

MINUTES
PENNINGTON COUNTY PLANNING COMMISSION
April 28, 2014 @ 9:00 a.m.

County Commissioners' Meeting Room - Pennington County Courthouse

MEMBERS PRESENT: Karen Hall, Jim Coleman, Lori Litzen, Bill McCollam, Barbara Landers, and Lyndell Petersen.

STAFF PRESENT: Lysann Zeller, PJ Conover, Brittney Molitor, Kelsey Rausch, Jeri Ervin, and Patrick Grode (SAO).

ROLL CALL

1. APPROVAL OF THE APRIL 14, 2014, MINUTES
Moved by Hall and seconded by Landers to approve the April 14, 2014, Planning Commission minutes. Vote: unanimous (6 to 0).

2. APPROVAL OF THE AGENDA
Moved by Hall and seconded by Landers to approve the April 28, 2014, Planning Commission Agenda, with the removal of Items #9 and #10, and to place Item #13 on the Consent Agenda. Vote: unanimous (6 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. **PLANNED UNIT DEVELOPMENT REVIEW / PU 09-02:** Salvation Army. To review the Salvation Army Camp Planned Unit Development in accordance with Sections 213 and 508 of the Pennington County Zoning Ordinance.

Lot B of Lot 1 of Lot C of Lot 8 of Lot E; Lot 2 of Lot C of Lot 8 of Lot E; and the unplatted portion of Lot C of Lot 8 of Lot E, Big Bend Placer MS 1442, Section 8, T1N, R6E, BHM, Pennington County, South Dakota.

To recommended approval of the extension of Planned Unit Development / PU 09-02 with the following nineteen (19) conditions:

1. **That the setbacks from property lines be 25 feet from all property lines and 58 feet from Section Lines;**

- 2. 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;**
- 3. That a minimum of one 36-unit first aid kit be provided and accessible to the public at all times;**
- 4. That the internal driveway be a minimum of a 24-foot-wide driving surface and maintained in a dust free manner;**
- 5. That the uses for this Planned Unit Development shall be limited to the existing uses already on the property, which include a bunkhouse with a capacity of 15 people, picnic shelter, two (2) restrooms (male and female) with showers and toilets, church shelter, fire pit with seating, officer's residence, two (2) wells and drainfields, and the expansion to include a pastor's prayer retreat cabin, meeting/dining/safety hall, six (6) deck platforms, five (5) cabins, and five (5) RV sites;**
- 6. That approval of a Floodplain Development Permit be obtained prior to any work done within the boundaries of the 100-year floodplain;**
- 7. That the any new wastewater disposal system be designed by an engineer and that all the supporting percolation tests and soil profile information be stamped by the engineer and obtain approval from the South Dakota Department of Environment and Natural Resources;**
- 8. That the applicant ensures the rustic character of the property is maintained;**
- 9. That no open fire shall be permitted, unless approved by the State Wild Land Fire Suppression or Johnson Siding Fire Chief;**
- 10. That barbecue pits, fireplaces and incinerators shall be located, constructed, maintained and used as to minimize fire hazard and smoke nuisance, both on and off the property. The Fire Chief shall approve the facilities before the use is permitted;**
- 11. That any parking areas be maintained in a dust free manner;**
- 12. That each sleeping room have a smoke/heat detector;**
- 13. That a portable fire extinguisher with a minimum 2 A-BC rating shall be placed in each structure and shall be inspected and tagged annually;**

14. That each floor where occupants are sleeping shall have two means of escape;
15. That the applicant works with the Pennington County Fire Coordinator in regards to evacuation, mitigation; building construction, water supplies, safety drills, emergency alerting systems and other safety issues;
16. That the camp be limited to a maximum of 100 overnight total campers at one time;
17. That the new cabins be limited to one story;
18. That all structures be 45 feet from the west ridgeline; and,
19. That the Planned Unit Development be reviewed in three (3) years or upon a complaint basis.

Vote: unanimous (6 to 0).

4. **CONDITIONAL USE PERMIT REVIEW / CU 92-42:** Sunnyside Mobile Home Court. To review a mobile home park in a Suburban Residential District in accordance with Sections 208-C-2 and 510 of the Pennington County Zoning Ordinance.

