditions of the CUP. If he does not have legally identified access, an adequate road, or is not in complete compliance, the 2018 CUP should be terminated immediately.

McKENZIE COUNTY

Planning and Zoning Commission

#01-21SUB Solid Rock Development Phase II-Gary Nottestad

Application:	February 10, 2021
Hearing Date:	March 8, 2021
Description:	T150N, R100W, S2.S1/2SE1/4 Parcel #030000750
Owner(s)/Applicant:	Solid Rock Development Phase II-Gary Nottestad
Reason for Request:	Applicants Comp Plan Amendment and Zone Change #03-20 were approved 1/19/21. The applicant is now applying for a Tentative approval of a Preliminary Plat for his 11 lot Subdivision.

Comprehensive Plan Land Use: Residential Low Density

Zoning: Residential 1

Findings of Fact:

1. All Requirements for Public Notification have been satisfied.
2. Project is located within Arnegard Township.
3. The surrounding area consists of agricultural land, homes and light industrial.
4. Ingress and Egress are in process with County Engineer.
5. A Zone change to R1 and Comp Plan Amendment to Rural Residential was granted on 1/19/21.
6. This is Preliminary Plat Tentative approval- not the required Final Plat approval which is a separate application.

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.**

Numerous access points exist the two main being 29th St NW to 133rd Ave NW and 29th St NW to County Rd 29 (134th Ave NW) which are adequate arterials.

- b. **The proposed conditional use shall not substantially impair or diminish the value and enjoyment of other property in the area.**

The addition of housing versus more industrial will be beneficial to the housing development directly west and bring cohesiveness to this area. This project will not impair nor diminish the surrounding values.

Planning and Zoning Board Member Applicant Selection Criteria

Revised March 12, 2021

- Ad will be placed in McKenzie County Farmer Newspaper indicating the opening. Ad will also indicate that a statement of interest is all that is required but more information is encouraged.
- The Planning and Zoning Department will compile the letters and all other pertinent information prior to the Planning and Zoning Board Meeting.
- Once applicants are determined, their names, letters of interest, geographic location, occupation, and any other information supplied by the applicants will be presented at the Planning and Zoning Board meeting for consideration.
- Applicants will be invited to the Planning and Zoning Board Meeting to introduce themselves and answer questions if desired.
- The Planning and Zoning Board will vote via roll call vote.
- The winning candidate will be recommended to the Board of County Commissioners.

CHAPTER 61-29
LITTLE MISSOURI STATE SCENIC RIVER ACT

61-29-01. Short title.

This chapter may be cited as the Little Missouri State Scenic River Act.

61-29-02. Intent.

The purpose of this chapter shall be to preserve the Little Missouri River as nearly as possible in its present state, which shall mean that the river will be maintained in a free-flowing natural condition, and to establish a Little Missouri River commission.

61-29-03. Definitions.

For the purposes of this chapter, unless the context otherwise indicates:

1. "Free-flowing" shall mean existing or flowing in a natural condition without impoundment, diversion, straightening, or other modification of the waterway.
2. "Little Missouri River" means the river commencing at the North Dakota-South Dakota state border and terminating at its juncture with Lake Sakakawea, with such juncture defined as the bridge crossing of state highway twenty-two in section thirty-four, range ninety-five west, township one hundred forty-eight north, with boundaries established as the natural channels of the river to the low water mark.

61-29-04. Administration.

This chapter must be administered by a Little Missouri River commission composed of the director of the parks and recreation department, the director of the department of environmental quality, the chief engineer of the state water commission, or their designated representatives, and one member from each of the following counties: McKenzie, Billings, Slope, Golden Valley, Dunn, and Bowman. The commission members representing the above-mentioned counties must be appointed by their respective boards of county commissioners and shall serve without compensation except that each appointing board of county commissioners may reimburse its county representative for actual and necessary mileage to and from meetings of the commission at the same rate as state officers. The county representatives appointed must be resident landowners who live adjacent to the Little Missouri River with the exception of the Golden Valley County representative. A county representative unable to attend a meeting of the commission may be represented by a person who has a written proxy from the representative authorizing that person to act and vote for the representative. The proxy must be a resident landowner of the county that the proxy is representing, but need not live adjacent to the Little Missouri River. The county members shall serve terms of office as follows: two members shall serve one-year terms, two members shall serve two-year terms, and two members shall serve three-year terms.

61-29-05. Powers and duties of commission.

The commission may advise local or other units of government to afford the protection adequate to maintain the scenic, historic, and recreational qualities of the Little Missouri River and its tributary streams. The commission shall also have the power and duties of promulgating management policies to coordinate all activities within the confines of the Little Missouri River when such action is deemed necessary.

61-29-06. Management.

Channelization, reservoir construction, or diversion other than for agricultural, recreational, or temporary use purposes and the dredging of waters within the confines of the Little Missouri scenic river and all Little Missouri River tributary streams are expressly prohibited. Flood control dikes may be constructed within the floodplain of the Little Missouri River. Diking and riprapping for bank erosion control shall be permitted within the confines of the Little Missouri scenic river. The construction of impoundments for any purpose on the Little Missouri mainstream shall be prohibited.

This chapter shall in no way affect or diminish the rights of owners of the land bordering the river to use the waters for domestic purposes, including livestock watering, or any other rights of riparian landowners.

MEETING SIGN-IN SHEET

Meeting Date: *Monday, March 8, 2021 5pm.*

Name PLEASE PRINT NAME LEGIBLE	Phone #	Agenda Item #
<i>Dary Woller</i>		
Steve Burica	701-740-4881	F.L
Joel Brown	701-570-1504	
<i>Honey Lamm</i>		
Grant Sticks		
Matt Olegard		
John: Kim Dixon		
<i>Stu Sanford</i>		
Kimberly Fischer (NO SWL) via phone		Dixon Ponds
Bryce Klaseen (NO SWL) via phone		Dixon Ponds

April 2021

Planning and Zoning Commission Minutes

April 13, 2021

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, Eva Hepper, Heidi Brenna (arrived at 6:00), Jeremy Olson, John Irwin, Kathy Skarda

Members Remote: None

Members Absent: Matt Beard

Staff Present: Planning Director Curt Huus, Planning Attorney Ari Johnson, Planner Dana Roff, Administrative Assistant Cindy Jensen

Others see sign in sheet at end of minutes.

APPROVE AGENDA

Kathy Skarda stated the wording under Discussion Items, #4 should be changed from Ordinance Review Committee - Kathy Skarda to Review Permit Criteria Checklist and Requirements of P&Z for the different applications. She stated she wanted this added to make sure all the verbiage is correct. Our Comprehensive Plan states we need to review our plan once a year. They could take a section at a meeting, quickly go through it and see if there needs to be any additions or corrections.

Motion to Approve Agenda as amended by Kathy Skarda; Second by Craig Hystad; Voice Votes: All Ayes;

Motion to Approve Agenda as Amended Passes.

APPROVE MINUTES

Motion to Approve Minutes by Craig Hystad, Second by Eva Hepper All Ayes;

Motion to Approve Minutes Passes

CODE ENFORCEMENT:

Abelmann/Smartlease

Director Huus gave an update on what is happening of the Abelmann/Smartlease located along Highway 85, north of Alexander. Dan Abelmann is working with Ari Johnson and Sandee Kimpel have been working on getting the site reclaimed.

Ari Johnson stated Mr. Abelmann and his attorney have been working with the State to get this site reclaimed to state standards. They have been working on getting the site cleaned up to State standards rather than going to Court. Smartlease has been let out of the case because they have no further interest in the land. Executive Housing solutions is the company that still has some interest in the lawsuit. Dan Abelmann is the primary owner of the land, and just leased it to the other companies.

UNFINISHED BUSINESS:

#13-20CUP - 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. TABLED

Jeremy Olson stated Dixon Properties has been **TABLED** at the request of the applicant.

PUBLIC HEARINGS:

Airport Protection Overlay District Ordinance Amendment - 2nd Reading

Director Huus stated this is the 2nd Reading of the Airport Protection Overlay District. As of today, no revisions from the Public have been received. Ari Johnson added a revision to the packet, so the latest version should be dated April 13, 2021. The part that was revised is in Section 3.15.3 and highlighted in yellow. That was added so any Airport can set the specific dimensions they require. **Ari Johnson** stated he wrote this based on what Watford City has for the Watford City Municipal Airport, and it has the flexibility to be used by other Airport as well.

Ari Johnson stated there were previously questions about building height restrictions. The way this is written now our restriction is that you cannot build something, have a tree or a building or anything else that encroaches in the surface. But there is an exception for things that are less than 50 feet tall. If a building is under 50 feet and on top of a hill, the hill is

already above that surface so it is okay. It is only if building something above 50 feet in those areas that you have to comply with the height restrictions. The idea is that these are outside of where planes normally fly and to avoid super tall structures in the area outside the airport itself. The new runway at the airport had to be turned rather than using the existing runway because there was a hill in the way. If building something that is less than 50 feet tall or planting a tree that will not grow over 50 feet, it should have zero impact.

Kathy Skarda asked would this cover the County? **Ari** stated absolutely. We need the instrument approach protection. If the county approves the 2nd Reading for the Ordinance, it makes zero impact on anyone because we have not applied the overlay to anything yet. The goal in the near future would be to apply this overlay to the quarter-quarter sections around the airport. The restrictions, to the extent there are any would apply to the Watford City Municipal Airport but could just as easily be applied to an overlay district at another Airport. **Kathy Skarda** asked if this overlay would affect farmers and ranchers. **Johnson** stated as of right now it will not affect any land because it is not being applied to any land to the area but it would have an impact. It will have minimal impact on anyone's actual use of their land.

There was a discussion on the height restrictions of 50 feet or 100 feet.

Johnson read the Airport Overlay District Proposed Zoning Ordinance Amendment 3.13.5. It is highlighted and attached to the end of these minutes. He clarified the meaning of Number 5 of this section, Excepted Height Limitations. **Kathy Skarda** asked where a citizen would go apply for an application to build in this area. **Johnson** stated they would go to Planning & Zoning and then it would come to the Board. If the FAA needed notification, it would have to be done separately by the Applicant.

Skarda asked if all the landowners in the area been notified? **Johnson** stated we have published the Amendment but specific landowners have not been mailed notice because this does not apply to specific land yet. When it comes time to create an actual overlay in the district using this ordinance amendment as the framework, that is when the specific landowners will get the notice and will have the opportunity to come forth if they have objections. This cannot be imposed on anyone's land without being notified and having an opportunity to say what needs to be fixed to make this work.

Director Huus stated if this does get enacted, they will have to come up with a permit application for building within that zone. We will have to determine if we notify the FAA or if the applicant notifies FAA.

Kathy Skarda stated her main concern is that the farmers and ranchers be notified and have their say.

Motion for Approval of Airport Protection Overlay District - Ordinance Amendment - 2nd Reading by Butch Fleck; Second by Craig Hystad. Voice Votes: All Ayes.

Motion to Approve Airport Protection Overlay District - Ordinance Amendment - 2nd

Reading Passes

Freshwater Pond Fencing - Ordinance Amendment - 2nd Reading

Jeremy Olson stated there is an opposition letter from Lemoine Hartel to be read into the Minutes.

Director Huus stated as requested by this Board, Barb Wire Fencing guidelines were added to Ordinance. He referenced the Conservation Practice Job Sheet and chose those specific requirements. The main opposition has been landowners having the right to decide if they want fence. There still needs to be a requirement for this so they are looking into options. One option and a good compromise, is a Fence Waiver a landowner can sign, if a landowner does not want a fence and there are no safety concerns.

Board Comments:

Jeremy Olson stated initially the main purpose for having these fences around these ponds was safety reasons and not intended for farmers and ranchers with nobody around. **Director Huus** stated originally it was all chain link fence. We have ponds with chain link fences, in the middle of nowhere with no safety concerns. **Olson** stated that is the unintended consequence of putting together something that applied to everything. **Director Huus** stated the Waiver is a good compromise and gives the farmer or rancher something to negotiate with if they do not want a fence. If the landowner does not want to have a fence, they ought to have that leeway. **Craig Hystad** stated the fence is a stipulation of a CUP application. We are not changing anything but just stating where to put the fence. **Butch Fleck** stated we had specifications for fences but never stated the location. At a distance of only 10 feet, a snow storm will wreck the fence. Some fences may have to be placed further away from the pond.

Hystad stated Elkan knew about the fencing stipulation when they signed for the Conditional Use Permit and therefor agreed to it. **Olson** asked if Elkan was in compliance. **Director Huus** stated they do not have the fence within 10 feet of the pond, but they do have a fence around their property. **Hystad** stated they agreed to fence around it. **Eva Hepper** stated but maybe not 10 feet. **Hepper** asked so now they would have to build another fence? **Olson** stated it would just be going forward. With that discussion we also had required a Bond and then realized maybe that is not always the best thing for everybody, so created a Bond Waiver.

John Irwin stated when that Bond Waiver first started being discussed, it was presented as when a company gives up the ponds, the landowners take them over. These ponds are not being given up on, these are industrial use ponds. There are some guidelines that need to be kept in place, but there should be some decision leeway for the distance. We cannot have a one-size-fits all for these ponds. **Director Huus** stated we need to look at why do we want a fence and does it have to be fenced. The Ordinance states to protect people and livestock, but people are going to get through and the landowner may not care if his livestock gets to his pond.

Eva Hepper stated the ponds are mainly for the cattle and we can sell the water if we choose. I do not want a bunch of fences out in the middle of my pasture, fencing the cattle out. **Olson**

stated it seems to be the consensus of a lot of the landowners.

Craig Hystad stated Elkan came in for a CUP to sell industrial water out of, not to water cattle and they still came and got a permit. I am not against a Waiver and they might as well get a Waiver when they get the CUP.

Director Huus stated they are allowed that option if they want a Reclamation Bond Waiver. If they want to do a Reclamation Bond Waiver at the time they do a CUP, they have that right to do that. I can see where a fence Waiver would be the same situation that they would apply for at the time. There will be a fee for the Waiver if done after the fact. **Hystad** asked where is the line cut-off that is next to public?

Director Huus indicated the current Ordinance states a 6-foot chain link fence shall be installed in close proximity to residential subdivisions, residences, schools, daycare, other areas at the discretion of the Planning Director. **Hystad** asked what distance is meant by close proximity. **Director Huus** stated a specific distance could be added. **Skarda** stated "close" can be defined differently by different people and this is a liability issue. **Jeremy Olson** stated what kind of application would still come before the Board so we could determine if it is close enough to Residential or not when Director Huus brings it to us. **Director Huus** stated it is something that would be part of the application. **Olson** stated it would not be decided exclusively by the Director, would still have some oversight by this Board. **Director Huus** stated it would still have to go through the Public process like a Reclamation Bond Waiver. As far as liability, maybe we do the Hold Harmless Agreement just like we do with the Reclamation Bond Waivers.

Jeremy Olson stated if this is a future application that would require a chain link fence no Waiver would apply. If it is close enough to a chain link fence, it is close enough to the public. If it is in the area where it would be another type of fence, that would be a barbwire fences, in that case. **Director Huus** stated that would be specific in the Ordinance too and it is only for barbwire fence waivers.

Jeremy Olson asked if they wanted to entertain the idea of having a Waiver. **Eva Hepper** stated it would be a good idea and on a case by case basis. **Kathy Skarda** stated there should be an Indemnity Clause so if a landowner has a fence and sign up, that might save the landowner from being sued by the family of someone getting hurt on his property. **Hepper** stated that is also trespassing. **Skarda** stated it is also a liability and it all comes back to the liability of the landowner.

Jeremy Olson stated for clarification, at this point, if there is a Barb Wire Fence, and in the opinion of the Director or the Board, the location of the Pond does not pose a hazard to the public, a Waiver may be given with a Hold Harmless Agreement. He asked if this is along the line of what they were thinking. **Butch Fleck** stated they have to take full responsibility of this just as with other Waivers. **Hystad** stated if it is like a truck depot where people and trucks are continually entering and leaving, do you fence that one? **Director Huus** stated maybe. Most of

the ponds cannot be used as a truck depot, but there are still some that are. **Skarda** stated maybe we need to take another look at this and come up with some different ideas.

Director Huus stated they could **TABLE** this until the May meeting and in the meantime make changes. **Skarda** asked if the Freshwater Depots would be addressed as well, and this Amendment needs to be done right. **Director Huus** stated this not a one size fits all. **Olson** stated would it be for a freshwater pond. **John Irwin** stated the County does not want to be responsible if there is an injury. **Craig Hystad** stated if that is the case, why do we even have a fencing policy then. **Director Huus** stated the Waiver is a negotiating point for the landowner for an outside company who does not want a fence. **Eva Hepper** stated she likes the idea of rewording it and bringing it back.

Director Huus stated he could author something and send it to our Ordinance Subcommittee and get their input on it. **Hystad** stated then they can work on it. **Olson** stated you have an idea what the intent is and you can send that to the subcommittee. **Director Huus** stated he would write up a draft and submit it to the Subcommittee.

Audience Comments:

Jim Talbert, Elkan stated we strive to do what is right and support the waiver because it makes sense to allow the landowner to make the decision to have a fence. We have put fences around all ponds they have applied for CUPs for and post "No Entry " Signs, and even then people still choose to ignore these signs. They are in favor of chain link fences when a pond is adjacent to the paved highway otherwise it becomes more of a visual nuisance. Ponds they have that are away from the public, require private roads to access. He believes Mr. Hartel's frustration is due to feeling like the owners' rights are being taken away.

Jeremy Olson read LeMoine Hartel's Letter into the Minutes. The letter is attached to the end of these Minutes.

Motion to TABLE Freshwater Pond Fencing - Ordinance Amendment - 2nd Reading with Additions for the May 10 P&Z meeting. Motion by Eva Hepper; Second by Kathy Skarda. Voice Votes: All Ayes

Motion to TABLE Freshwater Pond Fencing - Ordinance Amendment - 2nd Reading with Additions Passes

#045-18CUP - RBW - Jerry Shae - 13270 20TH Street NW, Arnegard, ND T-149N, R-100W, Section 25 Parcel ID #350011200

Director Huus stated this is a Reclamation Bond Waiver for a Pond located along County Road 30, West of Longview Subdivision. It is currently zoned Agricultural and the Comprehensive Plan has it as Agricultural. The surrounding land use is property landowners, Little Missouri Grasslands, some public land and North Dakota Trust Land, BLM Land.

Director Huus read the Findings of Fact for the 2021 Reclamation Bond Waiver. They are attached to the end of these Minutes.

Director Huus stated the Code Enforcement Officer, Sandy Kimpel, has been out to the site and inspected the it. Everything looks good. Staff recommends Approval of this Conditional Use Permit – Reclamation Bond Waiver.

Board Comments:

Kathy Skarda stated in the Reason for Request, under the Staff Report, “Water will be permitted and conveyed from Cherry Creek (on property) and possibly other surface water sources to fill the earthen pond”. Normally included in the Findings and Staff Report, is notation of the North Dakota State Water Commission’s jurisdiction for approval, regulation and enforcement of surface and ground water permits. It is not anywhere in this Report. Please clarify.

Director Huus stated we make sure that all required water permits are obtained. **Jeremy Olson** asked if Kathy was referring to the Conditions section, #5 of the Staff Report “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”. **Skarda** stated yes but it is not in the standard place it usually is. **Director Huus** stated those conditions were put on the original 2018 CUP. Sandee Kimpel has looked through it and is satisfied that they do have their permits as required with the original cup. **Skarda** stated the verbiage needs to be consistent with all applications. **Director Huus** stated those additional conditions could be added. **John Irwin** asked if Shae is in compliance with everything. **Director Huus** stated yes. **Jeremy Olson** asked is there a subdivision near this one? **Sandee Kimpel** stated it is by some residences.

Craig Hystad asked if all the paperwork was done and notarized and wanted to make sure the applications from the water Board were added. **Director Huus** stated yes and that he would make sure the applications from the Water Board were added.

Motion to Approve with Clarification for Permits from the State Water Commission #045-18CUP – RBW – Jerry Shae - 13270 20TH Street NW, Arnegard, ND T-149N, R-100W, Section 25 Parcel ID #350011200

Motion by Craig Hystad; Second by Eva Hepper
Voice Votes: All Ayes

Motion to Approve with Clarification for Permits from the State Water Commission #045-18CUP – RBW – Jerry Shae - 13270 20TH Street NW, Arnegard, ND T-149N, R-100W, Section 25 Parcel ID #350011200

Passes

#01-21CUP - Craig Wahlstrom - Lot Split - T151, R101, S6 Parcel #360002800

Director Huus stated this is a CUP to divide a lot into 3 (three) individual lots in which 2 (two) will be left will be less than 40 acres, which is a requirement for a CUP. He read the Reason for Request. (It is highlighted and attached to the end of these Minutes). Staff recommends Approval for this Conditional Use Permit.

Board Comments:

Director Huus stated this is just to divide the lots. When they decide to build, a building permit will be needed. The Conditional Use Permit is to allow a parcel less than 40 (forty) acres. **Fleck** stated his concerns if they go smaller with the lots again. **Director Huus** stated if they divide the 36 acres, then they would need to come back with either a CUP or Subdivision Application. Their intention right now is to sell one.

Audience Comments:

Craig Wahlstrom stated the purchaser is planning on keeping it at 35 acres for his residence.

Kathy Skarda stated the County's right to protect farmland is stated in Section 5.4 of the Comprehensive Plan. This could be applicable for Wahlstrom and recommended he add this Section into the sale to protect future ranching and farming on this land. **Jeremy Olson** stated this is remaining Agriculture. **Director Huus** stated the zoning is not changing from Agriculture.

Motion to Approve #01-21CUP - Craig Wahlstrom - Lot Split - T151, R101, S6 Parcel #360002800

Motion by John Irwin; Second by Cody Knetzger. Voice Votes: All Ayes

Motion to Approve #01-21CUP - Craig Wahlstrom - Lot Split - T151, R101, S6 Parcel #360002800 Passes

#02-21CUP - Kelly & Rachel Dewhirst - Hunting Lodge - T146N,R98W,S3 Parcel #390000725

Director Huus stated this is a CUP to change the existing non-conforming use to conforming and to add up to an additional 4 (four) Hunting Lodges to the property. The Reason for the Request: A Hunting Lodge was first established on this property in 1998. In 2001 an additional hunting lodge was added. The applicants wish to add up to four (4) additional hunting lodges to the property, scattered about for privacy over the 157.01 acres. The lodges are Amish built,

prefabricated units with kitchen and bath placed on a concrete foundation. This Conditional Use will change the non-conforming use of the existing lodges to conforming use.

The 2 (two) existing lodges are grandfathered in and were brought in before the zoning Ordinance, but now are considered non-conforming, because they do not meet the ordinance. This would bring them to conforming uses and they could add up to 4 additional hunting lodges to that parcel. The lodges are very well built and would be an asset to the property. The existing lodges and future lodges will all be scattered about the property. The one they want to put in at this time is to the North and the 3 (three) other future lodges would be scattered about property.

Director Huus read the Findings of Fact. They are attached to the end of these Minutes.

Director Huus stated Staff recommends Approval of this Conditional Use Permit.

Board Comments:

Butch Fleck stated they have been well maintained and have never had any problems with them.

Motion to Approve as Presented #02-21CUP - Kelly & Rachel Dewhirst - Hunting Lodge - T146N, R98W, S3 Parcel #390000725

Motion to Approve as Presented by Butch Fleck; Second by Kathy Skarda. Voice Votes: All Ayes

Motion to Approve as Presented #02-21CUP - Kelly & Rachel Dewhirst - Hunting Lodge- T146N, R98W, S3 Parcel #390000725 Passes

#15-21CUP - Bison Compression Station CUP Termination - T151N, R97W,S18 Parcel #590008500, McKenzie County, ND

Director Huus stated this is a CUP for ONEOK Bison Compressor Station that was Approved at the December 7, 2020 P&Z Board Meeting and at the December 15, 2020 County Commission Meeting. This Compressor Station is a Natural Gas Gathering Line per North Dakota Century Code. According to NDCC, Oil & Gas Gathering Lines and Aboveground Facilities are permitted and regulated by NDIC and therefore McKenzie County does not have zoning jurisdiction over those facilities. The department followed the historic zoning procedures that in the past required CUPs for these facilities, but since 2017 the State adopted rules for NDIC, giving NDIC jurisdiction that overrides the local jurisdiction. He was approached by ONEOK after-the-fact, questioning why they had to do the CUP. He researched the NDIC Ordinance

Rules and the Century Code and the Service Commission's rules. He had conversations with both the NDIC and Public Service Commission, Zoning Attorney, and our Planning Subcontractor regarding the interpretation of Planning and Zoning jurisdiction with all facilities regulated by NDIC and PSC. They now have a policy that should alleviate this from happening again. Staff recommends terminating this CUP and ONEOK has no issues with terminating this CUP.

Jeremy Olson asked if we are terminating because there should not have been a CUP in the first place? **Director Huus** stated yes. **Kathy Skarda** asked if funds were collected for that CUP and if so is it necessary to refund those, and how does that work with Government Entities. **Director Huus** stated the fee has not been refunded and it would be done after the termination is approved. **Craig Hystad** asked if we owe them money or not. **Director Huus** stated we would refund the application fee of \$750.

Motion to Terminate #15-21CUP - Bison Compression Station CUP Termination- T151N, R97W, S18 Parcel #590008500, McKenzie County, ND

Motion by Cody Knetzger; Second by Craig Hystad. Voice Votes: All Ayes

Motion to Terminate #15-21CUP - Bison Compression Station CUP Termination - T151N, R97W, S18 Parcel #590008500, McKenzie County, ND
Passes

DISCUSSION ITEMS:

1. Live Stream Retention

Director Huus stated we still have Planning & Zoning Board Meeting live stream video since February 2020, on the Vimeo Live Stream site. He asked for Erica Johnsrud's advice on how to get these removed from the site. She said a policy by the Board is needed to delete them. He would like to have a policy that would coincide the Board of County Commissioners Policy to remove the videos after 30 days from Board approval of the Minutes. **Jeremy Olson** stated so this would be reflecting what the County Commissioners do. **Director Huus** stated yes. The actual written Minutes that are approved by the respective Boards are the Legal Documents, not the Live Stream or any recordings of the Minutes. **Kathy Skarda** asked who removes them. **Director Huus** stated Erica does. **Olson** stated the video should be up for 30-45 days.

Motion to Follow the County Precedent for Video Retention of 30 days after Board Approval of the minutes by Butch Fleck; Second by Heidi Brenna. Voice Votes: All Ayes.

Motion to Follow the County Procedure for Video Retention of 30 days after Board Approval of the minutes Passes

2. Non-Conforming (Grandfather) Properties that Need Variance – Kathy Skarda

Kathy Skarda stated a citizen moved into their family homestead and the house burned down 2 (two) years ago. They were under the impression that having over 40 acres and living in the house, grandfathered and exempted them from needing a building permit to put a modular on the existing concrete foundation. Nothing moved or changed. It is not their fault the house burned down. How can we make this process easier for them, did we collect fines and are fees for a Building Permit or Variance collected? **Jeremy Olson** asked Director Huus to give a background and read what the rules are for this.

Director Huus stated a grandfathered use is a non-conforming use. Things that terminate or nullify a grandfather use are: a change in use; change in density of use; if they build another building on the land; building modification; destruction of the structure or at least 50% of the structure by fire or similar circumstances; if they have had any violation of State or Federal laws; or if they discontinue use for more than 180 days they lose the grandfather status. Those are the issues with the grandfather status. This one, the house burned down, which according to the Ordinance, they should not have even been able to build on it. They could obtain a CUP and completed that process to bring it in to conformance because evidently their parcel was less than 40 acres and they built it over the property line. That was the issue with having to get a variance to get the home built and to continue that use on the property line. **Kathy Skarda** asked if the property on both sides of the line belongs to their family. **Director Huus** stated yes. **Dana Roff** stated the property line goes directly through the middle of the house. **Director Huus** stated the setbacks do not distinguish between if it is the same owner. They would either have to move that property line or get a variance to go over that property line according to the rules of the setbacks. **John Irwin** asked if there were any issues with the families on both sides of the property lines? **Director Huus** stated no. If they build another building on the land, it nullifies their grandfather status.

Dana Roff stated the main issue is that in order to get a home loan it needs to be conforming and we cannot deem it conforming. **Kathy Skarda** stated they were told they needed a Certificate of Occupancy by the bank. **Director Huus** stated we cannot issue one because they never had a Building Permit to build it was never inspected by our building department. There was a discussion on what other options the citizen had to replace their home that burned down. **Director Huus** stated there was an attempt at a rule by the State Legislature to eliminate the non-conforming use provision that the residences could rebuild their houses if it burned down, etc. The North Dakota Planner's Association fought against it pretty hard. It passed the House but was defeated in the Senate. If that were to have passed this would not be an issue.

Director Huus stated there is a definite appeals process that if he makes a ruling, which is based on the Ordinance, the applicant can take it to the Board of County Commissioners to get a ruling on it and override his decision. **John Irwin** stated they should be able to streamline the process to be a little easier.

Jeremy Olson stated the original intent of the grandfather rule was not intended for residences but to clean up the county of blatant non-conforming shops and businesses. There are always the unintended consequences and this one of them.

Director Huus stated if somebody built a house but did not have a building permit and are trying to get financing and come to us for a Certificate of Occupancy, since we never inspected it they would have to hire a third-party inspector to look at it. **Skarda** asked if they were told they could do that? **Director Huus** stated yes. **Eva Hepper** asked then that person can get them the Certificate of Occupancy? **Director Huus** stated yes. **Jeremy Olson** stated you do not want the County to take on that liability for something that we never inspected.

There was a discussion that they can appeal this to the County Commissioners or Director Huus can do an Administrative Minor Plat line to remove the property line. **Skarda** stated they just need a Certificate of Occupancy and this is where it all started. They can get a private Inspector.

Jeremy Olson stated their best case is get a third-party inspector to get a Certificate of Occupancy for part of it, have them record a plat at the Recorder's Office to get off the property line.

John Irwin stated they should streamline the process to expedite it for Residential. **Director Huus** stated there are probably things we can do if we are authorized to do it. I do not know if it would take a Zone Change or a Zoning Ordinance Amendment to make that happen. **Jeremy Olson** stated there are things we allow the Zoning Director the authority to do Approve Administratively. **Director Huus** stated to give me the authority to do that in the case that there is a disaster. **Irwin** stated yes. **Jeremy Olson** stated the Commission meets every two weeks. If an event happens and someone were to lose their house, within 14 days they could be in front of the Commission and if something like that occurs they could get the emergency authority from the Commission to fast track it if that was the case. Is that what you are thinking? **Irwin** stated yes. **Director Huus** stated we would have to run it by the State's Attorney to make sure that would be a legal thing to do. **Kathy Skarda** stated this all ties in Agenda Item with #4 - Ordinance Review, meeting criteria and focusing on and reviewing our checklists to see if they are still adequate or related to it. People view and interpret information in different ways.

3. Blue Buttes Waste Management Facility - Kathy Skarda

Kathy Skarda stated the whole purpose of this is to make the Planning & Zoning Board aware of the North Dakota Department of Environmental Quality Meeting tomorrow night regarding the Blue Butte Waste Management Facility permit renewal. They have a CUP for the facility and **Director Huus** stated he is requiring an amendment to their CUP. **Director Huus** stated there are representatives from Republic here if anybody has any questions.

4. Review Permit Criteria Checklist and Requirements of P&Z - Kathy Skarda

Kathy Skarda stated I already addressed this in Agenda Item #2.

5. 30 x 30 Federal Land Acquisition - Kathy Skarda

Kathy Skarda stated we have Lee Geiger in the audience. He has been working with the McKenzie County Grazing Association and other entities about the 30x30 Rule.

Lee Geiger stated this is the 30x30 Resolution that the President signed in February of this year. (The email he sent to Kathy with the details on this is attached to the end of these Minutes). What they want to do is conserve 30% of the land in the United States by 2030. Right now the Federal Government owns 28% of the land within the United States. To get another 2% whether it be by Easements, Conservation practices or buying it outright or whatever, they would have to get another 2%. He stated the adverse effect this would have on North Dakota and what rights the County has to protect North Dakota's land. North Dakota has a lot of Federal Land, a National Park, Corps Land and Tribal Lands.

He is currently working on a resolution to bring to the Board of County Commissioners that would set forth policies and the words of Citizens of McKenzie County. He would like the County to do something and work on something to keep the Federal Government from acquiring the land, something saying the Board would have to approve that. **Kathy Skarda** stated it is something we can research and try to come up with some verbiage that says if you want to sell it, sell it, but we as citizens and landowners would be able to work with any Federal Entities or State Entities to make sure that the process was something both parties were amicable to. **Geiger** stated and if you do not want to sell the County would have your back basically. **Skarda** stated this is to make everyone aware of this.

