

## Planning and Zoning Commission Minutes

May 9, 2022

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

### **PLEDGE OF ALLEGIANCE AND ROLL CALL**

**Members Present:** Butch Fleck, Cody Knetzger, Craig Hystad, John Irwin, Kathy Skarda, Tim Transtrom

**Members Absent:** Eva Hepper, Heidi Brenna, Matt Beard

**Staff Present:** Planning & Zoning Director Sandee Kimpel, Planning Attorney Ari Johnson, Planner Dana Roff, Planner Candy Lundgren, Code Enforcement Officer Logan Innes, Administrative Assistant Cindy Jensen

**Others see sign in sheet at end of minutes.**

### **APPROVE AGENDA**

#### **Addition to Agenda**

**Kathy Skarda** stated she would like to add two items to the Agenda Discussions.

1- Review the process for the Public Meetings. If a meeting is cancelled, how do we make sure the Agenda and its contents are cross referenced and removed and added to the Agenda as the Legal means and make sure we are covered on how it is all done. Do you want that as a Discussion or do you want to just visit with the Planning & Zoning ladies? **Ari Johnson** stated it would be easier to just discuss with Staff, a plan and a policy for the Cancelled Meetings and to make sure we do it consistently.

2- Provide additional monthly reports before the Monthly Planning & Zoning to make sure we get all the reports and then forward them to the Board of County Commissioners so we have consistent information.

**Motion to Approved Agenda with Added Discussion Items; Motion by Craig Hystad; Second by Tim Transtrom; Voice Votes All**

**Motion to Approved Agenda with added Discussion topics Passes**

### **APPROVE PREVIOUS MEETING MINUTES**

**Motion to Approve March 7, 2022 Meeting Minutes as Presented; Motion by Kathy Skarda; Second by Tim Transtrom; Voice Votes: All Ayes.**

**Motion to Approve March 7, 2022 Meeting Minutes as Presented Passes.**

### **CODE ENFORCEMENT**

**Logan Innes, Code Enforcement Officer** stated I have nothing new at this time. Updated the status of the Ortiz Pond for the Arnegard Treatment Plant. It is completed and the fence is up.

### **UNFINISHED BUSINESS**

**#0021-18CUP-RBW – Dixon Ponds - #0021-18 – Conditional Use Permit – Reclamation Bond Waiver – Indemnification Agreement and Indemnification Agreement Signature Page Signatures**

**Director Kimpel** stated this item was actually approved at the November 8th, 2021 meeting. We just needed to straighten out the signatures so I was just bringing this forward to show that we had gotten signatures taken care of. **Kathy Skarda** asked so the documents have been updated with the correct signatures and have been filed. **Director Kimpel** stated they will now go before the McKenzie County Commission now that you have seen them here and the Chairman will sign them and they will get filed. This is just an update.

### **PUBLIC HEARING**

**#004-22ZC Joey Erickson/E&M Properties -#004-22 Zone Change Joey Erickson/E&M Properties – 13247 25M ST NW, Arnegard, ND T150, R100W, S25; Parcel# 030010088**

**Dana Roff** stated the applicant is seeking his Zone Change from agriculture to light industrial. This change is consistent with the comprehensive plan and area use. The property is located at 13247 25M Street Northwest, Arnegard, North Dakota.

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

**Dana Roff** stated we recommend Approval of Zone Change Request #004-22 Zone Change – Joey Erickson and M Properties LLC to the County Commission to allow the Zone Change from Agriculture to Light Industrial. Adopt the findings as provided in the staff report.

**Butch Fleck** stated this is a carryover from the April 11, 2022 Meeting Agenda.

Joey Erickson, was present.

There were no Board Comment or Public Comment.

**Motion to Approve #004-22ZC Joey Erickson/E&M Properties LLC -#004-22 Zone Change Joey Erickson/E&M Properties LLC– 13247 25M ST NW, Arnegard, ND T150, R100W, S25; Parcel# 030010088; Motion by Kathy Skarda; Second by Tim Transtrom; Voice Votes All Ayes**

**Motion to Approve #004-22ZC Erickson/E&M Properties LLC Passed**

**#01-22CUP Corey Hugelen Pond - #01-22 Conditional Use Permit – Corey Hugelen Pond- T-146N, R98W, S17; Parcel ID #390005300**

**Butch Fleck** stated this is a carryover from the April 11, 2022 meeting.

**Candy Lundgren** stated Hugelen Pond is located at T 146 N range, 98 W Section 17. The applicant is requesting a Conditional Use Permit to build a 320,000-barrel Freshwater Pond for Industrial use. The Zoning is Agriculture. The Comprehensive Plan use is Agriculture and this is an allowed use in Agriculture Zone.

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

**Candy Lundgren** stated the subject land area is designated in the Land Use Plan as Agriculture, and the staff recommends approval for this Conditional Use Permit. Suggested motion: “Recommend approval of Conditional Use Permit 01-22CUP to the County Commission to allow the Freshwater holding pond. Adopt the findings and conditions provided in the staff report.

**Kathy Skarda** stated I was just wondering about compliance and making sure it's compliant within X amount of days. I see that it states ‘periodically inspected to ensure compliance’. I'm so very appreciative of having that language in our CUP specific space and based on meeting the proper conditions influence. **Butch Fleck** asked you understood all the conditions and agreed with everything? **Corey Hugelen** stated yes.

