

**MINUTES  
PENNINGTON COUNTY PLANNING COMMISSION**

**July 28, 2014 @ 9:00 a.m.**

County Commissioners' Meeting Room - Pennington County Courthouse

MEMBERS PRESENT: Sig Zvejnieks, Lori Litzen, Jim Coleman, Bill McCollam, Barbara Landers, and Nancy Trautman.

STAFF PRESENT: Dan Jennissen, Lysann Zeller, PJ Conover, Jeri Ervin, Brittney Molitor, Kelsey Rausch, and Kinsley Groote (SAO).

ROLL CALL

1. ELECTION OF OFFICERS

**Moved by Coleman and seconded by Landers to nominate Sig Zvejnieks as Chairperson. Moved by Coleman and seconded by Litzen to cease nominations. Vote: unanimous (6 to 0).**

**Moved by McCollman and seconded by Zvejnieks to nominate Lori Litzen as First Vice-Chairperson. Moved by Litzen and Landers to cease nominations. Vote: unanimous (6 to 0).**

**Moved by Litzen and seconded by McCollman to nominate Karen Hall as Second Vice-Chairperson. Moved by McCollam and Landers to cease nominations. Vote: unanimous (6 to 0).**

2. APPROVAL OF THE JULY 14, 2014, MINUTES

**Moved by Litzen and seconded by Coleman to approve the minutes of the July 14, 2014, Planning Commission Meeting. Vote: unanimous (6 to 0).**

3. APPROVAL OF THE AGENDA

**Moved by Landers and seconded by McCollam to approve the Agenda of the July 28, 2014, Planning Commission Meeting, including the Consent Calendar. 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.

4. **CONDITIONAL USE PERMIT REVIEW / CU 07-03:** Cynthia Pushing; Roger Thompson - Agent. To review a single-wide mobile home as a residence and to retain the existing single-wide mobile home as a temporary residence while constructing a single-family residence in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

N1/2NW1/4SW/14SE1/4; N1/2NE1/4SW1/4SE1/4; NW1/4NW1/4SE1/4; SW1/4NW1/4SE1/4; SE1/4 NW1/4SE1/4, Section 25, T2N, R6E, BHM, Pennington County, South Dakota.

**To revoke Conditional Use Permit / CU 07-03 with the applicant's concurrence.**

**Vote: unanimous (6 to 0).**

5. **CONDITIONAL USE PERMIT REVIEW / CU 10-17:** Dan and Nancy Evangelisto. To review a Recreational Resort to include a Bed and Breakfast, up to 10 rental units and special events to include: weddings, wine tasting, rehearsal dinners, and family reunions in a General Agriculture District in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

Lots 3, 4, 10, and 11, Custer Trails Subdivision #1, Section 22, T1N, R5E, BHM, Pennington County, South Dakota.

**To revoke Conditional Use Permit / CU 10-17 with the applicants' concurrence.**

**Vote: unanimous (6 to 0).**

6. **PLANNED UNIT DEVELOPMENT AMENDMENT REVIEW / PU 06-03:** BankWest, Inc. To review a Planned Unit Development Amendment to allow for 75 residential lots, 1 well lot, and 1 detention lot with a minimum lot size of 1/2 acre in accordance with Section 213 of the Pennington County Zoning Ordinance.

Lots 1-3, Block 1; Lots 1-6, Block 2; Lots 1-10, Block 3; Lots 1-10 and Lot 20, Block 4; Lot 1 and Lot 20, Block 5; Lot 1, Block 6, all of Prairiefire Subdivision; NE1/4NE1/4 Less Eisenbraun Sub, Less Winton Sub, Less Prairiefire Sub and Less ROW; and SE1/4NE1/4 Less Eisenbraun Sub, Less Winton Sub, Less Prairiefire Sub and Less ROW, Section 26, T1N, R8E, BHM, Pennington County, South Dakota.