6. ADMINISTRATIVE CUP'S

Tom Jorgenson

Director Huus stated this is a CUP for a lot less than 40 acres and he approved it Administratively for a direct family member who wants to subdivide a 10 acre parcel from their mother's land to build a house for him and his wife. He approved this Administratively Per Ordinance 3.4.4 and 3.4.5.

7. P&Z Board Applicant Selection Criteria

Director Huus stated this is slated to be talked about at the Board of County Commissioners April 20 Meeting. Through conversations with the State's Attorney, Erica Johnsrud and the Planning & Zoning Board, the County Commissioners recommended that they select the Planning & Zoning candidate with their own roll call vote. Planning & Zoning, according to this selection criteria would supply the information to the Board of County Commissioners with no recommendation and the Board would select the Applicant that would fill the vacancy.

Jeremy Olson asked what process all the other County Boards follow and if they follow this process. **Director Huus** stated he followed the process he has seen the Water Resource use when selecting Board Applicants. **Olson** asked if this criterion is what the County Commissioners follows. **Skarda** stated yes. **Director Huus** stated it spells out our guidelines for this Board and for him also. He will present and gather up the data and bring it forward. **Skarda** stated the Applications are still received by the Planning & Zoning Department. However the County Commissioners make the ultimate decision and the vote.

Director Huus stated he will bring this to the County Commission Meeting and they will make a motion and vote on it. **Hystad** stated yes. **Skarda** stated it has to be voted on and discussed.

8. Fairgrounds/Ag Expo PUD

Director Huus stated this is an update on the Fairgrounds/Ag Expo PUD. The narrative should be completed early next week and will be on the P&Z Board Meeting Agenda for May 10. Last week there was an input /information meeting that focused mostly on the facilities and the site and there was not any opposition from the public at that meeting that he has heard of. Once it gets into the PUD process and Public Hearing notifications that it might generate some opposition.

ADJOURNMENT

The meeting was adjourned at 7.21

The next meeting of the McKenzie County Planning and Zoning Board will be held on Monday, May 10, 2021 at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM

Date: April 12, 2021

To: Planning and Zoning Board and
McKenzie County Board of Commissioners

From: LeMoine Hartel

Re: Proposed Amendment to Zoning Ordinance 4.10 Fencing Requirement

Dear Commissioners:

I am writing this letter to express my opposition to the proposed amendment to McKenzie County Zoning Ordinance Section 4.10 Regulation of Freshwater Depots, Pipelines, and Ponds, which would mandate the location of fences around freshwater ponds.

Prior to addressing the proposed amendment, I would like to provide some background information for your consideration. I have been ranching in McKenzie County for over 50 years, and I live and work on the land where I was raised. I have a deep connection with the land, and I firmly believe that I should have the sole right to control what happens on my land except in very limited circumstances. As such, I was not in favor of the county wide zoning ordinance when it was first being contemplated back in 2012. My fear was that the ordinance would infringe on my right to make decisions regarding my land, and instead, give that power to the county.

Notwithstanding my concerns, once the ordinance passed, my family and I have worked diligently to follow it. In addition to ranching, we own and operate Elkan, Inc. ("Elkan"), which sells freshwater for industrial use. Over time, the demand for increased volumes and flow rates for fracking required Elkan to build reservoirs. Even though some of those reservoirs are located on my land, Elkan went through the CUP process and obtained the required permits. During this process, it became clear that my fear about the zoning ordinance and the resulting county involvement had become a reality.

Although both the Hartel West and Hartel East Reservoirs are located in the middle of my ranch and miles from a public road, the permits required Elkan and I to install a 4-strand barbwire fence around each one. According to Section 4.10, the fence is intended to "prevent livestock and unauthorized persons from accessing it." While I understand the need to install a fence when the reservoir is "in close proximity" to occupied areas, there is no reasonable basis for the county to mandate a barbwire fence in a rural area. When public safety is not an issue, it should be up to me to decide if, when, and what type of fence I want to have installed. In the end, the decision should be mine alone and not the counties.

Now, as if requiring me to fence a reservoir in the middle of my ranch were not enough, the county wants to tell me exactly where the fence needs to go. According to the proposed amendment, the fence "shall be located no further from the pond than 10 feet outside the pond toe of fill slopes or cut backslopes." Why 10' and not 15' or 20'? What if I need to bring in equipment to perform work on the toe slope or want to mow the grass on the side slope of the reservoir? There is no way that 10' will accommodate either of these activities.

Governmental functions should be limited to those things that are necessary to protect life, liberty, and the pursuit of happiness. For the life of me, I cannot figure out why the county feels the need to tell me when to build a fence to protect my livestock, what type of fence to use, and where the fence needs to

be located! While the county does have a role to play in development that occurs within its borders, these types of regulations are not appropriate and are an attack on my rights as a landowner. I am 74 years old and fully capable of making my own decisions, especially as they relate to my property, and I urge you to reject the proposed amendment.

Sincerely,

LeMoine Hartel 4-12-21

LeMoine Hartel

McKENZIE COUNTY

Planning and Zoning Commission

0045-18 CUP - RBW - Jerry Shae - Arnegard Freshwater Holding Pit

Application:	March 8, 2021 - Reclamation Bond Waiver
Hearing Date:	April 13, 2021
Description:	13270 20th Street NW, Arnegard, ND T-149N, R-100W, Section 25 Parcel ID # 350011200
Owner(s)/Applicant:	0045-18 CUP Jerry Shae
Reason for Request:	Applicant is requesting a Reclamation Bond Waiver to remove the Reclamation Bond requirement from the required conditions of Conditional Use Permit # 0045-18CUP, which was for the construction of an earthen pond. Original 2018 Description "The pond will have bottom dimensions of 100 feet by 500 feet and be constructed with 4:1 side slopes. Water will be permitted and conveyed from Cherry Creek (on property) and possibly other surface water sources to fill the earthen pond".

Comprehensive Plan Land Use: Agricultural

Zoning: Agricultural

Findings of Fact:

Original 2018 Findings of Fact

1. All requirements for public notifications have been satisfied.
2. Staff has not received any public comments on this application.

2021 Findings of Fact

3. All requirements for public notification have been satisfied.
4. The applicant is the property owner.
5. Applicant has provided the indemnification and hold harmless agreement.
6. Project is not in an organized township.
7. #0045-18CUP was originally approved by the Board of County Commissioners November 20, 2018.
8. Freshwater ponds are conditionally allowed in the Agricultural District.

9. The pond liner has a 50 year life span.

10. Conditions of 2018 Conditional Use Permit have been met.

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 2018 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 property owner has acknowledged that the original conditions are still required therefore the value and enjoyment will not be further impeded or diminished.

c. The proposed conditional use shall not impede the normal orderly development of the surrounding property.

The property owner has acknowledged that the original conditions are still required therefore normal orderly development of the surrounding property will not be impeded further.

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 is existing off of County Road 30.

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:

The subject land area is designated in the land use plan as Agricultural.

Staff Recommendation:

Staff recommends **Approval** for this Conditional Use Permit - Reclamation Bond Waiver

zona with the most restrictive height limitation. The zones are established and defined as follows:

1. Approach Zone. The area covered by the Approach Surface.
2. Transitional Zone. The area covered by the Transitional Surface.
3. Horizontal Zone. The area covered by the Horizontal Surface, exclusive of the primary, approach, and transitional zones.
4. Conical Zone. The area covered by the Conical Surface.

3.13.5 Airport Zone Height Limitations

Except as otherwise provided in this section 3.13, no structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any zone created by this section 3.13 to a height in excess of the applicable height limit herein established for such zone. Such applicable height limitations are hereby established for each of the zones in question as follows:

1. Approach Zone. The height of the Approach Surface.
2. Transitional Zone. The height of the Transitional Surface.
3. Horizontal Zone. The height of the Horizontal Surface.
4. Conical Zone. The height of the Conical Surface.
5. Excepted Height Limitations. Outside of the Approach Zone and Transitional Zone, nothing in this section 3.13 shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree, to a height up to fifty (50) feet above the natural surface of the land.

3.13.6 Use Restrictions

Notwithstanding any other provisions of this ordinance, no use may be made of land or water within any zone established by this section 3.13 in such a manner as to create electrical interference with navigational signals or radio communications between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in

MCKENZIE COUNTY

Planning and Zoning Commission

#02-21CUP Kelly & Rachel Dewhirst

Application:	March 11, 2021
Hearing Date:	April 13, 2021
Description:	T146N,R98W,S3 Parcel #390000725
Owner(s)/Applicant:	Kelly & Rachel Dewhirst
Reason for Request:	A Hunting Lodge was first established on this property in 1998. In 2001 an additional hunting lodge was added. The applicants wish to add up to four (4) additional hunting lodges to the property, scattered about for privacy over the 157.01 acres. The lodges are Amish built, prefabricated units with kitchen and bath placed on a concrete foundation. This Conditional Use will change the non-conforming use of the existing lodges to conforming use.

Comprehensive Plan Land Use: Agriculture

Zoning: Agriculture

Findings of Fact:

1. All requirements for public notification have been satisfied.
2. Property is not located within an organized township.
3. Applicant is installing signage per EMS request for 911 numbering purposes.
4. Applicant is installing 1 hunting lodge at this time with 3 more possible in the future.
5. The Applicant is registered with State Food & Lodging. Every other year they are inspected. No violations exist.
6. Hunting Lodges are a Conditional Use in AG District.
7. This CUP will change the non-conforming use of the 2 existing Hunting Lodges to Conforming Use.

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.

The hunting lodges were first established in 1998. They are well made and maintained and located in a area of farm and ranch lands. The use shall not be detrimental to or endanger the public health, safety, comfort or general welfare.

b. The proposed conditional use shall not substantially impair or diminish the value and enjoyment of other property in the area.

Curt Huus

From: Kathy Skarda
Sent: Friday, March 26, 2021 3:07 PM
Subject: Curt Huus; Ariston Johnson; Scott Harmstead; Dana Roff; Sandee Kimpel
Fwd: Planning and Zoning

Good Afternoon,

Please add "30x30" as a discussion topic at the April 13th P&Z meeting.

It is my understanding the language regarding government land acquisition is talked about in our comprehensive plan but not yet implemented. If I missed it, please let me know what section and page I can find it on. Thank you for adding to P&Z meeting agenda on April 13th.

Sincerely

Kathy

Sent from my iPhone

Begin forwarded message:

From: Lee Geiger <lgeiger@deltacoconstructors.net>
Date: March 26, 2021 at 1:29:29 PM CDT
To: Howdy Lawlar <hlawlar@co.mckenzie.nd.us>, Kathy Skarda <kskarda@co.mckenzie.nd.us>, Craig Hystad <chystad@co.mckenzie.nd.us>, Clint Wold <cwold@co.mckenzie.nd.us>, Joel Brown <jbrown@co.mckenzie.nd.us>
Subject: Planning and Zoning

Good morning. I have been doing some research on the Executive Order on Tackling the Climate Crisis at Home and Abroad (executive order 14009), it was signed on 27 Jan 2021. This program is called "30x30". It would render 30% of all the land AND 30% of all the water in the United States under PERMANENT protection by the federal government by 2030. The U.S. is made up of 2.27 billion acres in which the federal government owns about 28% or 640,000,000 acres this consists of the BLM, US fish and wildlife, national parks, US forest service, this does not include any military installations. If the Federal Government actually goes through with this plan they would have to acquire another 2% of the total land in the US which would mean them acquiring about 45,400,000 acres, to put this into prospective North Dakota's total acres are 45,247,865. I am in the process of doing another resolution against this to bring forth to the BOCC. However I believe we should be using the Planning and Zoning Board to protect our virtues here in McKenzie County, protect all property owners, protect all types of industries as much as we can now before/if it becomes reality. I've inserted an example from a Nebraska county that I received yesterday this example is talked about in our comprehensive plan but is not yet implemented yet that I can find.:

Reasons for denial 78-2.112: (3) In order to minimize conflicts with land-use planning, each conservation or preservation easement shall be approved by the appropriate governing body. Such approving body shall first refer the proposed acquisition to and receive comments from the local planning commission with jurisdiction over such property, which shall within sixty days of the referral provide such comments regarding the conformity of the proposed acquisition to comprehensive planning for the area. If such comments are not received within sixty days, the proposed acquisition shall be deemed approved by the local planning commission. If the property is located partially or entirely within the boundaries or zoning jurisdiction of a city or village, approval of the

governing body of such city or village shall be required. If such property is located entirely outside the boundaries and zoning jurisdiction of any city or village, approval of the county board shall be required. If the property is located in the Niobrara scenic river corridor as defined in section 72-2006 and is not incorporated within the boundaries of a city or village, the Niobrara Council approval rather than city, village, or county approval shall be required. Approval of a proposed acquisition may be denied upon a finding by the appropriate governing body that the acquisition is not in the public interest when the easement is inconsistent with (a) a comprehensive plan for the area which had been officially adopted and was in force at the time of the conveyance, (b) any national, state, regional, or local program furthering conservation or preservation, or (c) any known proposal by a governmental body for use of the land.

(4) Notwithstanding the provisions of subsection (3) of this section, the state, or any state agency or political subdivision other than a city, village, or county, may accept an easement after first referring the proposed acquisition to and receiving comments from the local planning commission with jurisdiction over the property, which shall within sixty days of the referral provide such comments regarding the conformity of the proposed acquisition to comprehensive planning for the area. If such comments are not received within sixty days, the proposed acquisition shall be deemed approved by the local planning commission.

Also as you may have heard on the news in the last few years foreign countries have been buying land and other industries here in the United States, and I'm wondering if the P and Z can do something to prevent this from happening.

Lee Geiger
Delta Constructors
Mechanics Supervisor
lgeiger@deltacollectors.net
701-690-8134

May 2021

Planning and Zoning Commission Minutes

May 10, 2021

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

PLEDGE OF ALLEGIANCE AND ROLL CALL

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

Members Remote: Cody Knetzger

Members Absent: Eva Hepper, John Irwin

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.

APPROVE AGENDA

Motion to Approve Agenda as presented by Kathy Skarda; Second by Heidi Brenna; Voice Votes: All Ayes;

Motion to Approve Agenda as presented Passes.

APPROVE MINUTES

Motion to Approve Minutes as Presented by Butch Fleck; Second by Kathy Skarda; Voice Votes: All Ayes;

Motion to Approve Minutes as Presented Passes.

CODE ENFORCEMENT:

Director Huus stated he only had an update on the Novak Junkyard. There's a remedy hearing on Friday this week and will have more information next month of what that's going to entail.

UNFINISHED BUSINESS:

#13-20CUP - Dixon Properties, LLC - Ponds - Conditional Use Permit - #13-20CUP - Location:S2,SW4,Section 31, T148N, R98W, PID#610007800. Lots 2-3, Section 6, T147N, R98W, PID#600000780

Director Huus stated this is a Conditional Use Permit that was first brought forward July 15, 2020. The applicant has requested that it be put on back on the agenda for the unfinished business for this May 10th meeting. It has been pulled and tabled for various reasons throughout the process, including access issues requirements and State Water Commission permit questions. It is located South of Watford City, just East of Highway 85 and North of the Little Missouri River. There are 4 (four) ponds on the North side of the river. Each pond is 49 acre feet and for industrial purposes. The current plan is that water will be delivered to end users via lay flat lines and if permanent underground water pipelines are proposed a CUP amendment or new CUP application will be required. The applicant is proposing to access these ponds for construction and maintenance via crossing the little Missouri. Staff recommends approval for this Conditional Use Permit. Nothing has changed since the last meeting. Additional photographs were presented at the Commission meeting, but the Commissioners were not comfortable with the information, so they **TABLED** it and referred it back to Planning and Zoning.

Board Comments:

Kathy Skarda stated on #0021-18CUP, that actual criteria for Conditional Use Permits states "The applicant will access the site on private access easement on private road." Has that changed and the Applicant gotten any easements from or for that property for that existing CUP that is out of compliance? **Director Huus** stated no there aren't but his access for that one will also be via the same direct access as the other 4 (four) ponds.

Kathy Skarda stated under conditions, item number 4, states "The Emergency Plans submitted to the County Emergency Manager shall be updated annually." I have not seen any Emergency Management Plans. Do you have any? **Director Huus** stated I have not seen any. **Skarda** stated the County Emergency Manager has never received an emergency plan or an updated annual plan for the one that was completed in 2018 has nothing on her records.

Kathy Skarda stated the barbwire fence was supposed to be up and completed in October 2018. When did that finally get put up? **Director Huus** stated last year. Back then, the Applicant was PM Water. **Skarda** stated PM Water/Dixon Ponds, all their

documentation says Dixon Ponds on it also. **Director Huus** stated because it was on Dixon's Land.

There was a discussion on the map showing a narrow access road running between the ponds. **Sandee Kimpel** stated the roadway actually runs between the 2 (two) ponds, is very wide and she has pictures that show this.

Cody Knetzger asked if there is documentation on the Corps approve crossing the River. **Sandy Kimpel** stated there is a 2020 email from the Corps. **Kathy Skarda** asked if Dixon was using diesel to run his pumps. **John Dixon** stated diesel or electricity.

Jeremy Olson asked if the Corps email stated a time limit or had been revoked since issued. **Sandee Kimpel** stated the email does not. **John Dixon** stated there was no permission needed according to the Corps no permit is needed.

There was a discussion on crossings, that they were addressed in the April 13th meeting and that Dixon has permission to cross the river.

Kathy Skarda stated the 2018 CUP has not been complied with until the new CUP for 4 (four) new ponds was requested. Businesses need to be compliance and following the County's rules. **John Dixon** stated he did not know the 2018 CUP was not complied with until the CUP was released back to him from PM Water. The reason it didn't get done previously was the County let PM Water by for 2 or 3 years. He owns the land. He is not PM Water and it is not his fault that the previous owner did not comply.

Sandee Kimpel stated she has never found any notes or files on anyone previously inspecting the site, prior to her going down and inspecting it.

Audience Comments:

Steve Burian asked what happens if Code Enforcement is notified of a CUP violation? **Sandee Kimpel** stated she would first need to verify if that is what is indeed happening and if so, then she would notify the Board. **Burian** asked if there is evidence how many chances does one get before the CUP is actually up for revocation? **Kimpel** stated that's a board decision and how many times it would be allowed before it got brought before revocation. **Jeremy Olson** asked if the complaint was made and then verified to be true, it would come up as a code enforcement discussion. At that point, the board would give guidance to the staff on whether to warn them, send a letter, initiate the procedures to prepare for a revocation hearing and those are all tools that are available. Code Enforcement is a standing Agenda item every month. **Director Huus** stated only habitual Code Enforcement Problems are brought to the Board. The first step in the procedure is to send a violation letter and if it is not met then the next step is legal notice and that could be revocation of the CUP. **Jeremy Olson** stated this is a lengthy process. **Director Huus** stated although they are not able to sit and monitor this 24/7,

they commit to checking more often. **Sandee Kimpel** stated violation notices are sent via certified mail so they have that documentation.

Burian asked if the 2018 CUP for the existing pond will be amended to note that they're going to be crossing the River rather than a private easement. **Director Huus** stated we have not considered that yet, but it's a possibility. **Burian** stated the plan made was that they are going to cross the River with that one as well. **Director Huus** stated yes.

John Dixon stated he is not crossing the River to look at the existing pond, but will continue using the same road that he, his family, and others have used for many years. He is going to get an access taken care of. They are going to access via the Little Missouri River crossing to appease people temporarily.

Jeremy Olson stated the recourse that Dixon has is to use the River until the other part is resolved legally. His understanding is that Dixon is address the Road and the access issue outside of the scope of this application. **John Dixon** stated he is going to continue to use that road to check on his first pond, his property and the Dixon Trust Property because he has not agreed on anything regarding the first pond.

Jeremy Olson stated the County's standpoint is that the requirement for the first pond was to have an easement to get to that pond and because there is no easement that exists puts it in violation. **Steve Burian** stated that the minutes need to reflect that Dixon stated that he has no intention of using the River beyond construction and that he plans to drive on the road to access that pond and all the others.

Butch Fleck stated Dixon meets all the requirements. **Craig Hystad** stated the first pond does not have an easement so it is in violation. **Fleck** asked can we amend it to put it on with the new CUP? **Jeremy Olson** stated not as part of this application and that is separate. **Director Huus** stated that one is going to take a lot more legal action. **Fleck** stated so then we can't do anything until that's done.

Motion to Deny #13-20 CUP- Dixon Properties, LLC - Ponds - Conditional Use Permit - #13-20CUP - Location: S2, SW4, Section 31, T148N, R98W, PID#610007800. Lots 2-3, Section 6, T147N, R98W, PID#600000780

Motion by Craig Hystad; Second by Cody Knetzger. Voice Votes: Butch Fleck-Nay; Cody Knetzger-Aye; Craig Hystad-Aye; Heidi Brenna-Aye; Jeremy Olson-Nay; Kathy Skarda-Aye; Matt Beard-Aye.

Voice Votes: 5 Ayes to 2 Nay

Motion to Deny #13-20 CUP- Dixon Properties, LLC - Ponds - Conditional Use Permit - #13-20CUP - Location: S2, SW4, Section 31, T148N, R98W, PID#610007800. Lots 2-3, Section 6, T147N, R98W, PID#600000780 Passes

PUBLIC HEARINGS:

#01-21PUD/COMP PLAN AMENDMENT

Heidi Brenna stated Icon is the Architect on record for this project and she is a principal in Icon so she would just like to request the board to consider recusal for her on the discussion and Architectural vote.

Motion to Allow Heidi Brenna to Vote; Motion by Craig Hystad; Second by Kathy Skarda. Voice Votes: All Aye.

Motion to Allow Heidi Brenna to Vote Passes

Director Huus stated this is a Planned Unit Development (PUD) and Comprehensive Plan Amendment from Urban Residential to Public Institutional use for the new McKenzie County Fairgrounds and Ag Expo property located at Highway 85 and 25th Street Northwest and Southeast of Watford City. The street in the County portion is 25th Street Northwest and in the city, the ETA portion of it is 24th Avenue South East.

He read the Findings of Fact. They are highlighted and attached to the end of these minutes.

Director Huus summarized the PUD Narrative submitted by ICON Architectural Group and Mountain Plains LLC.

Director Huus stated Staff recommends Approval of the PUD and the Comprehensive Plan Amendment. Applicant representatives are available to answer any questions.

Board Comments:

Jeremy Olson asked if that is the correct representation of everything the Fair Board wants. **Craig Hystad** stated they try to include in the PUD, everything that could possibly happen because once it approved, they can't go back and change it. Should the Fairgrounds get annexed into the City, they would be Grandfathered.

Audience Comments:

Brian Zuroff, PE, Licensed Civil Engineer/ Mountain Plains, LLC stated he is a Licensed Civil Engineer for the Fairgrounds project in coordination with ICON Architects.

There was a discussion that in the future, the Buffer Zone. **Jeremy Olson** stated the Zoning Ordinance prescribes a Buffer Zone when against a residential area. **Director Huus** stated it is not required by Ordinance.

Kathy Skarda stated the importance to include the verbiage regarding the “Right to Farm and Ranch” policy (stated in the Comprehensive Plan, Section 5 Agriculture Element, Implementation Actions, Prioritization #4-#5 attached) included in the deed and in the PUD, because they do not want to impede or infringe upon the preservation of the County’s Agriculture heritage and the Right to Farm and Ranch and their related activities. **Jeremy Olson** stated that would be the preamble. **Brian Zuroff** stated the underlying zoning is Agricultural and with PUDs like this they try to leave things as strictly vague, as possible but a preamble could be included.

There was a discussion on the importance of having the “Right to Farm and Ranch” policy included as a standard condition for approvals on PUDs versus being an Ordinance Amendment, and the importance of the need for it to be Countywide.

Director Huus stated he would look into it. **Jeremy Olson** stated a preamble could be put in there until a permanent fix was made. **Brian Zuroff** stated that is something they could on work with the staff.

Motion to Approve #01-21PUD/COMP PLAN AMENDMENT with Amendment to include statement to protect Agriculture and Agriculture operations.

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

Motion to Approve #01-21PUD/COMP PLAN AMENDMENT with Amendment to include statement to protect Agriculture and Agriculture operations Passes

#02-21COMP/ZC - Roseholm & Coulee Man - #02-21 Comprehensive Plan Amendment and Zone Change - Roseholm LLC & Coulee Man LLC - Section 5, Township 150N, Range 98W. Parcel #200002700

Director Huus stated this is a Comprehensive Plan Amendment and Zone Change. It is located in North of Watford City and adjacent to the city ETA (Extra Territorial Area), along 125th Avenue NW and 30th Street NW. The Comprehensive Plan Amendment is

to change from the current Agricultural to Rural Residential and then to change the zone from current Agriculture District to Rural Residential R1 District. It is adjacent to the city ETA. Watford Planning and Zoning has indicated that Residential Subdivisions in Watford City are moving out that way, and it has received support from the City of Watford City. The applicant wishes the Comprehensive Plan Amendment and Zone Change. It is approximately 107 acres and if it's approved they will submit a Major Subdivision Plat for the North portion of the property. The preliminary plan is to not subdivide that whole piece at that time but that could change. Staff recommends Approval of the Comprehensive Plan Amendment and Zone Change as indicated in our Staff Report.

Board Comments:

Butch Fleck asked about its distance from other housing? **Director Huus** stated there are other housing areas there and one is located within the ETA, less than a half mile south. The nearest County R1 development is 3 (three) miles to the northwest. **Butch Fleck** stated the reluctance of possibly "Spot Zoning" this parcel. **Director Huus** stated it would be considered spot zoning. **Kathy Skarda** asked about its distance from the current city limits and ETA. **Dana Roff** stated it is just 1.88 miles from 4th Avenue. **Director Huus** stated the current Zoning map shows the city ETA. **Skarda** asked it is technically surrounded by Agricultural land, correct? **Director Huus** stated yes.

Kathy Skarda stated Spot Zoning is the application of zoning for a specific parcel or parcels of land within a larger zoned area when the rezoning is usually at odds with the County's Master Plan or current zoning restrictions. **Dana Roff** stated the Comprehensive Plan does list a piece of Rural Residential right across 30th Street Northwest. On the Comprehensive Plan Map right above the site, the start of that is Rural Residential. **Director Huus** stated on the Comprehensive Plan it is shown as Rural Residential. There is Watford Landing which is Rural Residential. **Jeremy Olson** asked on the Comprehensive Plan is Rural Residential and just to the South of that site is an actual Subdivision? **Director Huus** stated yes, half a mile South of Rural Residential. **Jeremy Olson** asked if it was actually developed or is it zoned that way? **Director Huus** stated it's developed. **Dana Roff** stated it's in the city.

Jeremy Olson asked if the surrounding uses are consistent? **Director Huus** stated the surrounding uses are Agriculture and Rural Residential. This would expand the Rural Residential and shrink the Agriculture portion of it.

Kathy Skarda stated typically they need to look at if all the businesses have a certificate of from the Secretary of State, to do business in our state. Do we have the certificates for both of these entities? **Director Huus** stated not a North Dakota one. **Dana Roff** stated Coulee Man does have one. Roseholm, submitted one from Montana. **Skarda** asked

why they did not have one for the State of North Dakota? **Jeremy Olson** asked is it a requirement to have one of those on the application? **Ari Johnson** stated for this application, no. Any use the land the applicant has to have a Certificate of Authority from the North Dakota Secretary of State, but this is not a use of land, this is a rezoning of land so they don't need it for this stage, but before anyone builds a house or anything they're going to need it. **Director Huus** stated before they do a Subdivision Plat, they will have to have one.

Matt Beard stated if XYZ is built, designed or approved and the ETA expands anything approved up to that point is grandfathered under County standards. If they did something new, it would it be regulated by City standards.

Dana Roff stated #5 in Findings of Fact states they have received support for this Comprehensive Plan and Zone Change from Curt Moen, Watford City Administrator.

Matt Beard asked if the County okays the road section and the ETA expands the next day, it would be allowed. **Director Huus** stated we could incorporate within the subdivision that the roads have to comply with City of Watford City standards rather than County standards.

Craig Hystad asked about a sewer line. **Jeremy Olson** stated if it is done based off this application, whatever the city inherits is grandfathered. **Matt Beard** asked if they have to honor the existing Approval? **Jeremy Olson** stated what they do at the County level is grandfathered as long as they don't make any changes.

Audience Comments:

Ken Sanford, Watford City stated his concerns of building housing there because there are multiple oil pipelines in the area. **Director Huus** stated the applicant has plans to eventually apply for a major subdivision. The Easements have to be complied with.

Dana Roff stated this is just a preliminary plat that they've drawn. Right now we're just discussing a Comprehensive Plan and Zone Change. They will have to come before us with another plan before they do their final survey.

There was a discussion on where the owners reside and they want the Zone Change so they can make the sale. They have trying for a long time to sell property.

Ken Sanford stated his concerns with increased traffic, if there are going to be Covenants, and sewer and water mains. **Dana Roff** stated they were talking about their main access will be 125th not 30th. When they get to the point of the preliminary major subdivision, public notice will be sent out again. **Jeremy Olson** stated this is just for changing the zoning to allow a subdivision or residential areas to be put there. There are many things that have to be approved before they can go there.

There was a discussion on safety, the location and number of pipelines, and when the final plat for the subdivision is received, these will be revisited and discussed and public notice will be mailed out again.

Director Huus stated the other issue with the subdivision is the proximity to oil wells there and the required buffer. **Director Huus** stated if the rezone is approved the subdivision has a chance of getting approved. If the rezone gets denied right, they won't be doing a rural residential subdivision. **Ken Sanford** stated it wouldn't break his heart if it was denied.

Director Huus stated if this was anywhere else in the middle of an Agriculture District we would recommend denial of the Comprehensive Plan Amendment.

Kathy Skarda stated if they approve this Zone Change and the residential subdivision gets approved as well, it's going to be detrimental to the residents who want to build outside in a rural area. They do not receive road services from either the ETA or the County because the County does not provide subdivision road services. **Director Huus** stated it has to develop over 50% of all the lots before the County will maintain the roads.

Ken Sanford stated even though the County rebuilt their road, there are numerous trucks using that road daily and it is noisy.

Butch Fleck stated it should not be approved because of all the problems there.

Motion to Deny #02-21COMP/ZC - Roseholm & Coulee Man - #02-21 Comprehensive Plan Amendment and Zone Change - Roseholm LLC & Coulee Man LLC - Section 5, Township 150N, Range 98W. Parcel #200002700. Motion by Butch Fleck; Second by Kathy Skarda; Voice Votes: All Ayes.

Motion to Deny #02-21COMP/ZC - Roseholm & Coulee Man - #02-21 Comprehensive Plan Amendment and Zone Change - Roseholm LLC & Coulee Man LLC - Section 5, Township 150N, Range 98W. Parcel #200002700 Passes

#03-21CUP - Elkan Inc. - Cascade Pipeline - Conditional Use Permit - Begin in Parcel #610003400 and end in 610001500, T-148N, R-98W, Sections 4, 5, 6, 9, 13, 14, 15, 16, 22, 23

Director Huus stated this is a Conditional Use Permit for a 24" (twenty-four inch) Freshwater Pipeline, East of Theodore Roosevelt National Park North Unit and it extends from the Dunn County line to County Road 34. Both the current Zoning and Comprehensive Plan are Agricultural District. The applicant is proposing to construct 7.1 miles of 24" (twenty-four inch) underground Freshwater Pipeline. The pipeline will

connect to a fresh water line that starts in Dunn County that was approved by Dunn County Planning and zoning.

Director Huus read the Findings of Fact. They are highlighted and attached to the end of these Minutes.

Director Huus stated Staff recommends Approval for this Conditional Use Permit. The Applicant is present to answer any questions.

Board Comments:

Kathy Skarda stated in Conditions, item #6 states the requirements for Dust Control. Does this have anything to do with the County Road Department putting it on, or is it solely underneath the discretion of Elkan Incorporated paying and providing the Dust Control. **Director Huus** stated the dust control is only during construction and would be by the Applicant.

Jeremy Olson asked is everything in order? Is there anything that would keep this from going forward? **Butch Fleck** stated they are in good standing and always have been so. **Sandee Kimpel** stated yes that is correct.

Move to Approve as Presented #03-21CUP - Elkan Inc. - Cascade Pipeline - Conditional Use Permit - Begin in Parcel #610003400 and end in 610001500, T-148N, R-98W, Sections 4, 5, 6, 9, 13, 14, 15, 16, 22, 23 by Butch Fleck; Second by Heidi Brenna; Voice Votes: All Ayes;

Motion to Approve as Presented #03-21CUP - Elkan Inc. - Cascade Pipeline - Conditional Use Permit - Begin in Parcel #610003400 and end in 610001500, T-148N, R-98W, Sections 4, 5, 6, 9, 13, 14, 15, 16, 22, 23Passes.