The SE1/4NE1/4, Section 17, T2N, R7E, BHM, including that portion designated as a private lane lying in the SE1/4NE1/4SE1/4, Section 17, T2N, R7E, BHM, as shown on the plats filed in Plat Book 9, Page 161 and Plat Book 12, Page 274, excepting there from Lot A of the SE1/4NE1/4 NE1/4SE1/4, Section 17, T2N, R7E, BHM, as shown on the plat filed in Plat Book 9, Page 161 and EXCEPTING there from Lots C and D of King Subdivision, as shown on the plat filed in Plat Book 12, Page 274.

(Continued from the March 24, 2014, Planning Commission meeting.)

To approve of the extension of Conditional Use Permit / CU 92-42 with the following eight (8) conditions:

1. That the gate remains closed, but may still be used for the purpose of emergency ingress/egress;
2. That any new roads be constructed to the same standards as the existing roads within the mobile home park. All new road construction will require that a Construction Permit be obtained;
3. That prior to any mobile or manufactured home being placed or removed from the mobile home park, a Building Permit is obtained from the County Planning Department;

4. That all mobile homes shall have a minimum 20 foot separation between units, a minimum front yard setback of ten (10) feet from all access roads within the mobile home park, and a minimum rear and side yard setback on both sides of the parcel of not less than ten (10) feet;
5. That the addition of accessory structures be allowed through the issuance of a Building Permit, at a nominal fee, that will include necessary site plans to be reviewed and approved by the Planning Director;
6. That the mobile home park continues to be provided with an on-site Management Office;
7. That garages and carports be allowed to be five (5) feet from interior roads within the manufactured or mobile home park; and,
8. That this Conditional Use Permit be reviewed in four (4) years or on a complaint basis.

Vote: unanimous (6 to 0).

5. **CONDITIONAL USE PERMIT REVIEW / CU 12-07:** Derek Alexander. To review a recreational vehicle being used as a temporary residence while constructing a stick-built residence in a General Agriculture District in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

N1/2NW1/4 of Section 23, T1S, R3E, BHM, Pennington County, South Dakota.

To revoke Conditional Use Permit / CU 12-07 with the applicant's concurrence.

Vote: unanimous (6 to 0).

6. **CONDITIONAL USE PERMIT REVIEW / CU 12-16:** ARC Business Ventures/ Penny and Jon Fosheim. To review a Vacation Home Rental in a Suburban Residential District in accordance with Sections 208, 319, and 510 of the Pennington County Zoning Ordinance.

Lots 30-32, Block 11, Silver City, Section 31, T2N, R5E, BHM, Pennington County, South Dakota.

To continue the review of Conditional Use Permit / CU 12-16 to the June 23, 2014, Planning Commission meeting, per the applicant's request.

Vote: unanimous (6 to 0).

7. **CONDITIONAL USE PERMIT REVIEW / CU 12-17:** ARC Business Ventures/ Penny and Jon Fosheim. To review a Vacation Home Rental in a Suburban Residential District in accordance with Sections 208, 319, and 510 of the Pennington County Zoning Ordinance.

Lots 1-3, Block 11, Silver City, Section 31, T2N, R5E, BHM, Pennington County, South Dakota.

To continue the review of Conditional Use Permit / CU 12-17 to the June 23, 2014, Planning Commission meeting, per the applicant's request.

Vote: unanimous (6 to 0).

8. **CONDITIONAL USE PERMIT REVIEW / CU 13-06:** Bituminous Paving. To review a portable asphalt plant in a General Agriculture District to work on the S. Highway 16 project in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

That Part of S1/2NW1/4 lying W. of Highway 16; That Part of SW1/4 lying N & N of Highway 16, Section 10, T1S, R7E, BHM, Pennington County, South Dakota.

To revoke Conditional Use Permit / CU 13-06 with the applicant's concurrence.

Vote: unanimous (6 to 0).

11. **CONDITIONAL USE PERMIT / CU 14-12:** Penelope Cox; Huling Revocable Trust – Owner. To allow a single-wide mobile home as a permanent residence in a Suburban Residential District in accordance with Sections 208 and 510 of the Pennington County Zoning Ordinance.

Lot F of Lot 1 of Lot L of E1/2SE1/4, Section 9, T1N, R8E, BHM, Pennington County, South Dakota.

To approve of Conditional Use Permit / CU 14-12 with the following seven (7) conditions:

1. **That a Removal Permit be obtained before the existing single-wide mobile home is removed;**
2. **That a Building Permit be obtained for the new single-wide mobile home before it is moved onto the property;**
3. **That the minimum setback requirements of a Suburban Residential District be continually maintained on the property, including no structures being located within eight (8) feet of the side property lines;**

4. That the property be kept free of debris and junk vehicles;
5. That the lot address (3679 Jim Street) be posted so it is clearly visible from both directions of travel along Jim Street at all times in accordance with Pennington County's Ordinance #20;
6. That the mobile home have a continually maintained peaked non-reflective type roof, wood or simulated wood-type siding, and skirting; and,
7. That this Conditional Use Permit be reviewed in two (2) years or on a complaint basis to verify that all conditions of approval are being met.