**To recommend approval of the extension of Planned Unit Development Amendment / PU 06-03 with the following eleven (11) conditions:**

1. **That the Planned Unit Development consists of no more than 75 residential lots, 1 well lot and 1 detention lot with a minimum lot size of 1/2 acre;**
2. **That prior to any Building Permits being issued, the roads providing access to the lots must be improved to city platting requirements;**
3. **That no off-premise signs be allowed within the Planned Unit Development;**
4. **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;**

5. That the required minimum setbacks meet the Suburban Residential Zoning requirements;
6. That each address must be posted in accordance with Pennington County Ordinance Amendment #20;
7. That prior to any new Building Permits located within newly platted areas of the subdivision, the applicant installs road signs for the new streets;
8. That the Terracotta Homeowner's Association maintains the Central Water System;
9. That the single-family residences must be stick-built or double-wide manufactured or modular homes meeting the requirements of Section 204-I of the Pennington County Zoning Ordinance;
10. That road widths are 28-feet-wide, with 4-foot to be striped and to be used by pedestrians and non-motorized travel; and,
11. That this Planned Unit Development be reviewed in one (1) year or on a complaint basis.

**Vote: unanimous (6 to 0).**

7. **REZONE / RZ 14-04 AND COMPREHENSIVE PLAN AMENDMENT / CA 14-04:** Kendra Larson; Fisk Land Surveying – Agent. To rezone 38.6 acres from General Agriculture District to Limited Agriculture District and to amend the Pennington County Comprehensive Plan to change the Future Land Use from Planned Unit Development Sensitive to Limited Agriculture District in accordance with Sections 206 and 508 of the Pennington County Zoning Ordinance.

Government Lot 3 (NW1/4SW1/4), Section 30, T1N, R7E, BHM, Pennington County, South Dakota.

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

**To recommend approval of Rezone / RZ 14-04 and approval of Comprehensive Plan Amendment / CA 14-04.**

**Vote: unanimous (6 to 0).**

8. **MINOR PLAT / PL 14-16 AND SUBDIVISION REGULATIONS VARIANCE / SV 14-05:** Louis and Carol Torres; John Preston – Agent. To create Lots 2A, 2B, and 2C of Battle Creek Mountain Estates Subdivision and to waive platting requirements in accordance with Sections 400.3 and 700.1 of the Pennington County Subdivision Regulations.

EXISTING LEGAL: Lot 2 less Lot H-1, Battle Creek Mountain Estates Subdivision, Section 17, T2S, R7E, BHM, Pennington County, South Dakota.

PROPOSED LEGAL: Lots 2A, 2B, and 2C of Battle Creek Mountain Estates Subdivision, Section 17, T2S, R7E, BHM, Pennington County, South Dakota.

**To recommend approval of Subdivision Regulations Variance / SV 14-05 to waive Section Line Highway improvements, engineered road construction plans and cul-de-sac improvements and approval of Minor Plat / PL 14-16 with the following five (5) conditions:**

- 1. That prior to County Board approval of the Minor Plat, percolation tests be submitted for review and approval;**
- 2. That that prior to filing the plat with Register of Deeds the T-turnaround be dimensioned;**
- 3. That prior to filing the plat with Register of Deeds, Lot “2D” be changed on the Plat to Lot “2C”;**
- 4. That prior to filing the plat, with Register of Deeds, an Operating Permit be obtained of the existing on-site wastewater system; and,**
- 5. That prior to filing the plat, with Register of Deeds, the top “Battle Creek Mountain Estates Subdivision” be removed from the plat heading.**

**Vote: unanimous (6 to 0).**

## **END OF CONSENT CALENDAR**

9. CONDITIONAL USE PERMIT / CU 14-23: Keystone Adventures, Inc.; Andrew Busse – Agent. To allow for a golf driving range and helipad in a Highway Service Zoning District in accordance with Sections 210 and 510 of the Pennington County Zoning Ordinance.