#17-20CUP - Cameron Dodge - Aboveground Storage Tank (AST) - Reclamation Bond Waiver - T149N, R-96W, Sec 2, Parcel ID #040012400

Director Huus stated this is an application for a Reclamation Bond Waiver for an Aboveground Storage Tank that was approved at the January 19th Board of County Commission meeting. The tank is located East of Watford City, near Beaver Creek Rd.

Director Huus read the Findings of Fact. They are highlighted and attached to the end of these minutes.

Board Comments:

Kathy Skarda asked how close is it to the road? **Director Huus** stated it along 109th and near Beaver Creek.

Matt Beard asked what the Departments precedents are with these kinds of requests. **Director Huus** stated as long as the applicant or the landowner has signed the proper acknowledgements and Indemnification Hold Harmless Agreements they have been approved. The acknowledgements state that they're aware of and still have to maintain the original conditions of the CUP in addition to any other requirements that were put on in conditions as part of the Reclamation Bonds. **Matt Beard** stated the landowner is accepting the liability.

Motion to Approve #17-20CUP - Cameron Dodge - Aboveground Storage Tank (AST) - Reclamation Bond Waiver - T149N, R-96W, Sec 2, Parcel ID #040012400

Motion by Kathy Skarda; Second by Heidi Brenna. Voice Votes: All Ayes

Motion to Approve #17-20CUP - Cameron Dodge - Aboveground Storage Tank (AST) - Reclamation Bond Waiver - T149N, R-96W, Sec 2, Parcel ID #040012400 Passes

#02-21VAR - Joshua Pruitt - Variance - 12555 32nd K St., Watford City, ND. Parcel #643201900

Director Huus stated this is an Application for a Variance to the Agricultural District Setback Ordinance. The property is located North of Watford City within the Watford Landing subdivision on a 2 (two) acre parcel. The Applicant built a shop on the subject property and it was found to be 22 (twenty-two) feet from the property line. The shop was built without obtaining a building permit. Setbacks within the Agriculture Zone are 25 (twenty-five) feet from the front, back and sides, and the applicant now wishes to bring the property into compliance by applying for a Building Permit. He paid the fine of \$500 for building without a permit. A Variance to allow the building to be 22 (twenty-two) feet from the property line is needed before he can be granted a Building Permit. The shop is on the West side of the property. Staff recommends approval for this Variance of 22 (twenty-two) feet from the property line from the 25 (twenty-five) foot required set back. The applicant is not present.

Board Comments:

Jeremy Olson stated it looks like he's made restitution and made it right from an applicant standpoint. **Director Huus** stated there were no objections from the adjacent neighbors. If zoned Rural Residential instead of Agriculture, the Applicant would be well within the setbacks.

Motion to Approve #02-21VAR - Joshua Pruitt - Variance - 12555 32nd K St., Watford City, ND. Parcel #643201900.

Motion by Craig Hystad; Second By Kathy Skarda; Voice Votes: All Ayes.

Motion to Approve #02-21VAR - Joshua Pruitt - Variance - 12555 32nd K St., Watford City, ND. Parcel #643201900 Passes.

Freshwater Pond Fencing - Ordinance Amendment - 2nd Reading.

Director Huus stated this was **TABLED** at our last meeting so revisions could be made including a change to the maximum fencing distance from the pond to 30 feet from 10 feet from the toe or backfill and adding in a provision to clarify when chain link fence is required along a paved County Road and or State Highway. Also added was an option to waive the requirement for barbed wire fencing, if the landowner requests it, similar to a Reclamation Bond Waiver. The Waiver provision would be similar in that they would need a Landowner Notification, Indemnification, Hold Harmless and Acknowledgement that they understand the implications of the Waiver. The 1st Reading language is highlighted in yellow and the 2nd Reading language is highlighted in red. This was sent to the Ordinance Subcommittee for Review. There were 3 (three) comments from the subcommittee. One was not in favor of the Waiver for Industrial Ponds and suggested a Fencing Plan be submitted. One of them that was in favor of it based on Landowner rights, similar to the Reclamation bond Waiver, where if the landowner is aware of all the implications of that Waiver, that they should be allowed to not have a fence around it if there were no safety concerns and that will be part of the acknowledgement also. We have to come up with that process yet, but when we do, we'll bring it forward here for information.

Board Comments:

Craig Hystad stated he was the one against it and is still in favor of the 4 wire fence because it helps make it a safer for protecting somebody that shouldn't be there. There is still fencing because the CUP requires it.

Kathy Skarda stated she received comments that if there are waivers for this, then when will there be waivers for other things. **Craig Hystad** stated rather than having a waiver require a fence within a quarter mile. That's where you put up barbed wire fences, then we're not doing waivers all this time. **Director Huus** stated that goes only for Barbwire. You can't get one for chain link. **Olson** stated the original intent is to do the chain link fence for the ones that are basically close to paved roads close to residents, and the barbwire was added in later. **Skarda** stated the applicant knew about the fence requirement when they applied for the CUP.

Director Huus stated it should be the landowner's choice whether or not to let their cattle drink out of their pond. **Craig Hystad** stated he doubts there are many people who want their cattle drinking out of their ponds. **Kathy Skarda** stated it is difficult for cattle to get in and out of there. **Butch Fleck** stated for one thing, it's commercial it isn't like it's a farmer with a stock pond. There is the other side where the farmer wants his cattle to drink out of the pond and therefore does not want a fence.

Dana Roff stated a farmer/rancher called her with the concern he would have to follow this. He has an unlined pond that he sells water out of. She told him that he would not have to follow the ordinance because he is grandfathered in.

Jeremy Olson stated you have to have it fenced unless a waiver is approved. These would be the exception, not everyone gets it automatically. **Butch Fleck** stated but that to me is a double standard. Either you do it or you don't do it.

Kathy Skarda asked if it's agriculture and they're selling the water for industrial purposes, is the acreage is underneath that pond, changed into industrial taxes or do the taxes remain agriculture. **Director Huus** stated the taxes are based on the use and he assumes the tax assessor would tax that as Commercial. **Kathy Skarda** asked do you send the approved minutes and all documentation to the Recorder's Office? **Director Huus** stated we send every Conditional Use Permit to the Recorder's Office. **Dana Roff** stated they get the full Staff Report

Matt Beard stated Jeremy 's idea of over a quarter mile not having a rule, how does that fit us or the applicants? **Director Huus** stated the discussion last month was that the landowner could use the waiver for negotiating point with a company that wants to have a pond on his land.

Craig Hystad stated it is the farmer's prerogative whether or not to have a fence. When they went industrial with the pond, they got away from farming with it and are trying

to make money. **Director Huus** stated if he is watering his cattle out of it, he's using it for Agriculture also. **Hystad** stated but he's still selling it.

Kathy Skarda stated regarding the written consent that says "shall include acknowledgment from the Planning and zoning Department, that they the owners of record with the interest in the ownership of the surface of land, and that they understand the implications of the waiver to them." **Director Huus** stated that is part of our Reclamation Bond Waiver process. With the Reclamation Bond Waiver process, they have to acknowledge this. They have to acknowledge that they understand that they still have to comply with the conditions of the original CUP even though they're getting a waiver from the Reclamation bond. There's also the Indemnification and Hold Harmless Agreement. They would have to do this with the fence waiver too. If somebody wanders onto their property and falls into the pond and drowns the County cannot be sued for not making the land owner build a fence. They'd have to sue the landowner.

Jeremy Olson stated It seems that we're not in agreement, so what do we do on the 2nd Reading here?

Director Huus stated we can **TABLE** it again, go back to the first reading and make the minor change of the distance away from the slope for the fence, the quarter mile for a paved County Road or state highway for barbed wire and just scrap the waiver idea, or just not approve it at all and the ordinance just stays the same. **Jeremy Olson** stated the initial reason for the ordinance change was to give requirements for fencing. **Director Huus** stated the driving force was the specifics, so we would know what to do. **Olson** stated then the public opinion came in of why they even have to have a fence if the pond is in the middle of nowhere away from public, which is the valid concern.

Craig Hystad stated if they want their cattle to drink out of it, all they have to do is leave the gate open. If somebody came in there and it is fenced, it would be helpful in a court of law. **Director Huus** asked what is the difference between someone getting mauled by a bull, while walking across someone's property, or falling into a pond. You're trespassing on somebody's property.

Jeremy Olson stated the first reading is without the red highlighted sections.

Audience Comments:

Jim Talbert stated it's whatever the landowner wants. The Hartles didn't want cattle in their whole pond area (East and West Ponds) so they just fenced off the whole thing. **Butch Fleck** stated Kathy and I have ponds and there's fences a half mile away. In the case of this fencing ordinance we had to come up with common standards, so people would know and we would know where this fence is required. 10 foot, is always going to be buried by snow, but with 30 you might be ok. **Butch Fleck** stated if we're going to stay with the fence there needs to be stipulations or consistency. I have fought ever since I got on here for personal rights. When you start going commercial you of give up

some of that. **Kathy Skarda** stated you're no longer doing the Agriculture, you're doing Commercial or Industrial.

Jim Talbert stated it is still zoned Agriculture. The CUP does not change the zoning. It is still Agriculture with a Conditional Use within it. It is not industrial, it is Agriculture that has been allowed as Conditional Use. If it's industrial then that's a completely different thing. The fact that the water is being used for industrial purposes doesn't change the land use itself. He also stated that whether you're farming corn or you're raising cattle you're doing it to make money. A person that owns land that has water rights, it's another resource that they are using to help pay for their facilities.

Jeremy Olson asked would anybody be opposed to removing the four-strand barbed wire requirement? **Jim Talbert** stated we would still put it up where we want to keep the cattle out of. We do have chain link on the Wolf and the Stenehjem Reservoirs.

Jeremy Olson asked greater than 1/4 mile away, is there any heartburn over removing the requirement for fencing?

Kathy Skarda stated she can see that somebody was to make money from having a facility on their land. However, we have had these CUPs in the system for quite a few years. **Jim Talbert** stated the Freshwater ponds probably started around 2015. **Kathy Skarda** stated then many people signed up for ponds, have been making money off them and are following instructions. We are making changes for Waivers, then citizens say, "I can sign up for this and eventually we'll get a waiver. "

Kathy Skarda stated we have approved many CUPS with stipulations and now if one section of the business doesn't want it then do we make additional waivers is very concerning.

Craig Hystad made a motion to approve but amend to leave the 1/4 mile distance fencing statement in (number 2), remove the waiver statement (number 13), and fence distance from pond to 30 (thirty) feet.

Butch Fleck stated this is first time, in his years on the board, that there have been complaints so it is best to stay away from waivers.

Director Huus stated this could be an Amendment because the only change from 1st Reading is the distance in the first and second reading and the clarification on the chain link fence distance from paved roads.

Motion to Approve as Amended to leave the 1/4 mile distance for chain-link fencing, remove the waiver statement, and make the fence distance from the pond as 30 feet to the Freshwater Pond Fencing - Ordinance Amendment - 2nd Reading.

Motion to Approve as Amended to leave the 1/4 mile distance for chain-link fencing, remove the waiver statement, and make the fence distance from the pond as 30 feet to the Freshwater Pond Fencing - Ordinance Amendment - 2nd Reading by Craig Hystad; Second by Butch Fleck; Voice Votes: All Ayes

**Motion to Approve as Amended Freshwater Pond Fencing - Ordinance Amendment
- 2nd Reading Passes**

DISCUSSION ITEMS:

Administrative CUPs

Director Huus stated there are no Administrative CUPs this month.

Permit Criteria Checklist Review.

Comprehensive Plan/ Zone Change Application

Director Huus stated this item was placed on the agenda for discussion, based on the discussion and the requests at the last meeting that you review our applications and checklists to make sure we're requiring the proper information and notifications. This is our Planning Comprehensive Plan/ Zone Change Application and Checklist. If you would like to digest and make comments, please let me know. Next month, if you still want to move forward with these types of reviews, I'll add another application for discussion and review at that meeting.

Kathy Skarda stated she would like to go over it some more. She appreciates the staff taking the time to make these examples of different things because it is very important.

Jeremy Olson stated if you have any questions preferably email to the staff before the meeting so they can research and get an answer for us.

**Building Permit Policy , Procedures, and Checklist Requirements for landowners
building homes for family (Kathy Skarda)**

Director Huus stated Kathy Skarda requested this item and we didn't have enough time to come up with the detailed information that was requested, so we will have it for the next meeting. **Kathy Skarda** stated that would be good for next time.

ADJOURNMENT

The meeting was adjourned at 7:15 PM.

Due to scheduling conflicts, the next meeting of the McKenzie County Planning and Zoning Board will be held on Monday, June 7, 2021 at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM.

MEETING SIGN-IN SHEET

Meeting Date: May 10, 2021

Name PLEASE PRINT NAME LEGIBLE	Phone #	Agenda Item #
Chris Kubal	701-307-0516	I-1
John Dixon		
Kim Dixon		
Kate Dixon		
Brenda Lautenschlager		
Kens Sanford		
Jim Talbert	602-403-4521	3,4,6
Shane Petersen	"	"

McKENZIE COUNTY

Finding of Fact:

1. McKenzie County Zoning Ordinance does not have a Zone Designation that fits the Fairgrounds use.
2. Public Notification has been completed.
3. Conditions are being addressed such as: Concern with the Buffer Zone, Noise and Site Lighting by the Fair Board Committee.
4. McKenzie County purchased Parcel #110012700 in 2020 after considering four other sites.
5. PUD Narrative has been approved by the Fair Grounds Board/Building Committee.
6. The surrounding Zoning Designation along this corridor is predominantly Agriculture however, the Comprehensive Plan for this area consists of designations such as Highway Commercial, Urban Residential and Light Industrial. This corridor is a natural area for future commercial growth due to its proximity to Highway 85 and clustering of Commercial and Industrial Comprehensive Plan designations.
7. The Residential use to the east of the Fairgrounds parcel will be provided a 50' Buffer Zone.

AGRICULTURAL IMPLEMENTATION ACTIONS

PRIORITIZATION	IMPLEMENTATION ACTIONS	PARTIES RESPONSIBLE	NEW COSTS/ STAFF TIME?	*TIME FRAME
1	Limit minimum parcel sizes in the agricultural zone to 40 acres (1/16 section).	Planning and Zoning Department	No	Ongoing
2	Consider areas of prime farmland and farmland of statewide importance as part of the review of non-farm development applications outside of Transition Areas and Growth Focus Areas. Document this review in Planning and Zoning Commission staff reports.	Planning and Zoning Department	Yes	Ongoing
3	Consider important ranching areas in the review of non-farm development applications outside of Transition Areas and Growth Focus Areas. Consider how a development proposal might impact ranching operations located adjacent to a project site. Utilize the Ranchland Heritage Map as provided in the Agriculture Chapter, which delineates areas of particular importance. Document this review in Planning and Zoning Commission staff reports.	Planning and Zoning Department	Yes	Ongoing
4	The County shall require all subdivisions approved for locations in or adjacent to productive agricultural areas and ranching areas to include a "right to farm and ranch" policy. The policy shall be recorded with the subdivision plat. The County shall require the program to be disclosed to buyers of property within subdivisions where the "right to farm and ranch" policy has been recorded.	Planning and Zoning Department Recorder	Yes	Ongoing
5	Ensure that new zoning regulations and all code enforcement actions do not arbitrarily restrict potential agricultural-related enterprises.	Planning and Zoning Department	No	Ongoing
6	Enforce zoning ordinance screening and buffer requirements on new development (requirements placed on new industrial, commercial, and residential development).	Planning and Zoning Department	No	Ongoing
7	The County shall work with property owners, waste collection providers, and law enforcement to find solutions to illegal dumping on agricultural properties such as offering free trash drop-off days and increased penalties for illegal dumping. This could also be a special focus of code enforcement activities.	Sheriff's Department Planning and Zoning Department	Yes	Ongoing

McKENZIE COUNTY

Planning and Zoning Commission

03-21CUP - Elkan Inc. - Cascade Pipeline

Application:	April 8, 2021 - Conditional Use Permit
Hearing Date:	May 10, 2021
Description:	Begin in Parcel # 610003400 and end in 610001500 T-148N, R-98W, Sections 4, 5, 6, 9, 13, 14, 15, 16, 22, 23
Owner(s)/Applicant:	Elkan Inc.
Reason for Request:	The applicant is proposing to construct 7.1 Miles of 24" (inch) underground Freshwater Pipeline. This pipeline will connect to a freshwater line that starts in Dunn County and crosses over to McKenzie County on parcel # 610003400 and continues North West to parcel # 610001500.

Comprehensive Plan Land Use: Agricultural
Zoning: Agricultural

Findings of Fact:
<ol style="list-style-type: none"> 1. All requirements for public notification have been satisfied. 2. Project is not in an organized township. 3. Applicant is not the property owner. There are multiple owners and easement agreements have been secured. 4. Freshwater Pipelines are conditionally allowed in the agricultural district. 5. Per section 2.13.1 of the McKenzie County Zoning Ordinance. Pipelines are exempt from the bond requirements. This exemption includes the portions of a pipeline that are brought to the surface for valves, maintenance or other necessary uses. Bonding for other surface structures and facilities are not exempt. 6. This freshwater line is continuation of a pipeline that is approved in Dunn County permit #03-2021 which is an amendment to water depot permit # 16-2020.

Conditional Use Permit Criteria::
<ol style="list-style-type: none"> 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. <p>This pipeline is underground therefore it will not affect the surrounding area once completed.</p>

MCKENZIE COUNTY

Planning and Zoning Commission

#17-20CUP - Cameron Dodge - Aboveground Storage Tank (AST) - Reclamation Bond Waiver

Application:	March 25, 2021 - Reclamation Bond Waiver
Hearing Date:	May 10, 2021
Description:	T-149N, R-96W, Sec 2 Parcel ID # 040012400
Owner(s)/Applicant:	#17-20CUP - RBW - Cameron Dodge - Aboveground Storage Tank (AST)
Reason for Request:	Applicant is requesting a Reclamation Bond Waiver to remove the Reclamation Bond requirement from the required conditions of Conditional Use Permit #17-20CUP, which was for a 60K Aboveground Storage Tank (AST). Original Project Description: The applicant would like to put up a 60K Aboveground Storage Tank (AST) adjacent to their stock pond so they can store water and sell it for fracs. They anticipate the tank will be up for several years. The AST will not be used as a truck depot nor will trucks fill from the tank. Layflat pipe will be used to transport the water. There will be no building and the tank will be 12' tall.

Comprehensive Plan Land Use: Agricultural

Zoning: Agricultural

Findings of Fact:

Original January 2021 Findings of Fact:

1. All requirements for public notification have been satisfied.
2. Project is not in an organized township.
3. Elkan Inc. will be the operator of the AST and is in good standings with the North Dakota Secretary of State.
4. An Aboveground Storage Tank falls under the definition of a Temporary Water Facility which is Conditionally allowed in the Agricultural District with an Administrative Permit. This AST will be there longer than the 6-month period allowed to be considered temporary.
5. Per the project description submitted the tank will be up for an indefinite amount of time.

Reclamation Bond Waiver Findings of Fact:

1. All requirements for public notification have been satisfied.
2. The applicant is the property owner.

3. Applicant has provided the indemnification, hold harmless agreement and landowner acknowledgement.

4. The tank liner has a 20 year life span.

5. #17-20 CUP was originally approved by the Board of County Commissioners January 19, 2021.

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.

The tank is located in a rural, low population area. The height of the tank is twelve (12') feet tall therefore it will be unlikely that illegal entry into the tank will occur. It will not impede the public health, safety, comfort or the welfare of the surrounding area.

b. The proposed conditional use shall not substantially impair or diminish the value and enjoyment of other property in the area.

The surrounding property is owned by the applicant.

c. The proposed conditional use shall not impede the normal orderly development of the surrounding property.

The surrounding property is owned by the applicant.

d. Adequate utilities, access roads, drainage or other necessary site improvements have been or are being provided to accommodate the proposed conditional use.

The Department of Environmental Quality (formerly part of the Dept. of Health) has been contacted and a SWPPP is not required.

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/egress for the site will be completed to the satisfaction of the County Engineering Department. Ingress/egress will not impede public roadway.

f. The proposed conditional use shall conform to all applicable regulations of the district within which it is located.

An Aboveground Storage Tank falls under the definition of a Temporary Water Facility which is Conditionally allowed in the Agricultural District.

Comprehensive Plan Consistency:

June 2021

Planning and Zoning Commission Minutes

June 7, 2021

Meeting was cancelled due to lack of Quorum.

The next meeting of the McKenzie County Planning and Zoning Board will be held on Monday, July 12, 2021 at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM.

July 2021

Planning and Zoning Commission Minutes

July 12, 2021

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

PLEDGE OF ALLEGIANCE AND ROLL CALL

Members Present: Butch Fleck, Craig Hystad, Eva Hepper, Jeremy Olson, John Irwin, Kathy Skarda, Matt Beard

Members Remote: Heidi Brenna

Members Absent: Cody Knetzger

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.

APPROVE AGENDA

Kathy Skarda requested due to viewing issues with Armor Cloud, Agenda Discussion Item #2 Building Permit Policy, Procedures and Checklist requirements for landowners building homes for family, be POSTPONED until the August 9, 2021 Planning & zoning Board Meeting.

Motion to Approve Amended Agenda to reflect Agenda Discussion Item #2 Building Permit Policy, Procedures and Checklist requirements for landowners building homes for family by POSTPONED until the August 9, 2021 Planning & Zoning Board Meeting by Craig Hystad; Second by Kathy Skarda; Voice Votes: All Ayes;

Motion to Approve Amended Agenda as presented Passes.

APPROVE MINUTES

Motion to Approve Minutes as Presented by Kathy Skarda; Second by Craig Hystad; Voice Votes: All Ayes;

Motion to Approve Minutes as Presented Passes.

CODE ENFORCEMENT:

Director Huus stated there are no Code Enforcement topics to present at this time.

UNFINISHED BUSINESS:

Director Huus stated there is no Unfinished Business to present at this time.

PUBLIC HEARINGS:

#01-21PUD/COMP PLAN AMENDMENT

Heidi Brenna stated Icon is the Architect on record for this project and she is a principal in Icon so she would just like to request the board to consider recusal for her on the discussion and Architectural vote.

Motion to Allow Heidi Brenna to Vote; Motion by John Irwin; Second by Butch Fleck. Voice Votes: All Aye.

Motion to Allow Heidi Brenna to Vote Passes

Director Huus stated, this was sent back by the BOCC at their May 18th meeting in order to reevaluate the commercial aspect of the PUD. The PUD was sent back to the Fairgrounds Board and the consensus was to revise the Comprehensive Plan Amendment to Public / Institutional for the entire parcel. The PUD Narrative was also revised to include parking lot landscape buffering between parking lots and adjacent right of way per the zoning ordinance. As such staff recommends the Overlay of the PUD onto the existing Agriculture District and to amend the Comprehensive Plan from Urban Residential and Highway Commercial to Public / Institutional land use.

Board Comments:

Kathy Skarda stated her concerns of the Fairgrounds being protected from having to be moved should the area be annexed by the City. Is there anything in writing from Watford City stating they would not force the Fairgrounds to move again? Other citizens have also expressed their concern of this happening.

Director Huus stated he does not know if the fairgrounds board has seen anything. There was a discussion when they met with the Fairgrounds board and Watford City attorney a couple of months ago, but his office has not seen anything for that yet.

Motion to Approve #01-21PUD/COMP PLAN AMENDMENT as presented.

Motion by Craig Hystad; Second by Eva Hepper. Voice Votes: All Ayes.

Motion to Approve #01-21PUD/COMP PLAN AMENDMENT as presented Passes.

#02-21COMP/ZC - Oakland Hills - Roseholm & Coulee Man - #02-21 Comprehensive Plan Amendment and Zone Change - Roseholm LLC & Coulee Man LLC - Section 5, Township 150N, Range 98W. Parcel #200002700

Director Huus stated at the May 10 P&Z meeting, Board recommended denial of the Comprehensive Plan Amendment and Zone Change. At the Board of County Commissioners May 18th meeting, it was sent back to the Planning & Zoning Board because the applicant representatives were not present at the May 10th Planning & Zoning Board meeting. The Planning & Zoning Denial was based on the detriment to residents wanting to build and live in a rural area and the concern of County Road safety. The applicant is present.

Board Comments:

Jeremy Olson stated the applicant had the opportunity to come to the May 10, McKenzie County Planning & Zoning. They're always invited, the notice is in the paper 2 weeks ahead of time, so if they can't make it, it's on them. The Board is going by our standards and our procedures and now we have to start over again.

Butch Fleck asked if is this a place where those pipelines and everything were, on the north of town? **Kathy Skarda** stated this is considered spot zoning.

Audience Comments:

Brady Bertram, PE, Brosz Engineering, stated he is representing the owner, and developer Roseholm & Coulee Man. Covid issues caused a delay in communication, a delay in the project, and is why he was not able to attend the May 10 Meeting. After reading the meeting minutes and watching the videos, there are 3 main issues. The first one is the perception of Spot Zoning. It does appear to be spot zoning because of Agricultural Zoning surrounding it. The City of Watford City's plans for the ETA are residential. The property to the South is within the ETA. If they were to go to the city first, get the rest of that 380 acres rezoned to residential, the spot zoning issue would potentially go away, and he would like the Board to consider what will happen to adjacent properties in the future. The second issue is access and traffic. A second access will probably have to be added. Adjacent landowners are concerned with the increased amount of traffic on the gravel road, but they would do all they can to make that more palatable for the adjacent landowners. The 3rd thing was the utilities. There are pipelines all over this property. Homes would not be built over them, but would be in accordance with the Easements Agreements with the pipeline companies out there. Written into the Easement Agreements with all of these pipelines is they have the opportunity within that easement to build or construct roads. A buffer would be maintained. The 2-3 acre Rural Residential lots would have septic systems and water wells. The owners have contacted McKenzie County Rural Water and were told there

would be the capacity there for rural water system. Unless approved for a Zone Change or Comp Plan Amendment, putting money into plans would be a moot point. They would like to have this opportunity to come up with something that is palatable for everyone. Also, Roseholm and Coulee Man have current developments in Watford City, and have agreed to donate property out there for another Elementary School.

Butch Fleck stated his concerns of building around, access and schools in close vicinity to the pipelines. **Brady Bertram** stated the school wouldn't be in close proximity. It is also his concern of safely navigating around and over the pipelines. More than likely, just a road would be put over the top of the pipelines. **Director Huus** stated those issues would be worked out in the preliminary subdivision Application and the Final Plating Application. No subdivision is being approved at this time, there is just the possibility of one being created. This is just to inform of intention to eventually subdivide and the issues with that. **Jeremy Olson** stated only the Zoning is being discussed, not development at this stage.

Kathy Skarda stated even with the explanation of this close to the ETA, the possibility of being annexed by the City and the possibility of a development in the future, she still has not heard anything yet that would change her mind. **Craig Hystad** stated his concerns of the high-pressure gas lines and if one were to blow. **Brady Bertram** stated his understanding from the Easement Documents and conversations, these pipelines were agreed to be built in a way that there could be building on top of them, just not structures. **John Irwin** stated he sees this as another Spot Zone which they have been getting away from and turning down.

Dana Roff stated attached to your packet, is an excerpt from the Easement Agreement, Exhibit from the State Agreement between the Gas Company and owners, that talks about the grade.

Motion to Deny #02-21COMP/ZC - Oakland Hills Roseholm & Coulee Man - #02-21 Comprehensive Plan Amendment and Zone Change - Roseholm LLC & Coulee Man LLC - Section 5, Township 150N, Range 98W. Parcel #200002700.

Motion by Kathy Skarda; Second by Butch Fleck. Roll Call Vote: Butch Fleck - Aye; Craig Hystad - Aye; Eva Hepper - Aye; Heidi Brenna - Aye; Jeremy Olson - Naye; John Irwin - Aye; Kathy Skarda - Aye; Matt Beard - Aye; Ayes - 7, Naves - 1.

Motion to Deny #02-21COMP/ZC - Oakland Hills -Roseholm & Coulee Man - #02-21 Comprehensive Plan Amendment and Zone Change - Roseholm LLC & Coulee Man LLC - Section 5, Township 150N, Range 98W. Parcel #200002700 Passes

Freshwater Pond Fencing - Ordinance Amendment - 2nd Reading.

Director Huus stated this was an ordinance amendment to define where barbed wire fencing around freshwater ponds is required and the construction requirements of that fence. We had an original first and second readings that included a provision to waive the barbed wire fencing by Application from the landowner similar to what we have for freshwater pond reclamation bonds. At the May 10 Planning & Zoning Board meeting, the waiver option was eliminated. At the May 18th BOCC meeting it was sent back to Planning & Zoning Board to further discuss the waiver option. The ordinance as it's presented here puts back the waiver option for this discussion. It will be left up to the Board of County Commissioners for further discussion for the next step.

Board Comments:

Craig Hystad stated the fencing requirement is already part of the CUP. All we are doing is designating where it can be. He is not in favor of the waiver. **Jeremy Olson** stated they should either not require fencing that's outside the quarter mile or have a waiver. He is in strong favor of a Waiver.

Jeremy Olson stated this is a living document and changes are made as the County grows and learns what does and does not work.

Butch Fleck stated ponds that are lined should be fenced like the dams in the County.

Jeremy Olson stated a Waiver is evaluated and could be denied or approved.

Director Huus stated it should be the landowner's decision if he wants to keep his cattle out or not. If a plan for fencing was submitted with the application, it could be reviewed, looked at for each situation and then approved or denied.

Kathy Skarda stated the need for consistency, having everyone follow the same rules, making everyone accountable, treating everyone fairly and equally. She is concerned with continually changing portions of the Ordinance. Jim Talbert did a lot of research and put a lot of time, care and thought into writing the Ordinance.

Jim Talbert, Former McKenzie County Planning & Zoning Director stated since he helped rewrite the Zoning Ordinance in 2016, changes and modifications have been made almost daily. This is a living document and decisions need to be based on the situation not who is before you. The purpose behind the CUP was to allow flexibility, to allow this board and the Board of County Commissioner to make decisions based on individual situations and their specific facts of a particular case and make decisions accordingly.

Director Huus stated removed from the Amendment is the statement "30 feet from the from the cut or fill slopes" after it was decided that wasn't enough. An agreement of distance could not be reached and sometimes the landowner wants the fence further away.

Butch Fleck stated the reason for this was so everyone would be on the same page regarding fencing with ponds. The fence ruling has been there since he started on the Board. There have recently been complaints even though there have not been any before. **Jim Talbert** stated after the recent decision to change the distance between the fence and pond, from 10 feet to 30 feet, various groups came forward to ask for a Waiver. Board and staff discussed the waiver to give the landowner flexibility on the fence location. For safety reasons, the pond lining comes with a non-slippery texture to allow for someone to get out of the pond. He is familiar with ponds, has reviewed a lot of ponds, and every pond he is aware of in the County has a fence in relative proximity to it.

Butch Fleck stated 4.10 Number 2 of Freshwater Pond Application must include a fence plan. **Jim Talbert** stated this has been an oversight Director Huus would like to correct and it is in the Ordinance already. Improvements to the document were made because of finding different problems or better ways to deal with them.

John Irwin stated safety and flexibility need to be the focus. Landowners have different goals and uses for their ponds. The ponds need to be fenced, but there should be flexibility where the fence is built. It should be in the vicinity where it does its job safely.

Director Huus stated other things in here besides the site plan, are clarification of where to put chain link fence, and a clarification on what type of fence that should be. They were directed to come up with a distance for the fence from the pond, but a set distance does not work in all situations. A Fencing site plan showing how all existing fencing would tie in with new fencing or if the new fencing would be required **Craig Hystad** stated the plan could be approved or denied. **Jeremy Olson** asked what if the landowner does not want to have a fence? That is what brought it back here after the County Commission meeting. **Director Huus** stated according to the way this is written they would have to have some fence at some distance and some type. **Craig Hystad** stated it was put in there for safety and there is no reason to take it out. **Butch Fleck** stated with a plan, we would know where the fence is supposed to be.

Motion to Approve Amended Freshwater Pond Fencing - Ordinance Amendment - 2nd Reading to reflect removal of paragraph 4.10.13 in its entirety. Motion by Craig Hystad; Second by Eva Hepper. Voice Votes: All Ayes.

Motion to Approve Amended Freshwater Pond Fencing - Ordinance Amendment - 2nd Reading to reflect removal of paragraph 4.10.13 in its entirety Passes.

