

MINUTES
PENNINGTON COUNTY PLANNING COMMISSION
May 27, 2014 @ 9:00 a.m.

County Commissioners' Meeting Room - Pennington County Courthouse

MEMBERS PRESENT: Sig Zvejnieks, Karen Hall, Barbara Landers, Lori Litzen, and Ken Davis.

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

ROLL CALL

1. APPROVAL OF THE MAY 12, 2014, MINUTES
Moved by Davis and seconded by Hall to approve the May 12, 2014, Planning Commission minutes. Vote: unanimous (5 to 0).

2. APPROVAL OF THE AGENDA
Moved by Hall and seconded by Litzen to approve the May 27, 2014, Planning Commission Agenda, and to remove Item #6 from the Consent Calendar and to also place Item #14 on the Consent Calendar. 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 96-14:** Mark Hirsch. To review a manufactured home as a caretaker's residence in a Suburban Residential District in accordance with Sections 208-C and 510 of the Pennington County Zoning Ordinance.

Lot 3 of Tract 2 of NW1/4, Section 31, T1N, R7E, BHM, Pennington County, South Dakota.

(Continued from the May 12, 2014, Planning Commission meeting.)

To approve of the extension of Conditional Use Permit / CU 96-14 with the following four (4) conditions:

1. **That the manufactured home continues to have wood, hardboard or simulated wood siding;**

2. That the manufactured home continues to have a wood or asphalt shingled roof;
3. That the manufactured home be removed at such time that Irene Hirsch no longer needs assistance, or the property be subdivided to create a separate lot for the manufactured home to stay on the subject property; and,
4. That this Conditional Use Permit be reviewed in three (3) years, on a complaint basis, or as directed by the Planning Commission.

Vote: unanimous (5 to 0).

4. **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.

(Continued from the May 12, 2014, Planning Commission meeting.)

To continue the review of Conditional Use Permit / CU 99-37 to the June 23, 2014, Planning Commission meeting.

Vote: unanimous (5 to 0).

5. **CONDITIONAL USE PERMIT REVIEW / CU 11-11:** Gerald and Barbara Wittler. To review a horse trailer with living quarters parked on the property and utilized as a residence in a General Agriculture District in accordance with Sections 206 and 510 of the Pennington County Zoning Ordinance.

Lot H1 in the SE1/4SE1/4 less 42 feet of the NE boundary for County ROW as conveyed in Deed recorded in Book 179, Page 573, Section 31, T2N, R11E, BHM, Pennington County, South Dakota.

To revoke Conditional Use Permit / CU 11-11 with the applicant's concurrence.

Vote: unanimous (5 to 0).

7. **CONDITIONAL USE PERMIT REVIEW / CU 13-09:** Beverly Sears; Nate Oviatt – Agent. To review an accessory structure prior to a principal structure in a Suburban Residential District in accordance with Sections 208 and 510 of the Pennington County Zoning Ordinance.

Lots 22-23, Block 8, Silver City, Section 31, T2N, R5E, BHM, Pennington County, South Dakota.

To continue the review of Conditional Use Permit / CU 13-09 to the June 23, 2014, Planning Commission meeting.

Vote: unanimous (5 to 0).

- 8. CONDITIONAL USE PERMIT / CU 14-16: Justin and Cassandra Kistler. To allow a double-wide manufactured home to be used as a temporary residence while constructing a stick-built residence in a Limited Agriculture District in accordance with Sections 206 and 510 of the Pennington County Zoning Ordinance.**

Tract 1, Valley View Estates, Section 7, T1N, R9E, BHM, Pennington County, South Dakota.

To approve of Conditional Use Permit / CU 14-16 with the following six (6) conditions:

- 1. That the applicant obtains a Removal Permit for the double-wide manufactured home and the double-wide manufactured home shall be removed from the property once the applicant's new residence is habitable;**
- 2. That the lot address be posted at the driveway, at all times, so it is clearly visible from Radar Hill Road in accordance with Ordinance #20;**
- 3. That prior to obtaining a Building Permit, the applicant obtain a Permit for the existing on-site wastewater treatment system through the City of Rapid City;**
- 4. That the applicant obtains a Building Permit for the new single-family residence and pay the applicable penalty fee;**
- 5. That a Building Permit be obtained for any new structures exceeding 144 square feet and located on a permanent foundation, which will require a site plan to be reviewed and approved by the Planning Director; and,**
- 6. That this Conditional Use Permit be reviewed in one (1) year, on a complaint basis or as required by the Planning Commission to verify that all conditions of approval are being met.**

Vote: unanimous (5 to 0).