**Motion to Approve #01-22CUP Corey Hugelen Pond - #01-22 Conditional Use Permit – Corey Hugelen Pond- T-146N, R98W, S17; Parcel ID #390005300; Motion by Kathy Skarda; Second by Cody Knetzger; Voice Votes: All Ayes**

**Motion to Approve Passes**

**#002-22ZC Badlands Ind Complex - #002-22 Zone Change – Badlands Industrial Complex – 2052 125<sup>th</sup> Ave NW, Parcel # 630009470, 2052 125<sup>th</sup> Ave NW, Parcel #630009540; T149N, R98W, S19**

**Dana Roff** stated the Applicant is requesting a Zone Change for two neighboring parcels, Parcel Number 630009470 Zone Change from Residential to Heavy Industrial. Parcel Number 630009540 Zone Change from Agricultural to Heavy Industrial. This is a holdover and was supposed to be presented last month. Location is 2052 125th Ave Northwest. The existing Comprehensive Plan is Transitional and proposed to stay the same. The setbacks would be increased. The setbacks are 30, 10 and 25 for parcel #630009470 and for parcel #630009540 the front is 25 feet sides are 25 feet, back is 25. They would change to 50 feet in the front, 25 in the sides and 50 feet in the back. They are respectively 10.46 acres and 7.72. Our suggested motion is recommend Denial of Zone Change #002-22Zone Change Badlands Industrial Complex to the County Commission for Zone Change from R1 to Heavy Industrial for Parcel #630009470 and Zone Change from Agriculture to Heavy Industrial for Parcel #630009450. Adopt the findings provided in the Staff Report.

**Butch Fleck** asked we have just one letter of opposition? **Dana Roff** stated that is from Indian Hills, which is located to the east, 2046 125th East Ave Northwest. The Badlands Industrial Complex property is approximately 416 feet from the first Indian Hills. Indian Hills is directly East to that.

**Dana Roff read the Rich Wilder letter of opposition into the minutes.**

**Dana Roff**

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**From:** Rich Wilder <rawilderjr@yahoo.com>  
**Sent:** Sunday, April 3, 2022 2:38 PM  
**To:** Dana Roff  
**Cc:** Ed Merchant  
**Subject:** Zone change request by Mark Crisp

As the owner of Indian Hills, now called Watford Studio Apartments, I am very concerned with the request to change what ,heretofore, was the Indoor RV Park to "Heavy Industrial".

In 2012 all of the commercial properties of Blue Sky Housing, Watford Ridge Housing, (even Mark Crisp's) 3 M Mobile Housing, the Indoor RV Park and my property, Indian Hills Lodging, were developed and enjoyed a very quiet and serene atmosphere. and, in my opinion should have been zoned "Commercial" when the Planning and Zoning originally took place .

Most of those have now closed. However, I still have a 39 room facility which has guests who stay because of the quiet and comfortable facility.

I haven't any idea what Mr. Crisp is planning, but if it is to have metal fabricating or plastic fabricating or large equipment repair, or any number of heavy industrial businesses, all of which bring inherent noise or odor pollution at all hours of the day and night, I adamantly oppose the change.

I suppose a tire shop or something similar, which makes little noise and only operates during the normal daytime hours could be acceptable, but I highly doubt those are considered "Heavy Industrial".

I fear the noise and or odor produced in a Heavy Industrial facility would severely adversely effect my business.

Thank you for your consideration of my input regarding the zone change to "Heavy Industrial".

Rich Wilder  
Indian Hills Lodging  
801-458-8222

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**Butch Fleck** stated I think one of the biggest problems, actually there are several it sounds like, are when they don't know what's going to actually take place there. It's kind of hard to know what to do with it.

**BOARD COMMENTS:**

**Kathy Skarda** stated when we have 14 Findings of Fact and 8 of them have questions regarding the viability of the business in that area, of the change of Agriculture, then Heavy Industrial, ingress questions, not meeting the setbacks, fire hazards or different things that they are concerned about, I would reach the same conclusion of Denial of this Application.

**Craig Hystad** stated it is going from Agriculture into Heavy Industrial and people are living there. I guess I would not be in favor of it.

**PUBLIC COMMENT**

**Brady Bertram**, Brosz Engineering stated he is here on behalf of the owners of Badlands Industrial Complex. We've realized pretty quickly after the Finding of Fact, that Heavy Industrial might not be the best use for this. We thought about pulling this and going for Light Industrial, but thought we would shoot for the moon and just see what the reception was. After

going through this Finding of Fact, Light Industrial is maybe a little more palatable. I think that's what a lot of the market is going to be down there. I don't know if we can make a formal request to change the requested zoning here, but we could come back and try to address a few of these things. The setbacks are obviously an issue that we just can't get around. If we move back down to a Light Industrial Zoning, I think we can take care of those. For the ingress and egress, I've got an Approach Permit Application on file with the Road and Bridge Department. We met with Tim Pickering out there. They didn't really want to approve a new Approach Permit until it was rezoned because as it sits now, the Approach is okay. The approach of 125th was to just add some rock or something off of the paved entrance there, to eliminate some tracking. So I think the approach issue is going to be ok. The additional access that may or may not be requested.