#04-21CUP - Cherry Creek Water - Pipeline

Sandee Kimpel stated this a Conditional Use Permit. Cherry Creek Water is proposing to construct and operate 3.4 miles of fresh water pipeline that's intended for industrial use. The pipeline would be a maximum 24 inches in diameter and composed of a combination of high-density polyethylene and Poly vinyl chloride, plastic materials.

The pipeline would be installed via open cut trenching and horizontal directional drilling, according to the accepted industry practice. The permanent Right of Way varies by the landowner ranging in width from 25 feet to 50 feet. The temporary construction Right of Way varies by landowner ranging from with the 50 feet to 100 feet. Both the Comprehensive Plan and Zone Plan are Agriculture.

Sandee Kimpel read the Findings of Fact. They are highlighted and attached to the end of these minutes.

Kathy Skarda asked if they have received all the landowner and easements and agreements and the US Forest Service written permission. **Sandee Kimpel** stated yes, we have them on file.

Motion to Approve as Presented #04-21CUP - Cherry Creek Water - Pipeline. Motion by Butch Fleck; Second by Kathy Skarda. Voice Votes: All Ayes.

Motion to Approve as Presented #04-21CUP - Cherry Creek Water - Pipeline Passes.

#01-21 SUB - Solid Rock Subdivision Development Phase II - Gary Knottstad.
Location: T150N, R100W, S2. Parcel #030000750.

Dana Roff stated #01-21SUB - Solid Rock Development Phase II is the final plat request for the Solid Rock Development for 10 (ten) lots for residential use.

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

Kathy Skarda stated her concerns regarding the road maintenance within this subdivision in Arnegard Township. **Director Huus** stated road maintenance is up to the residents, not County to maintain. The roads will be built to County standards, but maintenance is not per County. **Skarda** stated previously several subdivisions without a (HOA) Home Owners Association have come to the County demanding road maintenance. **Dustin Jordan**, present on behalf of the applicant stated those are going to be private roads, so that's going to be up to the residents of that area. **Butch Fleck** stated that information should be relayed to the residents when they buy those lots. **Dustin Jordan** stated they could relay that on to the developer so residents are aware of it. There are no Right-Of-Way dedicated on the Plat, it's all access easements. **Director Huus** stated a condition to the approval of the Covenants developed for that area that could indicate who has responsibility of road maintenance so it could be recorded and would run with the land.

Kathy Skarda stated the importance of making sure people are informed in advance that their driveway may not always be the same. **Craig Hystad** stated his concerns

about weed control. **John Irwin** asked if the Arnegard Township is on board with all this? **Jeremy Olson** stated this was approved at the last Township meeting.

Matt Beard asked about the configuration layout of existing and new Access Easements. **Dustin Jordan** stated he and Tim Pickering are not comfortable issuing any new approach permits. With the way the Frontage Road is going through there, no new access point is needed.

There was a discussion on Access Easements.

Motion to Approve as Amended with a Condition for Covenants ##01-21 SUB - Solid Rock Subdivision Development Phase II - Gary Knottstad. Location: T150N, R100W, S2. Parcel #030000750. Motion by Craig Hystad; Second: John Irwin.

Motion to Approve as Amended Passes.

DISCUSSION ITEMS:

Administrative CUPs

#03-21 ADMIN CUP - Edmondson - Director Huus stated the only Administrative application received was a Variance to put 2 homes on a single parcel for direct family members.

Permit Criteria Checklist Review.

Comprehensive Plan/ Zone Change Application

Building Permit Policy, Procedures, and Checklist Requirements for landowners building homes for family (Kathy Skarda) POSTPONED til August 9, 2021 Planning & Zoning Board Meeting.

Gene Transtrom - Adjacent Landowner Issues

Jeremy Olson stated this would be skipped until the end of the meeting because Gene was not present, but if he came back by the end of the meeting, then they could get back to him.

Republic Services Blue Buttes Landfill CUP Amendment

Director Huus stated in March, Planning & Zoning received a notice that the Blue Buttes facility permit number 0368 for modification and renewal was due. On March 26th he presented a letter to Republic and the North Dakota DEQ indicating a

requirement for a CUP Amendment to their original #0001-13CUP. On April 14 at the North Dakota DEQ Public Hearing for the permit modification and renewal, he stated the same at that public hearing that a CUP Amendment was needed. The reason for that Amendment on odor and load tarping complaints was based on public complaints. This was to make sure those issues got addressed within their original permit or within the permit renewal. The amended CUP requirement is based on 5.8.5. Paragraph F of the Zoning Ordinance. To get the Amendment requirement, he looked to the last requirement, that is for the Planning Director's discretion and states "any Amendment that the Planning Director deems so". Since then, NDDQ has renewed their permit. There is a provision in the Permit that ordered an odor control plan be implemented. It does say that they have to have an Odor Control Plan which includes review by the County Commission and Planning and Zoning staff. Since the public hearing in April, Republic has committed to working with the Planning & Zoning staff to discuss operational details and for Planning & Zoning staff to talk to them if there had been any other odor complaints and Republic has committed to monthly or more frequently meetings to discuss that. Since the renewal application, Republic has solicited and conducted an odor study and ongoing odor study by a 3rd party Odor Control Specialist. With the DEQ permit renewal and their monthly update meetings with Republic, he is satisfied with Republic's effort to address the odor and tarping complaints, so a CUP Amendment should not be required. If directed by this board to require a CUP Amendment then he would pursue that action.

Kathy Skarda stated she wanted to go on record on behalf of the Keene Township, to thank Republic for using one of their water trucks to help extinguish the fire in Keene about 6 weeks ago. The CUP that was brought to the Board of County Commissioners on April 16, 2019. The Board of County Commissioners TABLED Republic's discussion and had the Engineering Department formulate a plan for "the roads to the facility and for Planning & Zoning to reach out for ways to monitor and correct the diesel smelling odor." That's verbatim what was said in the County Board of Commissioners meeting. On May 7, 2019, Public Works Director Kanwar requested with the consensus of the board \$8,500 per mile per year for the ability for Republic to help maintain the road for 2.15, everybody was working together on that. Then, on May 21, 2019, Public Works Director Kanwar came before the board with 108th road agreement, which was approved the road agreement was approved. On May 23rd, an email was sent to Diane Trussell with the North Dakota DEQ and from Planning & Zoning Peyman Kadir that said Republic was going to withdraw their application for expansion and there would be no more need to come to any meeting. The odor control issue was never addressed. Numerous citizens attended and submitted verbal and written comments at the 2019 meetings. It concerns her that a company agrees to something and then withdraws when they get what they want. After that meeting, she promised the citizens and vowed to call every time she smelled diesel, on behalf of senior citizens concerns about their health and elderly relatives not comfortable talking to government entities. Often, she did not call because she grew tired of talking to the

answering machine. Jim Simrad, Air Quality, advised her that in order to work with and improve air quality for their community, that she would need to document concerns. She has documented written testimony from citizens regarding this odor. How is the County going to be kept abreast of what Solid Waste Program, North Dakota Department of Environmental Quality's decision is? It is up to the local entities to say if it's a wet or dry load. If a load has never been through the process of drying or having putting potash in it or anything like that, it's still really wet because it is her understanding that it comes from the rig, into the side dump and from the side dump right to the location.

Diane Trussell, Solid Waste Program Manager, North Dakota Department of Environmental Quality stated the loads that come in may look like they're wet, but they have to be dry enough to pass that paint filter test with it and some are solidified more than others depending on the material with it. Regarding the Odor Control Plan, we've just received the copy Friday and have not had a chance to review it. Republic is present and has more specific details. Some of the things they are going to be looking for in that plan is how odor will be monitored and what is done to resolve complaints. They are trying to have a direct line an open line of communication between the citizens and Republic so information does not have to go all the way to Bismarck and then relayed back. They will also be looking for how they're going to resolve those odors with it, what their communication plan is going to be with Planning & Zoning and County Commissioners. One condition requirement of the Odor Control Plan is an annual report to NDDEQ that includes County communications and comments. The adjacent landowners and Republic need to work together.

Kathy Skarda stated the odor negatively impacts the neighbor's quality of life. **Diane Trussell** stated Yeah, I understand.

Craig Hystad asked if Republic had any violations. **Diane Trussell** stated regarding the odor standard that is set forth in the administrative code, there have been no odor violations. **Craig Hystad** stated how about any others? **Diane Trussell** stated we've not issued any notices of violations to the facility that would be a high-level enforcement. It is standard practice at these facilities if we see something that could be deficient, then we will issue what's called a letter or parent noncompliance. We give them a chance to correct that deficiency with it, but we have not issued any formal enforcement actions against this facility.

John Irwin asked how can the neighbors be complaining about the smell and there's no there's new charges brought forth?

Diane Trussell stated the way the administrative code written for air quality and that's where their rules come out of. For the odor standards it has to reach at least a 7 OCU (Odor Control units) that's measured. She explained how they use a Nasal Ranger, that you have to be certified and trained to operate it. This is part of Republic's Odor Control Plan. We have never gotten any 7 complaints for any facility across the state my

understanding. The few facilities that have gotten 7s the smell just about drops you to the ground.

John Irwin asked if the odor constantly measured or only when there is a complaint. **Diane Trussell** stated when they receive a complaint. The frequency, day, complaint based or routine of monitoring odors need to be included in the plan. Republic has the specifics of their plan. **John Irwin** asked if other facilities do it on a regular basis and suggested that it be done daily.

Diane Trussell stated Blue Buttes is permitted as an oilfield special waste landfill and have received only a few complaints from other oilfield special waste landfills which were due to gas station cleanup.

Jeremy Olson asked how often does do they get inspected by the DEQ? **Diane Trussell** stated randomly, monthly and no specific time of day.

John Irwin asked why would they let the tolerance level be so high? **Diane Trussell** stated from my understanding it has been that way for several decades.

There was a discussion of some other landfills that receive the same waste, but did not have an odor. **Diane Trussell** stated they're taking the same waste stream, but she did not know why there was no odor. Most of their odor complaints are generated by household trash landfills. The Odor Control Plan was required for this site because of the complaints and they wanted to make sure they are addressing it. They had just recently received Republic's Odor Control Plan and she did not have time to read it before attending this meeting. **Kathy Skarda** stated she would like to see the actual written document so the Board can review it and address it at that time. **Diane Trussell** stated these are public records.

Jeremy Olson asked with this renewal, which changes triggered that threshold where you need to get county approval? **Diane Trussell** stated we had been notified that this renewal would trigger a CUP amendment, so we held off and then they looked through it. This one would have been a renewal, but there were some minor modifications. They hadn't changed like the height of the landfill. They weren't changing what they were accepting how much they were accepting and they weren't changing like the layout. That's really what will trigger our major modification and even if you change your height increase or decrease by a foot that's considered major for us.

Matt Beard asked the current permit renewal is complete and approved from the DEQ's standpoint? **Diane Trussell** stated correct. **Kathy Skarda** stated however, with that being said it's still the County's jurisdiction to be able to require a CUP Amendment if we so chose? **Diane Trussell** stated the Department of Environmental Quality does not supersede local zoning authority. It's never been our intent and we don't wish to do that.

Craig Hystad asked what length of time Republic's new renewal was approved for by the DEQ? **Diane Trussell** stated it is an 8 year permit.

Kathy Skarda stated Blue Butte's policy rules states anyone discovered to be in violation of one or more of Blue Butte's rules, will only be given one notification of Blue Butte's policy. Her understanding was according to the approved CUP, if a load came in untarped, it would be rejected. She found a copy of a 2016 untarped violation and wondered if the policy had changed. **Tom Johnson**, Basin Division Manager for Republic, stated presently if they discover a load that has been untarped, if they visually see it or if they are contacted by somebody in the neighborhood, they try and investigate it, make sure that's truly what's happened and talk to the driver. They reach out to the driver's dispatcher or owner of the company, advise him of their rules and state it will be clearly noted that if caught doing this again, their privileges to use this landfill will be lost. They do encourage the trucks to start untarping upon entering the property. This is so they can get a visual view of the load as it comes into our property. They have cameras set up and can see what's in that load.

Kathy Skarda asked if they were concerned about any droppings going on the road. **Tom Johnson** stated not when at our property. The trucks are going fairly slow and the internal roads are monitored for droppings or track out, and if any is discovered, it is cleaned. **Skarda** stated then if it gets rained on it just goes into the ditch. **Johnson** stated no, they clean it up and do testing on their water and property.

Kathy Skarda stated #001-13CUP, states all uncovered loads shall be rejected. **Tom Johnson** stated he will have someone make note of it and get back to her on that.

Kathy Skarda stated couple of the neighbors had concerns about the droppings on the 108th Ave and wondering if the cattle guards needed to be cleaned up. **Tom Johnson** stated the cattle guards are cleaned on a regular basis or as needed, and are monitored by site employees. They also cleanup track out in their site. **Kathy Skarda** stated when are they done? **Tom Johnson** stated they're visually inspected to see if they need done because they are self-contained.

Kathy Skarda asked if it was their policy to make sure that all loads have Waste Approval Applications completed before dumping? **Tom Johnson** stated yes, and extended an offer out to all members here and the public to come out and visit them.

John Irwin asked what is done with the wet loads and inquired about the Filter test. **Tom Johnson** explained the process for visually evaluating if a load is wet or not and sending wet loads back to the source. **Skarda** stated it still comes from the rigs from the rig site. **Johnson** stated it doesn't come directly off the rig itself, there is a process. **Jeremy Olson** stated it gets processed and thickened before it goes to your place. **Johnson** stated if not thick enough it could be rejected at the site, yes.

John Irwin asked what it smells over there? **Tom Johnson** stated occasionally there could be a load that comes in that is stronger than other loads. We will place this load in as small an area as possible cover it with something that isn't as odorous, which we've outlined in the plan that we have sent into the DEQ. It's in the draft form and we are

open for response back to them. The Nasal Ranger, Patrols, and Patrol Notification Forms are also part of our Odor Control Plan.

Jeremy Olson asked how often they cover it up and if dirt is the best way to cover it up.? **Tom Johnson** stated every 6 months if we don't work in an area, we're about to do some covering up occasionally. If we do get the odorous load, per say to us we'll try and put something on it but that is not in there always possible.

Kathy Skarda stated she asked a truck driver going down a 15-ton limit road how he got his directions to take that road. He replied he had been told to go there and had received a pin drop from the company. She strongly suggested they use 'Load Pass' because it is there to help all of them. **Tom Johnson** stated he did write that down, but that was probably somebody not familiar with their access. When you put in an address on your phone, your phone wants to take you the closest route shortest distance. A 'Pin Drop' will do the same and guide the shortest distance. Republic advises all their customers of all the proper roads to take to their facility.

Kathy Skarda stated do you think it would be a benefit to at the access on 28th or on 14th or 29th where it is a 15-ton limit road or a Low maintenance road or a no through road situation where we have better signage up saying that or something maybe that would be helpful. **Tom Johnson** stated that's definitely a possibility. He could check with the company and see if they mind putting something up on that road.

Kathy Skarda discussed that she knows residents who have worked in the oil fields and have experience with odor detection and what oil materials smell like.

Jeremy Olson stated that you had a third party come in during May. **Tom Johnson** stated yes. **Jeremy Olson** asked if you just you just sent them the results to give us a synopsis. **Tom Johnson** stated we didn't send the DEQ Test results that the results of that odor survey are being reviewed internally. We were required in our permit renewal to develop a management plan. **Kathy Skarda** stated so the results from the testing will be sent to DEQ and will be able to share them with the County. **Tom Johnson** stated that's not decided at this point. **Director Huus** stated we're supposed to get those directly also. Those results should be shared from your independent testing. **Tom Johnson** stated they could be shared but I can't really answer that question because that's above my pay grade.

Director Huus stated he wanted to get some direction from the Board whether I should pursue the CUP amendment or if you agree with my opinion. But if the Board wants me to, I will pursue the amendment requirement.

Jeremy Olson stated I think we don't need the amendment. You said you brought it up because you had issues with their odor plan. You said that you're satisfied with the progress they're making and the efforts they've been making so far. **Director Huus** stated that is my opinion. **Jeremy Olson** stated since you initiated it and it was your discretion you if no longer think it is required, I don't think it needs to be pursued.

Kathy Skarda stated she respectfully disagrees. She would like to see the CUP Amendment required because she would like to make sure that it's documented about the odor plan and how it's going to be handled and notified to the county and the residents.

Terry Effertz, Attorney with Lockridge, Grindal representing Republic Services stated a CUP Amendment would not be required for finalizing the details of the Odor Plan and in the permit it does say the permittee shall develop an Odor Control Management Plan upon approval by the Department. An Annual Summary of the Oodor Control Management Plan must be provided to the Board of Commissioners and upon the Board's request, the permittee will jointly review the plan with the Board. So you've got the opportunity to formulate this plan at the County level without requiring a CUP Amendment. I think what board member Skarda is looking for is a chance to have some input on what's going to be developed in this Odor Management Plan. I would also note that it's important to remember as far as tarping is concerned that Republic isn't running any of their own trucks. None of the truck drivers are employed by Republic Services. They're only accepting waste from their customers. I just wanted to make it clear that these are not employees of Republic Services. If the P & Z Board does require a CUP Amendment, it is imperative that we know exactly why that amendment is being required and it's on the record in case there needs to be action later. The March 26 letter from Director Huus didn't mention odor when the CUP Amendment was first brought up. I think everything that you want to do as far as reviewing this odor plan, you can do this without requiring a CUP Amendment and Republic Services is absolutely dedicated to working with the County on any of the facets and concerns that there may be.

Jeremy Olson stated it's giving people who don't want in their backyard an opportunity to try to kill it. **Kathy Skarda** stated I don't know of anybody who wants to kill it, they just want to have accountability and have this stench go away. Nobody has ever made that statement.

Terry Effertz stated if there are community members out there that have odor complaints that they'd like to voice with Republic Services in Blue Buttes, we would encourage them to reach out personally. I think it does work against us to have all of these complaints come through one person. Republic wants to hear if there's concerns and we would encourage those people to reach out themselves. **Kathy Skarda** stated they did write letters in 2019 and then the application was withdrawn before the order control issue was addressed by Planning and Zoning, and that's where I believe a lot of the Community kind of got a little bit disenfranchised by the whole thing. **Terry Effertz** stated we've got a chance to fix that now in 2021. We've got an Odor Management Plan that is ready to go forward.

Butch Fleck stated the meeting in 2019 had a room full of people and they all got up here and spoke on the odor. **Terry Effertz** stated during the Renewal Public Hearing, the only comments on the record submitted was the letter from Director Huus. There

was nobody else that commented either through writing or through the actual hearing. **Kathy Skarda** stated that was, I believe, a misunderstanding because they thought that means Mr. Huus had brought it before the Board of Commissioners and the Planning and Zoning that then they would be able to comment. I will share that with the 33 residents that surround the area so that everybody can work together and become a better neighbor to each other.

Terry Effertz stated we want to extend an invitation out to everybody here and in the Community to get out there and see this facility to learn more about the operations. I believe that some visitors have even noted that there's an odor, but when the wind is coming from a certain direction, it is not the landfill that you're actually smelling.

A discussion regarding who to contact took place. **Tom Johnson** stated we can bring in a bunch of business cards.

Matt Beard discussed the level of odor determination. **Terry Effertz** stated maybe we need to revisit the Administrative Code, which is unfortunately outside the purview of the McKenzie County Planning and Zoning Board and also for Republic services. We're committed to working with the County. The Odor Management Plan is something that can be done without an amendment to the CUP and we're committed to working with you on every step of it.

Diane Trussell discussed how Odor Detection and analysis is conducted.

Blair Thorson, Prodegy Strategy Group stated he works with government relations with Republic Services and that he has business cards with contact information. Feel free to reach out to him if there are any questions or need any assistance.

Kathy Skarda asked how he would handle issues if someone called?

Blair Thorson stated he would take the information and give it to somebody within Republic Services in a very timely manner. It's important to open a line of communication. If something comes up my phone is on 24, 7 as a former public official.

Director Huus stated we have heard that from one person that we would like to proceed with an amendment to the CUP is that the wishes of the board.

Craig Hystad asked what the amendment was going to do?

Director Huus stated he doesn't think it'll do any more than what the state permit is requiring.

Kathy Skarda stated she just wants to make sure that we are included in the communication and the plan because she does not want our citizens feeling like their concerns don't matter.

John Irwin stated because it's 8 years before we have this topic again.

Director Huus stated that every year according to the permit, they have to submit an Annual Summary of the Odor Control Management Plan and that has to be submitted to the Board of Commissioners which would also include Planning and Zoning staff review. The permit requires that an Annual Summary of the Odor Control Management Plan must be provided to the McKenzie County Board of Commissioners upon the Board's request. The permittee will jointly review the plan with the Board, beginning with the 2021 Annual Report. The permittee will include the written comments provided by the Board as part of the Annual Report required by NDDEQ permit condition E 16.

Diane Trussell stated all of our oilfield special waste landfills are required to submit an Annual Report by March 1st to the State. The ones that we received this March 1st are for 2020. So next March 1st, 2022 we will receive the 2021 Annual Report. They will have to submit that Annual Summary that was provided to them by McKenzie County Board of Commissioners, and then anything that came out of that has to be included with their March 1st Annual Report. We wanted to make sure that the County saw it even before the State. If we don't get the County review back we will be sending it back to them if they did not include it. That's why it was written this way. It's covered in two permit conditions.

Kathy Skarda stated and that the Board of Commissioners and the Planning and Zoning Board will be notified so nobody misses anything along the way.

Diane Trussell stated we just wrote it for the McKenzie County Board of Commissioners. That's what's written in the permit. We didn't include Planning and Zoning.

Kathy Skarda stated the County Commissioners have the ultimate authority. **Craig Hystad** stated the BOCC could send it to Planning and Zoning.

Kathy Skarda stated we would send it to Planning and Zoning to be reviewed. It would be up to us. I will agree to not having an amendment to the CU P but it goes against everything I know because everything should always be documented. **Craig Hystad** stated it is.

Director Huus asked if he can make one more of a request for discussion? When we get a request from a Board Member or anybody regarding submitting additional information for our meeting. For example, adding a discussion topic that requires additional information, or an open records request. It seems like an easy thing to just to ask for it, but it puts a lot of stress on the staff because we're trying to hurry up and we might miss some accuracy in the information requested. Also, it doesn't give a lot of time for the rest of the Board to review that information because we try to get the Agenda out by Wednesday before the Board meeting on Monday. If those requests could be submitted by Wednesday before the meeting to avoid the stress and potential inaccuracy of the information provided would be appreciated.

Kathy Skarda stated that was me. She also explained the reasons and type of information requested. She stated that Erica volunteered to help and that if there was an issue she was sorry.

Matt Beard expressed the need to see information ahead of time to have time to review.

Jeremy Olson stated that we need adequate time to respond.

Director Huus stated we can send out a draft Agenda ahead of time but it wouldn't have the attachments because most of the time they are not ready until the Agenda is published on the Wednesday before.

Kathy Skarda stated that the Agenda without the Attachments doesn't do much good because they need to see the details.

John Irwin stated the more information available the better to make decisions.

Jeremy Olson stated they need as much time as possible to review the information.

ADJOURNMENT

The meeting was adjourned at 7:15 PM.

The next meeting of the McKenzie County Planning and Zoning Board will be held on Monday, August 9, 2021 at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM.

MEETING SIGN-IN SHEET

Meeting Date: July 12, 2021

Name PLEASE PRINT NAME LEGIBLE	Phone #	Agenda Item #
Terry EFFERTZ	701-833-7224	J-4
BLAIR THORSON	(701) 793-7134	"
Tom JOHNSON ✓	701-651-1927	J-4
Andy Calle	701-580-7478	J-4
TERESA JOHNSON	701-609-4110	J-4
Grant Slick	218-766-4139	I-4
Evan Uetzel	701-430-9435	I-4
Diana Trussell	701-321-5164	
Alexis Craig	701-328-5171	
Shane Petersen	701-570-2701	F-3
Dustin Jordan	701-523-6583	
Jim Tolbert	602-403-4521	I-3
Vinoz Chedelawa	734 717 6360	

McKENZIE COUNTY

Planning and Zoning Commission

#04-21CUP - Cherry Creek Water, LLC - 3.4 Miles of Freshwater Pipeline

Application:	June 15, 2021 Conditional Use Permit
Hearing Date:	July 12, 2021
Description:	T-149N, R-97W, Sec 15, 22, 23, 25, 26 Parcel ID # 580002650, 580003550, 580003610, 580003770, 580003775, 580003700
Owner(s)/Applicant:	Cherry Creek Water, LLC
Reason for Request:	The applicant is proposing to construct and operate 3.4 miles of freshwater pipeline intended for industrial use. The pipeline would be a maximum of 24" (inches) in diameter and composed of a combination of high density polyethylene (HDPE) and polyvinyl chloride (PVC) plastic materials. The pipeline would be installed via open cut trenching and horizontal directional drilling according to the accepted industry practice. The permanent right-of-way varies by landowner, ranging in width from twenty-five feet (25') to fifty feet (50'). The temporary construction right-of-way varies by landowner, ranging in width from fifty feet (50') to one-hundred feet (100').

Comprehensive Plan Land Use: Agricultural

Zoning: Agricultural

Findings of Fact:

1. All requirements for public notification have been satisfied.
2. Project is not in an organized township.
3. Applicant is not the property owner. There are multiple owners and easement agreements have been secured.
4. US Forrest Service has given their permission.
5. Freshwater Pipelines are conditionally allowed in the agricultural district.
6. Per section 2.13.1 of the McKenzie County Zoning Ordinance. Pipelines are exempt from the bond requirements. This exemption includes the portions of a pipeline that are brought to the surface for valves, maintenance or other necessary uses. Bonding for other surface structures and facilities are not exempt.

Conditional Use Permit Criteria::

No conditional use permit shall be recommended by the Planning Commission or approved by the

McKENZIE COUNTY

Planning and Zoning Commission

#01-21SUB Solid Rock Development Phase II-Gary Nottestad

Application:	June 15, 2021
Hearing Date:	July 12, 2021
Description:	T150N, R100W, S2. Parcel #030000750
Owner(s)/Applicant:	Solid Rock Development Phase II-Gary Nottestad
Reason for Request:	Final Plat request for the Solid Rock Development. 10 lots for residential use.

Comprehensive Plan Land Use: Residential Low Density

Zoning: Residential 1

Findings of Fact:

1. All requirements for Public Notification have been satisfied.
2. Project is located within Arnegard Township.
3. Email response from Rick Schreiber dated 6/23/21 of Arnegard Fire and Rescue regarding adequate water carried by them (5,800 gallons) should they be called to a fire in this location. This will eliminate the need for water storage tanks within the Development.
3. The surrounding area consists of agricultural land, homes and light industrial.
4. Ingress/Egress are adequate with a Frontage Road to be installed parallel to 29th St NW.
5. Preliminary Plat was approved on 3/9/21.
6. Applicant has submitted Improvement Plans to McKenzie County Engineering.

Final Plat 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.

This subdivision as developed will not be detrimental or endanger the public health, safety, comfort or general welfare of those in the area.

b. The proposed conditional use shall not substantially impair or diminish the value and enjoyment of other property in the area.

This subdivision will add more affordable housing options for the citizens of McKenzie County. The direction of land development for housing in the Arnegard area is moving towards this development.

August 2021

Planning and Zoning Commission Minutes

August 9, 2021

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

PLEDGE OF ALLEGIANCE AND ROLL CALL

Members Present: Butch Fleck, Craig Hystad (arrived late), Heidi Brenna, Jeremy Olson, John Irwin, Kathy Skarda, Matt Beard

Members Remote:

Members Absent: Cody Knetzger, Eva Hepper

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.

APPROVE AGENDA

Director Huus stated the two Discussion items to add to the Agenda. An explanation of subdivision in Agriculture District and a discussion on Grassy Butte Zoning.

Motion to Approve Amended Agenda with Discussion items added; Motion by Craig Hystad; Second by Kathy Skarda; Voice Votes: All Ayes;

Motion to Approve Amended Agenda Passes.

APPROVE MINUTES

Motion to Approve Minutes as Presented by Butch Fleck; Second by Heidi Brenna; Voice Votes: All Ayes;

Motion to Approve Minutes as Presented Passes.

CODE ENFORCEMENT:

Director Huus stated there are no Code Enforcement topics to present at this time.

UNFINISHED BUSINESS:

Director Huus stated there is no Unfinished Business to present at this time.

PUBLIC HEARINGS:

#04-21 VAR - BERKHEIMER -#04-21 Variance Request - Carrie Berkheimer/Jared DeHaven - Parcel # 0100015844 & #010005832, T150N, R150W, S13. Located in Rawson, ND

Dana Roff stated the property is zoned R1 which requires a 10' setback from side property lines, 25' setback from back property line, and 30' from the front property line. A 133' setback from the section line which runs along 138th St NW is also a factor. The current lots' depth measures 190' from the section line and current zoning would only allow for a 57' buildable space. Applicants are requesting a variance of 15' setback from the back property line for proposed structures and a 70' setback from the section line for the new home. This Variance restores the setbacks to what the previous existing structures were on the lot. The applicants removed these structures due to being completely uninhabitable and dangerous.

Board Comments:

Jeremy Olson stated the applicants intend to rebuild on the old lot. Dana Roff stated correct. No opposition, only support comments and phone calls have been received.

Dana Roff stated an Administratively Approved Lot Line Merger Permit in connection for this will be presented in this meeting.

Motion to Approve #04-21 VAR - BERKHEIMER -#04-21 Variance Request - Carrie Berkheimer/Jared DeHaven - Parcel # 0100015844 & #010005832, T150N, R150W, S13. Located in Rawson, ND.

Motion by Kathy Skarda; Second by Heidi Brenna. Voice Votes: All Ayes.

Motion to Approve #04-21 VAR as presented Passes.

#01-21 ZC - Fladland - #01-21 Zone Change - T-15N, R-98W, Sec 32, PID # 203500500, 2496 125th Ave NW, Watford City, ND

Sandee Kimpel stated this is a Zone Change for a property located South of town off of 125th Avenue. The current Zoning is Agriculture and they would like to Rezone it to Light Industrial in order to build a shop to accommodate their business. They are currently registered in good standings with the North Dakota Secretary of State. No public comments or opposition have been received. **Jeremy Olson** stated the Comprehensive Plan is Industrial. **Kimpel** stated currently the Comprehensive Plan is Light Industrial. To the East and South is Light Industrial. This is an Agriculture island.

Sandee Kimpel stated the Zone Change is to get this Zoned for the use and adherence to the Comprehensive Plan. **Jeremy Olson** stated this Rezone will bring this to what is in the Comprehensive Plan.

Craig Hystad asked if the piece of land to the south will stay Agriculture. **Sandee Kimpel** stated there are two pieces of land to the south and they are Agriculture.

Craig Hystad asked about rezoning the land. **Kimpel** stated before there could be a decision to rezone the entire thing, they would need to talk to the residents that live there. **Butch Fleck** stated it is Light Industrial.

Kathy Skarda stated the land owner should be visited with regarding this. **Sandee Kimpel** stated there was a previous situation where nobody asked for changes and now the Zoning is being fixed.

Motion to Approve ##01-21 ZC - Fladland - #01-21 Zone Change - T-15N, R-98W, Sec 32, PID # 203500500, 2496 125th Ave NW, Watford City, ND

Motion by Matt Beard; Second by Craig Hystad. Voice Votes: All Ayes

Motion to Approve #01-21 ZC - Fladland - #01-21 Zone Change - T-15N, R-98W, Sec 32, PID # 203500500, 2496 125th Ave NW, Watford City, ND Passes

Freshwater Pond Fencing - Ordinance Amendment - 2nd Reading.

Director Huus stated this is an Ordinance Amendment to define fencing and the fencing construction requirements around freshwater ponds. The discussion and differing support have been an issue of landowner rights and control. The last reading was sent back to P&Z from the July 20th County Commission Meeting. This reading capitalizes on the current Site Plan requirement, but this Amendment will add a requirement to the site plan that the landowner approves, has reviewed and accepts the location of the fence. The Board was not in favor of putting in a Waiver so this is a compromise. This will allow the P&Z and the Board of County Commissioners to

review the site plan and ensure the landowner has a say. As long as the landowner has reviewed and accepts it, it will be put on the site plan. There will be a block for the landowner signature indicating the land owner has reviewed the plan and approves the fence location.

Board Comments:

Jeremy Olson read the Commissioner Brown's support email of this 2nd Reading into the Minutes. It is attached to the end of these Minutes.