- 9. CONDITIONAL USE PERMIT / CU 14-17: Mary Corbin. To allow a single-wide mobile home to be used as a permanent residence in a Suburban Residential District in accordance with Sections 208 and 510 of the Pennington County Zoning Ordinance.**

Lot 19, Morning View Subdivision, Section 31, T2N, R9E, BHM, Pennington County, South Dakota.

To approve of Conditional Use Permit / CU 14-17 with the following nine (9) conditions.

1. That a Removal Permit be obtained prior to removing the existing single-wide mobile home;
2. That a Building Permit be obtained for the new single-wide mobile home before it is moved onto the property;
3. That prior to a Building Permit for the new single-wide mobile home being obtained, the City of Rapid City must approve the septic system on the property;
4. That the minimum setback requirements of a Suburban Residential District be continually maintained on the property;
5. That the property be kept free of debris and junk vehicles;
6. That the lot address (22876 Moon Street) be posted so it is clearly visible from both directions of travel along Moon Street at all times in accordance with Pennington County's Ordinance #20;
7. That the mobile home has a continually maintained non-reflective type roof, wood or simulated wood-type siding, and skirting;
8. That a Building Permit be obtained for any structure exceeding 144 square feet or located on a permanent foundation which requires a site plan to be reviewed and approved by the Planning Director; and,
9. 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 (5 to 0).

10. **REZONE / RZ 14-01 AND COMPREHENSIVE PLAN AMENDMENT / CA 14-01:** William and Nancy Ewing; Davis Engineering – Agent. To rezone 2.49 acres from Low Density Residential District to Suburban Residential District and to amend the Pennington County Comprehensive Plan to change the Future Land Use 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.

(Continued from the April 28, 2014, Planning Commission meeting.)

To approve of Rezone / RZ 14-01 and to approve of Comprehensive Plan Amendment / CA 14-01.

Vote: unanimous (5 to 0).

- 11. CONSTRUCTION PERMIT / CP 14-03:** City of Rapid City. To complete designs for the Twilight Drive and Anderson Road Water Transmission Main Extension. The proposed project includes installation of 12,078 linear feet of new 16” City water main in the Rapid Valley area in accordance with Section 507 of the Pennington County Zoning Ordinance.

Sections 1, 2, 11 and 12, T1N, R8E, BHM, Pennington County, South Dakota.

To approve of Construction Permit / CP 14-03 with the following nine (9) 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 the contractor identify a staging area for the project and obtain a Conditional Use Permit from Pennington County if the area is located within Pennington County’s jurisdiction and not within a Commercial Zoning District;**
- 5. That the applicant addresses the 12 comments from the Pennington County Highway Department in the Twilight Drive and Anderson Road Water Transmission Main Extension Plan;**
- 6. That plans for hydrant locations be submitted to the County Fire Coordinator for comment prior to installation;**
- 7. That the contractor make efforts to protect the Hawthorne Ditch and work around irrigation season, if possible;**
- 8. That the disturbed areas be re-vegetated as required in Section 507-A(5)(c); and,**
- 9. That this Construction Permit expires in one (1) year from the approval date.**

Vote: unanimous (5 to 0).

14. **MINOR PLAT / PL 14-08:** Neil Tschetter; Fisk Land Surveying – Agent. To reconfigure lot lines to create Lots 1 and 2 of Black Berry Development in accordance with Section 400.3 of the Pennington County Subdivision Regulations.

EXISTING LEGAL: Lot 10 (of Government Lot 9) in Black Forest Village and Lot 10 (also in Section 15) of Tract A less a Portion of Lot 3R of Black Forest Village in Berry Development all located in Sections 15 and 22, T1N, R5E, BHM, Pennington County, South Dakota.

PROPOSED LEGAL: Lots 1 and 2 of Black Berry Development, Sections 15 and 22, T1N, R5E, BHM, Pennington County, South Dakota.