**Kathy Skarda** asked was the Approach Permit approved already? **Brady Bertram** stated it was not. No, there was really no reason to approve it for Industrial use. **Kathy Skarda** stated I just want to make sure I was understanding that it wasn't. **Brady Bertram** stated correct. I'll back up just a little bit. This is the old Indoor RV Park and I think there was a handful of issues with that when it was in operation. This is a new ownership group and they do not plan on using this for an indoor RV Park. The goal would be here with whatever higher up zoning we can get, would be a Build-To-Suit type facility where someone could market it as a Commercial, Light Industrial, whatever it may be. Get a leaser in there and then build it to whatever you know would meet that higher zoning. A lot of that, I think that's where the fire suppression, maybe even access that type of stuff would really need to be hammered out before a Building Permit is issued or a Certificate of Occupancy is definitely issued and that would be the goal with that facility. These other issues and the Finding of Fact, they're kind of tough to flesh out without maybe knowing what is going in there. If the Light Industrial operation were to come in there, fire suppression may be required, before a Building Permit or Certificate of Occupancy is issued. But there is really not a plan for anything specific there at this point.

**Kathy Skarda** stated I would also I have concerns for the people who are already living there and make sure that we do not negatively impact the quality of their lives or the guest's quality of their stay, negative impacts to the income of the person that's already operating their business. It's really hard to say this is a goal, or let's do this, or change that when we have absolutely no idea what they are planning. **Butch Fleck** stated in the past we have been really reluctant to approve anything that we don't know. We just can't approve something we don't know what it is.

**Brady Bertram** stated just Light Industrial. Understood. I understand too, where this is at. On 125<sup>th</sup> Avenue South there, is surrounded almost entirely by Industrial type uses. So, I think it fits the area pretty well. Obviously, what is there needs to be taken into account. I am speaking for the owner, it is kind of tough for them to market something like this or do anything with this with an Agriculture or R1 Zoning. We have discussed this, I don't really think that R1 zoning is applicable down there. If we take these buildings out and put six houses down or something like that, to me it just doesn't really fit. So, we are trying to go along with what's out there. We just kind of need a path forward. I know it's an interesting property, but one of the benefits I think of

doing this is it kind of cleans up something that has been a visual problem for the County in general.

**Kathy Skarda** stated we want to clean it up but we don't want to create a different problem. We want to make sure that we work together to find something that will work with the area for everybody.

**Butch Fleck** stated that set back issue is going to be an issue about anything.

**Dana Roff** stated should they go Light Industrial, the setbacks as far as front sides and back of 50 feet, 25 and 50 will stay the same. However, our Findings of Fact: #6 Light Industrial does not have the 1,250-foot residential set back requirement; #8 Light Industrial to the Northeast and Southeast. There is Light Industrial right around that, so those would be acceptable. I did talk to Mr. Wilder about what he would think if they went to Light Industrial and he wanted to go over those and study the Ordinance a little bit beforehand and make a comment on it. But Light Industrial would be more to his liking. It is a long list for him to go over.

**Butch Fleck** stated we want to work with somebody, but we want to know what they're doing so. I don't want to create a problem for the rest of the people that are there and have been there.

**Dana Roff** stated I think if we were to readdress this and republish a Public Notice as Light Industrial, that would give people a chance to look at those uses. It is Light Industrial Zoning and there is quite a bit of Light Industrial, around it already. But we do need to figure the parking issue out.

**Brady Bertrum** stated that is part of the issue here, as it sits right now, there's not necessarily a parking issue. Depending on what comes in there, I think that would have to be addressed and whatever that might be. If you can't meet parking requirements then I do not think it should go. More than anything I, I guess I'll just leave it with this. The Heavy Industrial, we understand that is just a pipedream. So, is there a palette for this as Light Industrial or do they have to be readdressed? Do we need to start looking at a Residential Development in there because that is what we are zoned with?

**Kathy Skarda** stated in my opinion, I would like to have you guys review what is in Light Industrial, think of something that would be something good, get with Planning and Zoning and maybe they can figure out what it's going to be.

**Brady Bertrum** stated Mr. Crisp has received some interest and can speak a bit.

**Mark Crisp, Badlands Industrial** stated we did review many different Light Industrial Uses and many are appropriate for a big area, with what is going on there. The other issue I want to bring up is that the current housing is all workforce housing. I have an interest in one that's next to the Indoor RV Park that we got rezoned and the people that we are working with are people who are in workforce housing. In the end there was another issue I guess you know this. I was under the impression that Wilder sold that property, but I'm not sure about that.

**Tim Transtrom** asked what are your future plans if it becomes Heavy Industrial? **Mark Crisp** stated there are several different plans. Like Brady Bertrum was saying earlier, there's nothing absolutely concrete because you really can't solicit somebody or talk to somebody unless you have this offer and what would be appropriate for them. I really believe the issue of use of, for oil service equipment, you know people who do that kind of work. You have to have a service truck, a welder shop, and then all the way down to every kind of that service work that you can think of. That is really what we are trying to do. I don't even know if Heavy Industrial is even needed for that. We just went toward Heavy Industrial because we didn't see where it would have obstacles and then finding out later, with the report they gather, quite a few setbacks and that sort of issue, so the Light Industrial would be better. When you say Light Industrial, you get the Zone, there is a list of uses that are allowed under Light Industrial. It is right around those things that we are talking about, service equipment, warehouse, that is where it is starting out.

