

**MINUTES OF THE HUGHES COUNTY
PLANNING & ZONING COMMISSION
Hughes County Commission Meeting Room
Pierre South Dakota
June 26, 2017, at 5:30 PM**

Members Present: Tom Rounds, (Chair), Anissa Grambihler, Les Stewart, Bill Johnston, Norm Weaver.

Absent: Lee Axdahl, Brent Pries

Staff Present: Kevin Hipple and Lee McCurrin

Guests Present: Darrell Beck

Chair Rounds called the meeting to order at 5:40 PM.

Pledge of Allegiance:

Approval of Agenda:

Weaver moved to approve the Agenda for June 26, 2017, Planning and Zoning Commission meeting. Motion seconded by Grambihler. Motion carried unanimously.

Approval of Minutes:

Grambihler moved to approve the Minutes of the May 22, 2017, Planning and Zoning Commission meeting. Motion seconded by Johnston. Motion carried unanimously.

New Business:

Public hearing to consider amending Article 7, Section 7-108. Space Limitations

Chairman Rounds opened the public hearing. Lee McCurrin summarized the issue:

Uses not requiring sewage and waste disposal systems shall have an area of not less than ten thousand (10,000) sq. ft.

Staff feels that this language as written would prohibit someone from purchasing a 10,000 square foot lot, if that person was intending to install water and sewer to a building, such as a carpenter shop, or storage building. That prohibition would apply whether the sewer was on site or off site. The question is, " Why would I build a shop, if I can't have a bathroom in it"? The concern would be that a building would be constructed without any water or sewer and then those utilities would be added later, moving the structure out of compliance. Staff questioned whether the exception as written made sense.

After research, staff feels that this was not the intent of this language, and that it was intended to address on-site septic systems and more specific industrial uses, which would need more

area, be restricted by conditional use permits, and be governed under State of South Dakota regulations governing sewage and waste disposal systems.

Staff is asking Planning Commission to amend the language of Section 7-108 to read as: Uses not requiring **on-site** sewage and waste disposal systems shall have an area of not less than ten thousand (10,000) sq. ft.

Staff feels that this will clear up any confusion about what the ordinance says.

Chairman Rounds asked staff for more clarification and Kevin Hipple explained that staff interpretation is: If you want to build on smaller than 1 acre lot, you can't need water and sewer. Staff feels the ordinance intent needed more clarification, and that adding the words on site would do that, then allowing smaller lots to have water and sewer. Discussion turned to other county locations where this ordinance would be applicable, noting that other county industrial zoning falls into extra territorial boundaries.

Weaver moved to amend the language of Section 7-108 to read: Uses not requiring on-site sewage and waste disposal systems shall have an area of not less than ten thousand (10,000) sq. ft. Grambihler seconded. Motion approved

Consider Sketch Plat of Lot C, B&B Equipment in the SW1/4, NE1/4, Section 4, Township 112, Range 80

Lee McCurrin summarized the proposed sketch plat

Proposal: Darrell Beck is proposing to subdivide Lot C into 7 Industrial type lots, for use as storage or shop type structures.

Staff Recommendation: Industrial zoning has a minimum lot size of 1 acre, unless the parcel meets the exception in the ordinance which allows a 10,000 square foot lot if water and sewer are not required. The 7 lots would be in compliance with 10,000 square feet exception of the Industrial Zoning Ordinance if they do not require water or sewer. There is also a proposed change to the ordinance which would allow lots down to 10,000 square feet if a water and sewer system is available. Lots 1-6 will have legal access, while Lot 7 will not. That lot is proposed to be sold to a family member, who wants to combine it with a adjoining residential lot that he also owns. This would create a parcel with one portion zoned residential and one portion zoned industrial.

Lot 7 needs legal access as part of this plat process.

Staff suggests that a PUD document include the following items:

1. A section that includes this item as a principle permitted use:
 - a. Warehouses, mini- storage type structures, and contractor shops
2. A section that excludes these items as permitted uses:
 - a. Trucking terminals containing in excess of 4 loading or transfer bays.