To approve of Minor Plat / PL 14-08 with the following one (1) condition:

1. **That prior to Building Permit issuance, the applicant have an acceptable Fire Mitigation Plan from the Pennington County Fire Coordinator.**

Vote: unanimous (5 to 0).

END OF CONSENT CALENDAR

6. **CONDITIONAL USE PERMIT REVIEW / CU 12-10:** Tom Bodensteiner. To review a portable sawmill to process bug-wood trees in a Limited Agriculture District in accordance with Sections 206 and 510 of the Pennington County Zoning Ordinance.

Lot 1R, Beaird Subdivision, Section 21, T2N, R8E, BHM, Pennington County, South Dakota.

Zeller asked to have this item removed from the Consent Calendar to note that staff had originally recommended approval of the extension of Conditional Use Permit / CU 12-10 with sixteen (16) conditions and now is recommending approval with fifteen (15) conditions.

Moved by Landers and seconded Hall to approve of the extension of Conditional Use Permit #12-10 with the following fifteen (15) conditions:

1. **That this Conditional Use Permit be limited to the processing of timber I-beams into boards for Bodensteiner Beamworks and the processing of bug wood trees behind the shop building for another year, any expansion beyond this will require the Conditional Use Permit to be reviewed;**

2. That the bug wood trees stored on-site be placed in a designated area;
3. That the daily hours of operation shall be 8:00 a.m. to 4:00 p.m., Monday through Friday;
4. That the lot address be clearly posted on the residence as well as at both entrances to the property so it is visible from both directions along in accordance with Pennington County's Ordinance #20;
5. That the shavings from the timbers and the bug wood trees be properly disposed of and placed in a dumpster and hauled away on a regular basis;
6. That the applicant ensures the residential character of the property is maintained;
7. That the applicant maintains the necessary permits from the South Dakota Department of Environment and Natural Resources, the Rapid City Air Quality Department, and any other applicable Federal, State, or Local agency;
8. That no new approaches be allowed;
9. That a total of three (3) portable fire extinguishers with a minimum 2 A-BC rating be placed within the building;
10. That prior to the placement of any on-premise signs, the applicant must obtain approval of a Sign Permit;
11. That a minimum of four (4) off-street parking spaces be provided. Each parking space shall measure at least nine (9) feet by 18-feet and shall be kept in a dust free manner;
12. That any trade or stock associated with the business must be stored inside a structure or behind a privacy fence;
13. That a Building Permit be obtained for any structure exceeding 144 square feet or located on a permanent foundation, which requires a site plan to be reviewed and approved by the Planning Director;
14. That green infested MPB trees not be moved from July thru September unless trees are debarked; and,
15. That this Conditional Use Permit be reviewed in four (4) months or on a complaint basis to ensure that all conditions are being met.

All voting aye, the Motion carried 5 to 0.

12. CONDITIONAL USE PERMIT / CU 14-07: Josh Bruning. To allow an illuminated, on-premise sign within 1,500 feet of a residential zoning district / dwelling unit in a Highway Service District in accordance with Sections 210 and 510 of the Pennington County Zoning Ordinance.

Lot C of Lot 1 less Lot 1 of Lot C of Lot 1 and less right-of-way, Rohrer Subdivision, Section 29, T1N, R7E, BHM, Pennington County, South Dakota.

(Continued from the May 12, 2014, Planning Commission meeting.)

Zeller reviewed the Staff Report indicating this item had been continued from the May 12, 2014, Planning Commission meeting in order for an Ordinance Amendment (14-02) to be submitted to allow “medical and/or dental clinics or offices and hospitals” as a permitted use in a Highway Service District. This Ordinance Amendment will allow the applicant’s chiropractic business to remain located on the property. The Ordinance Amendment was approved by Planning Commission at their May 12th meeting and again by the County Board of Commissioners at their May 20th meeting. A second hearing of this Ordinance Amendment is scheduled for the June 6th County Board of Commissioners’ meeting, in which case, if it is approved, the Ordinance Amendment would become effective on July 12, 2014. Following this date, the applicant could then advertise for his chiropractic business.