Vote: unanimous (6 to 0).

13. **TELECOMMUNICATIONS FACILITY PERMIT / TC 14-01:** Cellular Inc. / Network Corp. d/b/a Verizon Wireless; John Rowe - Agent. To allow a 190 foot stealth monopine pole and equipment shelter in a General Agriculture District in accordance with Sections 205 and 316 of the Pennington County Zoning Ordinance.

That Part of Lot A in SW1/4SW1/4 lying south of Highway 44, Section 12, T1N, R6E, BHM, Pennington County, South Dakota.

(Continued from the April 14, 2014, Planning Commission meeting.)

To continue Telecommunications Facility Permit / TC 14-01 to the May 12, 2014, Planning Commission meeting, per the applicant's request.

Vote: unanimous (6 to 0).

END OF CONSENT CALENDAR

9. **LAYOUT PLAT / PL 14-06:** William and Nancy Ewing; Davis Engineering – Agent. To create Lots A and B of Ewing Addition in accordance with Section 400.1 of the Pennington County Subdivision Regulations.

EXISTING LEGAL: Lot G, including the Former Railroad Right-of-Way Within Said Lot G, in the SW1/4SE1/4, Section 31, T2N, R6E, BHM, Pennington County, South Dakota.

PROPOSED LEGAL: Lot A and Lot B of Ewing Addition, Section 31, T2N, R6E, BHM, Pennington County, South Dakota.

Zeller asked to have this item removed from the Consent Calendar to note that staff's recommendation in the Staff Report is different from the Consent Calendar's recommendation.

Zeller reviewed the Staff Report indicating the applicants have applied for a Layout Plat to create Lots A and B of Ewing Addition from an existing 2.49 acre parcel (Lot G). Proposed Lot A is to measure 1.3 acres, while proposed Lot B is to measure .882 acre. The purpose of the platting is to create two buildable lots for residential use.

Staff recommended approval of Layout Plat / PL 14-06 with the following twelve (12) conditions:

1. That a non-access easement be dedicated on the plat along the entire frontage of W. Highway 44 and the north/south portion of Forest Road, in accordance with the Department of Transportation's comments and submitted drawing;
2. That a percolation test results be provided and a soil profile hole inspection be conducted by the Environmental Planner for both proposed Lots A and B prior to submittal of the Minor Plat;
3. That a 150-foot setback be designated on the plat from the high water line of Rapid Creek for any on-site wastewater system;
4. That proposed Lots A and B be rezoned to Suburban Residential District and the Comprehensive Plan be amended to change the designated Future Land Use from Low Density Residential to Suburban Residential District prior to recording the plat at the Register of Deeds, or else a Lot Size Variance be obtained to allow the proposed lot sizes in a Low Density Residential District;
5. That an Approach Permit be obtained from the County Highway Department for the proposed location of the shared approach onto Forest Road prior to submittal of the Minor Plat;
6. That the plat be drawn in accordance with the requirements of Section 400.3 of the Subdivision Regulations, including the proper certifications (for all owners) and the scale of the plat to be no greater than one (1) inch equals 100 feet, or else approval of a Subdivision Regulations Variance be obtained;
7. That the plat dedicate all necessary easements, including eight (8) foot utility and minor drainage easements along the interior of all lot lines and a major drainage easement for the location of any existing watercourse, drainage way, channel or stream which traverses the property, or else approval of a Subdivision Regulations Variance be obtained;

8. That the boundary of the 100-year floodplain be drawn on the final version of the plat as designated by FEMA, unless the floodplain boundaries are otherwise revised with approval of a LOMR from FEMA or a Floodplain Development Permit;
9. That Forest Road be improved and additional right-of-way be dedicated in accordance with the Local/Collector Road Standards for a Suburban Residential District designated in the Subdivision Regulations, including a 66-foot-wide right-of-way with a 24-foot-wide paved driving surface, with curbs and gutters, or else approval of a Subdivision Regulations Variance be obtained;
10. That the private access easement being dedicated on the plat across Lot A to Lot B be improved and additional easement width be dedicated in accordance with Local/Collector Road Standards for a Suburban Residential District designated in the Subdivision Regulations, including a 66-foot-wide right-of-way with a 24-foot-wide paved driving surface, with curbs and gutters, or else approval of a Subdivision Regulations Variance be obtained;
11. That engineered road construction plans be submitted for all required road improvements, or else approval of a Subdivision Regulations Variance be obtained; and,
12. That approval of this Layout Plat does not constitute approval of any further applications submitted for the above-described property.

