

Planning and Zoning Commission Minutes

June 12, 2023

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, Kathy Skarda, Lance Renville, Matt Beard

Members Absent: Eva Hepper, John Irwin, Tim Transtrom

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

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

APPROVE AGENDA

Motion to approve agenda as PRESENTED. Motion by Craig Hystad; Second by Lance Renville; Voice Votes: all Ayes

Motion to approve agenda as PRESENTED passes.

APPROVE PREVIOUS MEETING MINUTES

Motion to approve May 8, 2023 meeting minutes as presented; Motion by Kathy Skarda; Second by Cody Knetzger; Voice Votes: all Ayes.

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

CODE ENFORCEMENT

A Code Enforcement discussion was held regarding Down To Earth Truckn and Szostak Services.

UNFINISHED BUSINESS

Director Kimpel stated there is no unfinished business.

PUBLIC HEARINGS

#03-23CUP-RBW Limerock Resources - #03-23 Conditional Use Permit – Reclamation Bond Waiver - Limerock Resources; NW ¼ of T150N, R97W, S26, 2568 Beaver Creek Road, McKenzie County, ND; PID #130012600

Candy Lundgren stated this is for Lime Rock Resources. They would like to request a Reclamation Bond Waiver. “On May 16th, 2023, the applicant Limerock Resources was granted 03-23 Conditional Use Permit for the property at 2568 Beaver Creek Road. This included a Reclamation Bond requirement. Applicant is requesting waiver of the Reclamation Bond requirement based on McKenzie County Zoning Ordinance, 4.10 regulation of freshwater depots, pipelines and ponds (11).” 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.

BOARD COMMENTS

Craig Hystad asked how many acres of land do they own? **Candy Lundgren** stated this one’s on 160 and then they own another 160 and then another one. **Kathy Skarda** asked so they own 480. **Lundgren** stated yes.

Butch Fleck asked they're in good standing though otherwise. **Candy Lundgren** stated yes.

Butch Fleck stated that’s something that we’ve been doing since we’ve been here. That they understand if they waiver the bond that they're responsible completely. **Candy Lundgren** stated yes, they do.

Kathy Skarda stated I guess I would like to [add] on the conditions #5 where we say ‘the applicant shall provide the county planning and department with all federal approvals or denials’, I'd like to make sure that our Planning and Zoning Code Enforcement make sure and when they’re doing their inspection to ensure compliance, calls the state and make sure and gets those documents to prove that they are in compliance because I know that there’s been some that haven’t been in compliance, because they didn’t send them to us.

Director Kimpel stated the last time you requested we made a note too. That is going to be part of the review process going forward, that we get ahold of the state and get those for ourselves when their review is up.

Butch Fleck asked you haven't got it for this yet? **Director Kimpel** stated this one just got approved last month so they haven’t had their annual review, but when they do, this will be part of the process, the Code Enforcement will contact the State, as part of the process to make sure that we have any documentation from them regarding this pond.

Motion to Approve with Amended Condition #5 to Include ‘Planning and Zoning Code Enforcement make sure and when they’re doing their inspection to ensure compliance calls the state and make sure and gets those documents to prove that they are in compliance;’ #03-23CUP-RBW Limerock Resources - #03-23 Conditional Use Permit – Reclamation Bond Waiver -Limerock Resources; NW ¼ of T150N, R97W, S26, 2568 Beaver Creek Road, McKenzie County, ND; PID #130012600; Motion by Kathy Skarda; Second Matt Beard; Voice Votes: all Ayes

Motion to Approve with Amended Condition #5 Passes

#08-22AMEND-CUP-Todd and Nanette Edmondson – #08-22 Amend Conditional Use Permit - Todd and Nanette Edmondson; NW1/4 S12, T145N, R98W, PID #180002800, 12052 Charlie Bob Creek Road.

Candy Lundgren stated this is an Amendment to the Conditional Use Permit that was granted in November. The applicant wishes to build a 12.5-acre foot diversion/settling pond to use for filling their industrial use pond and amend their fence plan to include both the large and small ponds. The Comprehensive Plan Use is Agriculture. Zoning is Agriculture.

Candy Lundgren read the Findings of Fact and Conditional Use Criteria. They are attached to the end of these minutes.

Candy Lundgren stated the staff recommends Approval for this Conditional Use Permit. Staff recommends approval to the County Commission to adopt the findings and conditions that's provided in the staff report. **Butch Fleck** stated I was involved with this back in 2015. If I remember correctly, the tanks were denied and they had to take everything down.