The Unplatted Balance of Government Lot 16 less Right-of-Way; and the Unplatted Balance of Government Lot 21 less Right-of-Way, Section 31, T1S, R6E, BHM, Pennington County, South Dakota.

Zeller reviewed the Staff Report indicating the applicant is requesting a Conditional Use Permit to allow a golf driving range and helipad for helicopter charter tours in a Highway Service District. The applicant is intending to develop the subject property with tourism-oriented attractions, potentially also including ATV tours, a skydiving tunnel, rock climbing wall, horseback riding, interpretive hiking, and a high ropes course, etc., but these are all allowed uses in a Highway Service District and do not require approval of a

Conditional Use Permit. Therefore, only the proposed golf driving range and helipad are being considered with this Conditional Use Permit request.

Zeller stated the subject property is primarily surrounded by vacant property to the north, east, and west, including both privately-owned and Forest Service property. Directly adjacent to the south of the subject property is a hotel and further to the south is a restaurant and resort (Holy Smoke). The zoning along Highway 16A is primarily Highway Service and General Commercial District, with the remaining zoning in the surrounding area being General Agriculture District. The nearest single-family residences are located approximately one-fifth of a mile to the south and one-half mile to the northwest of the subject property, off of Trixie Lane.

Zeller also explained that access to the subject property is provided via an existing approach onto Highway 16A. It appears the approach and the beginning of the road to the applicant's property are located within the right-of-way for Highway 16A, though a site plan provided by the applicant shows this road and approach to actually be located within Lot F of Holy Smoke Addition with a 50-foot-wide easement for access and utilities proposed to be dedicated. Prior to issuance of a Building Permit on the subject property, the applicant will need to demonstrate legal access to the subject property in conformance with Section 313 of the Zoning Ordinance. This requires that the width of the easement meets the standards of the Subdivision Regulations (66-feet) or a Zoning Variance be obtained. In addition, the applicant will need to obtain approval of an Approach Permit from the South Dakota Department of Transportation for the proposed commercial use of the property.

Zeller further noted that the proposed use of a driving range should have minimal impact on surrounding property owners and staff feels is an appropriate use of the property. The proposed use of a helipad may also be appropriate; however, the applicant did not provide detailed information when the CUP Application was submitted, in terms of how many flights, what type of aircraft, hours of operation, etc. Therefore, the Planning Commission may opt to continue the Conditional Use Permit in order for more information to be obtained from the applicant and for contact to be made with the FAA, including submittal of FAA Form 7480-1, Notice of Landing Area Proposal, by the applicant.

If the Planning Commission desires for more information to be provided from the applicant and for contact to be made with the FAA, including submittal of FAA Form 7480-1, Notice of Landing Area Proposal, staff recommends Conditional Use Permit #14-23 be continued to the August 11, 2014, Planning Commission meeting.

If Planning Commission proceeds with approving Conditional Use Permit #14-23, staff recommends the following fourteen (14) conditions be incorporated as Conditions of Approval:

1. That this Conditional Use Permit allows for a golf driving range and helipad on the subject property with chartered helicopter tours to be operated from the site;