Commissioner Hall spoke of the platting process and wanted to know how long it will take for the applicant to go through this process.

Zeller noted that it usually takes about three months, at a minimum, in order for the entire process to be completed.

Mr. Ron Davis, agent, appeared and advised the Planning Commission that he has submitted information to FEMA and there is a new submittal process with their agency that should speed the process up for the applicant. Mr. Davis stated that FEMA indicates that it will be around 60 days for the turnaround time and it has already been about 20 days that they have had the information regarding revisions to the floodplain boundaries on the property.

Commissioner Litzen clarified that the letter the Planning Commission received from Mr. Reed Glawe pertains to the applicants' Rezone request.

Zeller said yes.

Moved by Landers and seconded by Hall to approve of Layout Plat / PL 14-06 with the following twelve (12) conditions:

1. That a non-access easement be dedicated on the plat along the entire frontage of W. Highway 44 and the north/south portion of Forest Road, in accordance with the Department of Transportation's comments and submitted drawing;
2. That a percolation test results be provided and a soil profile hole inspection be conducted by the Environmental Planner for both proposed Lots A and B prior to submittal of the Minor Plat;
3. That a 150-foot setback be designated on the plat from the high water line of Rapid Creek for any on-site wastewater system;
4. That proposed Lots A and B be rezoned to Suburban Residential District and the Comprehensive Plan be amended to change the designated Future Land Use from Low Density Residential to Suburban Residential District prior to recording the plat at the Register of Deeds, or else a Lot Size Variance be obtained to allow the proposed lot sizes in a Low Density Residential District;
5. That an Approach Permit be obtained from the County Highway Department for the proposed location of the shared approach onto Forest Road prior to submittal of the Minor Plat;
6. That the plat be drawn in accordance with the requirements of Section 400.3 of the Subdivision Regulations, including the proper certifications (for all owners) and the scale of the plat to be no greater than one (1) inch equals 100 feet, or else approval of a Subdivision Regulations Variance be obtained;
7. That the plat dedicate all necessary easements, including eight (8) foot utility and minor drainage easements along the interior of all lot lines and a major drainage easement for the location of any existing watercourse, drainage way, channel or stream which traverses the property, or else approval of a Subdivision Regulations Variance be obtained;
8. That the boundary of the 100-year floodplain be drawn on the final version of the plat as designated by FEMA, unless the floodplain boundaries are otherwise revised with approval of a LOMR from FEMA or a Floodplain Development Permit;
9. That Forest Road be improved and additional right-of-way be dedicated in accordance with the Local/Collector Road Standards for a Suburban Residential District designated in the Subdivision Regulations, including a 66-foot-wide right-of-way with a 24-foot-wide paved driving surface, with curbs and gutters, or else approval of a Subdivision Regulations Variance be obtained;

10. That the private access easement being dedicated on the plat across Lot A to Lot B be improved and additional easement width be dedicated in accordance with Local/Collector Road Standards for a Suburban Residential District designated in the Subdivision Regulations, including a 66-foot-wide right-of-way with a 24-foot-wide paved driving surface, with curbs and gutters, or else approval of a Subdivision Regulations Variance be obtained;
11. That engineered road construction plans be submitted for all required road improvements, or else approval of a Subdivision Regulations Variance be obtained; and,
12. That approval of this Layout Plat does not constitute approval of any further applications submitted for the above-described property.

All voting aye, the Motion carried 6 to 0.

10. REZONE / RZ 14-01: William and Nancy Ewing; Davis Engineering – Agent. To rezone 2.49 acres from Low Density Residential District to Suburban Residential District in accordance with Section 508 of the Pennington County Zoning Ordinance.

Lot G, including the Former Railroad Right-of-Way Within Said Lot G, in the SW1/4SE1/4, Section 31, T2N, R6E, BHM, Pennington County, South Dakota.

Zeller asked to have this item removed from the Consent Calendar in order for members of the audience to speak on the item.

Zeller reviewed the Staff Report indicating the applicants have applied for to rezone 2.49 acres from Low Density Residential District to Suburban Residential District to create two lots.