Director Huus stated in the Amendment on page 3, subparagraph 2, "for pond fencing whether 4 strand barbed wire or 6-foot chain link fence, shall be shown on the site plan and submitted with the application for approval or revisions. The site plan shall have a signature line for the property owner signature and a statement that indicates the property owner approves of the site plan as presented". In addition to the first reading the type of fence that has to be installed has not changed. It is indicated where it should be chain link and when it's barbed wire, which kind of barbed wire and what specifications it should be built to. We use the NRCS Barbed Wire Guidelines and indicate on the job sheet what it should be. That was one of the concerns we had with the barbed wire fencing as we weren't specifying what it had to be only it had to be 4 strand and sometimes it wasn't getting built to the proper practice. That and the signature are the amendments to the ordinance. Recommendation is to approve it.

Kathy Skarda stated the signature date should be included on the form in case there are any question regarding the date. **Director Huus** stated 'the site plan shall have a signature line for the property owner signature and date of signature' could be added.

Motion to Approve with the Addition of the Signature Date to Amended Freshwater Pond Fencing - Ordinance Amendment - 2nd Reading Motion by Craig Hystad; Second by John Irwin. Voice Votes: All Ayes.

Motion to Approve with the Addition of the Signature Date Amended Freshwater Pond Fencing - Ordinance Amendment - 2nd Reading Passes.

DISCUSSION ITEMS

Administrative CUPs - #01-21 Lot Merger - Berkheimer

Director Huus stated this is the item that Dana mentioned that goes hand in hand with the variance that was also approved on the same and this lot merger was administratively approved per Section 6.4.2 of the Zoning Ordinance.

Grassy Butte Zoning

Dana Roff read through her notes of what she and Sandee Kimpel found at Grassy Butte and the progression of what has happened with the Zoning so far. Currently the County GIS shows the entire Town zoned Commercial. These notes are attached to the end of these minutes.

Dana Roff stated she has gathered information and prepared very informative, very easy to follow packets and will be distributing the packets to everybody affected. Included with the packet is a sheet the property owner signs and states what they want their property to be Zoned. A Grassy Butte Town Meeting is going to be held at a future date to present information, welcome citizen input and answer questions. Only a few Comprehensive Plan changes are needed.

There was a discussion on the current land use in Grassy Butte, which includes Agriculture, Industrial, Light Industrial, Commercial, Recreation and R-1. Buildings and areas in Grassy Butte include residential homes, post office, convenience store, bar, scales, parks and rodeo grounds. There was also a discussion on how areas of Grassy Butte would be affected by Rezoning.

Application Procedures for Determination of Subdividing Agricultural Zoned Property

Director Huus stated it took a long time to figure out how to apply subdivision regulations in Agriculture Properties because of how the Planning and Zoning Ordinance is written. The flow chart was developed in order to consistently apply the proper process for subdividing Agricultural property. The Flow Chart is attached. There are many different caveats and ways to interpret the procedure to subdivide. The flow chart developed is continually being refined and revised. The Planners go through the list and see what application should be used. Subdividing according to the Ordinance has been interpreted many ways and consistency is needed in interpreting what type of application is needed. Property owners and applicants have been confused on what they can and can't do and at times are receiving mixed messages. This Flow Chart is being offered to help clear up the process and makes sense when following the Ordinance.

Kathy Skarda stated she would like to take this and read over the Ordinance.

Jeremy Olson asked this is for us to look over at our leisure? **Director Huus** stated yes and this will coincide with next month's Agenda.

Jeremy Olson stated reading and understanding the process is not always easy for the layperson, so this will help. We will look at it and come back with questions next month.

ADJOURNMENT

The meeting was adjourned at 5:35 PM.

The next meeting of the McKenzie County Planning and Zoning Board will be held on Monday, September 13, 2021 at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM.

McKenzie County Planning and Zoning

August 9, 2021 5:00 PM CST

Meeting Agenda

Board of County Commissioner's Meeting Room (Court House - 201 5th St.
NW)

- A. Call Meeting to Order
- B. Pledge of Allegiance
- C. Roll Call
- D. Approve Agenda
- E. Approve Minutes
 - 1. Meeting Minutes - July 12, 2021
- F. **Code Enforcement:**
- G. **Unfinished Business**
- H. **Public Hearings**
 - 1. **#04-21 VAR Berkheimer**
 - 2. **#01-21 ZC Fladland**
 - 3. **Freshwater Pond Fencing - Ordinance Amendment - 2nd Reading**
- I. **Discussion Items:**
 - 1. **Administrative CUPs - #01-21 Lot Merger Berkheimer**
- J. **Adjournment**
 - 1. **Adjournment**

The next meeting of the McKenzie County Planning and Zoning Board will be held on September 13, 2021 at McKenzie County Courthouse-201 5th St. NW, County Commission Boardroom at 5 p.m.

McKENZIE COUNTY

Planning and Zoning Commission

#04-21VAR Carrie Berkheimer/Jared DeHaven VARIANCE REQUEST

Application:	July 6, 2021
Hearing Date:	August 9, 2021
Description:	Parcel #010005844 & #010005832 T150N, R150W, S13. Located in Rawson
Owner(s)/Applicant:	Carrie Berkheimer/Jared DeHaven
Reason for Request:	The property is zoned R1 which requires a 10' setback from side property lines, 25' setback from back property line, and 30' from the front property line. A 133' setback from the section line which runs along 138th St NW is also a factor. The current lots' depth measures 190' from the section line and current zoning would only allow for a 57' buildable space. Applicants are requesting a variance of 15' setback from the back property line for proposed structures and a 70' setback from the section line for the new home. This variance restores the setbacks to what the previous existing structures were on the lot. The applicants removed these structures due to being completely uninhabitable and dangerous.

Comprehensive Plan Land Use: Rural Residential

Zoning: R1

Findings of Fact:

1. All requirements for public notification have been satisfied. Shayne and Anne Heggen of 2761 138th Ave NW wrote a note of support in favor stating: We have no problem with the setback rules.
2. Located within Alex Township.
3. The request was approved by Alex Township on 6/20/2021.
4. Ingress and egress are existing on the property.
5. Alley along the west parcel line was vacated in 2011. Second Avenue along the north parcel line was vacated in 2011. Main Street along the east parcel line was vacated in 2011. See Document Attached.
6. Per survey, the new parcel will be 1.16 acres.
7. Per McKenzie County Engineering Department, in this case, the 70' Section Line setback is adequate.

Variance Criteria:

No Variance 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 Variance shall not be detrimental to or endanger the public health, safety, comfort or general welfare.

MCKENZIE

COUNTY

Finding of Fact:

1. All requirements for public notification have been satisfied.
2. Applicant is the property owner.
3. Property is not in an organized township.
4. The business is in good standing with the North Dakota Secretary of State.
5. Surrounding land use is a mix of Agricultural and Light Industrial.
6. Applicant has obtained a building permit for a shop.
7. Property is adjacent to the Watford City ETA.

Growth Management Plan Consistency

Current Comprehensive plan is Light Industrial and there is other Light Industrial zoning in the surrounding area.

Suggested Motion:

Recommend approval of Zone Change request #01-21ZC - Chad & Angie Fladland to the County Commission to allow the Zone Change from Agricultural to Light Industrial. Adopt the findings as provided in the staff report.

**Freshwater Storage Pond Fencing
Proposed Zoning Ordinance Amendment
2nd Reading - Revised
August 9, 2021**

Preamble

The McKenzie County Zoning Ordinance Section 4.10 Regulation of Freshwater Depots, Pipelines, and Ponds specifies freshwater storage pond fencing requirements. The current ordinance requires either 6' Chain Link or 4 Strand Barbwire Fencing and parameters to determine which of these fences are required but not the proximity to the pond when fencing is required.

The purpose of this Zoning Ordinance Amendment is to provide guidance for review and approval of fencing plans so that the fencing placement can be consistently specified and to provide verification that the Property Owner approves the fencing location shown on the site plan.

Amendment

§ Section 4.10 Regulation of Freshwater Depots, Pipelines, and Ponds of the McKenzie County Zoning Ordinance is hereby amended to add fencing clarification to Subsection 2):

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, a quarter (1/4) mile of a paved County Road or State Highway, or other areas at the discretion of the Planning Director. 4 Strand Barbwire Fence meeting USDA NRCS Barbed Wire

guidelines (Conservation Practice Job Sheet RI-382(a)) shall be installed when adjacent to Agricultural Zoning or when 6' Chain Link Fence is not required. For pond fencing, whether 4 Strand Barbwire or 6' Chain Link, fencing shall be shown on the site plan and submitted with the application for approval or revisions. The site plan shall have a signature line for the Property Owner signature and a statement that indicates the property owner approves of the site plan as presented.

- 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

Application and Procedure for Determination of Process

Agricultural District Subdividing

Revised August 6, 2021

1. Is original Parcel 40 acres or more?
 - Yes – 2.
 - No – 3.
2. Will the parcel(s) to be subdivided be greater than 5 acres?
 - Yes – 5.
 - No – 4.
3. Was the original parcel previously platted approved by BOCC?
 - Yes – 2.
 - No – Not Allowed
4. Will the subdivided parcel(s) (up to 3 additional Parcels) be used to build homes for direct family members?
 - Yes – 5.
 - No – Not Allowed
5. Can the subdivided parcel(s) be described by Aliquot parts*?
 - Yes – 6.
 - No – 7.
6. Submit CUP application** (including legal description of new lots created) to P&Z for review. Follow Section 4.17 of Zoning Ordinance. Administratively Approved if Direct Family Members. Public Hearing if not Direct Family Members.
7. Submit Survey to P&Z and Minor Plat Application**. Follow Section 4.17 of Zoning Ordinance. Administratively Approved if Direct Family Members. Public Hearing if not Direct Family Members.

* Aliquot parts – In reference to a piece of land, in which successive subdivision of some larger area are appended to the beginning of the reference. For example, SW1/4 NW1/4 Section 13, Township 149 N, Range 100 legal description would not require a survey.

** My interpretation for required applications is for either a CUP or a Minor Plat but not both. The applications require the same submittal items so therefore it is an effort that would be duplicated if both were required. If the subdividing is for direct family members an Administratively Approved CUP application is required.

Grassy Butte Rezone

On 7/13/2021 I was contacted by Schau Appraisals regarding a property they were appraising at 604 Main St in Grassy Butte. It is owned by Kayla and Michael Trotter. They were inquiring about the zoning of the property and asking if it was conforming. At first glance I could see that it was Nonconforming.

Looking at our GIS map I could see that it was zoned Commercial, did not meet the setback requirements for Commercial and had 3 homes on the parcel. I dug a little further as the map showed the entire township to be zoned commercial which was very odd. I found that in 2014 the Michael Trotter's (owner of 604 Main St) applied for a CUP #0099-14 which was granted to place a 3rd home on parcel #180014000. The approval also stated that the parcel is located within a R-1 zone which indicated to me that the area should be zoned R-1. Talking with Kayla, she stated that the property was zoned R-1.

The qualifications for Commercial Zoning did not fit with most of the parcels in Grassy Butte:

- Minimum 1 acre is required. A majority of the residential structures are under 1 acre.
- The large amount of residential structures within this area which are not allowed in the commercial zone.
- Setbacks for Commercial of Front 30', Sides 10', Back 25' in most cases can't be met.
- 143.65 acres of land mostly deemed Farmland of Statewide Importance zoned as commercial (owned by Butch Fleck). In addition, portions of the 157.49 and 140.59 acres owned by Merle Jost are also zoned Commercial.

How did the Commercial Zone Change Come about:

Lucas Trotter applied for a zone change and Comp Plan Amendment #0015-14 back in 10/14 for his property at 1005 Main Street. I believe this is the time frame of the changes to commercial as the address of 1005 Main Street was assigned at the time #0015-14 was approved. The application for #0015-14 gave an address in bold writing of **510 Main Street** which could have been interpreted by the P&Z Staff at the time as the address for the requested Zone & Comp Plan Amendments.

We do not have any historical data available to show us what the Zoning designations are to be for the Township of Grassy Butte. The best we can go by is the current Comprehensive Plan, our inspection and discussion with the Citizens of Grassy Butte. Correcting this will require a Comp Plan Amendment for a few of the parcels and Zone Changes for many others.

Curt Huus

From: Joel Brown
Sent: Monday, August 9, 2021 12:18 PM
To: jeremy_olson@hotmail.com
Cc: Curt Huus
Subject: Freshwater Fencing Amendment

Chairman Olson,

Unfortunately, I am unable to attend the August Planning and Zoning meeting, so I am submitting this correspondence to express the reasoning by which I moved to send the 2nd reading of the fresh water pond fencing amendment back to Planning and Zoning. My intent is to convey my personal point of view as one member of the Board of Commissioners, and I do not speak on behalf of the entire board. If you deem it helpful, please feel free to share this email with the P&Z board.

The primary issue regarding the fencing requirements around fresh water ponds is a question of landowner rights and control. Previous iterations of the amendment have limited the landowner's ability to dictate where they would prefer the fence to be located. As the ordinance is currently written, there is no specific requirement as to the distance from a pond that a fence must be located, and I support leaving that distance unspecified in the ordinance. Additionally, there is currently a requirement that a site plan be submitted and reviewed as part of any CUP application, which, in my understanding, has not been practically enforced to-date.

I suggest that the ordinance be amended to require a landowner signature approval of the site plan that includes the location and orientation of any fencing to be submitted and reviewed by the P&Z board. Such a measure would ensure that the landowner has reviewed and agreed to the location of a fence, and should alleviate any concern of the P&Z board that the plan may go against the wishes of the person on who's land the pond is being built. In some instances, this may mean that the fence will be a significant distance away from the edge of the pond, but if that is the desire of the landowner, I do not believe that we, as the County, should tell them otherwise.

In summary, my request is that the P&Z board amend the current ordinance to include a landowner signature on the site plan, and, that moving forward, the review of the site plan will be conducted on future freshwater pond CUP applications. In the review of site plans, special attention should be paid to the specific desires of the landowner whose property is being impacted, creating the flexibility for them to dictate the location and orientation of the fence based on their unique situation.

Should there be any questions or points of clarification needed, please email me back so I can provide a response prior to your meeting.

Thank you all for your effort, consideration, and willingness to serve on one of McKenzie County's most complex and important boards. Your work is greatly appreciated.

Sincerely,
Joel Brown
McKenzie County Commissioner

September 2021

Planning and Zoning Commission Minutes

September 13, 2021

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

PLEDGE OF ALLEGIANCE AND ROLL CALL

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

Members Remote:

Members Absent: Heidi Brenna

Staff Present: Assistant Planning & Zoning Director Sandee Kimpel, Planning Attorney Ari Johnson, Planner II/Public Relations Director Dana Roff, Administrative Assistant Cindy Jensen, Building and Code Tech Cindy Mecham

Staff Absent: Planning Director Curt Huus

Others see sign in sheet at end of minutes.

Kathy Skarda stated that Building Permit Reports, Code Enforcement Reports and Annual CUPs Review Reports be presented monthly at the Planning & Zoning Board Meeting to be reviewed and then forwarded to the Board of County Commissioners for Review. This would keep the Board of County Commissioners aware of building activity in the County.

APPROVE AGENDA

Motion to Approve Agenda. Motion by Craig Hystad; Second by Cody Knetzger;

Voice Votes: All Ayes.

Motion to Approve Agenda Passes.

APPROVE MINUTES

There was a discussion regarding Public Hearings, #3 Freshwater Pond Fencing – Ordinance Amendment – 2nd Reading on adding a date to the Landowner Signature. Notarizing the Landowner Signature and date will be added to the October 11 Agenda.

Motion to Approve Minutes as Presented by Eva Hepper; Second by Kathy Skarda;

Voice Votes: All Ayes.

Motion to Approve Minutes as Presented Passes.

PRESENTATION:

Assistant Planning and Zoning Director

Jeremy Olson stated the McKenzie County Board of Commissioners has hired Sandee Kimpel to be the Assistant Planning and Zoning Director. In January 2022 she will be the McKenzie County Planning & Zoning Director.

CODE ENFORCEMENT:

Code Enforcement Case #219

#013-19CUP/ZC - Arnegard Treatment - #013-19 Conditional Use Permit.; Location: T-150N, R-100W, Sec 25; Parcel ID # 032000100 & 032000200

15.15 Acres - Zoned - Heavy Industrial

Assistant Director Kimpel stated this CUP was approved in 2019. It is located south of Arnegard since 2014. Listed in the conditions of the Conditional Use Permit is to fence the pond with a 6-foot chain link fence. The Code Enforcement Officer inspected the site in June 2020 and there was still no fence. He gave them until the end of summer 2020 to get the fence up, due to the delays of Covid. Assistant Director Kimpel inspected the site in February of 2021 and there was still no fence. She spoke to them in April 2021 and gave them until August 19, to get it done. She had a phone call from him at the August 9 Planning and Zoning Board Meeting. He said he could not get materials for 45 days. He asked if he could get a 60-day extension from the August 19th date that Assistant Director Kimpel had given him, to complete the fence. She is unwilling to give him the 60-day extension as this has been going on since 2019 and he has been given a couple of chances to complete this. She asked him to submit documentation that he has been trying to get the materials to get this done. He submitted quotes from April, from Home Depot on August 4th and another quote from someone else on August 11, only days before this was supposed to get completed. So, she as Code Enforcement is at the point where she wants to put on October's agenda to revoke this CUP. She told him that if he was going to be granted the 60 days, it would be by the Planning and Zoning Board, not by her.

Kathy Skarda inquired how long Assistant Director Kimpel would be willing to work with him. Thirty days? 2 weeks? **Assistant Director Kimpel** stated she had been working with him since April 2021 and had not heard anything from him from April to August. Assistant Director Kimpel had forgotten to include in her notes that she had first been to the site in February and several times since then. **Dana Roff** stated she had written the original CUP in 2019.

Steve Ortiz, Arnegard Wastewater Treatment Facility Representative stated he was not going to make any excuses. They had some bids on the days stated in the report and he emailed the bids to Assistant Director Kimpel, on days stated. They have 40 posts up now. They had to wait for material and had hoped to get it before this meeting but that didn't work out. They have material coming on Wednesday and he has proof if they need to see it. He is hoping the fence will be up and completed by the next meeting. **Assistant Director Kimpel** asked when they had gotten the 40 posts up? **Ortiz** stated 2 weeks ago. **Assistant Director Kimpel** stated she was out there on September 8 of the previous week and did not see any posts up. **Ortiz** stated if you go look up by the plant itself by the road and enlarged the picture, you could see them. **Assistant Director Kimpel** stated she was on the other side. **Ortiz** stated the holes are dug and the posts were supposed to be in last week and trying to get an order for a

fence is not that easy. Now they have it and it will be here on Tuesday or Wednesday. They will work on it until it gets done and the whole thing will take a week and a half. It will be done by the next meeting.

Jeremy Olson stated 60 days from August is going to be about the time of the next meeting. The next meeting is about a month from today. If they schedule a CUP Revocation hearing and he, has it done, then it'll be a moot point. He asked if Ortiz was confident, he would have it done by then. **Ortiz** stated it will be done. **Craig Hystad** stated you are going to have to schedule a hearing anyway, and if it is not done, then the CUP will be cancelled.

Kathy Skarda asked if he knew what kind of fence he had to have? **Ortiz** stated yes, a 6-foot chain link fence.

Jeremy Olson stated we will schedule a hearing for next month, and if the fence is completed by the meeting time, the hearing will be dropped from the Agenda. Does anybody disagree with that? **Butch Fleck** stated it must be done by the next meeting. **Kathy Skarda** stated then it must be verified by our Code Enforcement. **Ortiz** stated he would give Code Enforcement a call when it is done, and they could come look at it. **Assistant Director Kimpel** stated she would go look at it.

Matt Beard asked about the RV that was mentioned. **Assistant Director Kimpel** stated the other issues have been corrected.

Motion to schedule a Review for Revocation at the October 11, 2021, Planning and Zoning Board Meeting;

Motion by Craig Hystad; Second by Kathy Skarda.

Motion Passes

Bakken Holdings Update

Assistant Director Kimpel stated the Bakken Basecamp is located by Patriot Fuels. There has been significant progress in cleaning up the site since the previous Tuesday. She showed previous pictures of the site, and current pictures taken earlier that day.

John Irwin inquired about the buildings. **Assistant Director Kimpel** stated the owners were originally hopeful the buildings could be sold or donated, but the building conditions are too terrible, and the owner agrees.

Kathy Skarda asked what is the future plan for the site? It has all the utilities for that area. Do we know what his future plan is, or do we get to have 150% Reclamation Bond activated?

Assistant Director Kimpel stated she does not know the owner's total plan. These things are like an onion, and we need to work with him a little bit at a time. Once we get through that next stage where the buildings are gone then we can visit more with them so it's not quite so overwhelming.

Kathy Skarda stated it looks nice on top but there's stuff underneath that needs to be worked on. **Butch Fleck** asked where they are getting rid of the buildings at. Our landfill can't handle that. **Assistant Director Kimpel** stated no, I don't think it's going to. That's why we're not exactly sure of the answer to that question. That is why we are going to meet to discuss what specifically all that entails. **Craig Hystad** stated they can't take them to the landfill. **Assistant Director Kimpel** stated I'm not sure what his total plan is. We will know once we get further into the process with him.

Jeremy Olson stated they made some significant progress which is going in the right direction. We will hear what happens next month at the Thursday meeting.

UNFINISHED BUSINESS:

Assistant Director Kimpel stated there is no Unfinished Business to present at this time.

PUBLIC HEARINGS

#03-21ZC - WC Airport Overlay District - #03-21 Zone Change. Watford City Municipal Airport, 300 12th St. NE, Watford City, ND 58854

Dana Roff stated the Watford City Municipal Airport is constructing a runway and is set to open October 1st, 2021. To protect air traffic utilizing the runway, local governments must act through zoning and building codes to ensure structures and trees do not penetrate specific virtual surfaces in the vicinity. The McKenzie County Zoning Ordinance has been amended to allow for an Airport Overlay District in anticipation of the new runway. This application will apply that overlay district to land that is within the county's zoning jurisdiction and underneath the protection surfaces for the airport. We have had some public comment, a lot of phone-in questions regarding how this will

impact their property. Brooks Kummer called with how this overlay will affect the gun club and his personal property. Mark and Ward Koser came by, visited with her with questions on how the overlay will affect their property. They are very much disgruntled as they felt they didn't have enough notification that this was happening to their property. Darrell Kirkland called today with questions about how it will affect him.

Dana Roff stated she would like to include they did have some Weed management issues with Amber, but that's been corrected. The actual runway is located within the Watford City ETA. The county jurisdiction is an overlay on privately owned property, so their conclusion at the Weed Board was that board members and myself discussed the overlay and everyone agreed on there not needing to be a plan for this portion and that was from Amber.

Kathy Skarda asked if Watford City has a Weed Board Officer?

Dana Roff stated they do have one. It's rather complicated. I have a packet of information on a discussion with Rita Olson about it is a confusing situation between our ETA and the county as to where the lines are.

Kathy Skarda stated that's because that always becomes the issue of somebody says no, that's in your ETA and somebody else says no, it's your ETA. It is a point of contention, so it'd be nice to have a clarification of that.

Dana Roff stated I do have the ETA info from August 19, 2014, when it was moved by Lawler, second by Hager to accept the ETA as proposed by the city of Watford City and the county relinquishing their zoning authority over the second half mile to the city of Watford City. Effective September 8th, 2014, all voting Aye. Motion was carried. The board also agreed that the county will adopt city standards for 1/2-mile corridor outside the West Bypass. There is other information along with that. She does not have the maps that were originally agreed upon.

Kathy Skarda asked where would the ETA end?

Ari Johnson stated the ETA is applied by the city to specific quarter sections, so each time the city annexes more land if they want to extend the ETA, they must do that by separate action. On the map you received, the red dashed line is the current exterior end of the city ETA as far as I know. Anything inside that red dashed line is the edge of the ETA. If it's not Building Codes, Zoning Codes or Subdivision Ordinance, the ETA is the County's jurisdiction, not the City's.

Jeremy Olson asked so is it accurate to say that as far as this Overlay District is concerned the effect for the County is going to be how high somebody can build a structure? **Ari Johnson** stated yes. We talked about this before when we adopted the

Kathy Skarda stated the biggest concerns she has heard from the citizens is that they weren't notified when the ordinance was changed to allow an overlay in the Airport District and were not part of the discussion.

Ari Johnson stated when the Ordinance Amendment was adopted, it did not apply to specific land and there were no landowners to notify. It was included on the published agenda and was probably published on the web page in April. **Kathy Skarda** stated then this is their first chance to discuss it.

Ari Johnson stated no it's not the first chance. They certainly could have come when it was published that we were adopting an Ordinance Amendment. They can choose to be here now to discuss it at this public hearing. Everyone with affected land including within a mile in any direction got notice mailed to them and this included the Airport itself and City lot owners within a mile of the affected Quarter-Quarter sections. A lot of work was done by Airport's Engineer, KLJ, the Planning Office and Ari himself to make sure notice went out to everyone who could possibly be affected including those not affected because they are within the city zoning jurisdiction. This is not their first opportunity, but it is a good opportunity to speak, ask questions, and present concerns to the Board.

There was a discussion on how the people with concerns, who had contacted Planning & Zoning would be affected.

John Irwin stated his concern with the timing on notification letters and if notification was even sent out at all because of the lack of public input and meeting attendance. **Ari Johnson** stated the earlier application was a general amendment to the Ordinance and not applicable to any land. No landowners were affected. This application affects actual land, so landowners were given notice.

Denton Zubke stated his complaint is the way it was handled. He is not against the Airport. His complaint was getting something in the mail after it's already been enacted. There's an oil well pad that was made 2-3 years ago and supposedly going to be drilled out in 2022 on his land. The rig is not there yet but will be over 100 feet tall and wondered if it would put a stop to bringing the rig in.

Ari Johnson gave a brief explanation of the horizontal and conical surface heights, and their relation to the Airport height. The County Zoning is matching the City Zoning for

the Airport area and that is designed to match Federal Standards for Airport Protection Zones. There are also FAA Federal rules that must be followed.

There was a discussion on Conical and Horizontal height.

Ari Johnson stated the rules are two-fold. Rule one if you don't penetrate those surfaces. If within 350 feet below the airport elevation or above the airport elevation, you're fine because you're not going through that conical or that horizontal surface. If you are going to go through the Horizontal and Conical surface and it's less than 100 feet above the natural ground level, you're OK. Above either of those points, the 100 feet above the natural ground and penetrating the surface, then you need to come in for a permit. Outside of the Approach and Transitional Zones, nothing is construed as prohibiting construction or maintenance of any structure or growth of any tree to a height of up to 50 feet above the natural surface of the land. The Approach Zone and Transitional Zone not included, but we have the Horizontal and Conical zones. You can construct or maintain a structure or grow a tree up to 50 feet above the natural surface within those areas.

There was a discussion on the height and area of Horizontal and Transitional surfaces.

Ari Johnson stated there's no place in the County Zoning Jurisdiction that you would not be able to build something up to 50 feet tall. **Dana Roff** stated we're talking about 50 feet and above. **Johnson** stated in the Horizontal and Conical Zones nothing prohibits having structure or tree to height of up to 50 feet above the natural surface of the landing. The Approach Zone could be restricted, but Section 3.13.8 allows you to apply for a permit for things that are within those surfaces.

Ari Johnson stated you can do what you want up to 50 feet above the ground level in the Horizontal and Conical surfaces, everything in the County's Jurisdiction except for a little bit of the Approach surface. If you want to build something that is above 50 feet tall and penetrates those surfaces, then you need a permit. This applies only in the Horizontal Zone, Conical Zone, and the Approach Zone outside of 4,200 feet from the end of the runway. You need a permit for anything that penetrates these surfaces.

Eva Hepper asked about permitting and why does it need to be obtained. **Ari Johnson** stated that permit could trigger a Public Hearing process. If you wanted to build something at a point that would impact air traffic, the airport board could come in and say we're against it. This allows the airport to track what obstructions are out there so if the Airport or the County needs to change the rules, to keep air traffic safe. It's mostly about information and giving opportunity to discuss conflicting uses and make changes if needed.

Dana Roff stated the P&Z office will develop visual aids and explanations for layman's terms for these. They will put together something to present at the October 11 Meeting. **Jeremy Olson** asked would it be possible to have the Airport Engineer here? **Ari Johnson** stated he will see if he we can get the airport engineer at the October Zoning Meeting and will work with the Zoning Department to help with visual and we'll work on it for next month.

Motion by Kathy Skarda; Second by Craig Motion to **POSTPONE until October 11, 2021, Meeting #03-21ZC - WC Airport Overlay District - #03-21 Zone Change. Watford City Municipal Airport, 300 12th St. NE, Watford City, ND 58854**

Hystad

Motion to **POSTPONE Passes**

#05-21CUP - Elkan - Zubke Pond - #05-21 Conditional Use Permit - T-150N, R-99W, Sec 34, Parcel ID #110014000

Assistant Director Kimpel stated this one was previously approved by the Board of County Commissioners in 2018, then put on hold by the applicant due to the slowdown in times and the pandemic. This and #05-21CUP-RBW - Elkan - Zubke Pond go hand in hand.

Assistant Director Kimpel read the Findings of Fact. They are highlighted and attached to the end of these Minutes.

BOARD COMMENTS

There was a discussion on the type and placement of the fence, houses possibly being in the close vicinity and truck traffic.

Shane Peterson, Eklan stated this is a Freshwater Reservoir of prestored water to provide water for fracking through Lay-Flat purposes. It will be lined and fenced. There would be no trucking except for Emergency Vehicles.

Kathy Skarda stated there were no documents for Annual Inspections on this CUP. Prior to 2019 there have been documentation of Annual Inspections for CUPs. Why and when was practice removed? **Assistant Director Kimpel** stated that's something that

we can discuss and edit in. **Skarda** stated she would bring this to the next County Commissioner Meeting. **Skarda** having this proves the County is compliant.

Jeremy Olson stated Annual Inspections are part of the role of Code Enforcement.

Assistant Director Kimpel stated yes, it is part of the role. **Kathy Skarda** stated it be added to the list of conditions for all CUPs. **Assistant Director Kimpel** stated Director Huus stated (via text) they took out an Annual Inspection. It was not included due to a lack of staffing. **Skarda** asked when this was done and who did Director Huus notify. **Assistant Director Kimpel** stated she was not certain, but they could investigate this, discuss it later and add it. **Olson** stated that would be discussed at another time.

Kathy Skarda asked if this application should be notarized. **Assistant Director Kimpel** stated the Fence Plan has the Property Owner's consent, signature, and date, but is not notarized. Right now, it is not a requirement on the fencing location.

John Irwin asked if there needs to be documentation that there is no trucking. **Dennis Zubke** stated the way these ponds are constructed, it's not even conducive to run trucks up there and fill the trucks. He thinks there is a condition in the CUP that water be available for firefighting. **Butch Fleck** stated this would be just for Emergency vehicles.

There was a discussion on the distance of houses from the pond, houses in the vicinity of the pond,

Motion to Approve #05-21CUP - Elkan - Zubke Pond - #05-21 Conditional Use Permit - T-150N, R-99W, Sec 34, Parcel ID #110014000

Motion by Matt Beard; Second by Craig Hystad. Voice Votes: All Ayes

Motion to Approve #05-21CUP - Elkan - Zubke Pond - #05-21 Conditional Use Permit - T-150N, R-99W, Sec 34, Parcel ID #110014000 Passes

#05-21CUP-RBW - Elkan - Zubke Pond - #05-21 Conditional Use Permit - Reclamation Bond Waiver- T-150N, R-99W, Sec 34, Parcel ID #110014000

Assistant Director Kimpel stated this is for the same pond. It is just removing the bond requirement from the conditions. She has all the signed and notarized documentation from the owner, with her and can start attaching those. Typically, she does not.

Jeremy Olson stated all the documentations been satisfied for the Reclamation Bond Waiver.

Motion to Approve #05-21CUP-RBW - Elkan - Zubke Pond - #05-21 Conditional Use Permit -Reclamation Bond Waiver- T-150N, R-99W, Sec 34, Parcel ID #110014000

Motion by Butch Fleck; Second by Matt Beard. Voice Votes: All Ayes.

Motion to Approve #05-21CUP-RBW - Elkan - Zubke Pond - #05-21 Conditional Use Permit -Reclamation Bond Waiver- T-150N, R-99W, Sec 34, Parcel ID #110014000

Passes.

BOARD COMMENTS

#03-21SUB - Bona Son - #03-21 Minor Subdivision and #03-21COMP/ZC - Bona Son - #03-21 Comprehensive Plan/ Zone Change

Assistant Director Kimpel stated these both go together and are for the same property so she will start with the Zone Change. The applicant would like to change the existing Comprehensive Plan and Zoning from Agricultural to Heavy Industrial to continue to operate a Roustabout shop on the property. They would like to rezone 25.77 acres of the 80 acres. They want to subdivide their property in order to obtain the Zone Change. The reason these go hand in hand is because if the Zone Change and Comprehensive Plan Amendment are not approved then we can't subdivide the property because it does not fit within agricultural sizes.

