

Minutes are not official until approved by the Planning & Zoning Commission at the following meeting.

THE MORTON COUNTY PLANNING AND ZONING COMMISSION MINUTES

Chairman Kist called the Morton County Planning and Zoning Commission meeting to order at 5:33 P.M. July 27, 2023, in the Morton County Commission Room, 210 2nd Ave NW, Mandan, North Dakota. Commissioners present were Berger, Braun, Buckley (virtually), Rohr, Tomac, Wald and Zachmeier. Also present were County Planner Natalie Pierce and Deputy Auditor Eckroth. Absent, Ell Jr.

Rohr moved and Braun seconded to approve the agenda. All voting aye, motion carried.

Buckley moved and Rohr seconded to approve the minutes from June 22, 2023. All voting aye, motion carried.

Chairman Kist opened the Public Hearing – request from Dennis & Claudine Ferderer for the final plat of a short-form subdivision known as Ferderer Subdivision and a zoning map amendment from Agricultural to Residential on 23.04 acres in the NW¼ of Section 34, Township 140N, Range 86W, Morton County.

Rohr moved and Berger seconded to recommend approval of the final plat of the short-form subdivision known as Ferderer Subdivision and a zoning map amendment from Agricultural and Residential district, as the subdivision conforms to the regulations established in Article 7 of the Morton County Land Use Code and reasonably conforms to the land use priorities established in the 2045 Comprehensive Plan. All voting aye, motion carried.

Chairman Kist opened the Public Hearing – request from Ronald and Loraine Bosch for the final plat of a short-form subdivision known as Bosch Subdivision on 10 acres in the NE¼ of Section 6, Township 139N, Range 82W, Morton County.

Tomac moved and Wald seconded to recommend approval of the final plat of the short-form subdivision known as Bosch Subdivision as the subdivision conforms to the regulations established in Article 7 of the Morton County Land Use Code and reasonably conforms to the land use priorities established in the 2045 Comprehensive Plan. All voting aye, motion carried.

Chairman Kist opened the Public Hearing – request from Jeff Hatzenbuhler, Lorraine Berger, Jane Reede, and Judy Staley for the final plat of a short-form subdivision known as Mattanna Homestead Subdivision and a zoning map amendment from Agricultural to Residential on 3.09 acres in the SE¼ of Section 13, Township 135N, Range 81W, Morton County.

Braun moved and Tomac seconded to recommend approval of the final plat of the short-form subdivision known as Mattanna Homestead Subdivision as the subdivision conforms to the regulations established in Article 7 of the Morton County Land Use Code and reasonably conforms to the land use priorities established in the 2045 Comprehensive Plan. All voting aye, motion carried.

Chairman Kist opened the Public Hearing – request from MBR Properties LLC and Ski Haven LLP for the final plat of a long-form subdivision known as Honey Hills Estates First Subdivision and a zoning map amendment from Agricultural and Residential with the exception of Lot 1 Block 1 (from Agricultural to Commercial) on 46.85 acres, in the NE ¼ of Section 32 & NW ¼ of Section 33, Township 140N, Range 81W, Morton County.

Rohr moved and Berger seconded to recommend approval of Honey Hills Estates First Subdivision and a zoning map amendment from Agricultural and Residential with the exception of Lot 1 Block 1 (from Agricultural to Commercial) with the following three conditions:

- 1) the developer establish an HOA (meaning formally incorporate the non-profit, establish a Board, and adopt bylaws) prior to the recording of the plat.
- 2) the developer or their appointed agent work with staff to establish a stormwater management facilities schedule in the HOA bylaws, to the satisfaction of the County Engineer, prior to the recording of the plat.
- 3) on each lot bordering State Highway 1806, a light vegetative buffer be planted – whether by the developer or future lot owner – and maintained, prior to any approach permits being granted.

as the subdivision conforms to the regulations established in Article 7 of the Morton County Land Use Code and reasonably conforms to the land use priorities established in the 2045 Comprehensive Plan. Wald voting no, all other commissioners voting aye, motion carried.

Chairman Kist opened the Public Hearing – request from MBR Properties LLC and Ski Haven LLP for the final plat of a long-form subdivision known as Honey Hills Estates Second and a zoning map amendment from Agricultural to Residential on 124.17 acres in the NE ¼ of Section 32 & NW ¼ of Section 33, Township 140N, Range 81W, Morton County.

Zachmeier moved and Rohr seconded to recommend approval of Honey Hills Estates Second Subdivision and a zoning map amendment from Agricultural and Residential with the following two conditions:

- 1) the developer establish an HOA (meaning formally incorporate the non-profit, establish a Board, and adopt bylaws) prior to the recording of the plat.
- 2) the developer or their appointed agent work with staff to establish a stormwater management facilities schedule in the HOA bylaws, to the satisfaction of the County Engineer, prior to the recording of the plat.

as the subdivision conforms to the regulations established in Article 7 of the Morton County Land Use Code, reasonably conforms to the land use priorities established in the 2045 Comprehensive Plan, and to curb sprawl. Wald voting no, all other commissioners voting aye, motion carried.