**Butch Fleck** stated they are going to have to get with the staff and come back with a plan of some sort so we have something to work with. **Craig Hystad** asked do we deny this and they come back then? **Fleck** stated yes.

**Motion to Deny #002-22ZC Badlands Industrial Complex. #002-22ZC Badlands Ind Complex - #002-22 Zone Change – Badlands Industrial Complex – 2052 125<sup>th</sup> Ave NW, Parcel # 630009470, 2052 125<sup>th</sup> Ave NW, Parcel #630009540; T149N, R98W, S19; Motion by Craig Hystad; Second by Kathy Skarda; Voice Votes: All Ayes**

**Motion to Deny Passes**

**#0011-17CUP-RBW - Helfrich Pond - #0011-17 Conditional Use Permit – Reclamation Bond Waiver – Helfrich Pond – NE1/4, SE1/4 T147, R99W S1, Parcel ID #4250000120**

**Candy Lundgren** stated that has been **POSTPONED**.

## **DISCUSSION ITEMS**

### **Agricultural District Addendum - Kathy Skarda**

**Kathy Skarda** stated I want to make it simpler for landowners with 5 acres and 40 acres of land, for their immediate family members or whoever to hopefully build houses. For example, we seem to have quite a bit of people who want to bring their grandkids home. There may be somebody who is an uncle, they're not married, they're a bachelor, and they would like to have their niece or nephew come to live on the farm or whatever. I was just looking for discussion points to maybe change our 'direct family members' to include 'immediate family', which would



be all the spousal parents, step parents, foster parents, etc. It is listed in here, so that's with one of them.

**Butch Fleck** asked how would it be different than what we have now? **Kathy Skarda** stated because right now we have just 'direct'. From my understanding, the actual regulations, our Ordinance says 'direct family members'. The wording does not include 'immediate', which has a difference. **Fleck** stated I remember when we did this, but I thought we had it covered at one time, but maybe not. **Skarda** stated I didn't think so, but maybe that would be something the we could explore further. I am just wanting to see what the right language would be so we could include more of the family members.

**Butch Fleck** asked do you remember how that was there? **Ari Johnson** stated I do not remember how we worded it. **Fleck** stated I know we went through all that at one time. **Johnson** stated ultimately, we could just revise the definition of a direct family member, if that's the phrase that we've used. **Kathy Skarda** stated I just want to make sure that we are inclusive of everybody and make it easier.

**Tim Transtrom** asked my question would be why would it have to be relative? **Butch Fleck** stated if there is five acres, it doesn't. **Transtrom** stated I'm just saying because there's somebody that lives not too far from me. There's a fellow that comes out and helps, and he is of no relation to them, and they would really like him to move out to their place, put a trailer house there, but he is not a relative at all. But like in these last two storms, he went and shoveled so their dogs could get out.

**Butch Fleck** stated I know I remember specifically the question I asked when we were doing this before. When a son or daughter or whatever moves back, that stuff doesn't always work out and they left. What's going to happen to that place? It had to be a relative and they were hoping they could sell it to somebody. That is what we discussed before, because I asked that question. I don't know if it is directly in there.

**Dana Roff** stated 3.4.4 number 1: "A homestead parcel that is a minimum of 40 acres, may be divided into three additional parcels to build homes for direct family members. This may be approved by the Planning Director." **Kathy Skarda** stated it does not have anything about having a greater scope. **Butch Fleck** stated but it's been changed now, so five acres you could sell to anybody, right? Back then it was still that 40-acre deal.

**Tim Transtrom** stated regarding that, if I had 20 acres, I could sell 5 acres to one guy. But if two more people wanted to buy 5 acres each, for me to sell three 5 acre lots, I think that is why it was worded that way, to keep that from happening probably. Am I misunderstanding that?

**Butch Fleck** stated at that time there was 40 acres. We had a lot of discussion over this 40-acre deal. That is why we were going to let family members in on these 40 acres. Since then, it has been changed to five acre lots. As long as you have 5 acres, it doesn't matter now, does it? **Ari Johnson** stated I can't remember what the other requirements were to do the 5-acre thing. If it

was 1 five acres parcel of every quarter-quarter section, I can't remember off hand. **Kathy Skarda** stated maybe we could discuss it further next month. **Johnson** stated maybe we could. Ultimately, anytime we're talking about drafting something, the main question I have is, what's the scenario that we're trying to address that isn't already addressed? I always try to cut with a scalpel instead of a chainsaw on these things, because when you start cutting with a chainsaw, you end up really undermining the whole process. It's "five acres with, you know, access to a county-maintained road approved with an Approach Permit", and so on.

**Butch Fleck** asked then, since they have to get a Conditional Use Permit, it has to come back through us anyway, so you will always have that. **Ari Johnson** asked is that an Administrative Conditional Use Permit, though? **Candy Lundgren** stated I don't think it is. **Johnson** stated I couldn't remember if we'd made it an Administrative Approval or not. **Fleck** stated I did not catch that. Is it an Administrative Approval or not? **Johnson** stated we will look at it and outline the format in a flow chart.