Staff recommended approval of Conditional Use Permit #14-07 with the following ten (10) conditions:

1. That the applicant obtain approval of a Sign Permit, to be reviewed and approved by the Planning Director, for the proposed illuminated, on-premise sign prior to placement of the sign on the subject property;
2. That the illuminated, on-premise sign not advertise for the applicant’s chiropractic business until the Ordinance Amendment to allow medical clinics or offices as a permitted use in Highway Service District zoning becomes effective on July 12, 2014. If the Ordinance Amendment is not adopted by the Board of County Commissioners, the sign may only advertise for uses allowed on the premise;
3. That all lighting be installed and maintained so as to minimize spillage of light outside of the sign face so as not to create a nuisance and the sign must be effectively shielded to prevent beams or rays from being directed toward any portion of the traveled ways, and must not be of such intensity or brilliance to cause glare or impair the vision of the driver of any motor vehicle or otherwise interfere with any driver’s operation of a motor vehicle;
4. That the sign must meet a minimum of a five (5) foot setback from the front property lines and maintain proper setbacks from all side and rear property lines;

5. That the sign conform to all regulations in Section 312 of the Pennington County Zoning Ordinance;
6. That the on-premise sign only be illuminated only between the hours of 6 a.m. and 10 p.m.;
7. That the sign be maintained so as to have an aesthetically pleasing appearance at all times and not appear dilapidated;
8. That only on-premise advertising and public information be allowed on the proposed sign and no off-premise advertising be allowed unless otherwise permitted with Pennington County through approval of a Conditional Use Permit;
9. That any banners or other signs located on the property which have not been permitted either be removed or permitted immediately; and,
10. 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.

Mr. Josh Bruning, applicant, appeared and spoke of the proposed application. He stated that the illuminated, on-premise sign will not be left on at night.

Moved by Litzen and seconded by Hall to approve of Conditional Use Permit 14-07 with the following ten (10) conditions:

- 1. That the applicant obtain approval of a Sign Permit, to be reviewed and approved by the Planning Director, for the proposed illuminated, on-premise sign prior to placement of the sign on the subject property;**
- 2. That the illuminated, on-premise sign not advertise for the applicant's chiropractic business until the Ordinance Amendment to allow medical clinics or offices as a permitted use in Highway Service District zoning becomes effective on July 12, 2014. If the Ordinance Amendment is not adopted by the Board of County Commissioners, the sign may only advertise for uses allowed on the premise;**
- 3. That all lighting be installed and maintained so as to minimize spillage of light outside of the sign face so as not to create a nuisance and the sign must be effectively shielded to prevent beams or rays from being directed toward any portion of the traveled ways, and must not be of such intensity or brilliance to cause glare or impair the vision of the driver of any motor vehicle or otherwise interfere with any driver's operation of a motor vehicle;**
- 4. That the sign must meet a minimum of a five (5) foot setback from the front property lines and maintain proper setbacks from all side and rear property lines;**

5. **That the sign conform to all regulations in Section 312 of the Pennington County Zoning Ordinance;**
6. **That the on-premise sign only be illuminated only between the hours of 6 a.m. and 10 p.m.;**
7. **That the sign be maintained so as to have an aesthetically pleasing appearance at all times and not appear dilapidated;**
8. **That only on-premise advertising and public information be allowed on the proposed sign and no off-premise advertising be allowed unless otherwise permitted with Pennington County through approval of a Conditional Use Permit;**
9. **That any banners or other signs located on the property which have not been permitted either be removed or permitted immediately; and,**
10. **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.**

All voting aye, the Motion carried 5 to 0.

13. CONDITIONAL USE PERMIT REVIEW / CU 10-30: Janell Gibson; David and Maria Eisenbraun – Owners. To review the operation of a dog and cat kennel/breeding facility in a General Agriculture District in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

The S1/2NE1/4, E1/2SW1/4, SE1/4; Rainy Creek Cheyenne Township #19, Section 33, T4N, R16E, BHM, Pennington County, South Dakota.

Zeller reviewed the Staff Report indicating that although this Conditional Use Permit is not scheduled to be reviewed until September of 2016, staff has received a complaint from Animal Control about the sanitary condition of the kennel and the number of animals on the subject property. These issues were identified by Animal Control staff when they conducted an inspection to renew the applicant's Kennel License on May 6, 2014. At the request of Animal Control, a subsequent visit was made to the subject property by a Deputy of the Pennington County Sheriff's Office, Cameron Beyer, on May 15, 2014, to perform a welfare check on the animals. Deputy Beyer's report states that he counted 77 dogs and 23 cats before losing count, which is well in excess of the 65 animals allowed through approval of this Conditional Use Permit. When this Conditional Use Permit was originally approved in 2010, the applicant had approximately 35 animals; in 2012, staff did not thoroughly count the number of animals, thought it did not appear to be exceeding 65 at that time. According to the report, the applicant stated not all of the animals are hers and that she also takes in rescue animals.

