

Planning and Zoning Commission Minutes

September 11, 2023

Meeting was held at the McKenzie County Courthouse County Commission Boardroom 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, Jim Jeske,
John Irwin, Kathy Skarda, Lance Renville, Tim Transtrom

Members Absent: Matt Beard

Staff Present: Planning and Zoning Director Sandee Kimpel, Planning Attorney Ari Johnson,
Planner Candy Lundgren, Administrative Assistant Cindy Jensen

For others, see sign in sheet at end of minutes.

APPROVE AGENDA

Motion to approve August 8, 2023 meeting minutes as presented; Motion by Kathy Skarda; Second by Tim Transtrom; Voice Votes: all Ayes.

Motion to approve agenda as presented passes

APPROVE PREVIOUS MEETING MINUTES

Motion to approve August 8, 2023 meeting minutes as presented; Motion by Kathy Skarda; Second by Craig Hystad; Voice Votes: all Ayes.

Motion to approve August 8, 2023 meeting minutes as presented passes.

CODE ENFORCEMENT

Nothing was presented.

UNFINISHED BUSINESS

Nothing was presented.

PUBLIC HEARINGS

#05-23CUP-White Horse Water - #05-23 Conditional Use Permit – White Horse Water; S9, T147N, R101W, 1082 Red Wing Road, Arnegard, McKenzie County, ND PID #450000300

Candy Lundgren stated 05-23CUP White Horse Water. This has been postponed several months. They are wishing to build a 260-acre foot freshwater pond for Industrial use. The Comprehensive Plan land use is Agriculture. The current Zoning is Agriculture.

Candy Lundgren read the Findings of Fact. They are attached to the end of these Minutes.

Candy Lundgren stated the subject land is designated in the land use as Agriculture and staff recommends approval for this Conditional Use Permit, adopt the findings and conditions as provided in the Staff Report.

Candy Lundgren asked do you want me to read all the conditions? **Butch Fleck** stated No. Actually, they are the same as all of them.

Kathy Skarda asked if this would adversely affect any downstream users at all? I was wondering because that was one of the things we had with another applicant.

Duane Sand stated good evening, Mr. chairman. Commissioner Skarda. To the best of my ability, I will answer that question, which I'm not sure I'm qualified. Part of the study that the State Engineer's Office does, is calculate worst case scenario. A vertical fracture of the main berm and the watershed beneath it. In this case, the only property is that of the landowner and there's a house that Kit's son lives in that's elevated. So, I think the drainage basin that takes the Red Wing Creek right to the little Missouri River, would be where would it go. I know that is something that the State Engineer's Office looks at, but I can't speak any further than that.

Kathy Skarda stated I guess my question wasn't really regarding the berm so much as to if this 260-acre feet dam or two, keeps the downstream users from having any water. That was what we had concerns with one other big pond that we discussed and approved previously. So that's what that my question was. I understand that the owners of the property that remains downstream are for service or McKenzie County Permittees and mostly Mr. James as well as some North Dakota State school land. So, I was just wondering [if there are] any thoughts or concerns.

Duane Sands stated yes ma'am. The State Engineer's Office and Water Commission does not permit groundwater from being pumped into this pond and the only water that can go in and is water that comes down Red Wing Creek of the Missouri River, which is 3 miles to the South. So, all that is calculated or taken into account, which our Commission would need to be an approved water permit to pump from those two sources. Other than that, the only downstream would be further down the Missouri River and the State is pretty liberal when it comes to allowing anything, any amount of acre feet as long as the river is flowing above 30 cubic feet per second. So, I think all of that statement will come from the Regulatory Committees or Jurisdictions in the state. That's the best answer I can provide.

Butch Fleck asked so most of the water gets pumped from the river? **Duane Sands** stated the river or the Creek. Yes. **Fleck** asked [do] you have a high watermark that you could pump from or anytime?

Duane Sands stated this is Great Creek but it doesn't always flow, especially in July and August. It's quite possible we'll have the drain water from the Missouri River, to this point, which is about 250 feet in elevation higher than the river. So, it takes 3 pumps to get it up there. **Butch Fleck** stated because we okayed one of our areas, but they can only pump out of the creek when it's above what normally flows just in the flood stage, so it doesn't affect the creek.