**Kathy Skarda** asked and then do they actually have to have a Conditional Use Permit then? Because if it's family members, it says you can build three to four homes on x number of acres or whatever if you have it. I was just questioning, does it have to take a CUP? Did you receive what I had sent? **Johnson** stated I did and I emailed staff a little bit, at least emailed to Dana currently what we have for different categories, but I didn't go into a lot of detail. **Skarda** stated I was just thinking maybe we could revamp it a little bit so it's more 'user-friendly' for people who want to build, because it seems like when people have 5 acres, it seems like sometimes we've handicapped them more than what we do to help with the growth.

**Ari Johnson** asked have there been a lot of people who have five acres and they want to build a house but they don't because of the Conditional Use Permit requirement? Is that something we have documented happening? **Kathy Skarda** stated I just know it seems like there are a lot of different steps. **Dana Roff** stated we haven't documented it. Our interpretation has been, if the subdividing is for direct family members, an Administratively Approved Conditional Use Permit is required. Now you would either do a Conditional Use Permit or a Minor Plat, but not both of those. The Applications require the same submittal items so they would be duplicated if you did both of those. We do get in part what you used to call our Stock map. If someone had gone in and decided they were going to parcel out five acres and just go into Katie and have it recorded, we would not allow a building permit until they went through the Planning & Zoning process and did a Lot Split.

**Kathy Skarda** asked with working with the citizens that are trying to build homes on their family land on their family land, or if they are going to buy 5 acres, what do you find here that is the biggest heartburn that they have? I'm asking the staff. **Dana Roff** stated that they have to even ask. They should be allowed to get a building permit. Let's say, one of your children decides to build a house next to yours, maybe 500 feet away or something. You should be able to come in and get a building permit and do that. But with lending requirements, if they were to get

a loan, they'd need to have that parceled off. **Skarda** stated what people ask is why would they have to come to the county. What business is it of the County's, if someone owns the land, why does the county have to give the approval to take and do it on a Conditional Use Permit or whatever? Could they just come and get the building permit, because it doesn't cost anything, correct? Our building permits for a residence? **Roff** stated yes.

**Ari Johnson** stated one problem we have is, when you're parceling off land, you've got to record something to create a separate parcel that in that legal description then can be used for the mortgage. That's where the lender's concern comes in. **Kathy Skarda** stated if they're getting a mortgage, if they don't have a mortgage that is not a requirement. **Johnson** stated well, if you're not creating a separate parcel, then what you're doing is having two single family dwellings on one piece of land, which is a whole separate thing that we could discuss, if that is the 'use' case. That's why I asked, 'What is the specific scenario that we're trying to address here?' **Skarda** stated I'm just trying to make it easier for the forever landowners of five acres or more so that they can be able to build their home.

**Dana Roff** stated many other counties have what they call Accessory Dwelling Units. I did some research. **Kathy Skarda** stated Montreal has a nice one that they just came up with. **Roff** stated William Stutzman and Stark County, they all have these Accessory Dwelling Structures which they can put on their property. It is a little bit of a permit process, but they are allowed to do that.

**Butch Fleck** stated one thing I'm concerned about, that I asked before, is if that person decides to sell it and if it's sitting right next to the other side, if they have to come through the Board, we have questions that we could help these people work through and they won't even think about it as their daughters coming back or son or whatever. Then all of a sudden there's a blow off and they leave and they sell it to somebody. These people don't like it, but they don't want that pain close to their house. That's where if it comes to the board, we can kind of work through with these people so they understand all that. It's just like the bond on these ponds. A lot of these people didn't understand what was happening to them. Then we go through enough of them and we have more questions to ask. If you guys could check, I'll clarify and come up with a little bit for the next meeting.

**Kathy Skarda** stated just investigate some of the different options available so we can help make it easier. **Butch Fleck** stated like I said, we started on 40 acres and we switched to five and I don't think we switched anything else. **John Irwin** stated the whole process is very cloudy right now. People don't know they need a permit, they don't know what they need for acreage. We need to clean it up so the public understands. You get asked that all the time and they don't understand. **Skarda** stated they wonder why the County is in their housing business. **Irwin** stated they aren't even really trying to dodge it, they just don't know. Then when we had problems getting our building Inspector to get them their permits and everything got delayed. We

kind of got a black eye out of some of these things over the last couple of years and because of personnel and haven't really gotten out of it yet.

**Ari Johnson** stated one thing that happened, one reason it's murky is that we've had times that we've amended the Ordinance to create exceptions to what started out as the 40-acre rule and a lot of times we had, discussions where we have the whole town and our whole county here to talk about it and learning during the meeting that we previously wrote in an exception for that. So, we've written in a few different exceptions and we haven't had a cohesive messaging on what all the rules are, so it becomes cloudy. Then people come in asking for a new exception and we add another exception rather than just fixing the base rule it. It's like duct tape on a dam. You know you're better off building new dam at some point.

**Butch Fleck** stated we're never going to get it completely straightened out because a lot of us guys are too independent. **Ari Johnson** stated it's true, one of the options you have is to repeal the whole Zoning Ordinance and do it over, but then we get back to where we started, so we'll try to use a scalpel and cut a clean cut for you.

