

THE MORTON COUNTY PLANNING AND ZONING COMMISSION MINUTES
FEBRUARY 28, 2024 MEETING

Chairman Kist called the Morton County Planning and Zoning Commission meeting to order at 5:38 P.M. February 28, 2024, in the Morton County Commission Room, 210 2nd Ave NW, Mandan, North Dakota. Commissioners present were Zachmeier, Buckley, Tomac, Rohr and Wald. Also present were County Planner Natalie Pierce and Auditor Deputy Eckroth. Absent were Ell Jr., Braun and Berger.

Rohr moved and Tomac seconded to approve the agenda with amendments. All voting aye, motion carried.

Buckley moved and Tomac seconded to approve the minutes from January 24, 2024. All voting aye, motion carried.

Chairman Kist opened the Public Hearing – request from Jean Bechhold for the final plat of a subdivision known as Bechhold Subdivision and a zoning map amendment from Agricultural to Limited Industrial and Estate Districts on 30 acres in the NW¼ of Section 8, Township 139N, Range 87W, Morton County.

Rohr moved and Buckley seconded to recommend to approval of the final plat of the long-form subdivision known as Bechhold Subdivision and a zoning map amendment from Agricultural to Limited Industrial on Lot 1 Block 1 and from Agricultural to Estate District on Lot 2 Block 1, as the subdivision conforms to the regulations established in Article 7 of the Morton County Land Use Code and 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 WW Ranch LLP for the final plat of a long-form subdivision known as Harmon Village 23rd and a zoning map amendment from Agricultural to Residential on 19.95 acres in the W½ of Section 12, Township 140N, Range 82W, Morton County.

Buckley moved and Tomac seconded to recommend to approval of the final plat of the long-form subdivision known as Harmon Village 23rd Subdivision and a zoning map amendment from Agricultural to Residential as the subdivision conforms to the regulations established in Article 7 of the Morton County Land Use Code and 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 Lionel, Ann, Matt & Lakin Doll for the final plat of a short-form subdivision known as Tree Row Subdivision and a zoning map amendment from Agricultural to Residential on 5 acres in the SE¼ of Section 7, Township 140N, Range 85W, Morton County

Rohr moved and Tomac seconded to recommend approval of the final plat of the short-form subdivision known as Tree Row Subdivision and a zoning map amendment from Agricultural to Residential as the subdivision conforms to the regulations established in Article 7 of the Morton County Land Use Code and 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 Amber Kottre, Irene Geck, Stacey Geck, and Tamara Kroh, for the final plat of a short-form subdivision known as Micals Subdivision and a zoning map amendment from Agricultural to Residential on 14.28 acres in the NE¼ of Section 32, Township 139N, Range 87W, Morton County.

Buckley moved Rohr seconded to approval of the final plat of a short-form subdivision known as Micals Subdivision and a zoning map amendment from Agricultural to Residential as the subdivision conforms to the regulations established in Article 7 of the Morton County Land Use Code and 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 Lee Rebenitsch for the final plat of a short-form subdivision known as Rebenitsch Subdivision and a zoning map amendment from Agricultural to Residential on 1.83 acres in the SE¼ of Section 26, Township 136N, Range 81W, Morton County.

Buckley moved Rohr seconded to approval of the final plat of a short-form subdivision known as Rebenitsch Subdivision and a zoning map amendment from Agricultural to Residential as the subdivision conforms to the regulations established in Article 7 of the Morton County Land Use Code and 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 Bradley and Beth Allen for the final plat of a short-form subdivision known as Olsen Subdivision and a zoning map amendment from both Agricultural and Residential to the other, on 160.97 acres in the S½ of Section 10, Township 137N, Range 82W, Morton County.

Rohr moved Tomac seconded to approval of the final plat of a short-form subdivision known as Olsen Subdivision and a zoning map amendment from Agricultural to Residential and Residential to Agricultural, as the subdivision conforms to the regulations established in Article 7 of the Morton County Land Use Code and 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 Hehr Revocable Living Trust and Trevor & Danielle Fleck for the final plat of a short-form subdivision known as Entzels Acres 11th Subdivision Replat on 12.25 acres in the NW¼ of Section 33, Township 140N, Range 81W, Morton County.