2. That a Construction Permit be obtained for any land disturbance greater than 10,000 square feet and that all requirements of Section 507 (Construction Permits) of the Zoning Ordinance be continually maintained;
3. That prior to issuance of any Permits for development of the property, beyond this Conditional Use Permit, legal access, which meets the requirements of Section 313 (Access Easements) of the Zoning Ordinance, be demonstrated and approval of an Approach Permit be obtained from the South Dakota Department of Transportation;
4. That an On-site Wastewater Construction Permit be obtained for the installation of any on-site wastewater treatment system on the property, and that this Permit be obtained prior to issuance of a Building Permit for any structure containing plumbing;
5. That off-street parking be provided on-site in accordance with the requirements of Section 310 of the Zoning Ordinance for Commercial recreation uses;
6. That prior to operation of the helipad, the applicant obtain approval from the Federation Aviation Administration (FAA) and a copy of this approval be provided to the Planning Department;
7. That the applicant adhere to FAA regulations at all times and that all other applicable federal, state, and local requirements be continually met;
8. That fuel storage on the property be approved and meet the requirements of the South Dakota Department of Environment and Natural Resources (SD DENR) and the Environmental Protection Agency (EPA) at all times;
9. That access to the helipads be limited to employees and customers escorted by employees;
10. That the comments provided by the U.S. Forest Service be adhered to at all times;
11. That a Sign Permit be obtained prior to the installation of any signs on the property. All new signs must meet the requirements of Section 312 of the Zoning Ordinance;
12. That the property address be clearly visible from both directions of travel along Highway 16A, in accordance with Pennington County Ordinance #20;
13. That prior to operation of the helipad, this Conditional Use Permit be reviewed in order for specifics about the operation of the helipad to be determined, including hours of operation, number of flights per hour, etc.; and,
14. That this Conditional Use Permit be reviewed in one (1) year or on a complaint basis.

Zeller further added that the applicant indicated that, prior to this meeting, he has made contact with the FAA and could provide additional information regarding this, and staff has also received a letter in opposition to the proposed application.

Commissioner Litzen spoke of Condition #8 and questioned if it is necessary for the applicant to obtain approval through the EPA for fuel storage, when the applicant will also be obtaining approval from SD DENR for the same thing.

Zeller stated this condition was copied from a previous request for a helipad and, in the future, EPA approval might be needed by the applicant, depending upon the amount of fuel that may be stored on-site.

Chairman Zvejnieks expressed concern with the site plan and asked that a detailed one be submitted, including showing dimensions and drawn to scale. He further spoke of the applicant acquiring more land to the north of the subject property and asked staff if they knew which site it is.

Zeller said the applicant could address this.

Commissioner Trautman expressed concern with possible erosion and drainage issues since the hillside is not very stable. She further spoke of the hotel located to the south of the subject property experiencing problems when it was built. She also questioned if Pennington County can require further study of the soil types in the area before the project is started.

Zeller responded and stated she is unaware if the Planning Commission can require the soil types to be tested, but staff can stipulate erosion and sediment control measures during construction.

Commissioner Litzen stated the applicant did contact her to discuss the application.

Commissioners Coleman, McCollam and Landers stated the applicant also contacted them in regards to the proposed use.

Molitor addressed the erosion and sediment control measures stating that, in the County's Storm Water Quality Manual, there are regulations requiring that the existing drainage remain the same during construction and this may require the applicant to build some type of detention so that sediment and water does not leave the site.

Chairman Zvejnieks noted that Commission Trautman was also speaking of stability for a solid foundation.

Molitor noted that staff also needs to take into consideration the land disturbance.

Mr. Andrew Busse, applicant, appeared and spoke of the proposed application. He reviewed a presentation with the Planning Commission and public. He further spoke of tourism in the Black Hills and it is the intent of Keystone Adventures to build and create a unique, adventurous, and high-end eco-tourism destination within the Black Hills. The idea is to create a one-stop, eco-adventure tourism destination that will meet the entire

family's needs. The primary focus will be direct offering of specialty outdoor sports and local cultural experience. The specialty outdoor sports will include rock climbing, kayaking, mountain biking, atv tours, fly-fishing, helicopter charters, horseback riding, skydiving tunnel, high-ropes/confidence course, sailing, and interpretive hiking, in addition to a driving range. The operation would operate from May 15<sup>th</sup> to September 15<sup>th</sup> and be open from 9 a.m. to 6 p.m., seven days a week.

Mr. Busse stated the property was purchased based upon the similar uses already operating along Highway 16A and he is hoping to also purchase property to the north to allow for expansion. He also added that they have the option to purchase around 45 acres located to the south of the subject property, if the Conditional Use Permit is not approved. Mr. Busse further stated their intent is to partner with current businesses to enhance their attractions and build a professional atmosphere.