**Dana Roff** stated Stark County has a Title Notice placed on the property which generally states the accessory dwelling located on the property may not be sold as a separate residence until such time as the accessory dwelling is located as the sole residence on a legally subdivided parcel. So, they have that little caveat in there.

**Kathy Skarda** stated we receive a lot of comments and concerns and I know you guys usually bear the brunt of it and then some of us receive phone calls and so then we make phone calls. It would be nice to research it. When is the Comprehensive Plan scheduled to redone? **Dana Roff** stated 2025. **Skarda** asked so does that mean it has to be done in 2025 or could we begin looking at maybe the Agriculture District and just maybe looking at that section and seeing what can be improved so that when 2025 comes along, we don't have a great big huge blow up. Let's try to do this in a manner where we're going to do this section, review it, do our Public Comments and try to get things done so we can be ahead of the ball game and be ready to receive comments and recommendations and have a lot of it done before hand so that we have a good plan all ready to present to the public. Can we work on it ahead of time? That's my thought.

**Director Kimpel** stated I agree. I think we should look at it before we get to the deadline.

**Butch Fleck** stated that is going to be one part, just parts at a time.

**John Irwin** asked could you repeat what Stark County did? That kind of has a little bit of a bite to it. **Dana Roff** stated they have 'One accessory dwelling unit is allowed on any residential property less than 40 acres. Two accessory dwelling units are allowed under residential property 40 acres are larger. Then they go into a Title notice will be placed on the property which generally states the accessory dwelling located on the property may not be sold as a separate residence until such time as the accessory dwelling is located as the sole residence on a legally subdivided parcel'.

**Ari Johnson** stated so you build a second house on your 20-acre parcel for your kids or cousins or whoever, it is still one legal parcel of land and it's putting a notice out there as someone who runs title to say look, there's two houses here and they can't be sold separately. The land has to be sold as a whole unit until such time as they come in and go through the subdividing process to split the parcel.

**John Irwin** asked the bank didn't like that? I mean the kid that's trying to get the funding, split it out. **Ari Johnson** stated the bank wants you to subdivide that parcel so that each of the houses that you're selling, financing is on a separate parcel. That's the problem we've had.

**Craig Hystad** stated rather than landowner or whoever has land is cosigning the deal. **Ari Johnson** stated one thing we've had is, for example, I own a quarter section 160 acres and I want my kid to be able to build a house and they have their own mortgage. Well, I need to be able to parcel off less than 40 acres so that they can mortgage just their house, not the whole farm. That's one reason we require a subdividing process whether it is a simple lot split or not, because that was the main problem we were addressing, is financing that home on five acre or even less split off parcel. So, if you're building an accessory dwelling on the land, you're going to have to mortgage the whole parcel because you can't mortgage a corner of the farm to the bank. So, if it's going to be on a separate mortgage, it's got to be a separate parcel. That's probably not going to change, but if the question is just building and not financing, putting a second house on the land that's some accessory dwelling that we can address in that way. I actually like how they've done that. Because one problem, the loophole that we're trying to avoid here, one of them is the 'Well I've got 40 acres and I want to subdivide it, but I don't want to go through the subdividing plating process so I'll just build a lot for my son and he can sell that to someone and I'll build another house for him, and another one for him and he'll just keep selling them'. It circumvents the process. I'm always looking for these loopholes, because that's what we don't want is to create loopholes, but the accessory dwelling solves that problem because you can't sell the house separate from the land until you subdivide the land down the middle.

**John Irwin** stated it is just that that's what I was getting at, is you're protecting your land, but if a bank is brought in to finance this thing, they're going to want it subdivided. **Dana Roff** stated chances are, or they'll make you get a Commercial Loan, for instance, Residential or Agriculture Loan. As long as, to me, this extra accessory dwelling is a good thing we, to kind of think ahead on that. As long as we kept our setbacks at the 25-foot Agriculture setbacks between those two, there probably wouldn't be a problem. At least there would be that space. So, we wouldn't have to do a variance for setbacks.

**Kathy Skarda** stated I was just trying to see how we could improve the process.

**Dana Roff** stated we get that question a lot. It is just, you want to put another house on your property because you need help from your family. They don't want to live in the same house as you are.

**Kathy Skarda** stated I would like to see the language to be more inclusive of immediate family so it includes more family like aunts, uncles, nieces or nephews because maybe they will decide not to come live on the farm and it will be the nieces or nephews.

**Ari Johnson** stated one problem with family member that we are going to run into, especially as we broaden the net a little bit, is how do we judge that? How do we verify it? If someone comes in for a building permit, do they need to come in with their birth certificate and their mother's birth certificate, and then their cousin's birth certificate to show I'm first cousin once removed?

**Kathy Skarda** stated I guess I would hope that we would take their word for it. **Ari Johnson** stated I don't like to administer the law based on taking people's word for it, because then what happens when you have people come in and say, 'Oh yeah, this is my cousin. He's building a house'. **Skarda** asked so you're not going to let somebody, a relative be able to build on their land if they're a bachelor or a spinster own the land?