Staff recommended to continue Rezone / RZ 14-01 to the May 27, 2014, Planning Commission meeting so that a Comprehensive Plan Amendment can also be heard at the same time.

Zeller spoke to the audience member in attendance and she wanted to know where the current lot is located that the applicant wants to subdivide and also wanted to know where the other lot is located that submitted a letter opposing the Rezone request. Zeller showed the Planning Commission and public where that lot is located in relation to the current lot.

Commissioner Petersen left the meeting at 9:15 a.m.

Moved by Hall and seconded by Landers to continue Rezone / RZ 14-01 to the May 27, 2014, Planning Commission meeting.

All voting aye, the Motion carried 5 to 0.

Commissioner Petersen returned to the meeting at 9:18 a.m.

12. CONSTRUCTION PERMIT / CP 14-02: Lazy P6 Land Co., Inc. / Orvil Davis. To continue stockpiling of soil for future use, extension of the water and sewer mains, and grading.

NE1/4SE1/4 of Section 24, T1N, R7E; and the NE1/4SW1/4 of Section 19, T1N, R8E, BHM, Pennington County, South Dakota.

Molitor reviewed the Staff Report indicating the applicant has applied for a Construction Permit to continue general grading and shaping on the northern portion of the subject property. In addition, the request includes stockpiling, performing maintenance on the existing stock dam, creating Ag access areas, expanding future building platforms, road paving, and installing City water and sewer lines.

Molitor stated the applicant has submitted a Notice of Intent for the General Storm Water Discharges Associated with Construction Activities Permit to the SD Department of Environment and Natural Resources. She noted that permits were issued to the applicant with the facility Permit Numbers SDR10G072 and SDR10A732. The applicant has received an Air Quality Permit from the City of Rapid City, CIBP13-2651; however, it does not cover the portion of construction activity located in Section 19. The Air Quality Permit is effective until 8/20/2014.

Molitor further explained that a site visit was performed by staff on April 22, 2014, and the applicant was also present during the site visit. The applicant indicated that road improvements to the Section Line and East Watts Lane would be an asphalt surface and adhere to County Standards. In addition, the applicant stated that water and sewer lines were being installed to City of Rapid City standards. Erosion control measures were in place at the time of the site visit and appear to be maintained on a regular basis, with the exception of the wattles located on the northeast side of the property around the detention pond area in Section 19.

Molitor also stated staff would like to include another condition to state: "That road improvements to the Section Line be maintained by the applicant or by a Road District."

Staff recommended approval of Construction Permit #14-02 with the following thirteen (13) conditions:

1. That the conditions of the approval of the South Dakota Department of Environment and Natural Resources General Permits for Storm Water Discharges Associated with Construction Activities be continually met;
2. That the applicant continually maintains and adheres to the Storm Water Pollution Prevention Plan during the period of construction;

3. That the conditions of approval of the City of Rapid City's Air Quality Permit be continually met;
4. That a modification to the current Rapid City Air Quality Permit be submitted to include the construction activity located in Section 19;
5. That the Air Quality Permit, CIBP13-265, be renewed prior to August 20, 2014;
6. That a road sign for "E. Watts Lane" be posted at the corner of E. Watts Lane and the Section Line Right-of-Way;
7. That engineered road plans for improvements to the Section Line Right-of-Way be submitted for review and approval by the Pennington County Highway Department prior to commencement of any road improvements;
8. That the road improvements to both East Watts Lane and the Section Line Right of Way meet the requirements of Pennington County Subdivision Regulations Section 500.5;
9. That road improvements to the Section Line be maintained by the applicant or by a Road District.
10. That all buildings and/or offices located on the subject property be addressed and have that address posted;
11. That an adequate erosion control measure is implemented on the northwest portion of the property around the detention pond in Section 19;
12. That the disturbed areas be revegetated as required in Section 507-A(5)(c); and,
13. That this Construction Permit expires in one (1) year from the approval date.

Commissioner Hall asked staff to show where Section 19 is located.

Molitor stated that it is located close to the detention pond and Section Line, in the upper northeast corner of the property and showed the Planning Commission the location on the map.

Commissioner Petersen asked if the Construction Permit is being monitored.

Molitor noted that the City of Rapid City will enforce the Air Quality Permit, SD DENR will enforce the permits for storm water discharges on the properties, and Pennington County will enforce their regulations pertaining to the applicant meeting the Conditions of Approval under this Construction Permit.

Commissioner Hall spoke of Condition #5 regarding the Air Quality Permit and also asked if the applicants will be expanding the permit so that it includes the area in Section 19.