Motion to Deny #03-21SUB - Bona Son - #03-21 Minor Subdivision. 2591 Beaver Creek Road, Watford City, ND T-150N, R-97W, Sec 28, E1/2 NE1/4 Parcel #130013650

Motion to Deny by Butch Fleck; Second by Craig Hystad; Voice Votes All Ayes

Motion to Deny Passes.

Assistant Director Kimpel stated #03#03-21SUB - Bona Son - #03-21 Minor Subdivision and #03-21COMP/ZC - Bona Son - #03-21 Comprehensive Plan/ Zone Change go together and if one is Denied then the other must be Denied because it is not allowed by the standards.

#03-21COMP/ZC - Bona Son - #03-21 Comprehensive Plan Zone Change. 2591 Beaver Creek Road, Watford City, ND T-150N, R-97W, Sec 28, E1/2 NE1/4 Parcel #130013650

Assistant Director Kimpel stated the applicant has provided a map with little red squares showing Spot Zoning in the area. **Butch Fleck** stated the Spot Zones were not done by us; it was done before. **Assistant Director Kimpel** stated she did not know when it was done. **Fleck** stated they denied this because it was Spot Zoning, and they don't want Spot Zoning all over. **Assistant Sandee Kimpel** stated she explained this to them and that we are going to recommend denial again. They stated they are in front of the Board again because they have an opportunity ahead of them for a big contract and it was cheaper for them to try to get a rezone, then it was to move the operation

There was a discussion on landowners are very adamant against Spot Zoning.

Represent Bona Son were Bona Son, property owner and part owner of Son Oil Field Services; Hoa Huynh, to help with the presentation of the application because Kevin Tran who originally did the application with Bona Son, was not able to make it.; and Mahn Son, also part owner of Son Oil Field Services.

Hoa Huynh explained what was shown on the map they submitted and a description of their property. It is attached to the end of these Minutes. He stated the area is surrounded by a mixed use of all sites. There is enough distance between the placement of their shop on their property and the neighbors, that the neighbors will not be affected by the noise pollution or traffic. They have a permit with the state for the water drainage. What they plan to do with their shop meets all the requirements based on your ordinances for zoning ordinance of a Heavy Industrial and falls under all those categories of those requirements under.3.8.

Jeremy Olson asked what their plans are that they need to go heavy industrial and is not allowed in Agricultural? **Hoa Huynh** stated mainly Roustabout and welding. That would serve as a fabrication shop where the welders can fabricate piping and other structural items out of the elements. **Olson** asked and that's not allowed in Agriculture, is that correct? **Assistant Director Kimpel** stated not what they want to do. She has been out there several times and have never actually seen them working on the site since last year.

Hoa Huynh stated first to be competitive and to bid on these jobs that are out there, we really need a headquarter or fabrication shop to stay competitive. **Manh Son** stated they moved to Watford City looking for opportunity. Their location, logistics wise

gives them an opportunity to take on some work from a biofuel plant if they are approved. This would affect their numerous employees and their families.

Kathy Skarda asked when they purchased the property. **Bona Son** stated April 2018. **Skarda** stated asked if their original plans were to have Industrial and Fabrication. We had Planning & Zoning in 2013. Usually when looking at purchasing property, you would check to see if it is zoned properly and meets all your objectives prior to purchasing the property. **Hoa Huynh** stated when the property was purchase, they were still working as contractors and for a different employer. Son Oilfield Services did not exist in that name at that time. It was purchased by Bona and Mon for their family to move there.

Kathy Skarda stated it was originally purchased for a family for residence. **Bona Son** stated yes, and they were established with a company in New Town. Things started falling apart. They started their own company and started growing.

Craig Hystad asked if they are trying to zone this as Heavy Industrial with that house on there? You are trying to split the 25.77 acres you want to Heavy Industrial. A house cannot be next to Heavy Industrial. **Dana Roff** stated It depends on what they're rezoning and leaving the rest of the properties zoned as. **Assistant Director Kimpel** stated they are only trying to rezone the 25.77. **Hystad** stated we try to keep a buffer between Agriculture and Heavy Industrial and not have a house on there. We try to go a light industrial around the heavy industrial right?

Dana Roff asked if they have Agriculture on the lower portion of their property and raise goats? **Manh Son** stated yes, he has goats, chickens, and ducks. **Roff** stated you have quite a few down there so you are doing Agriculture on that bottom portion.

Kathy Skarda stated her concerns of dust and noise affecting the landowners if heavy trucks are used to transport the pipes so they can fabricate, and the landowners do not want more trucks. **Manh Son** stated if we're able to build vessels, that's when the trucking will be coming in, that's all. Currently there are many Oil Rigs that go through there.

Jeremy Olson asked what buffer zone is between? **Dana Roff** stated no building or structure shall be located within 1250 feet from the boundary of a residential district or 500 feet from any dwelling unit. **Kathy Skarda** asked if they would qualify to be outside the Buffer Zone? **Roff** stated it looks like where they're planning on doing there between their building and their home they would be.

Manh Son stated there is another building on their property that is used for storage and is moveable.

There was a discussion on if it could go to Light Industrial rather than Heavy Industrial.

Dana Roff stated the Light Industrial depends on what we would classify them as. Heavy Industrial depends on what we would classify them as. Heavy Industrial lists their Industrial Manufacturing Operation. **Manh Son** stated there are many Fabrication shops around and wondered if they are zoned differently. **Roff** stated Building or trade contractor shops might fit under that.

Assistant Director Kimpel stated if they manufacture, that is the portion that puts them into Heavy Industrial. She asked them what the likelihood was of them manufacturing vessels is? **Manh Son** stated it might be 2-3 years down the line.

Dana Roff stated under Light Industrial 3.8.1 (her Ordinance book is updated) there is a caveat. "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 properties." So that is under Light Industrial and that would work.

Jeremy Olson stated with Light industrial we're still talking about Spot Zoning.

There was a 5-minute break.

Jeremy Olson stated the meeting is back in order. It may be industrial for the use that they want, but the question remains, changing a Comprehensive Plan and Zoning in the area that's not in the Comprehensive Plan that is not and are we willing to do something like that?

Butch Fleck stated our hands are tied because we've been shut down all those spots.

Assistant Director Kimpel stated they are trying to rezone their storage area and I have not seen them working on the property whenever I have been out there since the last time they were before us. **Jeremy Olson** stated they are not coming to us and asking forgiveness.

Kathy Skarda asked about the big truck bays in their shop and did they build it with the future thought of constructing vessels.

Motion to Deny #03-21COMP/ZC - Bona Son - #03-21 Comprehensive Plan Zone Change. 2591 Beaver Creek Road, Watford City, ND T-150N, R-97W, Sec 28, E1/2 NE1/4 Parcel #130013650

Motion by Butch Fleck; Second by Craig Hystad; Voice Votes All Ayes

Motion to Deny Passes

DISCUSSION ITEMS

Administrative CUPs - #04-21ADMINCUP - Kirkland

Dana Roff stated they are replacing a home on the parcel for Riley Kirkland, their son removing an old cabin and installing a new home later. They're not installing the home right now.

Administrative CUPs - #05-21ADMINCUP - Bruins

Dana Roff stated #05-21ADMINCUP - Shelby and Steven Bruins. They're building a home on Family Farm next to Gary Bruins parents.

Administrative CUPs - #0028-19ADMINAMENDCUP - Certarus

Dana Roff stated Certarus added a 4 (four) inch interconnection line between Certarus and ONEOK Garden Plant. The original amend date was 10-21- 2019. This is a Compressed Natural Gas Fill Station.

Kathy Skarda asked if and Annual review is needed? **Dana Roff stated** it's not in the conditions.

#0010-16 - West Dakota Water

Assistant Director Kimpel stated this is an extension to an existing pipeline approximately 1.7. miles. The original Condition Use Permit started in 2016.

There was a discussion that this is an Administrative Amendment to the original CUP, the pipeline has been in use since 2016 and the conditions have not changed.

Skarda Building Procedures

Kathy Skarda stated McKenzie County Building Procedures Applications have more pages than Mountrail County's Building Applications and was wondered if there was a way to decrease the number of pages.

There was a discussion on appointing a Subcommittee make observations, review the procedures and pro and review the procedures and applications and streamline the process. The Subcommittee's current members will be Director Huus, Commissioner Kathy Skarda, Commissioner Cody Knetzger and Assistant Director Kimpel. Pete Transtrom and Glenn Wahus were suggested. Sandee Kimpel will get in touch with them. Bryan Roff was suggested as an alternative because he has been through the building process.

Jeremy Olson stated Assistant Director Kimpel talk to them and if they accept, then she would email the members of the board with whoever that ends up being on that committee and then she could schedule the Subcommittee at her convenience.

Discussion on 40-acre rule versus variance. The parcel size standards for direct family members.

Kathy Skarda stated a family building on a ranch received an email that said that the placement of the home does not fit with the ordinance because this home is not being added on a homestead's parcel with other family members. There have been approvals made on other people's property.

Dana Roff stated this is not quite the same case. In this case they surveyed off a one-acre parcel and are building a house on it. They do not own the parcel with their parents. The other ones that I'm aware of have been done on a family parcel and are building next door to their parents. The minimum lot size is 5 acres. **Kathy Skarda** stated they did that because that's what their lender required.

Dana Roff stated the minimum lot size is 5 acres. She has given the family a solution via many conversations and extensive emails explaining how this could be done. They need to be in at least 5 acres to fit our Ordinance. She has explained to them the

requirement is 5 acres or 10 acres. Do not go smaller than 5 acres. She thinks they're mainly concerned about the costs to pay off this loan and the costs involved with that. **Jeremy Olson** stated five acres is the minimum and this came from the 40-acre rule.

There was a discussion that the Variance states a homestead parcel that is a minimum of 40 acres may be divided into three additional parcels to build homes for direct family members.

Jeremy Olson stated 4.17.21 says the minimum lot size is 5 acres, maybe you had 40 acres and split it three ways or whatever, but you still have a minimum size of lot. **Dana Roff** stated they're all interconnected.

Administrative CUP Fee - Change to match all others @ \$350

Assistant Director Kimpel stated the current fee for an Administrative CUP is \$375. All other CUPs are \$350. Sometimes after approving and receiving a payment for an application, they discover it can be Approved Administratively and then \$25 must be refunded.

Motion to Approve to change the Administrative Permit Fee to \$350.

Motion by Kathy Skarda; 2nd by Craig Hystad; Voice Votes: All Ayes.

Motion the Approve to Change the Administrative Permit Fee to \$350 Passes

Board Member Kathy Skarda Discussion Topic - Wind Energy

Kathy Skarda stated she attended a meeting with the Northwest Landowners Association and reviewing the Wind Energy Ordinance was discussed. The Ordinance language needs to be very specific, include more language on permits, and how the City and County defines wind turbine, by the Cities and Counties. McKenzie County Ordinance 4.7.3 General Requirements for Wind Energy states setbacks are 2,640 feet from the nearest occupied dwelling. 1 (one) mile is the recommended minimum distance between the windmill and farm buildings, commercial buildings, publicly used

structures or facilities and the nearest occupied dwelling. Northwest Landowners Association is sending her documentation of how they are working with other counties. When she receives it, they can review it, see how other Counties are dealing with it and have a meeting to make changes.

There was a discussion on getting input from other Counties that have been dealing with this and combining it with what we have learned in the last few years.

Grassy Butte Rezone Meeting

Sandee Kimpel stated this is a general announcement to let everybody know that the Grassy Butte Rezone Meeting will be held at Grassy Butte Community Hall on September 22 at 6:00 PM Mountain Time.

Planning and Zoning Jurisdiction in Watford City ETA (Extraterritorial)

Ari Johnson stated It if it's in the Ordinance we don't do it in the ETA. We do it outside the ETA. If it's not in the Ordinance, then we do it inside the ETA, but outside City Limits. The City's ETA is the City's Land Use Code, Building Code and Zoning Codes Administration outside the City Limits.

There was a discussion on land the city has annexed into the Watford City ETA.

ADJOURNMENT

The meeting was adjourned at 7:30 PM.

The next meeting of the McKenzie County Planning and Zoning Board will be held on Monday, October 11, 2021, at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM.

MEETING SIGN-IN SHEET

Meeting Date: September 13, 2021

Name PLEASE PRINT NAME LEGIBLE	Phone #	Agenda Item #
Laurel Olson	701-586-3767	2 or 3 I
Cornell Wollan	701-770-3088	I or 3
Steve Willbrecht		
Cindy Meche		
MANH SON	(337) 780-1506	
Bona Son	337-281-1379	I 4, 5
HOA HORN	832-641-1981	I 4, 5
Mark Koeser	701-609-3646	I-1
Steve Ortiz	208-260-1257	G-1
Shane Peterson	701-570-2701	I 2 + 3
Denton Zubke	701-570-4043	

MCKENZIE COUNTY

Planning and Zoning Commission

05-21CUP - Elkan Inc. - Zubke Pond

Application:	August 12, 2021 - Conditional Use Permit
Hearing Date:	September 13, 2021
Description:	T-150N, R-99W, Sec 34 Parcel ID # 110014000
Owner(s)/Applicant:	Denton & Margaret Zubke (owner) / Elkan Inc.
Reason for Request:	The applicant would like to construct a 49.3 acre ft freshwater reservoir/pond for the purpose of providing water for oil and gas development. The reservoir will be lined and fenced.

Comprehensive Plan Land Use: Light Industrial & Highway Commercial
Zoning: Agricultural

Findings of Fact:
<ol style="list-style-type: none"> 1. All requirements for public notification have been satisfied. 2. Applicant is not the property owner. 3. Property is not in an organized township. 4. This pond was previously approved by the Board of County Commissioners in 2018 #0018-18CUP, but was put on hold by the applicant due to the slow down/virus. 5. The pond will have a poly liner with a lifespan of 20 years. 6. The applicant is applying for a Reclamation Bond Waiver # 05-21CUP-RBW. 7. Applicant is in Good Standings with the North Dakota Secretary of State. 8. Property owner has approved fence location. 9. Fencing site plan is included in the staff report.

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:
<ol style="list-style-type: none"> 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.
The pond will require fencing, weed and garbage control and signage.

October 2021

Planning and Zoning Commission Minutes

October 11, 2021

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

PLEDGE OF ALLEGIANCE AND ROLL CALL

Members Present: Butch Fleck, Cody Knetzger, Eva Hepper (Arrived at 5:10 p.m.), Jeremy Olson, Kathy Skarda, Matt Beard

Members Remote: Heidi Brenna

Members Absent: Craig Hystad, John Irwin

Staff Present: Planning Director Curt Huus, Assistant Planning & Zoning Director Sandee Kimpel, Administrative Assistant Cindy Jensen

Staff Absent: Planning Attorney Ari Johnson, Planner II/Public Relations Director Dana Roff, Building and Code Tech Cindy Mecham

Others see sign in sheet at end of minutes.

APPROVE AGENDA

Motion to Approve Agenda. Motion by Kathy Skarda; Second by Matt Beard; Voice Votes: All Ayes;

Motion to Approve Agenda Passes.

APPROVE MINUTES

Motion to Approve Minutes as Presented by Butch Fleck; Second by Kathy Skarda; Voice Votes: All Ayes;

Motion to Approve Minutes as Presented Passes.

PRESENTATION:

Assistant Director Kimpel stated none.

CODE ENFORCEMENT:

Assistant Director Kimpel stated Mr. Ortiz, Arnegard Treatment Plant

Assistant Director Kimpel stated I just wanted to give you guys a quick update. Last month we spoke to Mr. Ortiz about the fence around his pond. Due to no control of his own, the fencing that was delivered, came at 4 feet instead of 6 feet. We're going to give him little more time. He is working on getting fence posts up so, we have progress. But

we have no control over the delivery of the wrong material. He's working at it, so we're not going to do anything until the fencing is completed.

Kathy Skarda asked do we need to specify how long? **Director Huus** stated I think so. **Jeremy Olson** stated we could postpone the motion from the last meeting for another 30 days.

Steve Ortiz stated he has had numerous issues with Home Depot delivering the incorrect fencing posts and now he does not know when the correct fencing will be delivered, as he was told the vendor is out of stock.

Jeremy Olson stated that Ortiz communicate once a month with the status of his materials. **Steve Ortiz** stated the fence will go up when we get the fabric no matter the weather conditions.

Kathy Skarda stated she agrees with the communication between Ortiz and Assistant Planning Director. However, she would like to have Assistant Director Kimpel make sure and relate the progress and notify the Board when it is completed.

Steve Ortiz stated when he knows the delivery date of the materials, he will notify Assistant Director Kimpel of the delivery date within two weeks of it.

Kathy Skarda stated this was on the agenda and approved for this, but there is a violation. She wants to make sure it is recoded in the meeting minutes that it has been completed and taken care of.

Jeremy Olson stated since we have a motion to schedule review for the revocation for this meeting, we should probably have a motion to postpone it indefinitely or until the Director either tells us it's complete or to continue the Revocation Hearing. **Butch Fleck** stated they can't help it. **Olson** stated correct because last month we said we would have a revocation hearing today.

Motion to POSTPONE Arnegard Treatment Plant Revocation Hearing BY BUTCH FLECK; Second by Cody Knetzger passes.

Motion to POSTPONE BY BUTCH FLECK; Second by Cody Knetzger passes.

UNFINISHED BUSINESS

Assistant Director Kimpel stated none.

PUBLIC HEARINGS

Director Huus stated this is the Gary Nottestad Subdivision that that we approved 2 1/2 months ago. The Zone Change was approved in January. There were eleven lots on the property and Gary did not want one of those lots to be zoned R-1. He wanted it left

as Agriculture and he had that in his application, but that was misinterpreted to do the whole subdivision as R1. This is to correct that from his original application to change now from R-1 back to Agriculture as it was previously with that one block. The rest of it will stay as R-1. To change that back to Agriculture he would like to leave it like that because it gives them more opportunity to do what's allowed In Agriculture rather than the restrictions that are in R-1. **Jeremy Olson** stated Arnegard Township reviewed this and recommended approval because this is correcting an error.

Kathy Skarda asked do we need to rescind the previous motion that approved everything as Residential. **Jeremy Olson** stated this is just a separate application to take that one lot to go from R-1 to Agriculture. **Director Huus** stated it would just follow because it was changed to R1. There's no reason to change it back to. **Skarda** stated I just didn't know because in the previous meeting; we approved the whole thing, so I didn't know if it would work. **Director Huus** stated the way the motion is suggested it would suffice as changing it from R1 back to Agriculture. **Skarda** asked the Lot 11 specifically, if it states Lot 11. **Director Huus** stated it does not state Lot 11 but should. There's also a Comprehensive Plan Amendment too, because the comp plan changed it to rural residential and now it'll be back to transition area.

Motion to Approve #05-21COMP/ZC - Nottestad Zone Change Lot 11 From R-1 to Agriculture and to Amend Comprehensive Plan Amendment from Rural Residential to Transition Area; Motion by Cody Knetzger; Second by Matt Beard; Voice Votes: All Ayes.

Motion To Approve Passes.

#03-21ZC - WC Airport Overlay District - #03-21 Zone Change. Watford City Municipal Airport, 300 12th St. NE, Watford City, ND 58854

Director Huus stated this is the Watford City Airport Overlay District that was postponed at the last Planning & Zoning Board Meeting. The request was made to get more clarification and exhibits as far as what effects there would be to the properties that this Overlay would be placed on.

Jeremy Olson stated the main concern and questions are how we are doing the Airport Overlay District and to see how it will be affecting the residents living in the area.

Andrew Zilieke, Airport Engineer of KLJ, stated everything is centered on the runway. The Airspace, the Horizontal and Conical Zones are based off and entirely dependent on the elevation of the runways ends, location, the runway centerline and runway profile. Elevation is based off Mean Sea Level. As the Topography of the ground either rises or lowers, the difference is essentially subtracted from the height of that surface to the height of the ground. What they tried to do was to show an illustration based off Topographic data and to show the elevation of the ground. The height away from these surfaces will correspondingly change. The area nearest the runway has a shorter

height. The further away you get, the more space before you start penetrating your site, like an upside-down wedding cake.

Shane Steiner, Airport Engineer of KLJ stated the new runway is longer and the elevations are a bit different than the previous one. One requirement with the new runway is for anything that's built within 100 to 1 slope off the end of each runway, an FAA Form 7460 is required. It tells you whether you can build a structure and if you would have effects on the operations at the Airport. On the FAA website there is a Collector tool, you punch in the location and elevation, and it instantly tells you whether you need to fill out an FAA Form 7460.

Butch Fleck stated basically nothing has really changed from the original runway. This Overlay District is what people are confused by.

Shane Steiner stated the runway is now 6550 feet and was 4600 feet previously and the elevation is within 3 feet difference.

Jeremy Olson asked what kind of structures would someone need to be worried about? **Andrew Zilieke** stated any manmade structure or vegetation both need to be looked at. An item that is flagged as too tall might be required to be moved or lowered.

Kathy Skarda asked if there was an Overlay on the previous Airport Runway? **Shane Steiner** stated he did not know if this type of Overlay was previously adopted. The Federal Obligation was always there.

Kathy Skarda asked if the Overlay is normally voted on and approved prior to the designing and building process? **Shane Steiner** stated it's usually done after just for the fact that when going through the design and planning, the elevations are always in flux, so they don't know until it's being built.

Kathy Skarda asked when would it all be done because the Airport was supposed to open in October? **Shane Steiner** stated the Runway did open October 1st.

Andrew Zilieke stated everything is based off those exact runway ends. It's having that final product and having the runway ends where the rest of the airspace gets designed and based on. **Shane Steiner** stated part of the process we do, now that the physical runway is complete, is we fly it and collect data from the physical runway ends in the profile, and any obstructions. This information gets uploaded to the FAA Portal. Information can't be collected until the project is essentially complete.

Kathy Skarda stated this concerns her because the landowners in the area basically have no voice until after it is already built. **Steiner** stated in the environmental process during the environmental assessment, a Public Meeting was held. Different alternatives and their impacts were looked at and this final product is very close to those.

Kathy Skarda stated a lot of people have expressed their concerns that they were not informed or did not read the Public Notices Section of the McKenzie County Farmer,

regarding any meetings. It is basically the same as what it was. **Shane Steiner** stated this is very similar and the Federal Mandate was in already in place.

Kathy Skarda asked if a tall tree already existed would they cut it down? **Shane Steiner** stated when the airport accepts federal money, they accept "Federal Grant Assurances", one of which is that they must maintain and protect their airspace. It is a continuing grant assurance that they must follow. Every so many years they are going to have to check obstructions. So, five years from now, if there is something that exceeds the airspace, it will have to be removed or cut down. This is for every Airport across the Country.

Eva Hepper asked do you see anything that will have to be removed, that is currently there or was there before you started the project? **Shane Steiner** stated trees are the only thing removed or recommended for removal. The airport authority will be in contact with those landowners. As of October 1, the runway is open. Medical flights can now utilize the Airport but previously had to use helipad at the hospital. If it was poor visibility condition, foggy, cloudy or at night a lot of times they couldn't come in, so they were having to go up to Williston.

Shane Steiner stated the Instrument Approaches got published last week and anybody using an airplane with GPS technology can punch in 25, the Identifier for the Airport, and it will pop up right away.

Kathy Skarda asked if someone's tree that is too tall and don't want to cut it down, what happens? Is it done anyway? **Steiner** stated that is part of what adopting this will do. **Skarda** asked if we didn't adopt it, what would happen? **Shane Steiner** stated if you didn't adopt it and it would penetrate one of the critical surfaces, the FAA would get involved.

Ari Johnson asked him to explain what happens if the county or the Airport Authority violates the Federal Grant Assurances? **Shane Steiner** stated if this isn't adopted, or if a tree or building is put up that compromises the Airport's Airspace, specifically the instrument approaches that were just established. The airport or the FAA would take steps in order to alleviate those things. The one thing that they would do is that they would cease federal funding to the airport. Right now, the Airport receives \$150,000 per year to utilize for airport improvements. If it gets drastic what they could do is they could come back and ask for repayment for any previous projects. For this project the Airport is receiving \$11 million in federal money. The FAA could theoretically come back and ask for that repayment of that grant. **Andrew Zilieke** stated that assurance lasts for 20 years.

Motion to Approve #03-21ZC - WC Airport Overlay District - #03-21 Zone Change. Watford City Municipal Airport, 300 12th St. NE, Watford City, ND 58854

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

Motion to Approve Passes

35.04

#06-21CUP - Cherry Creek Water - 2.4 Mile Fresh Water Pipeline - #06-21 Conditional Use Permit - T-147N, R-98W, Sec 6 & 31, Parcel ID #110014000, 400001100, 600000780, 610007800, 610007700, 610007900, 610007600, T-149N, R-98W, Sec30, Parcel #610007650, 610007500

Assistant Planning & Zoning Director Kimpel stated this is a Conditional Use Permit Request for 2.4 miles of freshwater pipeline located South of Watford and by the Little Missouri River.

Assistant Planning & Zoning Director Kimpel read the Findings of Fact. They are highlighted and attached to the end of these Minutes.

Kathy Skarda how is ingress and egress going to be obtained for this site? They must be completed to the satisfaction of the County Engineering department and not impede the Public Roadway. Director Huus stated the South end will be the Long X Rd going into the pond on the South and County Road 34 on the North End. Kathy Skarda asked if they have the Corp of Engineers authority to do this and for how long? Director Huus stated the Army Corp of Engineers have given their permission. Jeremy Olson stated they didn't put a time limit on it, did they? Assistant Director Kimpel stated no they did not.

Butch Fleck stated whose ponds are these? Assistant Director Kimpel stated John Dixon's.

Kathy Skarda stated there needs to be a plan for maintaining dust control. Director Huus stated dust control must still be controlled during construction. Dust Control is a requirement for every Pipeline CUP and Pond Permit.

Motion to Approve #06-21CUP - Cherry Creek Water - 2.4 Mile Fresh Water Pipeline #06-21 Conditional Use Permit - T-147N, R-98W, Sec 6 & 31, Parcel ID #110014000, 400001100, 600000780, 610007800, 610007700, 610007900, 610007600, T-149N, R-98W, Sec30, Parcel #610007650, 610007500

Motion to Approve by Butch Fleck; Second by Matt Beard; Voice Votes: All Ayes

Motion Passes

#04-21COMP/ZC - Evanson - #04-21 - Jon Evanson - Comprehensive Plan Amendment and Zone Change - Location: 13021 Highway 85N, Arnegard, ND. T-150N, R-99W, Section 17; PID # 110009519.

Assistant Director Kimpel stated the applicant would like to change their existing zoning from Agriculture to Commercial and the existing Comprehensive Plan from Agriculture to Highway Commercial. The property was developed in 2013 for some temporary housing and still has facilities, water, septic system, fire suppression tanks

and electrical panels. This is located off Hwy 85. The existing zoning is Agriculture and right next door is Commercial Zoning. The Comprehensive Plan is Agriculture with Highway Commercial next to it. One public comment was received stating they did not want their own zoning changed. I responded back that that this Zone Change Request does not affect their zoning or their taxes.

Eva Hepper asked if this is considered Spot Zoning as discussed in previous meetings? **Jeremy Olson** stated it is right up against zoning that is Commercial already and the existing use has been Commercial. Spot Zoning is if it is out in the middle of nothing surrounding it. **Director Huus** stated we don't consider this spot zoning. **Jeremy Olson** stated this would not be considered Spot Zoning because it is up against existing Commercial Zoning.

Butch Fleck asked if the houses were before Zoning? **Assistant Director Kimpel** stated it was in 2013 and they had a Conditional Use Permit for that. **Assistant Director Kimpel** stated the process may have been started prior to Zoning but they did come and get a permit, so they were permitted. **Butch Fleck** stated it was Agriculture and stayed Agriculture. **Jeremy Olson** stated they had to get a CUP when they expanded it, so I think that is the point where they came in. **Director Huus** stated Workforce Housing is a Conditional Use allowed in Agriculture, so they didn't need to change the zoning.

Kathy Skarda asked what if someone bought land right next to this, then wanted to do Commercial and extend it and before the Comprehensive Plan review was completed in 2025? **Director Huus** stated it's very possible that could happen. **Skarda** asked if we approved this one and then denied that next one, would we get in trouble?

Butch Fleck stated we have gotten a number of these over the years and if they border the Comprehensive Plan we approved them. If it was a mile west, we have been denying those.

Butch Fleck stated in their township they are careful because they have a mess down there. I want to know what they want to do before we okay it. He has concerns of it being used for junk.

Jon Evanson stated we want to clean it up and sell it. We believe the best use of the land is Commercial. It is fenced in and has a couple of buildings. With the infrastructure it is impossible to go back to Agriculture. If they cannot get it rezoned, all they can do is clean it up and leave it as Agriculture. **Eva Hepper** asked until 2025 when it could be changed through an Amendment. **Jon Evanson** stated by that point in time everything would be deteriorated to the point nobody would want it. **Kathy Skarda** asked if there was still electrical. **Jon Evanson** stated there are wells. It was a man camp with trailers and has electric, sewer, water, power hooked up to all the trailers. **Jeremy Olson** stated the use for it is Commercial. **Maria Evanson** stated it has been taxed as Commercial since 2013. **Matt Beard** stated looking at the tax records, it looks like the applicant also owns the land West and North of this.

Jon Evanson stated it he inherited it in 2009 when his father, who had owned it since the early 50's, passed away. We leased it to North Dakota Developments. They also own some land across the road where his grandfather homesteaded. At this time, it is not developed.

Cody Knetzger stated he would be in favor of the application and agrees with Butch Fleck regarding the beautification of the land.

Jeremy Olson stated this fall under the Highway Overlay District and there are special provisions within the Highway Overlay District for what Butch Fleck was concerned about. **Director Huus** stated they must comply with the Highway Beautification Overlay. There are landscape requirements such as fencing and parking lot paving. **Olson** stated anybody that builds on there or purchases and does a project that has to come before the Board.

Kathy Skarda read the letter from one landowner who stated their concerns of a Commercial Development having a negative impact of their property. This is highlighted and attached to the end of these minutes

Eva Hepper stated they must have a plan for the piece of land since they want to sell it. **Jon Evanson** stated the plan is to separate out the 40 acres and sell them. They are not going to change from Agriculture with the rest of the area we farm. **Jon Evanson** stated we were given a Conditional Use Permit. They didn't change the zoning to the Commercial. **Eva Hepper** stated you got a Conditional Use Permit to use it for Commercial, it is not zoned Commercial, but you are paying taxes as Commercial.

Kathy Skarda stated you own all the land around it. **Jon Evanson** stated not to the East.

Assistant Director Kimpel stated properties are taxed on the use not the zoning.

Maria Evanson stated we were very confused also. We were under the impression that it was zoned Commercial until we were going to sell it then found out it was zoned Agriculture. Unfortunately, it is not going to be Agriculture again. It used to be 160 acres. We took off the 40 acres, where the man camp was so we could get rid of that portion of land by selling it. It made sense that with all the infrastructure that's there to get it zoned differently so that when we sell it, we could sell it as Commercial. Somebody can come in and see what they could use it for because there is a layout of the zone and what they can use it for. I am confused why this would be an issue. It is what it is at this point. Unfortunately, we leased it to somebody who made a man camp out of it, and rather than sell all 160 of it, we just wanted to sell off that chunk where they did the man camp. It made more sense to get it zoned from Agriculture to Commercial, because of all the infrastructure that's on the property. Our hope is to get that changed so when we sell it, we can say it is Commercial/Industrial and whoever buys it will know what the allowed uses are. We have it divided and now the plan is to get it zoned so it can be sold to someone who can utilize that piece of property. It is

beautiful farmland, but we decided to lease it. It was leased, not sold. We have been fighting with the developers and the leases to clean it up since 2015.

A discussion regarding Spot Zoning and land use was heard.

Butch Fleck stated someone using it would have to get a Conditional Use Permit to meet regulations. **Jeremy Olson** stated or go with approved uses. **Director Huus** stated uses that are either allowed or conditional uses. It could not be Heavy Industrial for Manufacturing.

Cody Knetzger stated they are trying to get away from Spot Zoning but considering the circumstances of this situation it would be worse to keep it as Agriculture than change it to Commercial and get it cleaned up and developed into something decent. He does have concerns of someone purchasing it and not keeping it cleaned up

Maria Evanson stated there are ordinances that would have to be met because of the proximity to the Highway.

Cody Knetzger stated ,there is no other way to get it cleaned up unless it is bulldozed and that is not going to happen.