**Ari Johnson** asked where do we draw the line? That's the problem. Why can't I say that anybody is my sister? **Kathy Skarda** stated will let's bring this up for debate because I just don't think that we need to just clarify just two, just six people or six family members. **Johnson** stated I'm not saying that I'm saying even as currently worded we have a problem of how do we verify the information? How do we verify who is a nephew, who is a stepson, and so on? While it's common knowledge for people that have had roots in McKenzie County for three or four generations, it's not going to be common knowledge for people that are newer to the community, both administering it as well as owning the land and I don't want to find us doing one thing for one group of people and a different thing for a different group of people, discriminating based on localness. Because that is a way to get ourselves in a bit of trouble and I don't want that. I want a code that we can always enforce and we can always rely on enforcing as written. So however, we write it, we need to have some kind of a verification process.

**Kathy Skarda** stated alright, but I will respectfully disagree. I want to broaden it so that the uncle can give it to his niece or his nephew, or if I have a foster child, I want to have them be able to have a role. **Ari Johnson** stated to clarify that, that is a policy decision for the Board of County Commissioner, not for me to make. That is a policy decision. The legal side is how do we verify it? How do we stop it from being someone who says that it's his uncle and it really isn't? and 'I have 19 different uncles, all of whom are building houses on small parcels around my land'. That's the problem that I want to make sure we address, no matter how broad the net is how do we verify the information?

**Dana Roff** stated I found this really interesting. Williams County has a really neat Family Farm Exemption. That is 'One lot less than 40 acres in size may be created from each working farmer ranch and be conveyed to each child of the landowner. To qualify for this exemption, the farm or ranch must be 40 acres in size or larger, and all of the other requirements of this ordinance, as well as meet specific conditions'.

**Kathy Skarda** stated it looks like we have lots of information that we have at our fingertips that we could review and have maybe some different discussions and come up with a working solution.

**Tim Transtrom** stated I think that even now it comes down to a lot of people now are hiring and bringing in hired men from other countries. You have to provide a place for them to live. So, the way it's written right now, you couldn't put up another house for them to live, or could you do a labor exemption for them? **Dana Roff** stated you could do workforce housing and do a Conditional Use Permit for Workforce housing or a Skid Unit.

**Butch Fleck** stated let's let them put together something and discuss it another time.

### Administrative Permits

**Butch Fleck** stated the first one is West Dakota Water. **Kathy Skarda** asked are they compliant? **Director Kimpel** stated yes, they are compliant. **Fleck** asked what about Select Energy Services? **Director Kimpel** stated yes they are. #04-22TW, 05-22TW, 06-22TW, 07-22TW and 08-22TW are all temporary waterline permits that have a length of six months before expiration. We have a couple for West Dakota Water, Select Energy Services, Mark Relkin and one for North Dakota Energy. **Butch Fleck** asked so every year you go through that, right? **Director Kimpel** stated so every time they're going to lay a temporary lay flat line, they have to come in for a permit. That permit has a life of six months and if that particular line is going to go on for longer than six months, then would come in and let us know and renew the permit. So each different line that they lay in a different location is a different permit.

**Butch Fleck** asked so these are all water, right? **Director Kimpel** stated except for the very last one on the list, #01-22 Administrative Site Plan.

### #01-22ADMINSITEPLAN – Lemoine Hartel

**Director Kimpel** stated that was a split of five acres for the Hartels. **Tim Transtrom** asked what building is the future operations building for? **Director Kimpel** stated the applicant is here.

**Jim Talbert, Elkan** stated I have been asked to only come here and observe. It's just the Hartels are dividing off five acres. **Director Kimpel** stated this was just a split of the five acres. There isn't a permit for anything else, but just to split those five acres off. **Butch Fleck** asked for a building or something? **Tim Transtrom** stated it says for a Building.

**Craig Hystad** stated why do you have those five acres for an Operations Building? **Butch Fleck** stated I think it is for the water line. **Hystad** stated that changes it. **Director Kimpel** stated there is another permit to follow because this permit was simply just a split of the five acres, it didn't entail anything else.

**Kathy Skarda** stated on April 8th I received an email from Candy and it CCs you. It says if a property is zoned Agriculture and 40 acres or more, it can be split into five parcels for immediate family members. This can be done with an Administrative Permit Approval. I'm looking at the Administrative Permit. It says for immediate family members, so the name of the applicant is Hartel Water Limited Liability Limited Partnership. So where is the family member's name?

**Tim Transtrom** stated right here, Property Owner on Record, Lemoine Hartel and he's the requesting it. **Director Kimpel** stated he is the one that requested the split. **Skarda** stated I thought it had to be for a son or a daughter or something like that. That is what I was thinking, but the owner is the family. **Director Kimpel** stated right, so he owns it and he split it. He split it out for himself.

**Tim Transtrom** asked so what would the name be on the app? **Director Kimpel** stated so we probably should have Lemoine's name on the application rather than Hartel Water. Lemoine is Hartel Water, LLP. **Craig Hystad** asked LLLPP? **Director Kimpel** stated yes.

**Butch Fleck** stated so Hartel Water, LLP is actually the one that owns it and Lemoine split it off for himself? These corporations, they change things.

**Director Kimpel** stated so what you are saying is it probably would have helped if we would had Hartel Water with all the L's and two P's, and Lemoine's name after it? Does that help clear up all the confusion. **Butch Fleck** stated Hartel Water LLP owns it and he just split it off and put his name on it. **Craig Hystad** stated Hartel Water doesn't own it.