Duane Sands stated you can pump from the Creek as long as water is flowing in the creek. But the new rule in the last 5-6 years is you can't pump water to a point where you stop flow in the creek. That's the hard requirement I've since learned about.

Candy Lundgren stated Commissioners, I also sent letters to both State Lands, USA, Kit and everybody else further down the stream for asking if anyone had any concerns or questions and I didn't get any responses from them.

John Irwin asked Kit, are you comfortable with just a 4-wire fence around it? **Kit James** stated as far as the fence, I'm a little bit, quite honestly because it's in our horse pasture and it would've been kind of handy then for deer and whatever else you know, to drink. But this is in and kind of puts weed barrier around. You guys have to understand this is pretty rough country and it's out in the middle of nowhere. After talking with Craig, it sounds like the reason you do require a fence is in case somebody comes along through there that they don't end up in it and nothing gets in the dam, I guess. Our perimeter fence is really close to this. When the creek is low, the chances of it are pretty narrow, but you know, even for horses. I am almost more concerned about when it starts freezing, quite honestly with deer getting out on the ice and falling through, because this can be pretty deep. Maybe some type of fence would be good. **Butch Fleck** stated but it will be fenced so nothing can get on it.

Kit James stated that's my point. Yeah, probably we should probably. **Butch Fleck** stated that's always a requirement. **Craig Hystad** stated that's always a requirement pretty much wherever you want it fenced. It doesn't have to be on the berm, it can be away from it, whatever. Requirements are pretty liberal on that; we're just asking for a drawing on it. **Fleck** stated I think they had a diagram for the fence. **James** stated it would probably be pretty close to the water.

Duane Sands stated Mr. Chairman, if I may, I did. There is a drawing we have of the fence, but that was before Kit and I decided to move some of the fence on that side. So, one of the thoughts coming, in the meantime, is to get a permission to not have a fence like on the berm or right around the berm, and to use some of the existing fence. **Craig Hystad** stated you can. You can have that fence anywhere you want. It can be 300 yards away from the pond. I mean, it's just we have asked for a drawing of where you are going to put it. **Sands** stated and knowing that now, I'd like to resubmit a fence plan. **Director Kimpel** stated absolutely. This is what currently was submitted.

Kit James stated I would kind of like to wait until we get the fence done to decide where we are going to put the fence. We have that butte beside there and we might want to change it. I don't really want to get it put in stone here now.

Craig Hystad stated we just kind of want (a general idea) of where you're going to go with, that's all we have ever asked.

Kit James stated it's pretty self-explanatory, it's in the bottom of the drainage. **Craig Hystad** stated it kind of sits on the berm to cross the creek.

Kit James stated it drains water a little bit when it rains. It's not a creek, it just drainage and to answer Kathy's question as far as water affecting downstream people, there's not enough water coming down that up against that creek. It gets pretty dry. Quite honestly, because it's a flatter drainage.

Kathy Skarda asked and you said that the property that it would impact is ultimately going to be your creek? **Kit James** stated because it goes right to the creek and into our property. **Skarda** stated but that's the question that I asked all the time,

Kit James stated there are springs and whatnot below the creek. To keep it flowing below this. **Kathy Skarda** asked and is that where he'll be getting the additional water if it does not fill, would be from the streams? **James** stated from Red Wing.

Director Kimpel stated Just going to do a little bit of clarification on how these things get filled. They are allowed to fill these ponds with what is permitted for that when they submit that to the State so they won't be pulling just randomly from anywhere.

Motion to Approve #05-23CUP-White Horse Water - #05-23 Conditional Use Permit – White Horse Water; S9, T147N, R101W, 1082 Red Wing Road, Arnegard, McKenzie County, ND PID #450000300

Motion by Craig Hystad: Second by Cody Knetzger

Voice Votes All Ayes

Motion to Approve #05-23CUP -White Horse Water Passes.

#11-23CUP Rough Rider Operating- #11-23 Conditional Use Permit – Rough Rider Operating; SE T152N, R101W, S10 / NWNE T152N, R101W, S15; PIDs 150004400 & 150005850, 14025 40th St NW Alexander ND 58831

Ben Barczewski for Rough Rider Operating was present on the phone

Candy Lundgren stated 11-23 CUP Rough Rider Operating is for an applicant is requesting a Conditional Use Permit to bring an existing freshwater pond that was built by a previous owner in 2014, 2015, into compliance. The Comprehensive Plan Use is Agriculture. The Zoning is Agriculture

Candy Lundgren read the Findings of Fact. They are attached to the end of these Minutes.