Molitor responded yes, and added that Rapid City will be sending her an e-mail confirming that the permit has been updated.

Moved by Hall and seconded by McCollam to approve of Construction Permit / CP 14-02 with the following thirteen (13) conditions:

- 1. That the conditions of the approval of the South Dakota Department of Environment and Natural Resources General Permits for Storm Water Discharges Associated with Construction Activities be continually met;**
- 2. That the applicant continually maintains and adheres to the Storm Water Pollution Prevention Plan during the period of construction;**
- 3. That the conditions of approval of the City of Rapid City's Air Quality Permit be continually met;**
- 4. That a modification to the current Rapid City Air Quality Permit be submitted to include the construction activity located in Section 19;**
- 5. That the Air Quality Permit, CIBP13-265, be renewed prior to August 20, 2014;**
- 6. That a road sign for "E. Watts Lane" be posted at the corner of E. Watts Lane and the Section Line Right-of-Way;**
- 7. That engineered road plans for improvements to the Section Line Right-of-Way be submitted for review and approval by the Pennington County Highway Department prior to commencement of any road improvements;**
- 8. That the road improvements to both East Watts Lane and the Section Line Right of Way meet the requirements of Pennington County Subdivision Regulations Section 500.5;**
- 9. That road improvements to the Section Line be maintained by the applicant or by a Road District.**
- 10. That all buildings and/or offices located on the subject property be addressed and have that address posted;**
- 11. That an adequate erosion control measure is implemented on the northwest portion of the property around the detention pond in Section 19;**

12. That the disturbed areas be revegetated as required in Section 507-A(5)(c); and,
13. That this Construction Permit expires in one (1) year from the approval date.

All voting aye, the Motion carried 6 to 0.

14. ORDINANCE AMENDMENT / OA 14-01: Venard, LLC. To amend the Vacation Home Rental Ordinance to change the maximum number of bedrooms allowed to be seven.

Zeller stated the applicant has applied for an Ordinance Amendment to amend Section 319-F-2 of the Vacation Home Rental (VHR) Ordinance to change the maximum number of bedrooms from five to seven.

Zeller explained that the applicant's property is located at 23906 Sun Country Lane and has been operated as a Vacation Home Rental for approximately 4 to 5 years, illegally. It came to staff's attention in September of 2013. Staff notified the property owner, who had recently purchased the property with the understanding that the property was allowed to be utilized as a Vacation Home Rental.

Zeller noted that the property is zoned Low Density Residential District, which allows Vacation Home Rentals, upon approval of a Conditional Use Permit. However, the residence on the property has seven bedrooms. Section 319-F-2 limits VHRs to five bedrooms. The proposed Ordinance Amendment would increase the limit to seven bedrooms.

Zeller added that, when the Ordinance was adopted on May 23, 2012, the idea was that anything over five bedrooms is not a typical home and should not be allowed to be a VHR. A conversation with Doug Johnston, SD Department of Health, indicated that the State of South Dakota regulates VHRs as to how they are used rather than the number of bedrooms, with the exception of more than 10 bedrooms. According to Mr. Johnston, a VHR can have up to 10 bedrooms as long as it is rented out to the same party. In other words, the people renting all know each other and are there as one group. The home is not rented out per room, but as a whole.

The South Dakota Department of Health's definition of a Vacation Home Rental is as follows:

"Vacation home establishment," any home, cabin or similar building that is rented, leased, or furnished in its entirety to the public on a daily or weekly basis for more than fourteen days in a calendar year and is not occupied by an owner or manager during the time of rental. This term does not include a bed and breakfast establishment as defined in subdivision 34-18-9.1(1).

The South Dakota Department of Health's definition of a Hotel is as follows:

“Hotel,” any hotel, motel, lodge, resort, cabins, building, or buildings with more than ten rental units which is used to provide sleeping accommodations for charge to the public.

The definition of a VHR is limited to 10 bedrooms by inference of the definition of a hotel, which starts out at 11 rental units.

Zeller informed the Planning Commission that the applicant, Ms. Kinsley indicated there is a need for this type of Vacation Home Rental for larger groups as they want one central location for their place of stay. She states that this includes multi-generational families who all want to stay under one roof; a group of retired military people who were all stationed together; or a group of college alumni. A five bedroom VHR does not accommodate these larger groups.