**Jim Talbert** stated both parcels will be owned by Lemoine, period. **Craig Hystad** stated well, Hartel Water should not have even been on there. It should have been Lemoine in both places. **Kathy Skarda** stated because right here it is saying the name of the Applicant is Hartel Water. **Talbert** stated anyone could be the Applicant working for Hartels.

**Butch Fleck** stated so that is what I'm getting at, why do you need anything? **Jim Talbert** stated there's tax reasons that people do things. For clarification, it is Lemoine's property, he's dividing off five acres. It will remain Lemoine's property. We got 2 parcels, both Lemoine. Lemoine had asked that Hartel Water be the Applicant. He owns Hartel Water. I don't understand what the confusion is. **Craig Hystad** stated because we don't know that he at this time we didn't know he owned Hartel Water. Anybody could own Hartel Water. **Talbert** stated and it wouldn't matter, because as long as the applicant has the landowner's permission, which he does. He happens to be one and the same. **Craig Hystad** stated it's the same thing we go through when they do a lot split for a house. **Kathy Skarda** stated we are just trying to clarify Jim. **Craig Hystad** stated there is an extra LL and an extra P. **Talbert** stated I can't even tell you when it was organized. **Hystad** stated I'm just saying when you are approving something that is legal, you have to make sure it is right.

**Kathy Skarda** stated that would be my reasoning. **Butch Fleck** stated actually, if you want to get back here, it goes on the title of the land, who it's under. It's Lemoine Hartel and remains



Lemoine Hartel. which I don't know how that works for his tax reason, but if the land has got Hartel Water and then he's switching it to Lemoine Hartel, that would be two different things. **Craig Hystad** stated to go from Lemoine Hartel to Hartel Water. **Fleck** stated let's just kind of see what the title of the land, which I don't know. We're not fighting it. **Kathy Skarda** stated it is just a question.

**Dana Roff** stated Jim when this is recorded, it is going to be the five acres is going to be Lemoine, still on title as long as Lemoine is still among us. **Kathy Skarda** stated it'll still have the deed as Lemoine. **Jim Talbert** stated yeah, but we can't get a Deed until we get the Approval and because there is the way the ordinance is written, there is an Administrative Permit to subdivide off five acres, that is why we did that. That's all he's done.

**Butch Fleck** stated it is just we've never run it through or a guy is subdividing from himself. **Jim Talbert** stated in your conversation, you are so set that the County doesn't want to get involved with these things and all of a sudden, the County wants to get involved in something that is so simple as a Subdivision. **Fleck** stated like I said, we have just never run into where a guy is subdividing from his name to his name, I mean, we've never run into that. That's why I said is that Deed on that land where he's subdividing Hartel Water? **Talbert** stated Hartel Water is the Applicant, not who's on the Deed. **Fleck** stated ok, then if he's subdividing it, it should be Lemoine Hartel and then subdivide it to Lemoine Hartel. **Talbert** stated it will be subdivided as both are going to be in Lemoine's name.

**Dana Roff** stated we have had applicants with a different name before given permission. We have had applicants with a different name with the owner's permission to go ahead with it. **Director Kimpel** stated we have had those before. **Roff** stated yeah, so that's why I didn't question this when I saw it because it was Lemoine giving permission to his company.

**Kathy Skarda** stated we didn't know that so we asked the question. I'm sorry. I did ask the question, I apologize, but I'm not sorry I asked it because we got clarification, so I appreciate that, Jim.

**Butch Fleck** stated we don't do anything with that. It is just a discussion. **Director Kimpel** stated it is just a discussion.

#### Agenda Amendment – Kathy Skarda Kathy's.

**Kathy Skarda** stated I would like to see Planning & Zoning receive the Code Enforcement, Building Permits, and Reviews and Reclamation Bonds and Plan, The miscellaneous Planning and Zoning Reports on a monthly basis. Then after we received them at the Planning & Zoning Meeting and review and I planning zoning, receive the Code enforcement, building permits and reviews, and reclamation bonds and plans, then they can easily just be forwarded directly to the Board of County Commissioners and its Campaign to review activity in the County. We did ask

for it in September 2021 and I think we just consistently do it monthly too. It would be nice to have them to the Planning and Zoning Board monthly. I spoke with Scott Harmstad and he said that they can be sent to the Planning and Zoning, and for their review, because you, as a director, review them and whatever you have completed is good to have completed. Then the Commissioners see it, and if it's not done by the 30th, I'm not saying let's have it done by the 30th of whatever whatever, but what you do have done is completed, that we can review it. **Director Kimpel** stated yes I can send you guys the same, and it would be the same as sending the County Commission. I can absolutely do that. **Kathy Skarda** stated and all five of them, all five different types of reports. **Director Kimpel** stated yes.

## **Adjournment**

**Motion to Adjourn by Butch Fleck; Voice Votes: All Ayes**

**Motion to Adjourn Passes.**

**The Meeting Adjourned at 6:20 PM.**

The next meeting of the McKenzie County Planning and Zoning Board will be held on Monday, June 13, 2022, at the McKenzie County Courthouse, 201 5th Street NW, County Commission Boardroom at 5:00 PM.