Candy Lundgren stated no public comments have been received. Not true. I did receive one comment from Tri Township which said it is godfathered in. That is what the comment stated. The Conditional criteria is the same as on all ponds and the Comprehensive Plan consistency. It is Agriculture. Staff recommends approval for the pond as it's been there for quite a few years.

Jim Jeske asked where does the water come from for this pond. **Craig Hystad** stated the Little Missouri river. **Candy Lundgren** stated the State Water Permit comes from the Little Missouri for this one.

Motion to Approve #11-23CUP-Rough Rider Operating - #11-23CUP-Rough Rider Operating - Conditional Use Permit – SE T152N, R101W, S10 / NWNE T152N, R101W, S15 PIDs 150004400 & 150005850, 14025 40th St NW Alexander ND 58831; Motion by Craig Hystad: Second by Kathy Skarda: Voice Votes All Ayes

Motion to Approve Passes;

Zoning Ordinance Review Project – Zoning Ordinance Workshop Summary Memo/ Article II – Bonds Section/ Article IV – Wind Energy Conversion Systems (Revised Draft) – previously discussed at July 10th Workshop/ Solar Facilities (revised draft) – previously discussed at July 10th workshop/Date Centers; Article V – Administration – same as July 10th draft

A transcript of the zoning ordinance discussion can be found [here](#).

INFORMATION REPORT AND ADMINISTRATIVE PERMTIS

No discussion was held regarding Administrative Permits and Informational Reports

Director Kimpel stated this concludes our regularly scheduled Planning & Zoning Meeting.

ADJOURNMENT

The Meeting Adjourned at 6:00 pm. Motion to adjourn by Craig Hystad; Second by Lance Renville; Voice Votes: all Ayes

Motion to Adjourn passes.

The next meeting of the McKenzie County Planning and Zoning Board will be held on Monday, October 8, 2023 at the McKenzie County Courthouse, 201 5th Street NW, County Commission Boardroom at 5:00 PM.

McKENZIE COUNTY

Planning and Zoning Commission

#11-23CUP Rough Rider Operating

Application:	August 1, 2023
Hearing Date:	September 11, 2023
Description:	SE T152N, R101W, S10 / NWNE T152N,R101W,S15 PIDs 150004400 & 150005850, 14025 40th St NW Alexander ND 58831
Owner(s)/Applicant:	Rough Rider Operating
Reason for Request:	Applicant is requesting a Conditional Use Permit to bring an existing freshwater pond that was built by a previous owner in 2014/2015 into Compliance.

Comprehensive Plan Land Use: Agriculture

Zoning: Agriculture

Findings of Fact:

1. All Requirements for public notification have been made.
2. No public comments have been received.
3. Applicant is not the property owner but has the Property Owners permission to apply for the permit.
4. The pond is less than 50 acre feet.
5. Per the state Applicant does not need a construction permit as the pond is less than 50-acre feet.
6. Freshwater Ponds are a conditional use in the Agriculture District.
7. Pond is enclosed with a chain link fence.
8. Property is in an organized township and has Township Approval.
9. Applicant has provided a Certificate of Good Standing from the State of ND.
10. Applicant has an approved weed permit from the McKenzie County Weed Dept.
11. Applicant did not build this pond, this was built in 20104/2015 by a previous owner.
12. Applicant has a Current State Water Permit # 6729
13. Applicant has an approved Approach Permit # RR220615BP

McKENZIE COUNTY

Planning and Zoning Commission

#05-23CUP White Horse Water

Application:	May 5, 2023
Hearing Date:	June 12, 2023 / Postponed to July 10, 2023 / Postponed to Aug 8, 2023 / Postponed to September 11, 2023
Description:	S9,T147N R101W, 1082 Red Wing Rd, Arnegard, McKenzie County, ND PID #450000300
Owner(s)/Applicant:	White Horse Water
Reason for Request:	Applicant wishes to build a 260-acre foot freshwater pond for Industrial use.