Zeller further stated that any new Vacation Home Rentals are only allowed on properties zoned Low Density Residential District, Limited Agriculture Districts or General Agriculture Districts. The smallest lot allowed in these three districts is three acres which could be assumed to provide a reasonable distance between units, though there are several non-conforming lots in these zoning districts that are smaller than three (3) acres in size. The VHR would still have to meet all of the requirements outlined in Section 319.

Staff recommended approval of OA14-01 to amend Section 319-F-2 “VHRs are limited to a maximum of five (5) bedrooms” to “VHRs are limited to a maximum of seven (7) bedrooms” as increasing the number of bedrooms from five to seven should have a minimal effect on surrounding property owners.

Zeller also added that Ms. Kinsley was not able to attend today’s meeting, due to road conditions. Staff stated this item could also be continued to allow her to appear and answer questions or concerns the Planning Commission may have.

Commissioner Coleman questioned the logic of this application and noted that the VH Rental Ordinance is possibly being amended in response to one person’s need.

Zeller commented that the Planning Commission has previously discussed not changing the Ordinances just to accommodate one person.

Commissioner Petersen wanted to know what made the property being operated as a Vacation Home Rental illegal.

Zeller explained that the use of a VH Rental was previously not allowed in the zoning district where the residence is located. Zeller also added that the previous owner had been operating illegally and the new owner purchased the property with the intent of operating a VHR because she thought it was legal to operate as such.

Commissioner Litzen asked if the VH Rental is still being operated illegally.

Zeller stated she believes the applicant does have some reservations for this summer.

Commissioner McCollam wanted to know if there is a way to waive the bedroom requirement.

Zeller said no.

Commissioner McCollam stated he would hate to change this Ordinance to satisfy one individual's needs and indicated that maybe it would be better to amend the Ordinance to allow for waivers.

Zeller said the Ordinance could possibly be amended to include a statement that the Planning Commission has the option to waive items.

Commissioner Litzen asked if staff researched the VH Rental Ordinance discussion to see why the committee adopted the five bedroom rule.

Zeller noted that the Director prepared this Staff Report and unaware if he researched the discussion of that.

Mr. Patrick Grode, Deputy State's Attorney, appeared and informed the Planning Commission that the committee felt that a five bedroom residence was the cut off for a single-family residence and, if there are more than five bedrooms, it starts to look more like a hotel or bed and breakfast and becomes more of a commercialized lodging rather than a single-family residence. He also encouraged the Planning Commission to think about that if they want to set up a waiver process, when you have one set of standards that applies to everyone, you are either in or you are out – you either fit or you don't, so that it doesn't look arbitrary.

Commissioner Landers questioned if the applicant would be able to operate it as a Bed and Breakfast.

Zeller indicated the applicant would need to live on-site to qualify for a Bed and Breakfast.

Commissioner Coleman responded and stated he supports VH Rentals, but his vision is that it not turns into a commercialized lodging enterprise. If the definition is expanded, it may get to that point. This may encourage people to build homes solely for the purpose of VH Rentals and that is not what he had in mind and he is hesitant to provide waivers to people.

Commissioner Hall also expressed concern and spoke of septic system sizing. She commented that, if the number of bedrooms is increased, will this require people to upgrade their septic system and questioned what it will all entail. She asked if staff knew what other states allow in terms of the maximum number of bedrooms for VH Rentals.

Zeller said that she does not know at this time, but will forward this request on and have the Director research what other states our counties require, so that he can bring this information back to the Planning Commission.

Ms. Joyce Sugrue, member of the public, appeared and explained that she was part of the committee that prepared the VH Rental Ordinance and clearly remembers adopting the five bedroom rule. She stated it was adopted because the State of South Dakota had a category named "Specialty Resort" that started at six bedrooms and that is definitely a business as a Specialty Resort.

Zeller clarified that the Director spoke with Doug Johnston, from the SD Department of Health, who indicated that the State of South Dakota regulates VHRs as to how they are used rather than the number bedrooms, with the exception of more than 10 bedrooms. According to Mr. Johnston, a VHR can have up to 10 bedrooms as long as it is rented out to the same party.

Ms. Sugrue responded and said that something must have changed in the category of a Specialty Resort with the State, since the adoption of the VH Rental Ordinance.

Ms. Sugrue asked that this information be looked into and brought back to another meeting for discussion and she further spoke of what she calls "business creeping." This is where someone first starts making cupcakes out of their residence and then adds on making wedding cakes at this residence, and then you incorporate weddings at the residence, etc., when the business should have not started at the residence in the first place. She feels that this is where the VH Rental Ordinance is going. Ms. Sugrue also asked that the VH Rental Ordinance is reviewed for health and safety reasons, that septic systems are sized correctly, and making sure any changes all fit together under the Ordinance, along with the State regulations. She further expressed concern with changing the Ordinance to allow seven bedrooms noting that there will be a lot of people at the property and this will impact parking and cars coming and going.