Mr. Busse spoke of the helicopters indicating their goal is not to create a competition but to facilitate a relationship with current business owners and move some of those industries under one roof. He would like to minimize the impact of the helicopters on other aspects of the business, through direct control of flight volume, flight route, and flight altitude, and operate 1-2 helicopters during normal business hours, with approximately 1-3 flight hours per day.

Mr. Busse added that he has spoken extensively with the FAA and they do not have an approval process for private helipads, but they do offer recommendations. He stated the land area will be 300 by 500 feet to make it as safe as possible. In addition, there are FAA regulations for flying in and around Mount Rushmore National Memorial and their intent is not to petition to fly inside of that zone, but plan to fly one-half mile outside of that zone. The current flight path will be over the Holy Smoke Campground and over downtown Keystone. This flight path will minimize the impact over the campgrounds, at Mount Rushmore, and at Keystone. They plan to fly higher which would create less noise disturbance on the ground.

Mr. Busse further discussed noise nuisances during the summer months in the Black Hills from motorcycles, including the week of the Sturgis Motorcycle Rally. Mr. Busse reviewed a noise profile decibel study from Manchester, New Hampshire, regarding motorcycles. Based upon the study, it shows the Robinson R44 Helicopter to be 40% less noisy than what a motorcycle emanates.

Mr. Busse also addressed the concerns with the fuel contamination stating they intend to store the fuel above ground so that there are no issues with this. Mr. Busse concluded that he would like to promote the Black Hills in a friendly way and asked that the Conditional Use Permit be approved.

Commissioner Trautman spoke of the applicant opening it up to current businesses and wanted to know if those uses would be limited to allowed uses in a Highway Service Zoning District.

Mr. Busse said he has identified uses that are similar to what their business plan is.

Chairman Zvejnieks also spoke of the golf driving range.



Mr. Busse explained that he wanted to include this since other family members might not be interested in rock climbing, mountain biking, etc.

Chairman Zvejnieks further discussed the applicant submitting a detailed site plan to show exactly where each use is proposed to be located.

Mr. Busse responded and explained that he did submit a full-scale plat map that was reduced to be included in the Staff Report, but lost detail as a result.

Commissioner Litzen noted the Planning Commission does review other site plans that are not detailed and those plans are also reduced down in size and submitted with Staff Reports.

Commissioner Landers thanked Mr. Busse for his presentation and thoroughness.

Mr. Matt Jackson, resident of Sun Country Estates, appeared and asked if the flight path in red, from the presentation, is the current flight path of Mr. Jacobs' helipad operation in Keystone.

Mr. Busse stated it is and noted that their proposed flight is indicated in green.

Mr. Jackson said it sounds like the helicopter flights are possibly being redistributed which is good. He further stated that this seems to be a responsible place to put the helipad.

Zeller commented that if the Planning Commission is comfortable with proceeding in approving the Conditional Use Permit, staff has included 14 conditions and asked to amend Condition #6 "That the applicant demonstrate compliance with the Federal Aviation Administration (FAA) and the applicant provide a letter from them that he is in compliance."

Commissioner Litzen asked if Condition #6 could be eliminated since it is also covered in Condition #7.

Zeller noted that it sounds repetitive, but staff still needs documentation from the FAA to show compliance. Staff would like to keep the separate conditions.

Discussion followed on a possible turning lane in the future from the SD DOT, submittal of a detailed site plan, and documentation from the FAA.

