

MINUTES
PENNINGTON COUNTY PLANNING COMMISSION
March 10, 2014 @ 9:00 a.m.

County Commissioners' Meeting Room - Pennington County Courthouse

MEMBERS PRESENT: Sig Zvejnieks, Jim Coleman, Barbara Landers, Nancy Trautman, and Ken Davis.

STAFF PRESENT: Dan Jennissen, Jeri Ervin, Kelsey Rausch, PJ Conover, and Patrick Grode (SAO).

ROLL CALL

1. APPROVAL OF THE FEBRUARY 24, 2014, MINUTES
Moved by Coleman and seconded by Landers to approve the February 24, 2014, Planning Commission minutes. Vote: unanimous (5 to 0).
2. APPROVAL OF THE AGENDA
Moved by Landers and seconded by Coleman to approve the March 10, 2014, Planning Commission Agenda. Vote: unanimous (5 to 0).

CONSENT CALENDAR

The following items have been placed on the Consent Calendar for action to be taken on all items in accordance with staff's recommendation by a single vote. Any item may be removed from the Consent Calendar, by any Planning Commissioner, staff member, or audience member for separate consideration. The findings of this Planning Commission are recommendations to the Pennington County Board of Commissioners who will make the final decision.

3. **CONDITIONAL USE PERMIT REVIEW / CU 01-01:** Charles and Ursula Brackett.
To review a mobile home park in a Suburban Residential District in accordance with Section 208-C-2 of the Pennington County Zoning Ordinance.

The West 250' of the North 662.9' of the NW1/4SE1/4, Section 17, T2N, R7E, BHM, Pennington County, South Dakota.

To continue the review of Conditional Use Permit / CU 01-01 to the May 12, 2014, Planning Commission meeting.

Vote: unanimous (5 to 0).

4. **CONDITIONAL USE PERMIT REVIEW / CU 08-06:** Robert and Melody Riggins. To review a single-wide mobile home as a temporary residence while constructing a stick-built home in a General Agriculture District in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

SW1/4SE1/4 of Section 12, T1N, R9E, BHM, Pennington County, South Dakota.

(Continued from the December 9, 2013, Planning Commission meeting.)

To continue the review of Conditional Use Permit / CU 08-06 to the June 23, 2014, Planning Commission meeting.

Vote: unanimous (5 to 0).

5. **PLANNED UNIT DEVELOPMENT REVIEW / PU 06-07:** Black Hills Resorts, Inc. (Cimarron Park). To review a Planned Unit Development to allow a mobile home park in accordance with Section 213 of the Pennington County Zoning Ordinance.

Tract C of Lot B of NE1/4 NW1/4 less Pengra Subdivision, Section 17, T2N, R7E, BHM, Pennington County, South Dakota.

(Continued from the December 9, 2013, Planning Commission meeting.)

To continue the review of Planned Unit Development / PU 06-07 to the May 12, 2014, Planning Commission meeting.

Vote: unanimous (5 to 0).

6. **MINOR PLAT / PL 14-04:** Granite Point, LLC; Gene Quinn – Agent. To create Lots A and B of Lot 3R, Lots A and B of Lot 4, Lots A and B of Lot 6, Lots A and B of Lot 7, and Lot 11R and Lot 12R of Granite Point Subdivision in accordance with Section 400.3 of the Pennington County Subdivision Regulations.

EXISTING LEGAL: Lots 3R, 4, 6, 7, 11, 12, and Lot 13, Granite Point Subdivision, Section 10, T2S, R6E, BHM, Pennington County, South Dakota.

PROPOSED LEGAL: Lots A and B of Lot 3R, Lots A and B of Lot 4, Lots A and B of Lot 6, Lots A and B of Lot 7, and Lot 11R and Lot 12R of Granite Point Subdivision, Section 10, T2S, R6E, BHM, Pennington County, South Dakota.

To approve of Minor Plat / PL 14-04 with the following one (1) condition:

1. **That the Road District maintains the road.**

Vote: unanimous (5 to 0).

8. **CONDITIONAL USE PERMIT REVIEW / CU 99-37:** Bob Young. To review a mobile home park in a Suburban Residential District in accordance with Sections 208 and 510 of the Pennington County Zoning Ordinance.