Comprehensive Plan Land Use: Agriculture
Zoning: Agriculture

Findings of Fact:
<ol style="list-style-type: none"> 1. All Requirements for public notification have been made. 2. No comments from the public have been received. 3. Property is not in an Organized Township. 4. The pond will be 260-acre feet. 5. Freshwater Ponds are a conditional use in the Agriculture District per 3.4.3 (16. 6. Pond will be enclosed with a 4-strand barbed wire fence. 7. Applicant has provided a Certificate of Good Standing from the State of ND. 8. Applicant has provided a Current State Water permit. 9. Applicant has an Approved SWPPP #NDR112139 from the DEQ 10. Applicant has an Approved Approach Permit #WHW200706DS and An Approved Weed permit from the county. 11. Applicant is not the property owner but has signed permission to build the pond from the owner. 12. Applicant has a State Construction permit #2715. 13. Pond will be lined with an earthen liner.

Conditional Use Permit Criteria::
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McKenzie County Ordinance Revision Meeting

9/11/2023, 5:00 PM

McKenzie County Courthouse, Yellowstone Room

Scott Harmstead (SRF Consultant): There was an Agenda provided tonight. I am going to speak on these in the order they are in the Ordinance. I will be reviewing the Bond in Section 2. All of this has been discussed several times in the past, the last couple of years. We have a requirement to review bonds at a certain period. We are looking at every five years, in this case, to address those based on inflation. So that's what's on page 2.

Kathy Skarda: It's letter G.

Scott Harmstead: Is there any questions on that? On things we need to add.

Butch Fleck (Chairman of the Planning & Zoning Board): On these bonds, if we do these, every 5 years, do we start now or is that retroactive?

Scott Harmstead: That's for all. This will be for all existing estimates.

Butch Fleck: So, do we have to go back and notify everybody about the five years, or do we start from now when we approve these?

Scott Harmstead: No. It would be on all existing bonds. So, it would be, I don't like the word retroactive for some reason, but yeah. So, we can let everyone decide how they handle the internally, process wise.

Kathy Skarda: At the maturity date?

Director Kimpel: Some of them don't have a maturity date. So, here's is what we are running into. We have had bonds from the beginning, 2013 and the amount is the same. So, due to inflation, some of the stuff doesn't have enough bond to cover the cost so we would require them to do the same thing. Get an engineer's estimate. Submit it to the Planning Department.

Scott Harmstead: It would be officially started from the older ones that are obviously more out of date.

Kathy Skarda: Maybe maturity date wasn't the right word. Maybe it's the date that they were approved.

Scott Harmstead: The estimate date.

Kathy Skarda: That would give you a starting point and I know some of them last for a long time. But we still need to take and start somewhere, so I would say at the beginning when they are approved or get their bonds.

Director Kimpel: Yes, that was the intention.

Kathy Skarda: Yes.

Director Kimpel: When they get approved, we have that date five years from that. Because there's a sixty-day period, they get sixty days to do renew their bond. So, if we renew their approval date, we can give the get 60 days to get their estimate in, and get the new one going again.

Kathy Skarda: And that would be for all bonds?

Director Kimpel: Yes.

Scott Harmstead: We were visiting on wind energy conversion for a little while. The last changes have to do with setback standards. The July discussion on the setbacks was for occupied buildings and non-participating parties that are part of the actual project. The setback was a mile. They did have a rule in there, that setback can be reduced with written permission with the affected landowner. So, obviously a developer of this type of project would have to negotiate, you know, with whatever property that is, if they really wanted to reduce that setback. Just something less than a mile would need to negotiate. Those are the only changes as far as wind energy, this last time.

Kathy Skarda: Mr. Chairman, Scott, if there is any additional comments or concerns regarding any of these proposed changes or the ordinance that may not or may be included, can we bring it forth to you at a different meeting?

Scott Harmstead: Yes. To talk about our plan moving forward I would say we are more than half way through now. But yeah, there will still be time to look at that and at any other items. Are there any questions on that change for setbacks?