**Moved by Coleman and seconded by McCollam to approve of Conditional Use Permit 14-23, and amending Condition #6, with the following fourteen (14) conditions:**

- 1. That this Conditional Use Permit allows for a golf driving range and helipad on the subject property with chartered helicopter tours to be operated from the site;**

2. That a Construction Permit be obtained for any land disturbance greater than 10,000 square feet and that all requirements of Section 507 (Construction Permits) of the Zoning Ordinance be continually maintained;
3. That prior to issuance of any Permits for development of the property, beyond this Conditional Use Permit, legal access, which meets the requirements of Section 313 (Access Easements) of the Zoning Ordinance, be demonstrated and approval of an Approach Permit be obtained from the South Dakota Department of Transportation;
4. That an On-site Wastewater Construction Permit be obtained for the installation of any on-site wastewater treatment system on the property, and that this Permit be obtained prior to issuance of a Building Permit for any structure containing plumbing;
5. That off-street parking be provided on-site in accordance with the requirements of Section 310 of the Zoning Ordinance for Commercial recreation uses;
6. That the applicant demonstrate compliance with the Federal Aviation Administration (FAA) and the applicant provide a letter from them that he is in compliance;
7. That the applicant adhere to FAA regulations at all times and that all other applicable federal, state, and local requirements be continually met;
8. That fuel storage on the property be approved and meet the requirements of the South Dakota Department of Environment and Natural Resources (SD DENR) and the Environmental Protection Agency (EPA) at all times;
9. That access to the helipads be limited to employees and customers escorted by employees;
10. That the comments provided by the U.S. Forest Service be adhered to at all times;
11. That a Sign Permit be obtained prior to the installation of any signs on the property. All new signs must meet the requirements of Section 312 of the Zoning Ordinance;
12. That the property address be clearly visible from both directions of travel along Highway 16A, in accordance with Pennington County Ordinance #20;
13. That prior to operation of the helipad, this Conditional Use Permit be reviewed in order for specifics about the operation of the helipad to be determined, including hours of operation, number of flights per hour, etc.; and,

**14. That this Conditional Use Permit be reviewed in one (1) year or on a complaint basis.**

**All voting aye, the Motion carried 6 to 0.**

10. PLANNED UNIT DEVELOPMENT / PU 14-02: Lynne Kinsley / Venard, Inc. To rezone 5.42 acres from Low Density Residential District to a Planned Unit Development to allow for a Vacation Home Rental in accordance with Sections 207, 319, and 508 of the Pennington County Zoning Ordinance.

Lot 2, Sun Country Estates, Section 26, T1S, R6E, BHM, Pennington County, South Dakota.

Conover reviewed the Staff Report indicating the applicants have applied to rezone 5.42 acres from Low Density Residential District to a Planned Unit Development (PUD) to allow for a Vacation Home Rental. This will create a Planned Unit Development Overlay, in a Low Density Residential District, to allow a seven (7) bedroom Vacation Home Rental. The applicants would like to use the seven bedroom residence as a Recreational Resort to rent to a group of people who all want to stay together. Most of these groups are in the area for a large group vacation, family reunion or other reunions. The residence will sleep a maximum of 18 people, plus children under 5. There are 3 garage spaces in the garage attached to the house and a 3 car unattached garage with one carport parking space on the side for parking.

Conover informed the Planning Commission that the applicants purchased the property after being told by both the seller and realtor that the home was being used and could be used as a Vacation Home Rental. Conover also stated that in May of 2012, Ms. Kinsley worked with the Planning Director to propose Ordinance Amendment #14-01 to amend the Vacation Home Rental Ordinance to allow for a maximum of seven (7) bedrooms instead of the current five (5). The Ordinance Amendment was denied on May 12, 2014, by the Planning Commission and again on May 20, 2014, by the Board of Commissioners. During the May 12, 2014, Planning Commission meeting it was stated that the consensus of the commission was to not change the Vacation Home Rental Ordinance and instead move forward with the suggestion made by the Planning Director that the applicants try to rezone the property to a Planned Unit Development to allow for the rental use.