The NW1/4NE1/4, Section 20, T2N, R8E, BHM, Pennington County, South Dakota.

To continue the review of Conditional Use Permit / CU 99-37 to the April 14, 2014, Planning Commission meeting.

Vote: unanimous (5 to 0).

END OF CONSENT CALENDAR

7. **MAJOR PLANNED UNIT DEVELOPMENT AMENDMENT / PU 14-01:** Granite Point, LLC; Gene Quinn – Agent. To amend the existing Granite Point Planned Unit Development to reduce the number of townhome sites and to reconfigure lot lines in accordance with Section 213 of the Pennington County Zoning Ordinance.

Lots 1, 2A, 3R, and 4; Lot A of Lot 5; Lot B of Lot 5; Lot C of Lot 5; Lot D of Lot 5; Lot 6; Lot 7; Lot 8; Lot 9; Lot 10; Lot 11; Lot 12; Lot 13; Lot 14; Common Area 1 and 2; and Well Lot Revised of Granite Point Subdivision, all located in Section 10, T2S, R6E, BHM, Pennington County, South Dakota.

Jennissen asked to have this item removed from the Consent Calendar to discuss amending Condition #1, per the applicant's request. Jennissen stated that the applicant contacted him prior to the Planning Commission meeting and asked to amend this condition so that he has the option to allow for either a single-family residence or townhome to be constructed on either Lot 8 or Lot 9 in the subdivision.

Staff had originally recommended approval of Major Planned Unit Development Amendment / PU 14-01 with the following fifteen (15) conditions:

1. That the Planned Unit Development consists of 10 townhomes, 13 single-family lots, and Common Lots;
2. That each proposed lot have areas for a single-family residence or townhome, as shown on the site plan;
3. That a minimum of two (2) off-street parking spaces be provided for each residential lot. All off-street parking spaces on the site shall measure at least nine (9) feet by eighteen (18) feet, be surfaced with gravel, concrete, or asphalt and maintained in such a manner that no dust will result from continuous use;

4. That no off-premise signs be allowed within the Planned Unit Development;
5. That the Planning Director may allow additional development or construction which is consistent with the existing development on this property. Significant changes in the use or impacts on adjacent land uses as determined by the Planning Director shall require an amendment to this Planned Unit Development;
6. That a Building Permit be obtained for any structures exceeding 144 square feet or located on a permanent foundation, which includes the necessary site plans to be reviewed and approved by the Planning Director;
7. That the required minimum setbacks for all structures on Lots 1, 8, 9, 10, 11R, 12R and 14 be a minimum of 25 feet from the front property lines, eight (8) feet side yard setbacks and 25 foot rear yard setback, also that there be a zero foot side yard setback between the town home lots, and a 20 foot front yard setback for the town home lots and Lots A&B of Lots 3R, 4, 6 and 7; and the front setback for proposed Lot A of Lot 4 shall be eight (8) feet from the north property line adjacent to the cul-de-sac and the front yard setback for Lots 2A and 2B be 19 feet;
8. That each unit has an individual address that must be posted in accordance with Pennington County Ordinance Amendment #20;
9. That all roads be paved with curb and gutter with a minimum 24-foot-wide driving surface and a minimum Right-of-Way of 50 feet or obtain a Subdivision Regulations Variance waiving this requirement;
10. That a Road District be formed to maintain the roads;
11. That the Homeowner's Association or Water Association maintains the water reservoir;
12. That all homes within the development be hooked up to the Keystone sewer system;
13. That the engineered water system be continued to be maintained for both water and fire protection;
14. That the townhome lot adjacent to South Dakota Highway 40 right-of-way have a zero foot setback from the property line adjacent to Highway 40; and,
15. That this Planned Unit Development be reviewed on a complaint basis only.

Jennissen explained that Condition #1 would then state: "That the Planned Unit Development consists of 10 townhomes and up to 15 single-family residential lots, and a Common Lot."

Commissioner Trautman commented that the proposed language would then make the total units 25 versus the 23 units as originally recommended.

Jennissen stated that Condition #1 could state: “That the Planned Unit Development consists of up to 10 townhomes and up to 15 single-family residential lots, and a Common Lot.”

Chairman Zvejnieks expressed concern that Condition #1 also included the language indicating a total of 23 units so that the applicant or potential buyer is not confused and thinks that there is the potential for up to 25 units, based upon the wording of the condition.