Zeller explained that staff has spoken with the applicant, Janell Gibson, and staff from Animal Control and it is staff's understanding that Animal Control is requiring that the floors of the kennels be lined with gravel prior to approving the applicant's Kennel License. In speaking with Ms. Gibson, she indicated that gravel has already been hauled in and more will be hauled in by the end of this week (May 23rd). As for the number of animals on-site, Ms. Gibson stated that the deputy's report is incorrect and although there may have been 10 animals in excess of the allowed 65, there are not as many as indicated by Deputy Beyer in his report. She also discussed the living conditions of the animals and stated that they are all provided adequate food and water. She would like to clarify how many animals are allowed; specifically, does the number designated in Condition #1 include all animals or just those animals that are involved with the breeding operation.

Staff recommended the review of Conditional Use Permit 10-30 be continued to the June 23, 2014, Planning Commission meeting in order for the applicant to bring the kennel into compliance with the Conditions of Approval, for a Kennel License to be obtained from Animal Control, and for staff to perform a site visit to the subject property.

Zeller also showed the Planning Commission pictures of the kennel area that the applicant had brought to the meeting.

Chairman Zvejnieks clarified that the number of animals in Condition #1 are limited to only the cats and dogs and the other animals listed, such as the geese, sheep, and goats are considered farm animals and do not count toward the maximum of 65.

Zeller said that is correct.

Commissioner Litzen asked staff if this is a boarding facility.

Zeller stated no.

Commissioner Hall asked if the applicant owns all of the animals.

Zeller said she did not know and the applicant could answer this question.

Commissioner Hall asked staff how often animal control does a site visit to the subject property to perform an inspection.

Zeller said that she believes it is done each year when the applicant applies to renew their Kennel License.

Chairman Zvejnieks clarified that the Planning Commission is hearing this item because of the yearly Kennel License renewal and not because of a complaint.

Zeller stated that is correct.

Ms. Janell Gibson, applicant, appeared and informed the Planning Commission that she

has around 15 rescue animals also on-site and that she is a no-kill facility, so it takes about six months or longer to place them in homes. Ms. Gibson further stated that she will no longer be taking in rescue animals to keep their animal numbers to what she was approved for.

Chairman Zvejnieks questioned if each litter would also make the animal numbers higher than what the applicant had been approved for.

Ms. Gibson said it would not, since they plan placing a number of their older dogs with family or friends to also help reduce their numbers.

Commissioner Hall wanted to know how often Animal Control performs an inspection.

Ms. Gibson said it is about once a year in order to renew their Kennel License. She also noted that it is around early spring that Animal Control will send out applications to renew licenses.

Commissioner Hall asked Ms. Gibson if Animal Control contacts her to let her know that they will be coming out to the property.

Ms. Gibson stated that sometimes they will and other times they do not.

Commissioner Hall questioned if the concern about the gravel is for the outside beds or inside the structure.

Ms. Gibson noted that the beds are inside the structure and initially they placed straw down for each of the beds and this is removed and replaced every other day and hauled to the Wall City Dump. The Wall City Dump has a certain area for this type of waste where they compost it, etc. Ms. Gibson noted that the Animal Control Officer did not like that setup and they have moved everything out of the barn to allow the ground to breathe and air out. The Animal Control Officer did not like the use of the straw and wants gravel used. She noted that the USDA also requires rock and if there is enough of a base, you can then spray the rock with disinfectants. Ms. Gibson stated that she believes by using straw for beds and removing and cleaning everything out is more of a sanitary solution, but Animal Control has made it as one of her conditions to use rock before she can renew the Kennel License.

Discussion followed.

Moved by Davis and seconded by Hall to continue the review of Conditional Use Permit 10-30 to the June 23, 2014, Planning Commission meeting in order for the applicant to bring the kennel into compliance with the Conditions of Approval, for a Kennel License to be obtained from Animal Control, and for staff to perform a site visit to the subject property.