Conover further explained that, during the research of the property, staff identified several issues/violations that needed to be address, such as: a Building Permit is needed for the additional 2,438 square feet of finished space, that was never part of the original Building Permit in 2000; a final inspection is needed for a holding tank from 2009; the on-site wastewater treatment system (OSWTS) needs to be upgraded for the amount of bedrooms; the house is operating and listed as a Vacation Home Rental without the proper permits; two (2) RV hook-ups need to be removed; and, if living quarters are located in the detached garage, a separate Conditional Use Permit (CUP) will need to be obtained for a Guest House. Conover indicated the applicants have been working with staff to bring the property into compliance.

Staff recommended approval of Planned Unit Development #14-02 with the following twenty-four (24) conditions.

1. That the purpose of this Planned Unit Development Overlay is to allow a Vacation Home Rental in a Low Density Residential District with seven (7) bedrooms;
2. The maximum occupancy allowed shall be no greater than two (2) persons per bedroom, plus four (4) additional persons, but may be fewer based on the capacity of the wastewater system as determined by the required inspection from the South Dakota Department of Environmental and Natural Resources before operation of the residence as a Vacation Home rental commences;
3. That this Planned Unit Development be considered an overlay zoning district whereby the provisions of the underlying Low Density Residential District still apply and if the property is no longer utilized as a Vacation Home Rental, the zoning revert back to Low Density Residential assuming the same lot configuration;
4. That the applicant notify the Planning Department prior to sale or transfer of the property so that the Planned Unit Development may be brought forth to the Planning Commission for review;
5. That prior to operation of the Vacation Home Rental, the applicant create an Emergency Plan to evacuate guests from the property in the event of an emergency and that a copy of said plan be submitted to the Planning Department to be kept on file;
6. That a minimum of seven (7) parking spaces continually be provided on-site, each measuring a minimum of 9 feet by 18 feet and maintained in a dust-free manner;
7. The Owner shall ensure that occupants and/or guests of the Vacation Home Rental do not create a Nuisance, per Pennington County Ordinance #106;
8. The Owner shall keep records as required per SDCL 34-18-21. The report shall be provided to the Planning Commission upon request;
9. Any lights used for exterior illumination shall direct light away from adjoining properties. Lighting shall be pointed/shielded downward to minimize upward glare;
10. Occupancy of recreational vehicles (RV's), camper trailers and tents shall not be allowed. Children under the age of 13 are allowed to "camp out" in a tent on the premises, but count toward the maximum occupancy;
11. The minimum age allowed for the principal renter of a Vacation Home Rental is 21 years of age;

12. Quiet hours shall be from 10 p.m. until 7 a.m.. No outside activities shall be allowed after 10 p.m.;
13. The use of open fires, fire pits, fireworks, charcoal-burning grills or other devices (as applicable) shall be the responsibility of the Owner or Local Contact. All authorized open fires shall be extinguished by 10 p.m.;
14. That the owner continually complies with Section 319-G-1 (Sign and Notification Requirements) of the Pennington County Ordinance;
15. That the maximum number of day quests allowed shall be 50 percent of the maximum occupancy of the VHR;
16. That prior to the placement of any on-premise signs, the applicant must obtain approval of a Sign Permit;
17. That the lot address be clearly posted on both the residence and at the approach to the property so it is visible from both directions along Sun Country Lane in accordance with Pennington County's Ordinance #20;
18. That the applicant ensures the residential character of the property is maintained;
19. National Forest Service Conditions: 1) Protect all posted boundary line corners, signs, and bearing trees; 2) Adhere to the setback requirements (25 feet) along the posted boundary between National Forest System lands (NFSI) and private property; 3) All access to the project area will need to be entirely from private property and not from NFSI; 4) All drain fields, leach lines or septic systems will need to be located on private property and not drain unto NFSI; 5) Construction materials, supplies, trash or garbage will not be located or dumped on NFSI; 6) Motorized trails for ATV, motorcycles, or ORV will not be authorized on NFSI; 7) Non-motorized trails (hiking, horse and pack animal) will not be authorized on NFSI.
20. That the Owner of the Vacation Home Rental submits in writing acknowledgement that the VHR meets all Fire Safety Standards for Vacation Home Establishment requirements in accordance with SDCL 34-18-22.3;
21. 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;
22. That prior to County Board approval, the two RV septic hook-ups be cut, capped-off and verified by staff;
23. If PUD 14-02 is approved, CUP 00-62 will be revoked; and,

24. That the Planned Unit Development be reviewed in one (1) year, on a complaint basis, or as deemed necessary by the Pennington County Planning Commission or County Board.