Jennissen said this could be reworded to state: “That the Planned Unit Development consists of a total of 23 units for a total of up to 10 townhomes and up to 15 single-family residential lots, and a Common Lot.” Jennissen further asked the applicant if he is in agreement with the wording of Condition #1.

Mr. Gene Quinn, applicant, stated he is not opposed to the wording.

Moved by Davis to approve of Major Planned Unit Development Amendment 14-01.

Jennissen also stated staff needs to make a change in Condition #7, based upon the change to Condition #1. Jennissen said that Lots 8 and 9 would be removed from the first line in Condition #7 and added after the language of the 20 foot front yard setback for the townhome lots and Lots A and B of Lots 3R, 4, 6, 7, and 8 and 9.

Commissioner Trautman asked staff to clarify the difference in the setbacks for Lots 8 and 9.

Jennissen stated the applicant is requesting the 20 foot front yard setback on Lots 8 and 9 because of the steepness of the terrain. The applicant would like the ability to have the structure built closer to the front of the lots.

Commissioner Trautman and Chairman Zvejnieks both expressed concern with that wording in Condition #7 and asked that this language be removed to a separate condition in order to clarify the setbacks for townhomes.

Jennissen noted that another condition could be added indicating: “That a zero foot setback only applies to Lots 8 and 9, if townhomes are built on the lots.”

Commissioner Davis further spoke of Conditions #11 and #13 and questioned if the conditions could be combined.

Jennissen stated staff did not have a problem combining those conditions.

Commissioner Zvejnieks reviewed the recommended changes with the Planning Commission and staff.

SUBSTITUTE MOTION: Moved by Trautman and seconded by Coleman to approve of Major Planned Unit Development Amendment / PU 14-01 with the following fifteen (15) conditions:

- 1. That the Planned Unit Development consists of a total of 23 units for a total of up to 10 townhomes and up to 15 single-family residential lots, and Common Lots;**
- 2. That each proposed lot have areas for a single-family residence or townhome, as shown on the site plan;**
- 3. That a minimum of two (2) off-street parking spaces be provided for each residential lot. All off-street parking spaces on the site shall measure at least nine (9) feet by eighteen (18) feet, be surfaced with gravel, concrete, or asphalt and maintained in such a manner that no dust will result from continuous use;**
- 4. That no off-premise signs be allowed within the Planned Unit Development;**
- 5. That the Planning Director may allow additional development or construction which is consistent with the existing development on this property. Significant changes in the use or impacts on adjacent land uses, as determined by the Planning Director, shall require an amendment to this Planned Unit Development;**
- 6. That a Building Permit be obtained for any structures exceeding 144 square feet or located on a permanent foundation, which includes the necessary site plans to be reviewed and approved by the Planning Director;**
- 7. That the required minimum setbacks for all structures on Lots 1, 10, 11R, 12R and 14 be a minimum of 25 feet from the front property lines, eight (8) feet side yard setbacks and 25 foot rear yard setback, also that there be a zero foot side yard setback between the town home lots, and a 20 foot front yard setback for the town home lots and Lots A and B of Lots 3R, 4, 6, 7, 8, and 9 ; and the front setback for proposed Lot A of Lot 4 shall be eight (8) feet from the north property line adjacent to the cul-de-sac and the front yard setback for Lots 2A and 2B be 19 feet;**
- 8. That a zero foot setback only applies to Lots 8 and 9, if townhomes are built on the lots;**
- 9. That each unit has an individual address that must be posted in accordance with Pennington County Ordinance Amendment #20;**

10. That all roads be paved with curb and gutter with a minimum 24-foot-wide driving surface and a minimum Right-of-Way of 50 feet or obtain a Subdivision Regulations Variance waiving this requirement;
11. That a Road District be formed to maintain the roads;
12. That the Homeowner's Association or Water Association maintains the water reservoir and the engineered water system be continued to be maintained for both water and fire protection;
13. That all homes within the development be hooked up to the Keystone sewer system;
14. That the townhome lot adjacent to South Dakota Highway 40 right-of-way have a zero foot setback from the property line adjacent to Highway 40; and,
15. That this Planned Unit Development be reviewed on a complaint basis only.

Vote: unanimous (5 to 0).