Scott Harmstead: The next one would be in the same article. This would be a completely new set of standards for solar energy facilities. The changes also have to do with the discussion in July. The setbacks were discussed and essentially what we arrived at with this board is the 1000 feet from non-participating residences and 500 feet on participating residences from the property lines. Again, there's this note in here that, that can be reduced if there is a special agreement from that affected landowner. So, that would change. That is on page 4.

Scott Harmstead: On page 5 and 6, in the middle, we did add if they do remove trees, that they would have to replace those on a one-to-one basis. These can be these could be potentially quite large so by the way as well.

Scott Harmstead: The other question was asked if the state has standards on this. I did contact and talk to the Public Service Commission. They do not have any. There's nothing in the State Code in the Administrative Code either, that the Public Service Commission has with respect to solar regulations.

Butch Fleck: Whatever we do won't be questioned, what we have here?

Scott Harmstead: Not at all. Typically, in the way the PSC works, is if the local jurisdiction has something more restrictive than them, they're okay with that and they always look for them. At least in this case they will look for local approval first before they approve. Similar to the other items that they do.

Craig Hystad: I don't see it in here, but I might be missing it. Do we have a Bond requirement on these?

Scott Harmstead: Yes, there is. They have to remove everything completely and restore as it was.

Craig Hystad: If the bond got held up completely, I could just see them walking away and leaving it totally demolished.

Scott Harmstead: I'm sure that's probably happened somewhere.

Jim Jeske: Where did these setback numbers originate from?

Scott Harmstead: Obviously there is no set standard anywhere. It's kind of all over the board. We did start at smaller numbers than that and there was discussion in the last two meetings about these numbers.

Jim Jeske: Was there any other existing solar and wind farm consulted to see what they suggested or do we just come up with that number?

Kathy Skarda: They want it closer to your house.

Director Kimpel: They have been here.

Jim Jeske: I know I'm late to the game. It seems like good numbers; I was just wondering.

Scott Harmstead: There was a company that came to one of our meetings. We've been in touch with them about generally what their projects are. But I think if ask them, they would request shorter setbacks than this.

Scott Harmstead: The only other county in the western part of the state, that has solar standards right now, and this is just within the last six months, I think adopted is Mercer County.

Jim Jeske: What did they come up with?

Scott Harmstead: About that, It is similar to this, maybe a little less. But they also have a similar standard about there's an agreement with the property owner that could reduce [the distance].

Craig Hystad: The biggest thing with this is they want to be close to the power lines. I mean you've seen all the power lines that are going across barren country where there are options for them, and they're not even close to houses.

Jim Jeske: But yet you're protecting them.

Butch Fleck: But according to the Century Code we have to allow all these uses so we can't stop them. But we have to be halfway reasonable or the State can come in and set their own, or we could get sued by the companies if we're too restrictive. So, we've got to work with the people and try to get what's halfway reasonable for everybody and Ari Johnson will back us up because he'll have to fight it, if it goes against it. So, is that right?

Ari Johnson: Generally, yes. There's a whole big gray area there that, that if we have a rule that people don't have a cost or risk that they are suing us over, it's cheaper to follow the rule than to go to court. They're not going to bother going to court. If someone decides to fight us on it, then it's up to the courts to decide what's reasonable and also whether we have any jurisdiction at all. The more reasonable we are, the less likely it is that someone will fight us and the harder it is for them to win. So that's why it behooves us to be as reasonable as we can and not overly restricted and also to tie any restrictions that we do have on the purpose of County Zoning. So, I hate solar; that's not a reason for County Zoning to impose a rule against solar. But solar power causes a weed problem in McKenzie County, that is scientifically based, then that would be a reason for us to have a zoning restriction on it. So, my rule is always just focus on reasonable requirements that match the purposes for zoning and we should be okay with it.

Butch Fleck: That is what we've been trying to do. But we've got people that don't want it and they spoke at these meetings, but we can't go that way. We have to if it's allowed under the Century Code.

Scott Harmstead: I think, like some of the legitimate concerns that the court would probably recognize have to do it I have to go with what I've heard so far, about concerns have to do with potential heat coming out of these. I've also heard about aesthetics, just the look of it. Industrial nature. We already have a lot of that with oil and gas and other things. There's some of the general concerns that I've heard.

Kathy Skarda: And don't we have it in here that if there is a concern about the landscape and the visual impact of the beauty of the area, we can have a study.