Chairman Kist opened the Public Hearing – amendments to the Morton County Land Use Code Section 5-180 Wind Energy Facility.

Staff disclosed she has a legal interest in a property within the proposed New Salem Wind Project area. Staff presented images of turbines from the Oliver Wind III project at various distances to provide a basis of comparison.

David Munsch stated that he is upset about the agreement he signed. If the setbacks had been a half mile as in the draft land use code amendment, he would not have signed. But since he signed he doesn't want any change in the setbacks.

Rocky Bateman stated that the NextEra project timeline was extended due to Covid. Stated that land owners have been working with NextEra to arrive at an air rights agreement such that if you don't have a turbine on your property you would still be compensated. If the County keeps the setback at ¼-mile then no neighbors have say over what you can do on your own property.

Representatives of NextEra stated that they would be comfortable with the proposed ½-mile setback from parks, and ½-mile setback for the laydown yard from occupied residences of non-participating land owners.

James Bahm stated that it looks like reinventing the wheel and advocated for no change to the ordinance.

Jim Melchoir stated that he likes the proposed ½-mile setback for turbines from occupied dwellings of non-participating land owners. He likes the ¼-mile setback from property boundaries. Stated he is bothered by wind energy projects that have not installed aircraft detection systems and red lights are blinking on a continual basis.

Claye Kaelberer stated that a group of land owners had engaged a law firm to represent their interests in negotiating with NextEra. After the lawyer dropped the group, the group of landowners arranged a meeting at the fair building in New Salem. He suggested a possible setback of 2,000ft. But only one person at the meeting was in favor of that setback. Most everyone preferred the setbacks the way they are in the current ordinance.

Commissioner Braun leaves the meeting.

Austin Collins of Enel Green Power suggested a turbine setback of 1640ft from the residence of a non-participating land owner would be reasonable to Enel. He also stated that the PSC requirement is 3x turbine height. Commissioner Tomac asked what is a typical turbine height and Mr. Collins stated within the 500 to 660ft range.

Bryan Johnson stated that he would appreciate a larger setback than the current ordinance. He stated that he is in the process of planning to construct a home and would simply like to know what the setback will be so that he can optimally position his home so as to minimize visual encroachment by any potential towers. He also asked how it is that members of the public can find out or be notified where wind energy facility components are going to be located.

Wayne Braun stated that he is participating in both Enel and NextEra projects and he wishes to keep the setbacks as they are.

Steve Fetting, a land agent with Enel, relayed comments from participating land owner Darrin Hoger. Mr. Hoger's comment was that if you change the turbine setback to ½-mile it handcuffs a property owner. He prefers for the setbacks to remain unchanged.

Commissioner Buckley stated that she has received numerous calls and none of them were in favor of increasing the setback.

Rob Slavick stated he wants to keep the setbacks as they are. He asked for a show of hands of meeting attendees both for and against adjustments to the land use code.

Chairman Kist asked for a show of hands in favor of keeping the land use code the same and a show of hands in favor of increasing the setbacks. A large majority of meeting attendees preferred to keep the setbacks unchanged.

Motion by Rohr and second by Berger to keep the land use code as-is and not forward the land use code amendment on to the County Commission.

Commissioner Zachmeier suggested having another meeting on the topic of wind energy facility component setbacks. Commissioner Tomac stated she thinks the topic deserves more discussion.

Commissioner Buckley calls for a point of order that no motion is required if there is no change recommended to the ordinance. Rohr withdraws motion and Berger withdraws second.

Zachmeier and Tomac state that they would like to continue the discussion to next month's P&Z meeting. Chair Kist asks for definition of which parts of the proposal would be re-discussed so as to not burden all meeting attendees with another long meeting.

Commissioner Tomac states the board should not forget substations in the discussion. A member of the public states that if the P&Z Commission pushes the discussion to the next month, most landowners in the room will be busy harvesting and unable to attend a public hearing.

Berger motioned and Rohr seconded to send the code amendment to the County Commission with a half-mile setback for laydown yards from occupied residences, with the option to waive the setback; and a half-mile setback from state and county parks. Tomac and Wald voting no, all other Commissioners voting aye, motion carried.

Buckley moved and Rohr seconded to approve the 2024 Planning & Zoning Department budget as presented. All commissioners voting aye via roll call vote.

Rohr moved and Berger seconded to adjourn the meeting at 9:25 pm. All voting aye, motion carried.