9. MINOR PLAT / PL 14-03: John Donahue. To reconfigure lots lines to create Lots 1 and 2 of Silver City Addition No. 2 in accordance with Section 400.3 of the Pennington County Subdivision Regulations.

EXISTING LEGAL: Tract A of Blocks 7 and 8 and all of Lots 25 and 26 in Block 7 of Silver City, Section 31, T2N, R5E, BHM, Pennington County, South Dakota.

PROPOSED LEGAL: Lots 1 and 2 of Silver City Addition No. 2, Section 31, T2N, R5E, BHM, Pennington County, South Dakota.

Conover reviewed the Staff Report indicating the applicant has applied for a Minor Plat to create Lots 1 and 2 of Silver City Addition No. 2. He stated the request is to reduce the size of Tract A Revised from .77 acre to .61 acre; whereby, increasing the size of Tract B from .18 acre to .29 acre.

Conover explained that proposed Lot 1 is currently legal, non-conforming and consists of one cabin, shed, holding tank and a well. The house on the property was built in 1948 and the addition to the residence was built in 1984 (BP #6423). In 1999, the owners at the time, Gene and Judith Hoffman, created Block 7, Lots 27-32, a .15 acre of undeveloped Nugget Street which was vacated via Plat 29-99, and Block 8, Lots 17-21. The request was approved on October 9, 1999, which created Tract A Revised of Block 7 and 8. This lot is vacant of any structures, but it does have an aboveground power line with a platted 15-foot easement on each side of the line. Also, on the east lot line of Tract A Revised, there exists a small 4.3 foot by 3.8 foot outhouse. This outhouse

belongs to the owner of the land to the east (Beverly Sears) of Tract A Revised and spans said lot line.

Conover informed the Planning Commission that on January 15, 2014, the Pennington County Ordinance Officer sent letters to Mr. John Donahue and his neighbor, Mrs. Beverly Sears, informing them that an existing outhouse encroaches into an existing minor drainage and utility easement. On January 24, 2014, the Pennington County Ordinance Officer received a letter from Mr. David Allard (on behalf of Mrs. Sears), in response to the January 15th letter. The Planning Department then sent two final letters dated January 24, 2014, and February 17, 2014, respectively, to Mrs. Sears and Mr. Allard. At the time of this report, the Pennington County Ordinance Officer has indicated that this Violation will be passed on to the State's Attorney's Office, as the outhouse is still located on the property and has not been removed.

Staff recommended approval of Minor Plat / PL 14-03 with the following four (4) conditions:

1. That prior to County Board approval of the Minor Plat, a Lot Size Variance be obtained for proposed Lot 1;
2. That prior to County Board approval of the Minor Plat, a Lot Size Variance be obtained for proposed Lot 2, if a well and septic system are to be located on the property;
3. That prior to County Board approval, the outhouse partially located on proposed Lot 2 be removed or a Variance be obtained for the setbacks and the formerly dedicated minor drainage and utility easement on the plat for Tract A be vacated where the outhouse is located, with a note on the plat; and,
4. The approval of this Minor Plat does not constitute approval of any further applications to be submitted for the above-described properties.

Ms. Janelle Finck, agent, appeared and discussed the proposed application. She stated that Fisk Land Surveying originally thought the outhouse was a shed from its outward appearance and that this matter would be handled in a neighborly manner to have it removed, but this is not going to be the case. Ms. Finck also stated this is an Ordinance Enforcement issue and asked the County to handle this violation, as they would with any other structure built over a lot line.

Chairman Zvejnieks asked Ms. Finck if there is a timeline the applicant is trying to meet for platting purposes.

Ms. Finck responded and said the applicant would like to continue with the platting of the lots and to get his affairs in order while he is still able and pass the property to his son in the future.

Jennissen further explained that Mrs. Sears has been before the Planning Commission for approval of a storage shed that was actually a playhouse on a separate lot, which needed approval through a Conditional Use Permit. Jennissen noted that the outhouse encroachment should have been caught at that time, but there was no indication it was located over the lot line. He also stated the outhouse was checked to see if it was being used as an outhouse, but not checked if it was meeting the setbacks from the property line.

Commissioner Landers asked if Mrs. Sears claimed ownership of the outhouse.

Jennissen responded and said yes.