- b. The storage above ground of liquid petroleum products or chemicals of a flammable or noxious nature when stored for resale.
 - c. Meat packing, slaughtering, eviscerating and skinning.
 - d. Poultry killing, plucking and dressing.
 - e. Railroad through and spur tracks, sidings, other terminal type facilities.
 - f. Rendering of by-products or slaughtering and killing of animals or poultry.
 - g. Yards for the sale, transfer and temporary holding of livestock.
 - h. Junk yards, auto parts salvage and auto wrecking yards when such operations are obscured from any street or from any adjacent property by a sturdy, sight obscuring fence in good repair, and under the condition that any burning operations be carried on in an enclosed structure provided with such super-heating devices designed to assure complete combustion as may be approved by the zoning administrator. Fencing must also comply with State of South Dakota and Federal Standards.
3. A section that excludes these items as conditional uses:
- a. Recreational uses which are temporary in nature and do not involve any appreciable amount of fixed construction and which will not interfere with the efficient functioning of the district for its primary purpose of providing for manufacturing and heavy commercial establishments, may be allowed only upon appeal to the Board of Adjustment.
 - b. Telecommunications Towers, Antenna Support Structures, Broadcast Towers, Receiving Towers, and similar electronics or meteorological towers.
 - c. Small Wind Energy Conversion Systems compliant with Section 2-117.E.
4. A section that includes these items as uses declared incompatible and Excluded:
- a. Any use, which cannot meet the performance standards, set forth herein.
 - b. All dwellings and other types of living accommodations shall be prohibited save quarters for a watchman or caretaker shall be permitted as an accessory use for any permitted use if justified by a history of loss at site or community safety concerns.

Lee McCurrin stated that staff is trying to add language that very specifically limits the permitted uses of this property to warehouse, shop buildings and mini storage type building, and also very specifically excludes residential type uses

The east side of the property does have an improved access via an access easement, however some work needs to be done in order to meet subdivision standards. Subdivision standards require an improved, platted road to access all lots, so this plat would require a platted street on the east side, built to subdivision standards. Beck is also requesting an easement from the county in order to improve the road in its current location. The easement would mean that the platted street would not need to be as wide, since some of the ditch would be on county property. This would mean giving an easement for a road ditch and Right of Way, this would let the road shoulder end at the edge of Beck's property, and increase the usable corner lot size by approximately 25', which would help with building sizes; using current setbacks- which are 40' feet front, 25' feet side and rear. The county lagoon borders the east edge of Lot C, and the road ditch would run alongside the lagoon's west edge.

SDDENR Design Criteria for Wastewater Collection Facilities:

C. Pond Location

1. Separation Distances

The high-water line of the pond shall be at least 50 feet from the property line of the adjacent owner. Where an existing pond facility has been established on a site with fixed boundaries, then only the additions and modifications will be subject to the 50 foot separation.

H. Miscellaneous

1. Access Roads

An all-weather access road to the pond site shall be provided to carry out the routine inspections and maintenance which are required year-round on even the smallest installations.

A minimum 30 foot easement is recommended and not less than 20 feet should be provided. This minimum easement will permit light shaping and gravel surfacing for a ten foot roadway. Such minimums may only be satisfactory where the drainage is good and the distance from a maintained roadway is less than one-half mile. Minimum access fulfilling these requirements should be provided in all cases.

2. Fencing

The entire pond area shall be enclosed with a suitable fence to provide for public safety, to exclude livestock, and to discourage trespassing. The pond area should be fenced with at least 4 foot woven wire and two strands of barbed wire at the top.

Where ponds are located near schools, parks, trailer courts, etc., the pond area shall be entirely enclosed with 6 foot high non- climbable chain-link fence. A vehicle access gate of minimum 12 foot width to accommodate mowing equipment should be provided unless the installation is small; then 8 foot will be satisfactory. All access gates shall be provided with locks. Fences shall be located away from the outside toe of the dike to facilitate dike mowing and maintenance operations.

In order to follow SDDENR Design guidelines, the lagoon fence will need to remain in the current location, which means the subdivision road would have a fence that is 2 feet from the road edge. This will be an issue for mowing and snow removal, and this issue will need to be resolved. County highway department simply said no.

The separation distance from high water- mark to property boundary should not be an issue

While staff does not object to the sketch plat, IF the many other issues are addressed, Staff would also recommend that Lots 1-4 be changed to 3 lots, as this would address the setback issues, and also allow for bigger buildings to be constructed.

Chairman rounds asked for clarification on ownership of the easement and was informed that easement is part of Beck property. Darrell explained that he and former planner Rick Hahn had worked together on location and use of easement, saying that part of the reason was to avoid building a cul- de- sac, and county access to sewage lagoon. Darrell also explained that the road that is in the easement is heavily travelled and allows access for the locals. Kevin Hipple explained that according to subdivision road standards, if Darrel plats Lots 5 and 6, he would need to plat a road that at least touches Lot 6. Darrell explained that this would cause a jog on the road, and he did not feel comfortable about even approaching adjoining northern landowner about constructing new road, he feels it would be waste of time. Darrell wants to eventually turn all roads to road district. It was determined that the Lot 7 and Lot 24 would be sold immediately upon completion of plat, and that it would be platted as a separate parcel that will have both residential and industrial zoning, and having language in plat PUD preventing further subdivision of this lot. The easement along the lagoon was discussed, it was determined that building a road with a fence 2 feet from the shoulder was not going to be acceptable. Truck access was discussed, it was also discussed that right now Beck's could build right next to the easement. Darrell stated that he hoped that something could be done to compromise on a road, he also talked about the amount of traffic that uses the easement, which is considerable, in his estimation. Norm Weaver suggested that going to 5 Lots might be a better option. This would be done by changing lot 7 to lot 5, and extending lots 3 and 4 all the way to northern boundary. Lot Coverage was discussed, and 30% was determined to be the coverage. NOTE On June 27, 2017 staff determined that Lee McCurrin incorrectly stated the lot coverage size, actual coverage is: Entire lot may be covered out to permitted setback distance.