John Irwin: Don't you think we should probably treat wind the same way? I mean, we have one of them, at a mile and they are letting these in at 500 feet.

Scott Harmstead: They are all very different. Obviously, they are very tall and have spinning blades

Kathy Skarda: They are very loud.

Scott Harmstead: There is a noise, there could be a noise element to it. There's some other issues and potential impacts associated one versus the other. So that's I think that's a really good reason for the differences and setbacks.

John Irwin: Just so one doesn't think we are picking on just one. These guys were here lobbying for their best interest. We didn't have too many show up for the wind discussion. These guys probably would have been out here a mile too if they had not been here.

Scott Harmstead: That is all I have for solar.

Kathy Skarda: asked I was wondering is there a minimum height requirement? I know we have a maximum not to exceed, but there is a minimum as well?

Scott Harmstead: I never received that in the examples. It could be, yeah. I know there is a provision for when they are resting on their side. We're not going to have sheep grazing.

Director Kimpel: If they get too close to the ground, if they bring them down too close to the ground, they're not going to work because they can't tilt them.

Kathy Skarda: It says here, panel shall be placed at least two feet off the ground and to allow at least four feet clearance for mowing and maintenance, I just found it. I thought it was only the standards for height, but this is for maintenance instead.

Scott Harmstead: That is not minimum height. That is clearance.

Butch Fleck: That guy that spoke to us said that now that they can the technology and they rotate those paddles and that dissipates the heat. Have you heard anything that they use them that have done that?

Scott Harmstead: Honestly, I haven't gone into that or anything like that.

Butch Fleck: I mean that's just what they were saying.

Scott Harmstead: I think with these setbacks, that will definitely help with, if there are any heat concerns or anything like that.

Director Kimpel: I can't really speak to the key portion of it. When I was just on my trip out West, a couple weeks ago, I did see some of these newer panels and I was very shocked at the fact, that the ones I saw recently were more like a flat black panel. I don't mean flat like a flat surface; I mean like flat black paint. The reflectivity of them is almost nothing anymore. I think that would probably cut down on the heat too.

Scott Harmstead: stated the next section is new. It is supposed to be on data centers. All the definitions are on the first page. This also could be crypto currency mining. I learned a lot about these in the last year or so and these are very popular. These obviously are a very new issue. These can be fairly large depending on how much power they have access to and what they're exactly doing. But I've heard that these can be several feet high, almost like shipping containers, and they're just like just blocks of big building blocks. They can be quite large. Some of the issues that we've read about that have to do with noise is probably, the biggest one. If people are living nearby, there is definitely noise that can be heard and it's a consistent noise, which is a lot different than like a train passing or a plane going over. It's a consistent humming noise. So that's the number one issue impact that we've seen. Industrial type of development has had over the years is just to look at it, where it is and who has to look at it. So those are really the top two issues. Otherwise, it's just the aesthetics, the look of it. The other thing we were looking at with this, is over the years there's definitely an issue that we can't get any control out of it. A lot of it, the industrial Commission will allow some oil and gas type of facility in the middle of Agriculture land. With this you do have control over it, which is great. What we're thinking is this is really more appropriate especially if it's large, and we could limit those to Industrial Zoned areas. We have two zoning districts in industrial, Light Industrial and Heavy Industrial, I-1 and I-2. Then also by Conditional Use Permit. It's another thing that's changing rapidly. The impacts might be different in five or 10 years from now, than they are now. Might be more noise, we just don't know. These things are changing so quickly these days, so we thought that's probably the safest approach to go. With this, the standard we are looking at is to break up the facade of these

things, so it's not just a blank wall. That's what Part B on the bottom of page one has to do with. Same has to do with all the other mechanical equipment that is shielded.

Scott Harmstead: Lighting. If they do a lot of lighting like for security purposes, that it's at least pointed downward and not pointed up contributing to light pollution you already have.

Scott Harmstead: Then the last one I should probably mention is electronic waste that's part G on page 2. Whenever these things are done, it's a lot of waste. These are huge server rooms, basically, they're just for our computer waste. Those have to be disposed at an appropriate recycling facility compliance with the state. Basically, that is what we are seeing there

Kathy Skarda: So, who is going to pay for that? It's not listed whose responsibility [it is].