Commissioner Davis expressed concern about staff's comment that the structure was checked to make sure it was not an outhouse.

Jennissen stated that when it was checked, it appeared to be used only for storage.

Commissioner Davis asked if staff checked to determine if there was a hole underneath of it.

Jennissen said there could be, but it was not checked at that time.

Mr. Patrick Grode, Deputy State's Attorney, appeared and stated that Ms. Sears is represented by an attorney and he is unaware at this time what she plans on doing to address the violation of the structure over a lot line. He further noted that the structure does violate County Ordinances in regards to setbacks, but there is the issue that both property owners have to work out. Mr. Grode noted that if the County looks the other direction and if the property is sold in the future, the problem is still there and the new owner will wonder why this matter wasn't handled when the County new about it before. If the Planning Commission and Board of Commissioners would like him to proceed with addressing the violation of the structure not meeting the setbacks, he will address it.

Commissioner Coleman commented that the applicant should not be held in contempt and the other property owner needs to address the issue of the outhouse.

Chairman Zvejnieks asked if the applicant is opposed to the outhouse remaining where it is located.

Conover stated the applicant is not opposed to the outhouse being there, but he would have to apply for a Variance to address the issue and vacate easements on the plat, which costs more time and money.

Commissioner Davis asked Mr. Grode if the Minor Plat could be approved with a stipulation that the outhouse issue is address before approval of it.

Jennissen stated this Minor Plat is the Final Plat procedure for the applicant.

Ms. Finck commented that this is a dangerous precedent to set implying anyone can build over lot lines and if the property owner then comes to the County Board knowing its illegal, the County is going to tell the two property owners it's their property to fix, rather than addressing the issue under the County Ordinances. County Ordinance does prohibit a structure being built over a lot line and she further asked that the County enforce their Ordinances.

Discussion further followed.

Commissioner Davis stated he would like to have the County proceed with the handling of the outhouse as a violation and to also include a stipulation indicating the matter is resolved before the plat is approved.

Commissioner Trautman questioned whether the letters sent to Mrs. Sears have also been sent to her attorney.

Mr. Grode informed the Planning Commission that Mr. Oviatt, from Goodsell, Quinn, contacted the County's Ordinance Officer requesting that all further correspondence regarding Mrs. Sears be sent to them as of further notice and no longer to Mr. David Allard, but is unaware if the letters were sent to Mr. Oviatt.

Commissioner Trautman asked that there is some type of document on file from Mr. Oviatt indicating he is representing Mrs. Sears.

Commissioner Davis asked Mr. Grode what his recommendation is.

Mr. Grode stated he agreed with the Planning Department and would also contact Mr. Oviatt letting him know what the matter is to be resolved and to also confirm that Mr. Oviatt is representing Ms. Sears.

Moved by Davis and seconded by Landers to approve of Minor Plat / PL 14-03 with the following four (4) conditions:

- 1. That prior to County Board approval of the Minor Plat, a Lot Size Variance be obtained for proposed Lot 1;**
- 2. That prior to County Board approval of the Minor Plat, a Lot Size Variance be obtained for proposed Lot 2, if a well and septic system are to be located on the property;**
- 3. That prior to County Board approval, the outhouse partially located on proposed Lot 2 be removed or a Variance be obtained for the setbacks and the formerly dedicated minor drainage and utility easement on the plat for Tract A be vacated where the outhouse is located, with a note on the plat; and,**

- 4. The approval of this Minor Plat does not constitute approval of any further applications to be submitted for the above-described properties.**

Vote: unanimous (5 to 0).

10. COUNTY BOARD REPORT

The Board of Commissioners concurred with the Planning Commission's recommendations from the February 24, 2014, Planning Commission meeting.

11. ITEMS FROM THE PUBLIC

There were no items from the public.

12. ITEMS FROM THE STAFF

- A. Building Permit Report. Jennissen reviewed the Building Permit Report for February 2014.

13. ITEMS FROM THE MEMBERSHIP

There were no items from the membership.

14. DISCUSSION ITEMS

There were no discussion items.

15. ADJOURNMENT

Moved by Davis and seconded by Trautman to adjourn.

All voting aye, the Motion carried 5 to 0.

The meeting adjourned at **9:46 a.m.**

Chairperson, Sig Zvejnieks