Weaver moved to change sketch plat to 5 lots with access to Lots 1-4 from Walleye Dr. and access to Lot 5 from residential lot 24, with utility easement as discussed. Grambihler seconded. Motion Approved

Wind Ordinance draft review

Kevin Hipple Summarized the draft ordinance, staff changed setbacks from non participating occupied structures from 1000 feet to ½ mile (2640'), changed the setback distance from participating residence from one point one (1.1) times system height to ¼ mile (1320'), Changed the setback distance from right of way of public roads from one point one (1.1) times system height to ¼ mile (1320'), and distance from any property line from one point one(1.1) times system height to ¼ mile (1320').

Staff also changed the language in the decommissioning portion of the ordinance by adding the following to Section 14, Paragraph e) Decommissioning Plan.

Prior to commencement of operation of a LWECS facility, the facility owner or operator shall file with the County Commission the estimated decommissioning cost per turbine, in current dollars at the time of the application, for the proposed facility and a decommissioning plan that describes how the facility owner will ensure that resources are available to pay for decommissioning the facility at the appropriate time. The County Commission shall review a plan filed under this section and shall approve or disapprove the plan within six (6) months after the decommissioning plan was filed. The County Commission may at any time require the owner or operator of a LWECS to file an **annual** report describing how the LWECS owner or operator is fulfilling this obligation.

Staff also changed paragraph f) Financial Assurance to the following:

At any time after the **first (1st) year** of operation of a LWECS facility, the County Commission may review the owner/operator's financial strength, credit rating, and internal measures for removing the liability or risk of decommissioning the WECS and may require a form of financial assurance ranging from corporate guarantee to a letter of credit, performance bond, surety bond, or other form of financial assurance (i.e. scrap value, etc.) that is acceptable to the County Commission to cover the anticipated costs of decommissioning the LWECS facility.

This was to address planning Commissions wish to *add teeth* to the decommissioning process Chairman wanted clarification on definition of report. Kevin Hipple stated that most interesting to him was the fact that developer wanted to put cash in escrow, rather than do a bond, with a decommissioning report determining value and how much cash in escrow, PUC can determine if bond is required. It was stated that the permits in place did have cash value. Discussion centered around time of permits and permit review.

Norm Weaver brought up setback distances, saying that ½ and ¼ mile distances amounted to land taking and that we should consider shortening those distances. Hunting and infrastructure was discussed, sub stations and inter connection was discussed. General wind energy issues were discussed, with sound issues as topic, with energy developers stating sound health issues are not a problem out past 1400'. It was also stated that if a land owner, or other parties, did not want wind energy towers, ¼ or ½ mile was not going to make a difference.

Kevin Hipple reminded the planning Commission that any action taken, if ending up in a courtroom, would need justification for those actions. He also noted that developer still needs to find purchaser product.

North Dakota wind laws were mentioned and staff was directed ti enquire about their ordinances and update commission

Norm Weaver stated that he has had his mind changed about occupied setback distance and he thinks going to 1400 feet from residence, 1.1 from right of way and property boundary. Planning Commission directed staff to go back to these setbacks, leaving the decommissioning changes in place. Norm also said that if a landowner will waive the distance requirement, he would be okay with that also.

Planning Commission directed staff to possibly set up public informational meeting in Harrold, around July 20, 2017, if possible, and possibly another public informational meeting earlier in the afternoon on July 24, 2017 before the Planning meeting for interested parties.

Summary of Previous & Future Projects:

- a. Horseshoe Ridge Estates: No updated information has been received on Lot 1 Horseshoe Ridge Estates in Section 22, Township 112, Range 80
- b. Lot 96 and 97 Oahe Acres: Lois Schmidt has re-started the process to plat and re-zone Lot 96 and 97 Oahe Acres, Section 32, Township 112, Range 79. This project originally started in 2013, with Lot 96, in 2014 it was withdrawn from consideration. She has now also submitted sketch plat drawing that includes Lot 97, a single residential lot, that she intends to sell to a family member.

Meeting Adjourned at 7:40 PM

Grambihler moved to Adjourn. Motion seconded by Pries. Motion approved unanimously.

Next Meeting - The next meeting is scheduled for Monday, July 24, 2017.

Minutes by Lee McCurrin