Commissioner Landers thanked Ms. Sugrue for appearing and speaking on this matter and feels that the State of South Dakota regulations are lacking.

Moved by Landers and seconded by Hall to continue Ordinance Amendment / OA 14-01 to the May 12, 2014, Planning Commission meeting.

Commissioner McCollam commented and wondered what different information can be presented by the applicant, based upon the discussion at this meeting.

Commissioner Litzen responded and said the applicant may like to provide more information to the Planning Commission.

Commissioner Landers noted the ongoing problems with real estate transactions and potential violations that buyers are not fully aware of when they purchase property. Then

those problems are brought in front of the Planning Commission. She further questioned whether it's possible to mandate full disclosure in a transaction.

Mr. Patrick Grode said that when a home is sold, there is a requirement on the Disclosure Form, through State Law, where the seller is to disclose if the property is out of compliance with any land use regulations. The seller is supposed to disclose to the buyer any Ordinances they are in violation of.

Commissioner Coleman stated these regulation issues should be handled before the court system and not through the Planning Commission. People try to find remedy through the Planning Commission, when they should find it through the previous owner or realtor who sold the property to them. The Planning Commission and Planning Department cannot become a regulatory organization for all the problem real estate transactions.

All voting aye, the Motion carried 6 to 0.

15. DISCUSSION OF SECOND LIVING QUARTERS (RANGES).

Zeller reviewed a Memo addressing issues the Planning staff has run into regarding multiple-family dwelling units. Staff is looking for comments and possible direction in the area of what constitutes separate living quarters or multiple-family dwelling units. It has been an area of discussion within the Planning Department as to what is the determining factor of a structure that will make a multiple family dwelling unit.

Zeller explained that staff has been using the range as a determining factor as to what determines a structure or property to have second living quarters. Staff has run into several situations where a structure was constructed on a piece property that appears to contained a second living quarters with a full kitchen minus the range.

Zeller spoke of a Building Permit applied for at 14793 Sunlight Drive that originally showed living quarters connected to the main residence. The applicant was required to amend the floor plan to not show a second kitchen with a range. Staff stated it's getting complicated to determine what constitutes second living quarters.

Zeller also spoke of another Building Permit application at 7720 Redemption Road, where the floor plan also showed second living quarters connected to the main house. This Building Permit was issued even though the floor plans showed a second kitchen. Staff wants to be consistent but is unsure where to draw the line on what qualifies as second living quarters.

Staff is looking for comments from the Planning Commission to help determine what should be the factors for determining second living quarters or multi-family dwelling units.

Commissioner Coleman asked staff to outline the ramifications in not addressing this issue.

Zeller spoke of septic sizing, the use, and the potential of when the property gets sold, the new owner now has a rental unit instead of a single-family residence and this is not the intent of the Zoning Ordinance.

Discussion followed.

Planning Commission asked staff to research what other county regulations are regarding this issue, including the counties of Minnehaha, Brookings, Brown, etc.

Zeller stated staff will research this and bring this item back to the Planning Commission.

16. DISCUSSION OF PLANNING COMMISSION ITEMS TO ADDRESS.

Conover discussed the list with the Planning Commission. He further asked them to review the list and get in touch with Planning staff, if they would like to see any of the items on the list addressed sooner. Conover stated the item will be placed on the May 12th Planning Commission Agenda for further discussion.

Commissioner Petersen asked staff to research the term “revoke” to see if another word could be used in place of it.

Commissioner Hall said she would like to see Overlay Districts addressed in 2014.

Discussion followed.

17. COUNTY BOARD REPORT

The April 14, 2014, Planning Commission items will not be heard until Tuesday, May 6th at the Board of Commissioners’ meeting.

18. ITEMS FROM THE PUBLIC

There were no items from the public.

19. ITEMS FROM THE STAFF

There were no items from staff.

20. ITEMS FROM THE MEMBERSHIP

There were no items from the membership.

21. DISCUSSION ITEMS

There were no discussion items.

22. ADJOURNMENT

Moved by Hall and seconded by Coleman to adjourn.

All voting aye, the Motion carried 6 to 0.

The meeting adjourned at **10:31 a.m.**

Lori Litzen, First Vice-Chairperson