All voting aye, the Motion carried 5 to 0.

15. CONDITIONAL USE PERMIT REVIEW / CU 13-07: Jack Bradt. To review the operation of a dude ranch to include lodging and horse trail rides in a General Agriculture District in accordance with Sections 205-C and 510 of the Pennington County Zoning Ordinance.

The W1/2 of the NW1/4, Section 21, T2S, R6E, BHM, Pennington County, South Dakota.

Jennissen reviewed the Staff Report indicating that on May 28, 2013, Planning Commission approved Conditional Use Permit 13-07 to allow a dude ranch with the following twelve (12) conditions:

1. That the permitted uses be a dude ranch (recreational resort) which is to include: a duplex, a ranch hand residence, a one bedroom guest quarters (garage), a single-family residence and trail riding;
2. That the existing onsite wastewater disposal system be pumped and observed and an Operating Permit be obtained within six (6) months of approval of this Conditional Use Permit;
3. That Building Permits be obtained for any new structure(s) 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;
4. That a guest list is maintained;
5. That smoke detectors are placed in each sleeping room and each smoke detector be tested semi-annually for proper function. The smoke detectors must be Underwriters Laboratory (UL) listed and be either AC or battery operated;
6. That the applicant has at least one 2ABC dry chemical fire extinguisher accessible to all guests at all times on each floor or structure;
7. That one (1) wall sign and one (1) free-standing sign be allowed not to exceed twenty-four (24) square feet in area and that the free-standing sign shall not be located closer than seventeen (17) feet to the nearest street right-of-way line;
8. That the applicant obtain a Sales Tax License and any applicable license(s) from the State of South Dakota;
9. That within 120 days the applicant obtain approval from the U.S. Forest Service to utilize the Forest Service easement and the Section Line Road be maintained to a minimum of a 12-foot-wide driving surface and a driveable condition or obtain a minimum of a 40-foot-wide access easement across private property or a prescriptive easement;

10. That the address be clearly posted on the property and the address be shown in each guest room for emergency purposes;
11. That a Building Permit be obtained for the conversion of the garage to living quarters and the Planning Commission recommended the applicant apply to the Board of Commissioners to waive the doubled penalty fee; and,
12. That this Conditional Use Permit be reviewed in one (1) year or upon a complaint basis.

Jennissen added that Condition #9 gave Mr. Bradt 120 days to obtain approval from the U.S. Forest Service to utilize the Forest Service Easement and that the Section Line Road be maintained to a minimum of a 12-foot-wide driving surface and a drivable condition or obtain a minimum of a 40-foot-wide access easement across private property or a prescriptive easement.

Jennissen further explained that, on September 20, 2013, the County Board of Commissioners moved to allow Jack Bradt of Rushmore Resorts to operate under CU13-07 until November 1, 2014, without the documentation required by Condition #9 which states: *“That within 120 days the applicant obtain approval from the U.S. Forest Service to utilize the Forest Service easement and the Section Line Road be maintained to a minimum of a 12-foot-wide driving surface and a drivable condition or obtain a minimum of a 40-foot-wide access easement across private property or a prescriptive easement”* since, at that time, the U.S. Forest Service did not act on the Road Use Permit FDR 363.1A. The motion by the County Board of Commissioners has given Mr. Bradt Permission to operate his business until November 1, 2014.

Since September 20, 2013, Mr. Bradt has worked with the U.S. Forest Service and obtained permission to utilize the access easement across Capstone’s property to the Section Line ROW along the western edge of Capstone’s property for legal access. Staff contacted the U.S. Forest Service and verified that they have issued a Special Use Permit to utilize the access easement across Capstone’s property. A copy of the Forest Road Special Use Permit is in the Conditional Use Permit’s file.

Jennissen stated that he also had a conversation with Mark Harlow, owner of Capstone, who indicated that there is still no agreement to utilize the access road from the easement to Mr. Bradt’s property. Mr. Harlow indicated that he had conversed with Mr. Bradt on several occasions but was not able to come to an agreement to utilize the existing road from the access easement to Mr. Bradt’s property. As of May 21, 2014, Mr. Bradt is still utilizing the roadway from the access easement to Mr. Bradt’s property without Mr. Harlow’s permission.

Jennissen further noted that Mr. Harlow and Mr. Bradt are scheduled to meet to discuss the above issues.