Scott Harmstead: Everything is the responsibility the applicant and we can say it here. Of course, also could be said in the Conditional Use Permit, but we can say it here as well and that would make it extra clear.

Kathy Skarda: It all needs to be clear whose responsibility it is because a lot of people, if they do not see their name or telling them that they are responsible, they may not say or accept that they are responsible for it. It has to be there in black and white otherwise, it's not clear most of the time.

Tim Transtrom: As far as the setbacks, it's saying 50 feet from the property line. A minimum of 500 feet from a residential dwelling, schools and religious centers. That's really pretty low.

Scott Harmstead: We can look at that a little bit further. Actually, McClean County has similar standards there right now.

Craig Hystad: But if we put it in Industrial, only Industrial.

Scott Harmstead: Having industrial. They're not putting it in Industrial right next to Residential.

Butch Fleck: In Williston, that was in Industrial and they had to put up a wall because of the noise.

Scott Harmstead: Yes, the noise could be a huge issue. Chairman, you have a good question. I'll just repeat the question. Williams County has areas that are, you have Industrial Zoning next to Residential areas and I think that's kind of an unfortunate symptom of their Planning and Zoning. They recognize that and that's kind of really the bigger problem that they are dealing with. But they are looking at probably having some sort of setbacks.

Butch Fleck: But when you get back to the waste, would be our place to put restrictions on it or does the Industrial Commission do that?

Scott Harmstead: These are the items that the Industrial Commission does not have jurisdiction over these. At least at this point it might change in a year or two.

Craig Hystad: That would come back with basically that.

Jim Jeske: The point I see with this is the noise issue. You can put it in an Industrial zone, but it can affect a Residential Zone, potentially a long way from the Industrial Zone. Is there a way to shorten up the, you know, the decibels at so many feet? Because I mean they could run 1000 servers in this thing and it's working fine and then they up it to 2000 because they need more power and the next thing you know you're affecting a school half a mile away.

Scott Harmstead: If those change, those would be considered an Amendment to the Conditional Use Permit condition. We can make that really clear here.

Jim Jeske: Like they're only allowed so many decibels at so many feet.

Scott Harmstead: And there's other ways. The setback is the easier way to mitigate that. The other way to do is sound walls but the complication with that is you got to start measuring noise, in order to do that. But still, it's more work to monitor the ways and have more standards around the different decibel levers and things like that. That's why it's easier to have setbacks.

Jim Jeske: I suppose there's not enough.

Scott Harmstead: Again, there is big wall out on the prairie, do you really want that?

Kathy Skarda: In our Light Industrial District, we also include motels and different businesses that would be very adversely affected by a large amount of noise. And so, I'm just wondering, do you have a light industrial listing of businesses? I mean, I'm not sure we want to have light industrial even included in this. I would rather have it be heavy industrial. Because if we're going to have a motel, have it right next to them, good luck having that motel surviving or do any business and good luck to anybody who happens to stay there for the night. Aren't there 26 different businesses in Light Industrial, they're transferred from Commercial to Light Industrial,

Craig Hystad: I think we have some workforce housing in it. I don't know why any motel would be in it. But I think more than anything else, most of the noise is coming from the Transformers and all that is putting the power to them.

Kathy Skarda: I'm just trying to see.

Jim Jeske: You have got some huge fans going.

Kathy Skarda: I was just thinking maybe that would be something to look at. You know, maybe it isn't anything to look at, but I think it would be something to consider when we're doing our Amendment.

John Irwin: I think the NDIC kind of trumps what they're doing anyway.

Kathy Skarda: The NDIC doesn't have anything to do with this.

John Irwin: stated with what we're doing, but they still might give somebody the permit to do it. So that's where I think we need to get these 500 feet. If we don't want to listen to a silent solar panel on 1000 feet, I definitely don't want to listen with this thing at 500 feet.

Butch Fleck: But if it's, if it's on an oil site but it's industrial, we can't do nothing about it.

Director Kimpel: So that's what I was just going to mention if they put it on oil pad, have no jurisdiction at all. That's all under the NDIC. If somebody wants to put one elsewhere, I feel we should have some rules for that.