Tomac moved Buckley seconded to approval of the final plat of a short-form subdivision known as Entzels Acres 11th Subdivision Replat as the subdivision is in keeping with the land use priorities established in 2045 Comprehensive Plan. All voting aye, motion carried.

Chairman Kist opened the Public Hearing - request from Blaine and Lisa Zachmeier for a zoning map amendment from Industrial to Agricultural on 17.75 acres in the SW¼ of Section 3, Township 139N, Range 81W, Morton County.

Commission Zachmeier request to be recused from voting due to conflict of interest. By unanimous consensus, request granted.

Rohr moved and Wald seconded to recommend approval of the rezoning request from Industrial to Agricultural on 17.75 acres in the SW ¼ of Section 3, Township 139N, Range 81W, Morton County.

Roll call: Buckley, Rohr, Wald and Kist voting aye, Tomac voted nay, motion carried.

Chairman Kist opened the Public Hearing - request from Dave & Joy Fischer for a variance to construct a garage addition on approximately 0.8 acres on Lot 2, Block 2 Schlosser's 4th Subdivision, N½ Section 33, Township 140N, Range 81W, Morton County.

Buckley moved and Tomac seconded to recommend approval of the variance request to construct a garage addition at 8660 Willow Road as presented, as there is adequate space on the property to accommodate septic needs now and in the future, with the following conditions:

1. Any drain field associated with the floor drain is not allowed to be located within a building setback.
2. Applicants will be required to apply for a floodplain development permit separately. Approval of the special use permit does not guarantee on automatic approval of a floodplain development permit on the property.
3. Applicants must provide any and all application materials requested by the Floodplain Administrator at the point in time the applicants apply for a floodplain development permit.

All voting aye, motion carried.

Chairman Kist opened the Public Hearing - request from Fabian Fitterer and Retract LLC for a special use permit to construct a direct air capture facility on 161.9 acres in NW¼ Section 2, Township 139, Range 87W, Morton

Planner Pierce presented basic elements of the application.

Geologist Mike Madison briefly presented information on behalf of the applicant. He stated the seal rocks and reservoir rocks in Morton County are excellent for CO2 capture. Low number of existing wells is a positive characteristic with respect to potential leak points. Broom Creek formation is 6,000 feet underground. Deepest fresh water in the area – Fox Hills – is 1,000 feet underground.

Representatives from Retract LLC, the applicant, Amir Moslemian, David Spotts and John Switzer presented further details about the project, including a software model of noise levels emanating from the proposed facility. Mr. Switzer suggested the project would create 100-200 construction jobs and 15-40 permanent jobs. Applicant representatives answered questions from Planning & Zoning Commissioners. Topics included well casing, project size/volume of CO2 sequestered, impact to agricultural producers and crop yields, road use, type of energy sources that will fuel the project, availability of utilities, water usage, fire suppression tanks, stormwater management, monitoring and test wells, application with the Industrial Commission, and other topics.

Applicants discussed relative experience and track record of the company, project financial feasibility, 45Q tax credits, and that they planned to be funding the project up until construction.

Chair Kist opens the public hearing.

Lacey Knight lives approx. 1.5 miles north of project. Asks for Planning & Zoning Commission to delay the decision, based on lack of information provided by the applicants to the County. Concerned that questions brought up at the community meeting on Monday were not answered/that applicants “spoke around” the questions. Concerned about the risks of CO2 sequestration. Concerned that the buffer area around the project is not large enough. Cited a study that modeled the a CO2 reservoir expanding up to 12 miles from the injection site. The road was very difficult to travel last spring even with a 4-wheel-drive vehicle and concerned about the truck traffic.

Dawn Shepherd lives on north side of the facility. Concerned with short history of the company. Stated there are only 27 commissioned DAC facilities in the world (and that includes the facilities that are attached to a carbon emitting facility such as a coal plat or gas well). Very concerned about the risk of CO2 injection. 98% of Broom Creek formation is constantly changing; it is not stable. Very concerned about water being used from Storm Creek for industry and would take away water from livestock production. Concerned about the amines, used in the sequestration process, blowing in the air and poisoning people and livestock. Concerned about decreased agricultural yields due to reduction of CO2 in the air near the project site. Concern about fire hazard from an industrial use and very long response time from rural fire. Wanted to know what noise modeling software the applicants used, because she had concerns about the applicant’s noise model. Very concerned about visibility over hills on the main road and worried about head-on collisions with school buses and other daily users of the road.