Motion to Approve #04-21COMP/ZC - Evanson - #4-21 Comprehensive Plan Amendment from Agriculture to Highway Commercial and Zone Change from Agriculture to Commercial. - 13021 Highway 85N, Arnegard, ND: T-150N, R-99W, Section 17. PID # 110009519

Motion by Matt Beard; Second by Heidi Brenna; Roll Call Vote: Butch Fleck - Aye; Cody Knetzger - Aye; Eva Hepper - Aye; Heidi Brenna - Aye; Jeremy Olson - Aye; Kathy Skarda - Naye; Matt Beard - Aye. 6 - Ayes, 1 - Naye.

Motion to Approve#04-21COMP/ZC - Evanson - #4-21 Comprehensive Plan and Zone Change Passes

Jeremy Olson stated this will more than likely be pulled from the consent agenda since it was not a unanimous vote, so this will probably be discussed at the County Commission meeting, and he recommended they attend.

#02-21ZC - Three M's & General Dentistry - #02-21 Zone Change - 2050 125E Ave NW & 2054 125E Ave NW, Watford City: T-149N, R-98W, Section 19, Parcel 3's 630009495 & 630009490

Assistant Director Kimpel stated this is another Zone Change Request without the Comprehensive Plan Amendment because it is located within a Transitional Area. This Application is for Three M's & General Dentistry 401K Penson and Profit-Sharing Plan. Those are the names of the entities that own the property. They are requesting a Zone Change from Agriculture to Light Industrial to continue to operate their existing RV park that has been there since 2013. This is located Southeast of Watford City, east of

the indoor RV Park. The Comprehensive Map shows the Transition Area and where the Indoor RV Park is located. No public comments have been received regarding this application.

Kathy Skarda stated on April 28th of this year the State Food and Lodging stated this was an unlicensed RV Park in and Agriculture Zone and this was not on the disclosure for the criteria. **Assistant Director Kimpel** stated I have been working with them for a long time. they are stuck between a rock and a hard spot. This is part of their process to become compliant so they can get their license with the State Food and Lodging. On our side we tell them that to do these things they have to be licensed with the State Food and Lodging. Then the State Food and Lodging is saying they are not in compliance with the County, so they need to do this. This is their first step to making all the pieces and parts work.

Butch Fleck stated they are already in Light Industrial with the Comprehensive Plan; it is just a matter of cleaning it up. **Assistant Director Kimpel** stated correct.

Eva Hepper stated they were grandfathered in until they figured out what they were doing with it. **Director Huus** stated yes. When the Comprehensive Plan was initially being written and the Zoning Ordinance just didn't fit, this was a way to get this messy area so the zoning could be cleaned up. **Kathy Skarda** stated this is currently in violation according to Code Enforcement. Our Ordinance states if there is an existing violation, we are not supposed to approve a Conditional Use Permit. This is an Amendment to the Transition Plan to make it fit and compliant. **Assistant Director Kimpel** stated yes this must happen for them to comply. We usually don't do this for those in violations, but without doing this they are going to remain in violation. **Butch Fleck** stated they weren't intentionally in violation this just happened to be. **Assistant Director Kimpel** stated this is just one of those things that happens overtime. When working with people, sometimes issues come up. This is the first piece to help them become compliant in several areas.

Jeremy Olson stated it is not all Agriculture. We have approved other zones within there since the Transition area identified in the Comprehensive Plan was put in place. **Kathy Skarda** stated this was after comprehensive plan was approved. **Jeremy Olson** stated correct. That was when the Comprehensive Plan was adopted and since that time those parcels have been rezoned to what they are now. They could not do anything more than what their grandfather status allowed them to do unless they get a Zone Change or Conditional Use Permit

Butch Fleck asked if we go Light Industrial are we going to get a big mess where there are numerous zones out there? **Jeremy Olson** stated that's why it's a Transition Zone. We knew that this area was going to be mixed like that. Certain areas around the County were developed without a lot of forethought. **Director Huus** stated I would consider this Spot Zoning, but it is one of the exceptions where you must allow it because nobody is going to go in there and rezone that whole area. So, you're going to

end up with Spot Zoning in this area, the goal is to clean it up and this is one step toward cleaning up the area. **Butch Fleck** stated it's an area that it's allowed though, correct? **Director Huus** stated yes, but there is no ordinance that says Spot Zoning is allowed or not.

Cody Knetzger stated it is a mess and we would be worse off to deny it. It is a mess, and I wouldn't see anybody making a home back there. **Jeremy Olson** stated it gives some incentive to do the right thing and helps us out. **Eva Hepper** asked we are talking about an RV Park not the Indoor RV Park? **Assistant Director Kimpel** stated correct.

Kathy Skarda stated this is your definition of spot zoning when there's all this activity around it and right next to it. **Director Huus** stated yes but this is where you must make an exception to look the big picture and get it all cleaned up eventually.

Butch Fleck stated what covers us is that Transitional Area.

Cody Knetzger asked how do we straighten all of this out? There is only one nice place in that area. **Jeremy Olson** stated this Transitional Area is the best effort to straighten out this area. It doesn't look great now but compared to 5 years ago it is better, and this is the County's way to clean it up even though it is not a perfect solution. **Butch Fleck** stated the Transition Area covers the Spot Zoning. **Jeremy Olson** stated the Transition Area is going to be intermixed and have different uses in there. So, we put that umbrella on it to say we are going to accept it.

Director Huus stated we have been relying on the property owners to request Zone Changes. The County could go in and try to rezone everything to fit and do it that way.

Motion to Approve #02-ZC - #02-21ZC - Three M's & General Dentistry - #02-21 Zone Change - 2050 125E Ave NW & 2054 125E Ave NW, Watford City: T-149N, R-98W, Section 19, Parcel 3's 630009495 & 630009490

Motion by Butch Fleck; Second by Eva Hepper; Roll Call Vote: Butch Fleck - Aye; Cody Knetzger - Aye; Eva Hepper - Aye; Heidi Brenna - Aye; Jeremy Olson - Aye; Kathy Skarda - Naye; Matt Beard - Aye. 6 - Ayes, 1 - Naye.

Motion to Approve #02-21ZC - Three M's & General Dentistry - Passes

DISCUSSION ITEMS

Administrative CUPs - #06-21ADMINCUP - Maki

Director Huus stated this was an Administratively Approved Conditional Use Permit per Ordinance 6.4.2 with a Lot Line Adjustment. A direct family member wanted to give Maki's a 5-acre parcel to build on and that was allowed to be Administratively Approved. **Kathy Skarda** stated the family appreciated finally getting it approved.

Grassy Butte Rezone

Butch Fleck stated he would thank the staff. They did a great job of presenting. He also appreciated Commissioners Clint Wold, Craig Hystad and P & Z Board Member Heidi Brenna for attending the meeting. People really understood because there were very few questions afterwards.

Assistant Director Kimpel stated the meeting went well. There was a lot of interaction between the residents and the Planning & Zoning Department, and we answered a lot of questions. We have prepared and mailed out today, another letter with an updated map that shows the changes. The residents have until November 15th to submit any more changes. We are hoping to bring this before the Board in December.

Jeremy Olson stated the residents can attend the meeting and have received the letters, so everyone has been notified. Butch Fleck stated one resident, that had concerns did not get back to him. **Jeremy Olson** stated everybody can be heard and that is the main thing. **Kathy Skarda** asked about sharing the contact information. **Olson** stated there is contact information on all the letters going out.

Board Member Terms - January

Director Huus stated Jeremy Olson's and Eva Hepper's Board Member terms are expiring January 31, 2022. Even though Eva just got on the Board, she took over Craig Hystad's term and Craig Hystad took over Gene Veeder's term. There is nothing to decide yet, this is just a notification, and it will be out in November. **Eva Hepper** asked how does that work? Do you reapply? **Jeremy Olson** stated it is up to the County Commissioners how they want to do it.

Director Huus stated Planning & Zoning Staff will take applications and names, review them, give those names to the County Commissioners who will make the decisions. **Jeremy Olson** stated with previous members they have been automatic unless they choose to leave because it is not a vacant position. **Director Huus** stated he would envision that both Jeremy and Eva would have to show an interest and those names would be brought before the County Commissioners for their consideration among others if others are interested in it.

Matt Beard stated also they have previously talked every January choosing the Chairman. **Jeremy Olson** stated that would be a January meeting, the first meeting following the reorganization. February is the reorganization. **Director Huus** stated Jeremy will still be the Chairman in the January Meeting and February is when the vote for the Board Chair is made.

ADJOURNMENT

The meeting was adjourned at 6:50 PM.

The next meeting of the McKenzie County Planning and Zoning Board will be held on Monday, November 8, 2021, at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM.

McKENZIE COUNTY

Planning and Zoning Commission

#06-21CUP - Cherry Creek Water - 2.4 Mile Fresh Water Pipeline

Application:	September 15, 2021
Hearing Date:	October 11, 2021
Description:	T-147N, R-98W, Sec 6 & 31, Parcel # 400001100, 600000780, 610007800, 610007700, 610007900, 610007600 T-148N, R98W, Sec 30, Parcel # 610007350, 610007500
Owner(s)/Applicant:	Cherry Creek Water
Reason for Request:	Cherry Creek Water, LLC is proposing to construct and operate a 2.4-mile fresh water pipeline intended for industrial use. The pipeline would be a maximum of 24 inches in diameter and composed of high density polyethylene (HDPE) plastic material. The pipeline would be installed via open cut trenching and horizontal directional drilling according to accepted industry standard practice. The permanent right-of-way varies by landowner, ranging in width from 30 feet to 50 feet. The temporary construction right-of-way varies by landowner, ranging in width from 75 feet to 100 feet.

Comprehensive Plan Land Use: Agricultural
Zoning: Agricultural

Findings of Fact:
<ol style="list-style-type: none"> 1. All requirements for public notification have been satisfied. 2. Project is not in an organized township. 3. Applicant is not the property owner. There are multiple owners and easement agreements have been secured. 4. US Army CORPS of Engineers has given their permission. 5. Freshwater Pipelines are conditionally allowed in the agricultural district. 6. Per section 2.13.1 of the McKenzie County Zoning Ordinance. Pipelines are exempt from the bond requirements. This exemption includes the portions of a pipeline that are brought to the surface for valves, maintenance or other necessary uses. Bonding for other surface structures and facilities are not exempt. 7. Applicant is in good standings with the North Dakota Secretary of State.

Conditional Use Permit Criteria::
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Sandee Kimpel

From: David Drovdal <ddrovdal@yahoo.com>
Sent: Friday, September 3, 2021 8:15 AM
To: Sandee Kimpel
Subject: Fw: Zone change #02-21ZC

Second effort

[Sent from Yahoo Mail for iPad](#)

Begin forwarded message:

On Thursday, September 2, 2021, 9:41 PM, David Drovdal <ddrovdal@yahoo.com> wrote:

McKenzie Co. Planning Commission
201 5th St NW
Watford City, ND

RE: Jon Evanston zone change request

Dear sirs

First let me thank you for your services on the planning commission and thank you for letting me submit my comments electronically. I was unable to open the application so I am speaking without some of the information.

My name is David Drovdal and along with my wife Kathleen we are the owners of the majority of land in T-150N, R-99W, Sec 17, PID #110009519 in McKenzie County, ND. Currently our land is listed as agricultural. I understand and support landowners rights to control their property as long as there is no negative impact on surrounding property owners. Negative impact that can be the result of uses like waste deposits, air quality, weed control, tax consideration, etc. Having stated that I strongly want my land to stay zoned as agricultural at this time. It may also be prudent to point out that many of us have to view any activity or development regularly where as some living outside the area don't have to see the property if it's a trash site. Current situation maybe an example.

Sincerely

David Drovdal
9115 Oak Dr
Bismarck ND. 58503

PS: please acknowledge receiving this email

[Sent from Yahoo Mail for iPad](#)

November 2021

Planning and Zoning Commission Minutes

November 8, 2021

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

PLEDGE OF ALLEGIANCE AND ROLL

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

Members Remote: Matt Beard, Eva Hepper called in at 5:15 PM

Members Absent: None

Staff Present: Planning Director Curt Huus, Planning Attorney Ari Johnson, Planner Dana Roff, Assistant Planning Director Sandee Kimpel, Administrative Assistant Cindy Jensen

Others see sign in sheet at end of minutes.

APPROVE AGENDA

Director Huus stated he would like to add a Discussion Item for the Planning & Zoning Board Member Openings.

Motion to Approve Amended Agenda to Include Planning & Zoning Board Member Openings by Kathy Skarda; Second by Cody Knetzger; Voice Votes: All Ayes;

Motion to Approve Agenda as Amended Passes.

APPROVE MINUTES

Kathy Skarda stated on page 7, end of paragraph 4, “**Skarda** ‘stated’ if we approved this one and then denied the next one, would we get in trouble.” be changed to “**Skarda** ‘questioned’ if we approved this one and denied the next one, would we get in trouble?” She also stated there was not an answer to the question. **Director Huus** stated he did not believe we had an answer. **Cindy Jensen, Planning & Zoning Administrative**

Assistant asked Kathy Skarda if she would like the question to state “questioned” or “asked”? Skarda stated “asked”.

Motion to Approve Minutes as Amended to Reflect Kathy Skarda’s Corrected Question by Heidi Brenna; Second by Cody Knetzger; Voice Votes: All Ayes;

Motion to Approve Minutes as Amended Passes.

PRESENTATION

Jeremy Olson stated there is no presentation.

CODE ENFORCEMENT:

Assistant Director Kimpel stated nothing at this time.

UNFINISHED BUSINESS:

Assistant Director Kimpel stated nothing at this time.

PUBLIC HEARINGS:

#0021-18CUP/RBW - Dixon Properties - Dixon Pond - Conditional Use Permit Reclamation Bond Waiver - Location: SE1/4, SW1/4, T-148N, R-98W, Section 31 Parcel ID #610007800

Assistant Director Kimpel stated this is an application submitted by Dixon Properties for the Reclamation Bond Waiver for their existing pond on the North side of the river. This was originally approved by the Board of County Commissioners on August 20, 2018. The Applicant is the property owner. They have provided all the written consents as far as the Zoning Acknowledgement and Hold Harmless Agreements. The Pond is lined with a Poly liner with a life span of 20 years. The pond is fenced, and the Applicant is in Good Standings with the North Dakota Secretary of State. All the conditions of the original Conditional Use Permit remain the same. This just takes away the requirement for the 150% Reclamation Bond. A last-minute letter was received from

Mr. John Tinker that provides maps regarding what a 50-Year and 100-Year flood would look like. He is agreeing with the fact that our Ordinance requires Bonds but is concerned about this being in a Floodplain. She has been told McKenzie County does not have Floodplain designations and the reasons have to do with farming and ranching.

Kathy Skarda stated the Indemnification Agreement states Dixon Properties, LLC is the Landowner. Then it says (Applicant Name) John Dixon and (Owner) John Dixon. It does not have the same name for the owner and states the (Applicant's Name) is John Dixon. Do these applications or Indemnification Agreements get recorded? Do these mean we're exempting that County from any liability in six months or 600 years? How technical does this have to be, legality wise?

Assistant Director Kimpel stated not always is the applicant the property owner.

Kathy Skarda asked how technical must we be? In her previous experience it would have stated the (Applicants Name) is Dixon Properties, LLC. **Ari Johnson** stated here's what it would say 'Dixon Properties, LLC By:'. It would say (Name) Dixon Properties LLC By: written in John W. Dixon, President and we have the 'by' and 'it's lines, they've been used as the signature and name line. That's a clerical thing that could easily be fixed as a condition of approval or something like that. It should say applicant and owner name as precisely as they would appear on the record.

Kathy Skarda stated on the Indemnification Agreement there is some scratching out where there were evidently some typing errors and some legal descriptions that weren't correct. In my previous experience, anything like this had to be retyped and correct or the very minimum dated and signed. **Ari Johnson** stated there's no regulation that would require that here. It could be cleaner, but the handwritten portion is acceptable for what we're doing. **Skarda** stated we are indemnifying the County from all legal action. We want the date so that they couldn't say any of the changes have been made after we approved it.

Ari Johnson stated regardless of what the Recitals say, those are just to help understand what the agreement is about.

Kathy Skarda asked do we record these Agreements at the County Recorder's Office?

Director Huus stated no we do not. **Skarda** asked why not? **Director Huus** stated we were told to just keep them in our file by our Auditor. **Assistant Director Kimpel** stated that's correct. The very first Reclamation Bond Waiver we ever did, I tried to record it and was told it wasn't recordable. **Skarda** stated if we are indemnifying that chunk of

land for 6 months or 60 years, and someone decided to buy this land and sell it, how would they know that nobody was ever supposed to clean it up?

Jeremy Olson stated John Dixon was Indemnifying us, not us Indemnifying Dixon.

Director Huus stated we keep the Indemnification Agreements in the archive files.

Kathy Skarda asked if they are scanned into their files? **Director Huus** stated yes.

Jeremy Olson stated if this is approved it would be with an Amendment, they have the correct LLC name as the applicant. **Director Huus** stated as the owner. **Kathy Skarda** asked and then have John's name be as the Owner, President. **Craig Hystad** stated if they are going to fix one part, they need to get the whole document correct.

Jeremy Olson stated right. He's going to have to do that part anyways, they just as well have a clean copy of the document.

Assistant Director Kimpel stated if this is approved, when it comes before the Commission, she will have a clean copy. **Director Huus** stated the Indemnification Application should be cleaned up also.

Motion to Approve Amended #0021-18CUP/RBW - Dixon Properties- Dixon Pond - Conditional Use Permit Reclamation Bond Waiver - Location: SE1/4, SW1/4, T-148N, R-98W, Section 31 Parcel ID #610007800 - to include a Clean Copy of the Indemnification Agreement to Reflect the Corrected Company Name and Owner Name'; Motion by Kathy Skarda; Second by Butch Fleck; Voice Votes: All Ayes.

Motion To Approve Passes.

#0034-15CUP/RBW & #0034-15AMEND/CUP - RBW - Dixon Badlands Trust - Dixon J2K Water Depot - Reclamation Bond Waiver - Location: Lot 4, Section 6, T-147N, R-98W, Parcel ID#400001100, 12583 Long X Road, Watford City.

Kathy Skarda stated her concerns on the Indemnification Agreement Signature page because it this just says, 'Dixon Badlands Trust' and it's just signed 'John Dixon', 'SAME AS APPLICANT' same as Applicant, and making sure the names are correct, to safeguard the applicants as well as the County. **Assistant Director Sandee Kimpel** stated we can do that.

John Irwin asked are they in compliance with everything? **Assistant Director Kimpel** stated the three original ponds were approved on CUP #0034-15. In 2018 they did an Amendment for a larger pond. When this Amendment was done and Administratively Approved, a 6-foot chain link fence was required to be around this pond. That would

not have been required today. The property itself is fenced but that condition of the 2018 Amendment was not completed. **Kathy Skarda** asked #5 is not completed? **Jeremy Olson** stated that is a requirement that today will no longer apply. **Assistant Director Kimpel** stated right, it's not within a ¼ mile of a paved road.

Craig Hystad asked if that was required then why wasn't done. **Assistant Director Kimpel** stated she don't know and that is why we are having this discussion. She can't answer why or why it was not done back then.

Butch Fleck asked they are all altogether, the other ones weren't required? **Assistant Director Kimpel** stated correct. The first three were on a Condition Use Permit from 2015. The bigger one was an Amendment in 2018. Things were not very streamlined, so some of these ponds were fenced. Some required barbed wire and some required chain link. That was one of the things that we have had months of discussion on and are trying to straighten out.

John Irwin asked if there are any fences around the first three ponds? **Assistant Director Kimpel** stated there's a fence around the property. **Irwin** asked if everything else is in compliance? **Assistant Director Kimpel** stated yes. **Craig Hystad** stated it should have been fenced. **Assistant Director Kimpel** stated that's why we're talking about it. **Hystad** stated it went three years and never got fenced. **Assistant Director Kimpel** stated that is why we are talking about it.

Butch Fleck stated there was a discussion on it here a couple years ago and that never even was brought up. He has not heard about it until he read this.

Cody Knetzger asked there are no homes within a quarter mile? **Assistant Director Kimpel** stated the nearest home is to the West, but she is not sure of the distance.

Craig Hystad stated at that time a fence was required and so it is still technically requiring one because it has not been abandoned.

Assistant Director Kimpel stated correct, which is why when you read her recommendation, you will see she included it in there.

Jeremy Olson stated he is not in compliance by the 2018 requirement, but by the requirement today it is what we do.

Butch Fleck stated I don't understand why the other three weren't required. They're all together. **Jeremy Olson** stated that is prior to the fencing requirements. **Craig Hystad** stated the closest person is 2 miles away and they are chain link fence because it was

required of them. **Olson** stated we went through a lot of meetings to address the fencing requirement.

Director Huus stated that Dixon do an Amendment to the previous Conditional Use Permit to get rid of the Chain Link Fence Requirement Condition and then proceed with the Reclamation Bond Waiver, if that was approved.

Jeremy Olson stated that would address the outstanding requirement that's not fulfilled. If Dixon was able to have that removed by today's standards and then come back after that, it would be a Bond Waiver. Then he would have a clean sheet at that point. **Director Huus** stated yes. You could postpone this one until that time.

John Irwin asked if we're going to go by today's standards, would you be comfortable with those other three not being fenced? That is how people get out of the fencing requirements, is if everyone agrees prior to construction.

Director Huus stated we would require him to submit a Site Plan showing the Fencing Plan, then we would bring it here and the Board would have an opportunity to agree with that or not. That was how we set up the latest Fencing Requirement Condition Ordinance. They submit a Site Plan that they sign off on, we look at it and then bring it to the Board. The Director does not have an Approval to Waive the fencing, but the Site Plan would then be brought to the Board for Approval.

John Irwin asked are we willing to go at the new plan for half this project or are we going to want to update the other half? **Director Huus** stated you would want to update the whole complex.

Jeremy Olson asked are the other three part of the other Conditional Use Permit or is that separate? **Assistant Director Kimpel** stated the other three are part of the original 2015 Conditional Use Permit. This new one is the 2018 Amendment to that original 2015 Conditional Use Permit.

Jeremy Olson stated right now he is out of compliance. We could have him amend it to include the Site Plan and that would address all four of those ponds. **Assistant Director Kimpel** stated there wasn't anything she saw that he was required to turn in before there was a Site Plan. This would address the issues.

Jeremy Olson stated this might be the best solution. To have the entire area on a Site Plan. Right now, he's not complying with the original Conditional Use Permit. **Craig**

Hystad stated if that is an Amendment, then all four are out of compliance. **Director Huus** stated he would amend the original Conditional Use Permit.

Motion to POSTPONE #0034-15CUP/RBW & #0034-15AMEND/CUP - RBW - Dixon Badlands Trust - Dixon J2K Water Depot - Reclamation Bond Waiver - Location: Lot 4, Section 6, T-147N, R-98W, Parcel ID#400001100, 12583 Long X Road, Watford City.

Motion by Kathy Skarda; Second by John Irwin; Voice Votes All Ayes.

Motion to POSTPONE Passes.

DISCUSSION ITEMS:

Gene Transtrom - Adjacent Landowner Issues

Gene Transtrom stated he is here to discuss the issues he is having with his neighbor Connor Bian. Connor Bian came into the community years ago and moved onto the property of 80-Year-old Kenny Rogness, stating he was Kenny Rogness's distant relative. He has taken over the Rogness's farm and removed items even after ordered not to by the Court. Rogness's daughter inherited the farm after Kenny's death. She tried working with the Zoning Commission and has received no help from them or her lawyers.

Gene Transtrom stated they listed the land they were operating and there is a Deed that shows the Section Line. Bian chose to put his road across a pasture rather than where there no hinderances. He never paid Trotter Construction, who he hired to build the extra wide road and told them he had a pipeline company. When asked why they were removing the dirt from this leased land, they stated it was Bian. The next day Trotter pulled out. The only time Transtrom had contact with Bian was a few days later when he noticed Bian stealing dirt again from both neighbors' premises. Bian took the right of way, across the pasture, cleared off and stole dirt off the neighbor's hill. He had rural water placed in the wrong place. Transtrom purchased the property and requested they move it, but they refused. Bian lied to McKenzie, signed an easement to run water along County Road 30 up to a Section Line. As it was being installed, Bian told them the land was his and had them run it across the pasture. Now Transtrom has a water line going across his pasture. He has since purchased the property from the former owner. He asked them to move the water and they refused. Transtrom can live with the line underground, but he can't plant a tree, build a building, or do anything on that right of way, and it is not even surveyed. When Bian had them go across the

pasture, when it got to his land, he had them curve way around. He dug a big hole and diverted the water from the dam. Bian's house is 5 feet from the property line. Rogness's daughter, Lynda Scholin, lives in Minnesota and has been back numerous times trying to get something done. Sundeen offered to buy the land from her without informing Transtroms who were leasing it. Transtrom found out, so she sold the land to Transtroms instead, but they only had three days' notice. Scholin has no rights or help. Transtrom talked to Zoning about the sewer on his land. Bian put the septic tank and sewer in the pasture owned by Lynda Scholin but now owned by Transtrom. Transtrom talked to the Zoning Commission and was told they do not have anything to do with that, and that he needed to talk to Upper Missouri Health. Upper Missouri Health told him this is not their's, it is the Zoning Commission's and that they don't do anything because in McKenzie County they never do anything about it. The State's Attorney never does anything about it. When Transtrom called and told Ty Skarda what Upper Missouri Health said, Ty said if they'll charge Bian with something, he guarantees he do something about it. Transtrom relayed this the Upper Missouri Health.

Gene Transtrom stated Bian never paid any fines, any fees, had anything approved, does whatever he wants and gets away with it. Transtrom asked Zoning what they were going to do, and Zoning said there is nothing they can do about it. Now the waterline is underground, on somebody else's land. Transtrom asked if they were going to fine or charge Bian. Zoning said they do not have the authority to either fine or charge him with anything. Transtrom asked how they expect the State's Attorney to do anything if they do not charge Bian with something? Zoning said that's his problem. On approximately 9/12/21 Transtrom found the septic tank overflowing and still overflowing the next day. Transtrom thought the overflowing septic tank on his land next to his neighbors might be enforceable because it may not have been installed properly. When Transtrom and his wife were leaving County Road 30, Bian came at them at a high rate of speed. Bian has a history of doing this. Transtrom complained to the Sheriff's Office about the overflowing sewer and harassment, but it was never given to the State's Attorney Office. Transtrom filed with the Sheriff's and the next day saw a Vac truck out there. Later the same day, some deputies showed up Bian was told to remove the system from Transtrom's land. Someone is always tipping Bian off ahead of time. Transtrom talked to the Zoning Department about Bian being Zoned Agriculture and that he is advertising Bianco Pipeline Company. Zoning said they did have time to chase rumors. Transtrom asked is it really a rumor because Bian is advertising that he has a Pipeline Company, and he is Zoned Agriculture? Bian has a house, a big shop, oilfield paraphernalia and has never had anything to do with Agriculture, on his place.

Transtrom questioned Zoning about the house being too close to the property line and Zoning said the house predated Zoning. Transtrom stated that is not true because there is an aerial photo that shows otherwise. Then Zoning told him the rule didn't apply because it was a premanufactured home, and the State takes care of that. Transtrom checked with the State and with a premanufactured home the State checks to make sure it's anchored properly. But it wasn't a premanufactured home. During that time, Transtrom asked twice, if you buy a premanufactured home, you can put it anywhere and the zoning rules don't apply? He got the same response of yes. Transtrom asked about the setback rule and Zoning said they would check. Transtrom told them not to bother because he knows it is 25 feet. Zoning said they are not going to make Bian move his house, even though it was five feet from the line. Transtrom stated he can live with that, but if you're going to have rules, either enforce it equally to everybody, or throw them out. Besides Bian being zoned Agriculture, he had a special rate on property taxes for years and yet one of Transtrom's sons was paying much more. Somebody is covering for Bian for some reason. Bian tried to bully a new neighbor who had been a Deputy Sheriff. He tore up the Sheriff's yard when he was working on his roads. They tangled and of course Bian got the best Land Lawyer in the Country. They finally checked the rules. Zoning showed up soon after and Bian restored it and did a great job. You must have a badge to get results from the Zoning Commission. On 9/24/21 Transtrom saw Bian and his brother had cut Transtrom's fence and were painting the posts. He told him to stop but they refused and kept painting. So, Transtrom called 911. The Deputies were going to charge Bian with trespassing and destruction of property, but Bian convinced them that since the fence is on the section line, he had a right to cut it. What is the law concerning fences on section lines? The Deputy cited a statute that talked about setting your fence off the line. The same statute states, unless changed by the Township Ward or by the County Commissioners. At some point in time in McKenzie County, either the Township Boards or the County Commissioners changed it because there are fences on the section lines all over. If people don't understand if there's not a clear-cut rule, there could be fences all over the place. The Deputies continue to say always hire lawyers. What do we have Commissions for? What do we pay these people for? Why should we have to hire high priced lawyers? The previous owners spent thousands of dollars on lawyers and got nothing other than an offer to buy her land. They did come up with a lawsuit at the end, but it was never filed. Transtrom inquired at the State Water Commission regarding his situation and Bian taking all the water. They stated it was a violation and stated the Statute number Bian was violating. A State Inspector came to inspect and talked to Bian, but not to Transtorm. Bian's Lawyer sent a letter to the Water Commission and Sandee Kimpel

had a conversation with the Water Commission regarding this. Transtrom stated he went Bismarck and talked to the State Water Commission. They can tell you anything and they have the final say. Then the State Water Commission's attitude changed. They then informed Transtrom there was not enough evidence to show a violation.

Gene Transtrom read the State Water Commission's letter he received: "In the review of the Civil Dispute between you and your neighbor Connor Bian, here is the Statute. Priority and time give the Superior Watering Priority of a water rate acquired under this Chapter, dates from the filing of an application of the Department of Water Resources, except for water applied to domestic or livestock purposes or fish, wildlife, and other recreational uses. In which case, the priority date must relate back to the date when the quantity of water in question was first appropriated, unless otherwise provided by law. Priority of Appropriation does not include the right to prevent changes in the condition of water occurrence. Such as the increase or decrease of stream flow or the lowering of a water table or change in pressure or water level by later appropriate. If the prior appropriator can acquire reasonably the prior appropriates water under the change conditions the prior water resources do not have the necessary information."

Connor Bian dug a hole last year and stopped all the water from going into Transtrom's dam and they say there is not enough evidence here. Transtrom stated he had no water in his dam all Summer because it all went into Bian's 20 to 30 feet hole. That dam on his property's been there as far back as he can remember. We've got another Government Bureaucrat interpreting the law. Transtrom stated the man assumed that when that dam was built it was all that land belonged to one party. Transtrom said people don't normally build dams on the neighbors. The man said being it was way back there, the guy that bought the 10 acres, Connor Bian, has water rights too. Bian does not have all the rights. The other Statute states "Damages for illegal diminishment of water supply, if a Court of Competent Jurisdiction that a water supply has been legally diminished in quantity or quality, and that a valid Water Right cues that supply has been damaged because of the diminishment, damages awarded to the owner of the water rate shall be in amount to cover the cost of making such repairs, alterations or constructions, and so on." The State Water Commission letter stated "While it is evident that Mr. Bian has modified the shared structure, a court of competent jurisdiction would need to determine if Mr. Bian has illegally diminished your water supply. A July 14, 2021, site visit by Department of Water Resources Staff documented a well on your property. The stock tank supplied by this well would likely provide a cleaner and more reliable water source for livestock." Transtrom stated the issue about the well that is really bothering,

is the fact that there is a well on my property. The problem is to prove to you that Bian was doing things. Kenny Rogness would have never sold land to the neighbor that had the power going to his well. The well is on Transtrom's land, but Rogness insured it because Rogness's son-in-law told Transtrom that Rogness sold Bian 5 acres, but Bian wound up with 11. Rogness would not have sold him the power to his wealth if he knew what he was doing. Bian was getting Rogness to sign anything he could. There will be a lot of trouble in the future because water is a big deal in McKenzie County. Can it really be that a guy can go out, buy 10 acres on a tributary leading to one of your dams, dig a big hole on it and stop all the water, using what he's saying it was all under one ownership at one time when you built your dam. Can I steal all your water? It clearly says you can't. You can divert water from a tributary as long it doesn't diminish the quality or the quantity. It's impossible to ever win if the government agencies never charge anybody because by not doing it, they're basically saying they're right. Another case of Government Agent interpreting the law however they want.

Bian controls the pump power. It cost Transtrom \$4,000 just to get a pole to his well and that is not counting getting the well hooked up and putting in a tank, when Transtrom has a dam right there that would be holding a lot of water if Bian had not stolen it. Rogness's daughter, Lynda Scholin used to come back time after time and try to get something done about this thing. After purchasing the land, Transtrom found out she wasn't exaggerating and that you can't get anything done. Just make excuses. He does not know why Bian is so protected.