Scott Harmstead: I was going to mention that. In our research in Williams County, these companies, they are looking for substations. They want to get as close as they can to these substations. So, one exercise is to just look at where are your substations at. Understanding where those are, that is more likely where they are going to be.

Craig Hystad: There is one outside of Watford, right South of town there, and I don't see them ever getting any land in there to ever put one in.

Scott Harmstead: Like I said before, this is always changing and that could change as well. There can be a technology to bring gas off of pad right and then have it right on the pad.

Craig Hystad: That is where they are at now.

Director Kimpel: That is usually where they are at now, but without anything in our ordinance, somebody does something we have got nothing to say.

Craig Hystad: If they go off the pad and try to run it, then we would have some say on it.

Scott Harmstead: And this definitely requires, of course, consent, and I guess the ones that we're hoping for to have some more data centers because they are pretty good customers.

Scott Harmstead: We're going to have setbacks with all these applications and they can always ask for a variance

Kathy Skarda: If we come up with some other documentation that will take and help prove a point or disprove a point, we can always bring it forth at a meeting as well.

Scott Harmstead: With variances they have to follow the facts should be those there has to be a concrete reason for that hardship.

Director Kimpel: A proven hardship.

Scott Harmstead: A proven hardship Issue something like that isn't easy either.

Craig Hystad: 2500 feet, then they would be able to get a variance. Go a half mile and then they variance it's in. The same with your wind tower, if you go half a mile, but you can have the variance on it.

Butch Fleck: I'm surprised when Scott said variance because he's been trying to get away from that.

Kathy Skarda: But we have a mile.

Scott Harmstead: Of course, they can apply for them, but we don't want that to be a standard practice.

Scott Harmstead: We looked at setbacks, looked at the districts and if Light Industrial is appropriate. I think that one covers all that we have touched on in this one.

Scott Harmstead: And then the last one, we did not make any changes is the Administration. Article 5 has to do with all their applications that the County deals with the Planning & Zoning, but no changes have been made there. So, I really have nothing to present unless there's questions on that.

Scott Harmstead: What I will say before I'm done here, is that the last section we are looking at is the subdivision regulations. There will be some substantial changes to those. We're looking at the next workshop, probably November to do that. So, stay tuned for that, but that would be all subdivision regulations and if of course if there's other things, we'll address some other tweaks initially to some of these like stuff about data centers, but we'll spend most of the time on subdivision regulations. We will also involve the county engineer in that review as well. Then after that, we hope to bring everything together. We're starting to do that now. Bring everything together back through the process. The whole revised ordinance will come to this Board and then to the Commission after that.

Kathy Skarda: Do we have a public hearing before it comes to us, or is there our public hearing.

Ari Johnson: That you have that, yeah, at the public hearing,

Kathy Skarda: I mean, invite the public, I mean, advertise it that this is your chance.

Director Kimpel: Yes, these have all been advertised in the paper with the larger add and we will continue to do so until the end of this project.

Ari Johnson: But just to be clear, the actual public hearing on amending the ordinance would be all at one time, one big amendment.

Director Kimpel: At the end.

Scott Harmstead: I know cities require 2 readings. This requires 2 readings as well additionally. And that's not at the Commission level.

Kathy Skarda: I thought we did it two times at the Planning and Zoning.

Ari Johnson: I think that's the way we've done it as two times here and once at the County Commission.

Kathy Skarda: But we can change it to whatever needs to be done.

Ari Johnson: I think, that's why we've done it. Again, the Century Code is not terribly clear. But I think we've been above and beyond what's required by having two hearings here, plus a public hearing at the County Commission, in case anyone thinks that it has to be there.

Butch Fleck: We try to invite everybody to show up at these meetings, these small ones so we can work our way up to it. I was surprised we didn't have more here tonight.

Ari Johnson: Well, I think it's also good that we are doing it this way too because people have a big beef with Administration. They can come in November. Breaking it up that way, makes it a lot easier for us to digest, as well as the public.

Kathy Skarda: I think doing it the way we've been doing and piecemealing it so to speak.

Ari Johnson: As a workshop and then a master public hearing for the actual adoption, I think. That's a good move. We are in too deep to change.

Kathy Skarda: But if somebody does have some real concerns involved, they could still bring them forth on anything because we have not approved this.

<Meeting adjourned>