Director Kimpel stated there was several different pieces and parts in 2015. I do believe that a pond was dug and there were some issues with it and the state made them reclaim it. I don't know that anybody in 2015 in the office here was aware of it. I did some research on this previously and the state had made them reclaim that pond, which ultimately made them make the request for the five frac tanks and the frac tanks were, I think later in 2017 approved, but then they just were never installed. It's a long process, but in the 2015 one, once they got that all reclaimed, they were squared away and on good terms. Again, the state gave their approval on the reclamation and everything and said that it had been reclaimed to their satisfaction.

Craig Hystad asked the first pond 45-acre feet? **Director Kimpel** asked the first one? 49. **Hystad** asked are they adding another 12 1/2 or? **Director Kimpel** stated it's a little one beside it.

Craig Hystad stated right. But do they still have up to 61 1/2-acre feet of water they could use or are they still up to 49?

Director Kimpel stated those are two separate things. So, when we're dealing with the acre feet and the construction permits, the construction permits deal with acre feet. The water usage is a different permit and they have to get an additional permit for the 12-acre foot for the water usage that's coming out that's metered.

Craig Hystad asked so they got 61-1/2-acre feet total or they got the 49-1/2-acre feet they total?

Garret Lind stated I have a pretty good idea of how to explain this. So, the first pond built it has to be less than 50-acre feet and that is the size of pond that can be constructed without a state engineered permit and they can build bigger ponds than that but they don't need a permit from the state to build a 50-acre foot pond or less. So that would be pumped and metered into for only storage. The 12 1/2-acre feet is still state-owned water until it is pumped out of there. Essentially, we needed a way to divert water off of Charlie Bob without interrupting the flow. One of our conditions of our water permits in that area is that we do not cause the flow to cease. We have trouble pumping directly from the frac, it becomes a lot of different issues. When the flows are very heavy, we have a lot of sediment, sand, beaver stick, stuff like that plug up the pumps. If I put the pump straight in the creek it doesn't work very well. Then, when the Creek flows are low, we have trouble matching the stream flow with flow rate. The creek's going up and down, depending on what the beavers do or how dry it was that day, we will end up causing the stream flow to cease by having a pump in the Creek. What we're

proposing to do is put a culvert slightly above the bottom of the stream so there's always a flow going by the culvert and then we have these heavy flows, the water will flow in, settle out, we can pump it. Essentially, we have 50-acre feet of pump storage metered into and 12-1/2-acre feet which is of unmeasured State water still and it's equivalent to like a rancher digging the stock dam.

Craig Hystad stated I understand that, but you didn't get an increase on your water allotment. You still only got 49 less than 50-acre feet that you can use. **Garret Lind** stated we have available in that location 940-acre feet that we can permit. Edmondson's, I believe have like 150-acre foot per minute and I have 150-acre foot per minute in those locations. We could each fill that pit three times with our permit and so there's plenty more water there.

Craig Hystad asked but the 12-1/2, extra pond didn't give you more water, right? **Garett Lind** stated no. **Director Kimpel** asked Garrett from my understanding or just to clarify, is the meter between the meters before the settling pond? **Lind** stated no. It will be a creek, culvert, pond, meter, big pond.

Butch Fleck asked you can fill that 50-acre foot pond three times a year? **Garret Lind** stated with just my permit. With Edmondson's pit, they could permit, they could fill it three times as well. And if we use up those permits, we can go back to the state and ask for more permits because of the drainage basin above it has enough water up to 900-some acre feet.

Kathy Skarda asked are you concerned with any of the farmers and ranchers downstream of you not having any water and that you have control and of it from the North.

Garret Lind stated it flows to the north and we do have some control over it. With this design of this diversion, we're hoping to ensure that there is a continuous stream flow beyond this point. **Skarda** asked but how much is continuous stream flow and how many animal units are going to be drinking out of the stream flow? **Lind** stated at this point the state has no actual regulation on how many CFS needs to flow past. But I did talk to Bryce Clausen from the State Water Commission, and he essentially referenced about one CFS as a base flow rate. So I can't explain it, but it should be quite a bit of water. **Craig Hystad** stated 1 cubic foot a second is pretty good flow.

Butch Fleck asked is that normal? I've never heard that before. I just thought that you had 50-acre foot, 1 pond full per year.

Director Kimpel stated what the 50-acre foot refers to is the size of the hole that you have in the ground. The number on the state water permit tells you can have so much flowing through this meter. I don't know how they determine how much they let flow through the meter in the year, or if this water permit is good for several years and they could use it faster than that, or it could take longer, use it, I'm not sure how the state does that. But the 50-acre foot size is for this hole in the ground. **Kathy Skarda** stated they can fill it as many times as they want.