Bian has never spoken to Transtrom regarding these issues. Transtrom wrote a letter to Bian and Bian took it to his lawyer. Scholin talked to Todd Foster, was told to call back in a week and when she called, Sandee Kimpel was the new Code Enforcement. Neither helped Scholin. Sandee Kimpel called somebody about Bian listing the Kenny Rogness Farm address. There's a vacant farmstead that Bian uses as the address for his pipeline company. Then he had his mail forwarded to his address where he is living. Whatever happened to Todd Foster?

Jeremy Olson stated that is not something we are going to discuss here in an open meeting. This meeting is not to discuss personal issues and that is not a Zoning appropriate subject. **Ari Johnson** stated that is not a zoning question, so it's not appropriate for us to discuss. We're only here for Zoning.

Gene Transtrom asked can you go upstream, stop all the water and not be in violation? There are big consequences if that's the case, so you better check it out and rule on it ahead of time or it's going to happen a lot. Second, what is the local law about cutting fences on section lines or any other fence for that matter? Does anybody know?

Ari Johnson stated not a zoning question. This board can't answer your questions. In this Board, it is Zoning. That's not a zoning question. **Gene Transtrom** asked where your fences are isn't Zoning thing? **Johnson** stated it can be, but the type of fence question you're asking is not a Zoning question. **Transtrom** what kind of question is it? **Johnson** stated that would be a fence question. You'd have to hire an attorney as I told you last July.

Transtrom stated he is not interested in hiring attorneys. You get nothing for what you pay Attorneys. If we have agencies, Zoning Commissions, and Water Commissions that are to do their job, why should it always be "We don't know, go hire a lawyer"? Some of us don't have enough money to be hiring lawyers, all the time. I see what the prior owner got after spending thousands of dollars on a lawyer. I'm not here to offend anybody, but I have some questions. What real purpose does the present Zoning Commission serve? My experience has been, it appears to be a cover for crooks and a pain for honest citizens. You can talk to a lot of people who have had a lot of trouble with the Zoning Commission. Talk about "straining a gnat and swallowing a camel type of situation". What are we getting for the cost of the Zoning Commission budget? What does Ari Johnson do for the amount of money he gets paid every year to be the attorney for the Zoning Commission. Does he turn in a timesheet, or does he just get paid for having his name on there as the Zoning Lawyer?

Ari Johnson stated that's not a Zoning question and I'm not your lawyer. I am not answering your questions. As I told you last July 2020 when you called me on the phone at my office inappropriately about this because I'm not your attorney, that is not a Zoning question.

Gene Transtrom stated I don't think it was that I was calling you, but you never answered the phone because you told somebody that you don't answer the phone.

Ari Johnson stated Sir, I spoke to you on the phone. I was home quarantined in July of 2020. I remember it vividly. I took your call, spoke to you, heard you out and explained to you that these are not Zoning problems. I explained to you that you should act on your own or hire an attorney to do so. The Zoning Board doesn't have power over non-Zoning issues. Most of what you've described in the past half hour tonight has nothing to do with Zoning. **Gene Transtrom** stated most of it does. **Johnson** stated I understand, you think it does. Mr. Chairman, this is an utter waste of time because almost none of this is a Zoning concern. It's a Discussion item only. We can't take any action on it, nor would it be appropriate for us to take any action on something that isn't in the Zoning Ordinance. Our jurisdiction is limited to that Ordinance. Anything beyond it has either other departments or private rights of action to do, something

about. I've been advising Mr. Transtrom of that for 17 months. I know he's been advised that by the Zoning staff and I think it's very frustrating for the staff to have Mr. Transtrom or anyone else here complaining at length in the evening about issues that they can't do anything about. It's unfortunate that they can't do anything about it, but we only have the power that we have. This board should focus its energy on the things that it does have the power to do something about which does not include fences, septic tanks, trespass and all these other things. It would be a more efficient use of our time if we focused our energy on things that the Zoning Ordinance does cover.

Jerney Olson stated we wanted to give Mr. Transtrom a chance to speak his piece, and that is what we did.

Craig Hystad stated the only thing I would say that we have anything we can even look at would be is if Bian is running a pipeline pipe yard out of his house that is Zoned Agriculture. Then I have to check to see if that is an Allowed Use in Agriculture. **Jeremy Olson** stated It's a Conditional Use. **Hystad** stated if it is a Conditional Use if you have the right permits. That's the only thing that you've talked about tonight that we might be able to help you on.

Ari Johnson stated correction, the setback possibly but I don't know if that is something that's been looked at.

Assistant Director Kimpel stated Bian has received a Variance Application for the setback issue. **Ari Johnson** asked has he filed it yet? **Assistant Director Kimpel** stated no he has not. I spoke with him again on Friday when I was at his house, taking pictures of the moving of the septic tank, and I did remind him that he needs to get that filed. **Kathy Skarda** asked if the septic tank has been moved? **Assistant Director Kimpel** stated yes, and it is in an approved place. When I was at the site on Friday, I was there with Dana from Upper Missouri Health and she had been out there in September when law enforcement was there, I was there as well. She asked them to escort her because she had been led to believe that she needed them. When we were out there in September when she came out, was to look at where the location of the septic tank was on that other property, told him where he needed to move it and where it had to be on his own property. I have pictures showing that has since been taken care of over the weekend.

Gene Transtrom stated just after midnight. It just happened over the weekend?

Assistant Director Kimpel stated yes. **Transtrom** stated interesting point is someone told him I was coming to this Commission Meeting. **Assistant Director Kimpel** stated when I was there with Upper Missouri Health on Friday, they were surprised that he

was able to obtain a septic tank, because apparently right now you can't get them. He told her that he had ordered it 4 months ago and got it in Dickinson. That is the discussion that I heard. It's very hard to get those materials right now.

Gene Transtrom stated nothing was done and he kept checking with the Sheriff's Department because he had heard that Bian was supposed to move it but never got moved. **Jeremy Olson** asked the septic system? **Transtrom** stated it's still not moved, but then this past weekend suddenly there is some activity, and he did dig in a septic service on his land, but the old one still on my property. So I'm assuming I can go, just fill it up and destroy it. Is that correct?

Ari Johnson stated no one here can answer that question. **Jeremy Olson** stated again, that's not a Planning & Zoning question. Our parameters are clear. We deal with a very narrow set of items and a lot of the things you discussed tonight are not in that. I feel for you, but we cannot go beyond what we are allowed to do.

Gene Transtrom stated I was misled many times regarding setback and building. I have been stonewalled a lot of times, just like the previous owner was and I thought she was exaggerating. but she wasn't. There is something going on here. There is a lot of collusion between the Zoning Commission and Mr. Bian because he does whatever he wants, and nothing happens to him. Judging by their performance, I would suggest you ban the Zoning Commission or hire some fair-minded people that will enforce the law equally to all citizens. I'm not trying to be a hard guy. Some things people apply quickly and firmly and other people just keep going on and on and nothing happens. If I were asked by some young person if you should follow all the rules of the zoning Commission, I'd probably tell him you just do what you want to do, you might get by with it and if you get caught, just tell me you're invoking the 'Connor Clause' because he does whatever he wants, and nothing ever happens. It's questionable what is Zoning and what isn't? I don't know. It's so easy to say, 'that is not our thing' and 'always go get a lawyer'. Some of us aren't rich enough to hire lawyers all the time for everything, especially when you've got Commissions that are supposed to do it. Really, putting a sewer purposely on a neighbor's property and the Zoning says that's got nothing to do with us. Or someone puts their house 4 feet from the property line and Zoning is not going to make him move it. Why did they let him put it there in the 1st place? Bian still just applied for the set back now. He does everything 1st and then afterwards says he will do it. The former owner still owns the farmstead and hired Shannon Maki to clean it up. He has been held up for weeks because some Government Agency said there could be Asbestos. Then they were told they needed numerous permits. I've spent considerable of my own time getting by all the stonewalling and sometimes thought it's

not worth it. I'm starting to feel the same way right now, but I'm going to tell you the one thing that kept popping into my mind. Have you ever heard that old saying? The only way that evil can prevail is if good men do nothing. That's the only reason I kept on because he can go ahead and cheat, lie, steal any anything he wants to. It won't bother me. I'm going to head South soon. I've done what I can do. Now it is up to you. Thank you for your time. If you have any questions let me know. Thank you.

Craig Hystad stated none of us on this board get paid. We all volunteer and do the best that we can with what we've got. I know a lot of things happened before the Zoning Board got started. We have no authority to enforce anything. **Gene Transtrom** stated I am starting to understand and can see that. **Hystad** stated all we can do is, like you say, keep people honest if we catch them. But this is all volunteer. Applications are coming up for next year. You can put your name in if you want to try to change something. We are trying to do what we can do. A whole part of this is that water but we have no authority over any water in North Dakota.

Gene Transtrom stated you are a Commissioner, right? **Craig Hystad** stated yes, but we are at a Planning & Zoning Board right now. **Transtrom** asked so I should come to the Commissioner Meeting? **Hystad** stated yes, but we still can't change anything with the water district. The Federal Government wants to take the water rights and we're lucky to keep it just in the state. This Board is all volunteer and applications are coming up if you want to put your name in.

John Irwin stated Mr. Transtrom, I feel for what you're into here. You've bought a piece of property with some problems. I don't know if you knew about it before you bought it. **Gene Transtrom** stated I did. **Irwin** stated that is like buying a crippled horse. The road on down on your property and the septic tank. Some of these things aren't really fixable unless you want to roll up your sleeves and hire a lawyer and doesn't sound like you want to do that. **Transtrom** stated I went into it with my eyes open. We were leasing the property, so I knew all it was going on. But I really thought something could be done about it, but I was wrong.

DISCUSSION ITEMS:

ADMINISTRATIVE APPLICATIONS - #06-21SIGN - KT ENTERPRISES

Director Huus stated we Administratively Approved Sign Permit for KT Enterprises for a sign for their operation South of Johnson Corner.

P&Z BOARD MEMBER

Director Huus stated he wanted to update the Board that the two open Planning & Zoning Board Member positions will be advertised in the McKenzie Farmer.. It will request names and a statement of interest that will then be submitted to the Board of County Commissioner who will then fill the positions.

Kathy Skarda asked if the current Planning & Zoning Members want to be on it, I thought it was discussed at the last meeting that they would only have to say they were interested and would not have to reapply? **Jeremy Olson** stated that is what the County Commission would do. **Director Huus** stated if that is how you would like to do it, that is fine with me. **Butch Fleck** stated that is the way we have always done it. **Skarda** stated that is what we discussed last meeting. **Fleck** stated but it is different now. **Olson** stated his suggestion would be to get names of applicants to the County Commissioners in the next meeting. **Director Huus** stated we will still take names of others that want to be on it, and then, if the two terms that are expiring want to stay on it, then we'll present that the Commission also.

ADJOURNMENT

The meeting was adjourned at 6.15 PM.

The next meeting of the McKenzie County Planning and Zoning Board will be held on Monday, December 13, 2021, at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM.

December 2021

Planning and Zoning Commission Minutes

December 13, 2021

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

PLEDGE OF ALLEGIANCE AND ROLL CALL

Members Present: Butch Fleck, Cody Knetzger, Craig Hystad, Jeremy Olson, Kathy Skarda, Matt Beard,

Members Remote: Eva Hepper

Members Absent: Heidi Brenna, John Irwin

Staff Present: Planning Director Curt Huus, Planning Attorney **Ari Johnson**, Planner Dana Roff, Administrative Assistant Cindy Jensen

Others see sign in sheet at end of minutes.

APPROVE AGENDA

Director Huus stated I would like to add 1 (one) item under Discussion, and update on Board openings.

Motion to Approve Agenda with Director Huus's Request to Add Discussion for Updated Board Opening; Motion by Kathy Skarda; Second by Craig Hystad; Voice Votes: All Ayes;

Motion to Approve Agenda as Amended Passes.

APPROVE MINUTES

Motion to Approve Minutes as Presented; Motion by Craig Hystad; Second by Cody Knetzger; Voice Votes: All Ayes;

Motion to Approve Minutes as Presented Passes.

CODE ENFORCEMENT:

Director Huus stated not at this time.

UNFINISHED BUSINESS

Director Huus stated nothing right now. **Craig Hystad** and **Kathy Skarda** asked if there was any new information on the Great American Lodge. **Ari Johnson** stated he has not heard back on the Great American Lodge. The next step is the County Commission will probably ask him to take further action.

Kathy Skarda asked if a Connor Bian needed to have a Variance approved for his house.

Director Huus stated Bian has not brought the application yet as far as he knows.

Kathy Skarda asked would that be unfinished business or is Bian just out of Compliance?

Director Huus stated Bian knows he has to do an Application for a Variance and has to get a survey done to establish it and can only assume that Bian has not completed it.

PUBLIC HEARINGS

#07-21COMP/ZC - GRASSY BUTTE REZONE- #07-21 COMPREHENSIVE PLAN AMENDMENT AND ZONE CHANGE

Dana Roff stated the County initiated Comprehensive Plan Amendment and Zone Changes for parcels listed in Rezone #07-21COMP/ZC - #07-21 Comprehensive Plan Zone Change for the Grassy Butte area, which found most parcels Commercial.

Jeremy Olson asked all those parcels are listed in everyone's Grassy Butte Packet and there are too many to go through at once? **Dana Roff** stated correct and there are 52 (fifty-two) parcels. She received some responses back from property owners. She did 14 (fourteen) parcel changes by 11 (eleven) owners. On 9/1 (September 1) and 10/5 (October 5) letters were sent out to owners regarding what was happening and asking them to respond back should they have any specific changes they want to make. A September 22nd meeting was held in Grassy Butte. 10 (ten) parcel owners signed in but more people attended.

Jeremy Olson asked is this ready for a vote to be pushed to the Commissioners now at this point? **Dana Roff** and **Director Huus** stated it is.

Butch Fleck stated where my shop and one of my granaries are, is only Residential. Should it be Agriculture? **Director Huus** asked where your current house is? **Butch Fleck** stated no, right across the highway.

Director Huus stated the property directly across is all identified to be Low Density Residential and how it's shown on the Comprehensive Plan is Rural Residential. **Butch Fleck** asked should that be Agriculture since that is what it is?

Dana Roff stated it was the original map when we were there and we went over that. **Director Huus** asked could you point out which property specifically you're talking about on the maps, Butch?

Butch Fleck pointed out on the displayed maps where his house, shop and granaries are located.

Director Huus asked you think it should be Residential or Agricultural? **Butch Fleck** asked shouldn't it? **Air Johnson** stated if it helps, you're grandfathered in for whatever you have going there. **Dana Roff** stated it is grandfathered in. **Butch Fleck** asked so putting another building, another shop, granaries, or anything there isn't going to make any difference?

Kathy Skarda stated it should be Agriculture. **Ari Johnson** stated all the agricultural uses I think are allowed in the other districts in the Residential District. Truly Agricultural use we can't stop because of state law, but even the stuff that most, for the most part, I think everything that we allow in Agriculture, we allow in Residential, so it doesn't make a difference, but I'm not 100% sure on that. If you wanted to put a shop that was not an agricultural shop. That's my question, **Butch Fleck** stated that's what it would be. It's a farm. **Johnson** stated that is what I mean so we can't stop you.

Kathy Skarda asked which is the (parcel) number on that? **Ari Johnson** stated 180012700, I think. **Dana Roff** stated it is 180012700. **Butch Fleck** stated 806 Main Street. **Cindy Jensen** stated 180012700 and the one right above it. **Johnson** stated 180012550. **Jensen** stated yes. **Fleck** stated it is Agriculture. **Skarda** stated you have it as R-1. **Roff** stated under R-1, all Agricultural use is an allowed use. **Fleck** asked it's allowed there? **Johnson** stated yes. **Fleck** stated then we're OK the way it is. **Roff** stated yes, you're fine. **Director Huus** stated he is shown as R-1. **Roff** stated this shows he is R-1, so he is grandfathered in because he has his own business there. We just didn't want a bunch of Spot Zoning.

Butch Fleck stated it is right up against our farm. It's our land. **Dana Roff** stated if we put that in there and there would be those pockets of Agriculture. I got a letter from him. **Director Huus** stated I had discussed this with him at that meeting in Grassy Butte. **Butch Fleck** stated another landowner was under the understanding they were going to be Agriculture, but I see it's Residential.

Ari Johnson stated now is the time to change it if we are going to. **Butch Fleck** asked the other landowner has a business there and would be better off under Agriculture than under Residential, wouldn't he? **Director Huus** stated the landowner would be grandfathered in. **Fleck** asked so what happens if you wanted to add on to the building to do something. The landowner might put a house there some day. **Dana Roff** asked if the landowner wanted Agriculture with a Conditional Use Permit? **Fleck** stated that's what we were talking about at one time. **Jeremy Olson** asked Dana Roff, you said you had a letter from him. **Roff** stated yeah, I had one from him in the beginning of the Conditional Use Permit and then our big maps that we took to the Grassy Butte meeting

have something else written all over it, that's when I heard it was R-1. **Director Huus** stated those are the notes I took through my conversation with him at the Grassy Butte meeting.

Dana Roff stated I left it as that because it was on the map and what the landowner wants to do is allowed. He would be grandfathered in. **Butch Fleck** asked under R-1? **Roff** stated yes. **Craig Hystad** asked even if the landowner built a house on it, it would still be allowed? **Butch Fleck** stated the landowner has that shop that's called Commercial or whatever, so if he wants to add onto it, what's that going to do? **Jeremy Olson** stated he would need a Conditional Use Permit under R-1. **Fleck** stated that's what we thought, but I thought it would be under Agriculture that way, I didn't know if it would be under this (Commercial)?

Kathy Skarda asked wouldn't you have to change in some way? **Jeremy Olson** stated if it is a Commercial shop it would have to be a Conditional Use Permit regardless if it was Agriculture or R-1. It would require a Conditional Use Permit either way.

Kathy Skarda asked but isn't that Residential? **Dana Roff** stated R-1 is, but it does allow certain Agricultural uses to it. Even in R-1 you can have animals like horses and such. **Skarda** asked what would be the easiest for the landowner in the future if he wants to change it? What is the easiest way to make a change on his property in the future? **Director Huus** stated doing the Conditional Use Permit would be the easiest, because if he wants to do a Commercial Business, we will have to have it Zoned Commercial. **Butch Fleck** stated but that's what it is. The landowner has that shop. He doesn't do that much anymore because he works in the oil but does do mechanical in there. He is grandfathered in now. If anything gets changed is what I was worried about. **Ari Johnson** asked is the shop on (parcel) 180012500 or 118001500? **Roff** stated it's on 118001500. **Johnson** stated so 118001500. So, it does share a part of its border with the Commercial. .

Dana Roff stated I would leave it with R-1 and apply for a Conditional Use Permit. All of these, I'm putting notes in these files. Each one of these properties, if someone wants to do something different at a later time, they're all grandfathered in. They are very unique and need to be looked at that way. **Butch Fleck** stated but under R-1 the landowner can put a house there if he wants to. It's just if something changes on the shop, he only makes some problems in the future. **Roff** stated yes, if the landowner wants to add on to that shop, but still under R-1. That shop is his shop. It could be even called his garage.

Butch Fleck stated like Curt said it's been in there for a long time. **Jeremy Olson** asked the way that it is written right now, this is what was presented, or this was what you guys came away with from that meeting in Grassy Butte? **Dana Roff** stated correct. **Olson** stated unless the landowner says something different, I would say this is what was published and that this was on the docket to be approved if he hasn't asked for something different. We can't really speak for him right here, in my opinion. **Roff**

stated he recently got the letter, too. It said this is it, it's going to the Board and this is your last chance to say something if you want to.

Butch Fleck stated I guess that's why I wanted to get it clarified now so I knew.

Director Huus stated either way, if we put it as Residential R-1 or left it as agriculture, the landowner would either have to do a Conditional Use Permit or rezone it. If we Zoned it as Commercial, he wouldn't be able to put a residence on it. **Fleck** stated that's why he was under the understanding, Agriculture is planned, so it would work. But if this here is not going to make any difference, then it is not going to matter. **Director Huus** stated if he wanted to expand or somebody wanted to expand that business, I would suggest they subdivide the property, zone just that piece the business is on as Commercial and leave the piece of property that he wants to build his house on as R-1. Otherwise, with the grandfather if he doesn't do anything in there, it can stay the way it is, but he will run into issues if he tries to expand that shop. Either way, whether it is R-1 or Agriculture. **Jeremy Olson** stated it seems like R-1 gives him the most options.

Dana Roff stated he can put a house there if he wants. **Fleck** stated so we should change that to Commercial on the building on the South half. **Director Huus** stated you can't divide a lot. You can't do part of a lot as one zone. He would have to subdivide that. **Fleck** stated actually it was two lots to start with. It is combined now, I grew up right there, that's why I own a house there.

Director Huus stated the lot split is a pretty easy process to do. You don't have to go through the whole subdivision process, it's just a simple lot split and then you would just split off the part you want to have Commercial and rezone that as Commercial.

Jeremy Olson stated the landowner would not need that unless he decided to expand.

Director Huus stated right. **Butch Fleck** stated so it wouldn't matter if he did it down the road. **Director Huus** stated right. That is the way that it makes the most sense to me. It sounds like it's all onerous, splitting a lot and rezoning. But in lieu of subdividing it, the whole thing must be one or the other.

Butch Fleck stated since we're doing it, I just wanted to (clarify) right now. Sounds like we just leave it alone then. I've got another question on these. A lot of these lots, since it's Rural Residential, it's made for houses. A lot of these lots are an acre or less. Are people going to have trouble getting sewers there? A lot of them lots are empty now.

Dana Roff asked a septic you mean? **Fleck** stated a septic tank, yes. **Roff** stated that would be Upper Missouri. **Director Huus** stated you do have to have one acre to put a septic system on it. **Fleck** asked so what good is it doing to zone these Residential if we can't use them? **Roff** stated well, it would be basically you have to rezone them to something and they can't stay Commercial. **Fleck** stated Rural Residential is housing. **Roff** stated you basically couldn't really do anything with them that would require a restroom. **Kathy Skarda** asked a business would not be applicable either? **Roff** stated no, nothing would be if it had to have a septic system. **Fleck** asked this land is just going to be shut down? Nothing can be done?

Dana Roff stated they can still use it for whatever they are using it for now. They'd have to buy another lot. It was really hard for me to figure out what to do with those little pieces up there at the South or the North end because they are so unique and some of them are only .2 (.2-acre), tiny. The Community Center is even Biseq, it's half on someone else's property. **Director Huus** stated no matter what it's zoned, it's not going to affect the regulations that require an acre lot for septic systems. **Roff** stated none of them need setbacks. If they have a home on them, chances are they don't need setbacks, so they're grandfathered in also. **Butch Fleck** stated mine is only $\frac{3}{4}$ acre. My sewer runs out into the field of mine on my land, where my house is, but I've got a lot on the other side, that a hunter might be interested in. I don't know if it's an acre or not. It is South of the Lutheran Church.

Craig Hystad asked can you tie, say there's two lots that made it over an acre, and can they be a community one? **Butch Fleck** stated this one here you can't because it's Commercial, so it's one-sided commercial. **Jeremy Olson** asked you are talking about future growth, right? **Director Huus** stated I am not sure about that regulation if you could share a septic system. **Craig Hystad** stated there was one that was developed, and they have 2-3 trailers on one septic up there.

Dana Roff stated that would be an Upper Missouri question. **Director Huus** stated I don't know that rule. That would be an option if you could come up with an agreement with adjacent landowners to have a combined system. **Craig Hystad** stated most of them they don't use it for a month or even that.

Kathy Skarda asked is Billy's lot big enough for a sewer if he decided to build a house his location? **Butch Fleck** stated but he has one there anyway, so I guess you'd be alright.

Butch Fleck stated I have that piece on the other side of the road where you can't expand or nothing because it's Commercial around there.

Butch Fleck pointed out the location of his place and his dad's house on the displayed map.

Dana Roff asked is the parcel number 180013850? That would be 608 Main Street **Fleck** stated that is 180013900. **Roff** asked that one at the bottom (of the map)? **Fleck** stated yeah right there. Maybe it is an acre but it's right in that area. **Craig Hystad** stated it looks like it is close to an acre. **Fleck** stated it might be just under. That's why I was just wondering. **Jeremy Olson** asked is this something that we are going to be able to solve here? **Fleck** stated actually it is. When you are going through town there, I think your lot is out to the middle of the street. **Hystad** stated I'd say it is over an acre. I mean, that's something that maybe I'll have to go to Upper Missouri and try to figure it out. **Olson** asked is that something that we can solve here in this meeting?

Cody Knetzger asked does that go out into the middle of the street? **Dana Roff** stated Butch's is .91 (.91-acre) per our maps, but it could be more. **Cody Knetzger** stated that

should be out to the middle of the street. **Roff** stated that is just what our GIS says, so you are probably at an acre if it actually goes out into the middle of the street.

Jeremy Olson stated that's the setback. **Butch Fleck** stated we used to use it for our saddle horses, but now that I don't use the horses, it's just setting there. To do something with it and we have a hunter that's been wanting a piece of land. He actually wanted out in the country, but I don't want to do that. With this it would work good for something like that. He will use it once in a while. **Kathy Skarda** asked didn't we do something one time where we tried to make somebody's acreage to include half of the road so that it was listed as that. **Director Huus** stated it depends if it's an easement or a Right-of-Way. **Dana Roff** stated it was the Right-of-Way until the County took some of the property to widen the road. **Director Huus** stated it was an amendment too, that it would still be a conforming lot if it lost acreage because of Right-of-Way purchase. **Skarda** asked is that something that we could add to this so if people wanted to develop their property? **Craig Hystad** stated it's in our By-Laws, where if the road is taken from them. **Skarda** stated that's true, but she said she was doing this Spot-On specific for every parcel. **Jeremy Olson** stated this is just GIS. Whatever is recorded in at the Courthouse, that's what their actual property is. This is what the best guess based on. **Roff** stated we are GIS, not according to the Recorder's Office. **Director Huus** stated the Ordinance that you are talking about Craig, though only affects the nonconforming mod status we did. It does not apply to Upper Missouri Health Regulations. They interpret that however they need to for their acreage. But from the Planning & Zoning standpoint it doesn't affect that part of it. **Hystad** stated you could put a house on that and Spot Zone that too. **Director Huus** stated yes.

Dana Roff stated our new Planner 1 here tonight. Her name is Candy and she's sitting in the front row. I'll make sure that that's part of what I teach her so she will know. **Craig Hystad** stated one of the biggest things we want is to have it right so when none of us are still here, that they don't have to fight something later on.

Butch Fleck stated I think of those people that have those smaller lots, when they realize this, they're not going to be happy. But I don't know what we could do differently about it. **Director Huus** stated yeah, Zoning is not going to solve that problem at all. **Jeremy Olson** stated it was always a problem but you didn't know it. **Director Huus** stated when it was all zoned Commercial, there were far more problems. **Fleck** stated but nobody realized it until we brought it up here. **Dana Roff** stated it would have been a major problem later on if we wouldn't have figured it out or seen it.

Butch Fleck asked are there any other complaints that you got? I didn't get anymore. But this sewer thing never has come up. I just thought of it the other day. That's going to be a problem though I know there are going to be mad people. **Dana Roff** stated I think no matter what if they went to Upper Missouri and said look, this is what we want to do on our property, then Upper Missouri would have to come and approve that. Then Upper Missouri would have a problem at that point. **Fleck** stated so then you

pass the buck off to somebody else. **Director Huus** stated no matter what we did, we wouldn't have anything to do with that.

Kathy Skarda asked how many different parcels are affected by that? **Butch Fleck** stated there's about four maybe. **Dana Roff** stated there are some up at the north end of town. **Cody Knetzger** asked so it's not all the same person? **Roff** stated no. They're all different. **Director Huus** stated which even if it would have stayed the way it was, they would still have those problems.

Craig Hystad stated but there are six or seven that might be a little less than an acre. **Butch Fleck** stated there is one up town, a Man Camp or whatever you want to call it. I doubt if that is a quarter acre. That's got sewer stuff on there.

Dana Roff stated we've got about 15 (fifteen) at that North end of town, just up in that area that are less than an acre.

Craig Hystad stated you can put this as Old Business and get a hold of Upper Missouri Health, but there is nothing that our Zoning is going to change for that.

Butch Fleck stated I didn't know so that is why I wanted to bring that up here while we were doing this.

Dana Roff stated the South end of town looks pretty good. There are three parcels that are under an acre as far as we know. **Butch Fleck** stated on the South side. **Roff** stated one of them is owned by the County.

Butch Fleck stated the Telephone building would be less, but that's grandfathered in. **Dana Roff** stated it's 1.02 (1.02-acre) according to our GIS. **Fleck** stated I thought it would be less. The next one to the South of them would be good. The one at the end of the street probably wouldn't be. **Roff** stated the one with the little trailer, the little manufactured home is 1 ½ (one and one-half acres).

Butch Fleck stated I know across from the bar, those are small. **Dana Roff** stated yours is .55 (.55 acres) where your house is. **Fleck** asked where my house is? I think it's ¾ (¾ acre). **Roff** stated just according to our GIS, because your son is 2 acres. **Fleck** stated yeah, it was two.

Dana Roff stated up where the bar is, that's .86 (.86 acre). **Cody Knetzger** stated you've got this line, it looked crooked, but it goes to the center of the road. **Butch Fleck** stated across the street to the West of the bar, that's where you've got some small ones.

Dana Roff stated JC Nielsen's lot is .44 (.44 acre). She is right up there off Carr Lane. When you go off Carr Lane, those are some small properties. **Butch Fleck** stated if there is nothing we can do about it, we just as well move on. There is no use discussing it if we can't do anything with it.

Jeremy Olson asked Butch, since you are the most invested in this one, do you want to make a motion?

Butch Fleck asked you didn't have anymore, everybody else was OK with everything that was done? **Dana Roff** stated yeah, they were. I've spoken with quite a few people on the phone and explained to them the difference between the Comprehensive Plan and the Zoning and I haven't had anybody come back and say "No". **Fleck** stated they were all alright with, the ones that I did talk to, but I didn't talk to those others.

Dana Roff stated the hunters didn't respond to anything. **Butch Fleck** stated we can't do anymore now that you've set up the letters and everything. **Jeremy Olson** stated you made a Good Faith effort. **Roff** stated yeah. **Fleck** stated I guess I'll move to Approve or whatever we have to do. **Olson** stated Approve as Presented? **Fleck** stated yeah.

Motion to Approve as Presented #07-21COMP/ZC - GRASSY BUTTE REZONE- #07-21 COMPREHENSIVE PLAN AMENDMENT AND ZONE CHANGE -#07-21COMP/ZC . Motion by Cody Knetzger; Second by : Voice Votes: All Ayes

Motion passes.

PLANNING AND ZONING BOARD VACANCY APPLICANTS

Director Huus stated I just wanted to give an update on a couple of different things. We have had 3 (three) Applicants show interest, but nothing really in writing. Dustin Jordan expressed an interest, but we don't have any information. Sarah Billing and Tim Transtrom also showed interest in the position. There will be two Applicants if Dustin doesn't formally acknowledge that he wants to (apply).

Director Huus stated the other thing is Jeremy, you put in your Resignation letter. This is your last meeting, and I don't believe we've heard from Eva.

Eva Hepper stated I will stay on if that works. **Director Huus** stated so that would be brought forward to the Commission for their Approval. Then selection should probably take place at probably the first meeting in January Commission meeting. We will bring it forward at the January 4th meeting. **Kathy Skarda** asked could it come next week? **Director Huus** stated we could if we didn't just want to bring these forward. **Skarda** asked the reason why I was saying that is because the person that is elected has time to go through training and orientation. Then they would be able to have that done and be able to attend their first meeting in January. **Butch Fleck** stated otherwise you'd be short members.

Jeremy Olson asked was there a time limit or a time of opening for this when you put that out in the paper? **Director Huus** stated no, we didn't put a deadline on it. We said it was for starting in January.

Cody Knetzger asked what was that second name? **Director Huus** stated Sarah Billing.

Jeremy Olson stated since I won't be here in January, Butch is the Assistant Chair. He will be the Chair until a new one is done in a reorganization meeting, probably in

February. **Butch Fleck** asked you are not going to be here? **Olson** stated no, this is my last meeting, **Butch**.

Kathy Skarda stated Jeremy I just want to thank you for your service. **Jeremy Olson** stated thank you. **Butch Fleck** stated it will be the loss. He's helped me a lot.

Director Huus stated thank you Jeremy for your service.

ADJOURNMENT

The meeting was adjourned at 5:35 PM.

The next meeting of the McKenzie County Planning and Zoning Board will be held on Monday, January 10, 2022, at the McKenzie County Courthouse 201 5th Street NW, County Commission Boardroom at 5:00 PM.