Staff recommended to continue the review of Conditional Use Permit 13-07 to the November 10, 2014, Planning Commission meeting, as motioned by the County Board of Commissioners, as Mr. Bradt still does not have an agreement from Mr. Harlow.

Moved by Davis and seconded by Landers to continue the review of Conditional Use Permit 13-07 to the November 10, 2014, Planning Commission meeting, as Mr. Bradt still does not have an agreement in place with Mr. Harlow.

Chairman Zvejnieks reminded Mr. Bradt that any comments need to be made to the Motion to continue the item.

Mr. Jack Bradt, applicant, appeared and stated he is meeting the Conditions of Approval except for obtaining a 911 address and road name. He also wanted to know the process to finalize everything.

Chairman Zvejnieks reminded Mr. Bradt that the Motion is that this item is being continued, so that he can work with the adjacent property owner to come to an agreement to continue utilizing an access easement across private property or maintain the Section Line Road to a minimum of a 12-foot-wide driving surface and in a driveable condition.

Mr. Bradt wanted to know when he could again finalize everything.

Chairman Zvejnieks said this item is being continued to the November 10th Planning Commission meeting so that he can find a workable solution to meet Condition #9.

Commissioner Landers asked if the review of this CUP can be placed on the next scheduled Planning Commission meeting, if the applicant comes to an agreement with the adjacent property owner.

Jennissen said yes.

Commissioner Davis suggested the original Motion then be reworded to include the language of “no later than.”

Commissioners Davis and Landers both agreed with that language for the Motion.

SUBSTITUTE MOTION: Moved by Davis and seconded by Landers to continue the review of Conditional Use Permit 13-07 to no later than the November 10, 2014, Planning Commission meeting, as Mr. Bradt does not have an agreement from Mr. Harlow.

Commissioner Davis asked Mr. Bradt how long he has used the road across Capstone’s property.

Mr. Bradt said it has been used for about 20 years and believes it is a prescriptive easement already because of the use of it for 20 years. Mr. Bradt further stated that they have met the requirements of Condition #9 already.

Jennissen added that a prescriptive easement is not recognized in the Zoning Ordinance and the applicant would need to go to Court, if he wants the road across Capstone's property recognized as such.

Commissioner Davis also noted that the Planning Commission and Board of County Commissioners do not have the authority to create an access easement across another owner's property.

Mr. Bradt stated that he believes he is meeting Condition #9 because he has obtained approval from the Forest Service and that the Section Line Road has gravel on it and is in a drivable condition.

Commissioner Hall asked Mr. Bradt if he has developed the Section Line Road.

Mr. Bradt responded yes.

Jennissen said it is developed, but has not been used for some time now and would need a considerable amount of cleanup to make it drivable again.

Commissioner Litzen clarified that, besides the applicant needing to obtain approval from the Forest Service the applicant would also need to maintain the Section Line Road to a minimum of a 12-foot-wide driving surface and be in a drivable condition, or come to an agreement with Mr. Harlow to continue using an access easement across his property.

Jennissen said that is correct.

Mr. Mark Harlow, owner of the adjacent property (Capstone), provided a brief history of an agreement between Mr. Bradt and himself. Mr. Harlow stated there was a license agreement in place so that Mr. Bradt could bring his customers, in his own private vehicle, across Mr. Harlow's land, by way of a handshake agreement on the easement. Mr. Harlow expressed concern with the Section Line Road not being maintained and it has started to become overgrown with grass and weeds. He expressed concern with customers driving on an uncut, unmaintained road and the potential of fire danger in the area. He asked that the road be more than 12 feet wide and it needs to be maintained as such because of the commercial business the applicant is operating, as well as ingress/egress for emergency vehicles.

Commissioner Litzen noted that the Section Line Road is not in drivable condition and clarified this with the Planning Director.

Mr. Jack Bradt disagreed with this and said the road does have about six inches of gravel on it, but it has not been used in some time and has become overgrown with grass. He believes the road is in good condition and drivable and that he has met Condition #9.

Commissioner Hall asked Mr. Bradt if he will be using the Section Line Road.

Mr. Bradt said no, not if he can come to an agreement with Mr. Harlow.

Discussion followed.

All voting aye, the Motion carried 5 to 0.