Butch Fleck asked what you can fill at that many times a year as they want. **Director Kimpel** stated they can fill it till they get their permit full. It's two separate permits, one for the hole and one for the actual water in the cup.

Craig Hystad stated all we're going to do is allow an extra pond. **Butch Fleck** stated I have never heard that before. I just wanted to clarify that.

Craig Hystad stated they can still pump all this water out into that pond. They can fill it this many times. What they're asking for is someplace to let the mud settle out till they pump the other ponds so they get clean water.

Kathy Skarda asked the meters that the North Dakota State Water Department has, they check them daily or whatever and it's done that way. I have heard comments and concerns that when the water and flow start to dry up, there's only 5 individuals at the State Water Department that actually work the state of North Dakota is from what I understand. So, they count on a lot of the land owners and people who are livestock producers or whoever that are using that like recreationalists or whoever to also call the state Water Department to let them know if something doesn't look right or is being diverted wrong or whatever. I would really like to have the land owners that have questions and submitted comments have the numbers to be able to make the phone calls necessary directly to the right person.

Butch Fleck stated this is one good thing because they're going to have the water above the creek so it's only going to come in when the water is above that level. I'm glad they're not sucking right out of creek. **Craig Hystad** stated but what they could suck with their state water permit, and it's filling could suck with their water permit and that's not our issue here. It's the pond and whether or not we allow them ponds when the water is running full bore and it's dirty and filling everybody's things up downstream, to pump into this pond, let it settle and keep [going] when there is a good flow. [There's] a lot of waters going by, that they could utilize. But it is just going by and filling everybody else's and running over everybody else's downstream. **Kathy Skarda** stated I just want them to have the right number and contact information.

Matt Beard stated I'm curious why we are even looking at this. This is a proposed 12 ½-acre foot diversion pond. What part of the CUP realm makes it to where we have to review this request? And why are we seeing this? **Director Kimpel** stated because it is a change to the site plan that was submitted, along with it. **Beard** stated it's like an additional pond, so that's why we're seeing it again? **Director Kimpel** stated it is a change. **Butch Fleck** stated it's a significant change. Not so much about the additional pond.

Andrew Steck stated it's also worth noting that the ordinance says that ponds are conditional use in Agriculture. There is no specification on the size of the pond. So, the fact that there's a second pond, if this was one-acre foot, you guys would still have to approve it. **Director Kimpel** stated I feel it's good practice.

Candy read the letters submitted by the land owners. They are attached to the end of these Minutes,

Butch Fleck stated I've never heard of more than one owner taking water out of one pond. Do they need two Conditional Use Permits or how does that work? **Director Kimpel** stated the CUP (Conditional Use Permit) is for the container of the CUP. What goes into the cup and what gets taken out of the cup. I am not sure if the state has, if they said they can or they can't. That's not something I've ever experienced, so that's something I would have to ask them for. But the CUP is for the cup. **Fleck** asked but it under that name does it have to be under the other guy's name too? **Director Kimpel** stated no. He is like a contractor. **Fleck** stated because I've never heard of that before as long as I've been on.

Kathy Skarda stated the Beckert/Kubik letter, item number one says 'there is GIS documentation that the original flow was not returned to its natural flow per the map, when they were required to remove the reservoir and return it to its own original natural flow.' Do we have that documentation and can we see it?

Director Kimpel stated I think I have some stuff in my file from the state stating that they were happy with the reclamation. I do not specifically have the flow information on what the flow looked like.

Motion to Approve #08-22AMEND-CUP-Todd and Nanette Edmondson – 08-22 Amend Conditional Use Permit - Todd and Nanette Edmondson; NW1/4 S12, T145N, R98W, PID #180002800, 12052 Charlie Bob Creek Road. Motion by Craig Hystad; Second by Matt Beard: Voice Votes All Ayes

Motion to Approve Passes;

DISCUSSION ITEMS

Director Kimpel stated I do not have any Discussion Items.

INFORMATIONAL ITEMS AND ADMINISTRATIVE PERMITS

A discussion was held regarding Administrative Permits and Informational Reports.

ADJOURNMENT

The Meeting Adjourned at 5:50pm. Motion to adjourn by Craig Hystad; Second by Kathy Skarda; Voice Votes: all Ayes

Motion to Adjourn passes.

The next meeting of the McKenzie County Planning and Zoning Board will be held on July 10, 2023 at the McKenzie County Courthouse, 201 5th Street NW, County Commission Boardroom at 5:00 PM.