Ashley Kramer lives roughly 3.5 miles north of the project. Would like the commission to deny the project. It’s not in the appropriate location.

Wes Kroh lives northwest of the site. Would like the application to be denied. Spoke about the responsibility to take care of the land and heritage.

Lyle Peltz of Glen Ullin. Owns land directly adjacent to the project site to the northwest. Stated he was never contacted by the company. Would like the application denied.

Kurt Swenson lives in Oliver County about 15 miles north of the site. States he’s an engineer with work experience in CO2 sequestration associated with the energy industry. Also owns land that is being leased in Oliver and Mercer Counties for CO2 sequestration. Suggests the application include an atmospheric CO2 release model conducted by a licensed third-party engineer. Provided opinion that the noise model presented by the applicants is not valid. He suggested the County require a pre-construction noise survey be completed with measurements at critical points such as nearby homes and Danzig Dam and that the threshold for noise mitigation be zero increase over established ambient noise level. Stated that the cryptocurrency facility in Williams’ County is producing noise at 65dbl. Stated applicant should be responsible for dust control. Suggested requiring an engineer to calculate the funding needed to reclaim the site after the use is discontinued and condition any permit approval on the applicant posting a reclamation bond throughout the life of the project, with updates every three years to account for inflation in reclamation costs.

Melissa Friesz lives about ¾-mile from the project. Spread the word on Facebook to all her neighbors and community to attend the meeting. Stated that Danzig Dam and the whole area is beautiful and doesn't want this project in this area.

Eric Schultz is an engineer. He lives in Almont. He suggests that the software models, such as the noise model the applicants have provided, are imperfect. He suggests sensors on the monitoring wells can fail. He would like CO2 facilities to not be allowed in North Dakota. States that well casings can fail and is concerned about a "plan B" for the proposed project in the event a well casing fails.

Chairman calls for anyone online to speak who wishes to speak. No one speaks online. Chairman calls again for speakers from the room.

Tim Weichel from Glen Ullin. States that there was a similar project proposed south of Hebron. He lives close to the pump station by Glen Ullin. He said it's like having your dishwasher running all the time.

Commissioner Zachmeier calls Emergency Manager Patrick Martin to stand for questions from the P&Z Commission regarding emergency response.

Member of audience states that the project location is in the Glen Ullin fire district, not the New Salem fire district.

Dale Hitchcock lives directly north of the project area and has worked as an industrial fire-fighter. States that industrial fire suppression is a much different skill than structural fire-fighting. He states that New Salem and Glen Ullin fire teams are not trained in industrial fire suppression.

Manager Martin states that a commercial partner has stated they would be willing to send local fire fighters to Texas A&M to train in industrial fire fighting.

Jordan Schantz of Hazen. His parents farm in Hebron/Glen Ullin area. States that farming fans are quite loud. And that there will be 864 fans running on this site. He is concerned about the noise they will generate.

Chair Kist calls applicant representatives up to the podium to provide rebuttals and answers to questions that were asked by the public. Applicants speak on issues that have been raised. Mr. Spotts states that the decibel level of all the fans taken as a whole is not cumulative. The injection site/wellhead is going to be the loudest component of the site. Mr. Switzer states that per NDIC regulations an applicant is required to have a half-mile buffer between extent of anticipated plume and edge of leased pore space. Mr. Spotts states that vegetation management is important and that the greatest risk for fire on the project site is something like an employee smoking a cigarette and throwing it aside. He states that there is no greater fire risk inherent in the proposed project than any other electrical substation.

Discussion among the board.

Wald moved and Tomac seconded to deny a special use permit to construct a direct air capture facility on 161.9 acres in the NW ¼ Section 2, Township 139, Range 87W, Morton County as follows:

1. Project, as proposed, contains elements that do not align with the County's duty to protect public safety.
2. Questions, essential to evaluating the effect of the proposed project on public safety, cannot be definitively answered by any data that is currently available.

Roll call: Tomac, Wald, Rohr and Kist voting aye, Zachmeier and Buckley voting nay. Motion carried.

Zachmeier moved and Tomac seconded to adjourn the meeting at 10:07pm. All voting aye, motion carried.