16. DISCUSSION OF ERIC AND HEIDI HENRIKSEN PROPERTY LOCATED AT 15571 ANTELOPE CREEK ROAD.

Government Lots 1 and 2, SE1/4; SE1/4SW1/4, less Right-of-Way, Section 2, T1S, R9E, BHM, Pennington County, South Dakota.

Jennissen informed the Planning Commission that on March 25, 2013, the Henriksens applied for a Conditional Use Permit to bring their property into compliance, which would allow the existing uses to remain on the property. The existing uses include three residential units and numerous outbuildings all located on one lot. On March 25, 2013, Planning Commission denied the Conditional Use Permit without prejudice to allow the Henriksens to meet with staff to discuss ways to bring the property into compliance. Since then, the Henriksens have obtained approval of a Floodplain Development Permit and obtained a Building Permit for the pole shed. They have also submitted an outline of how they would like to proceed to allow the uses, the three residences, to remain on the property under a Conditional Use Permit.

Jennissen further explained that staff has reviewed the current uses on the property and discussed ways to bring the property into compliance with the Henriksens. The property could be subdivided into three separate lots for each home on the property. The property would have to be rezoned or Lot Size Variances obtained for the lots. Also, given the close proximity of each of the homes to each other, it would be difficult to meet the required setbacks of 25 feet from all property lines. Variances would have to be obtained just to meet the required setbacks. In addition, the applicants have no intent of selling the homes to separate parties. The lot configuration would be such that it would not make sense to plat the properties into three separate lots for the sole purpose of creating three separate lots for each home, even though they would be under the same ownership.

Jennissen noted that a Conditional Use Permit appears to be the best option. Section 204-F states that "Other uses may be allowed, which are not listed, provided they are not contrary to the intent of the district in which they are to be located." The three homes have been on the property for numerous years and apparently have not had an effect on the neighboring property owners. The Conditional Use Permit could be approved with conditions that specifically outline that the residences cannot be replaced if damaged

more than 50 percent and that the mobile home is removed upon non-occupancy by the current residents. The Henriksens have agreed that the mobile home would be removed once the current residents are not able to reside on the premises, which they have indicated could be within two to three years.

Staff is looking for direction from the Planning Commissions on how to proceed.

Commissioner Davis also wanted to know if the applicant could apply for a Planned Unit Development.

Jennissen said it is another option, but a Conditional Use Permit is the better option since a Conditional Use Permit can be revoked or may no longer be needed at some point and the property would not have to be rezoned a Planned Unit Development.

Commissioner Litzen questioned if the property is sold, will the Conditional Use Permit stay with the property.

Jennissen said yes, unless a condition is added indicating that if the property is sold, the Conditional Use Permit shall be revoked.

Discussion followed and no action is needed.

17. DISCUSSION OF PLANNING COMMISSION ITEMS TO ADDRESS.

Chairman Zvejnieks clarified that the Planning Department is looking for input from the Planning Commission before a Memo is prepared by the Planning Director listing items by priority with dates and assignments.

Discussion followed on priority items to address and to have the Planning Director prepare a detailed Memo listing the priority items with dates and assignments to be presented at the June 9, 2014, Planning Commission meeting.

Mr. Patrick Grode, Deputy State's Attorney, appeared and reviewed prescriptive easements with the Planning Commission. Mr. Grode stated that the Planning Commission and Board of Commissioners cannot take a prescriptive easement into consideration unless there is a judgment from State or Federal Court recognizing the prescriptive easement, which then can be filed with the Register of Deeds Office. Mr. Grode also noted that, until a person obtains a judgment for a prescriptive easement and can file it, there is nothing legal creating the prescriptive easement because it is not an established fact.

Discussion followed.

18. COUNTY BOARD REPORT

The Board of Commissioners concurred with the Planning Commission's recommendations from the May 12, 2014, Planning Commission meeting.

19. ITEMS FROM THE PUBLIC

There were no items from the public.

20. ITEMS FROM THE STAFF

There were no items from staff.

21. ITEMS FROM THE MEMBERSHIP

There were no items from the membership.

22. ADJOURNMENT

Moved by Davis and seconded by Hall to adjourn.

All voting aye, the Motion carried 5 to 0.

The meeting adjourned at **10:39 a.m.**

Sig Zvejnieks, Chairperson