Conover further discussed the sizing of the well and stated another condition can be added if the Planning Commission feels the well is not adequately sized and needs to be inspected prior to approval.

Conover also noted that there are letters in opposition to the proposed use.

Commissioner Trautman asked if the property contains a private well.

Conover said it does not, it is a community well.

Commissioner Coleman expressed concern with the PUD Application and questioned if this is a good strategy for anyone who wanted to have a much larger vacation home rental.

Conover stated this could be setting a precedent.

Commissioner Coleman commented that he supported the initial Vacation Home Rental Ordinance and this appears to be being used as something different and he is hesitant of the use of the property as a vacation home rental as a Planned Unit Development.

Commissioner Trautman expressed concern with rezoning to a PUD which allows for different types of uses and also allows for a billboard and different types of signs.

Commissioner Landers further discussed the use of the Overlay District for this PUD. She expressed concern that this makes the overlay standards looser, not stricter which is what an Overlay District is intended for. She further commented that the Vacation Home Rental Ordinance is being circumvented by the proposed application.

Jennissen spoke of signage and stated that a billboard can only be allowed if it is included in the PUD conditions.

Commissioner Trautman noted that signs are allowed per Section 319-G-1 and this does not limit them.

Jennissen said this section could allow the signs, but the Planning Commission and the Board of Commissioners can limit it through the conditions attached with the PUD.

Chairman Zvejnieks discussed Condition #22 and stated an RV could still be used on the property, even if the RV septic hook-ups are removed.

Commissioner Landers also expressed concern with Condition #21.

Jennissen said the language in this condition is typically allowed with a PUD, meaning that, if the applicant wanted to build a garage, they possibly could. If there is a

significant change, the applicants would have to apply to amend the PUD and be heard in front of the Planning Commission and/or Board of Commissioners.

Commissioner Landers again reiterated that a PUD may not be appropriate for this type of use.

Chairman Zvejnieks noted that in Condition #15 the word “quests” should be “guests.”

Commissioner McCollman also expressed concern with the rezone to a PUD.

Commissioner Litzen discussed the existing wastewater system and spoke of staff expressing concern that it will not handle the number of guests requested.

Conover explained that the current Ordinance allows two guests per bedroom, with an additional four. He further stated the Environmental Planner does have concerns with the size of the system, indicating that it barely meets handling fourteen people. South Dakota DENR will inspect the system and make the determination.

Commissioner Trautman commented that the website for the property indicates it can be rented to 22 people.

Conover said it is advertised for that, but is unsure if it is being rented.

Commissioner Coleman asked if there are any empty lots in the area for future expansion, because of the community well system, and new homes can be built which creates more demands on the system.

Jennissen stated there are two empty lots.

Chairman Zvejnieks asked about the review that the SD DENR performs and wanted to know if staff ever questions their rulings. He wanted to know if staff automatically approves the application, based upon DENR’s approval, even though staff may not be comfortable with it.

Jennissen stated that the Pennington County Environmental Planner noted that the system could handle up to 14 people.

Commissioner Trautman expressed concern and noted that the existing system could handle up to 14 people, but the applicant is advertising for 22 people to stay.

Molitor appeared and explained that anytime there is a system over 750 gallons, it is calculated and the system cannot be sized smaller. She also stated that the Environmental Planner has concerns about the size and location of the wastewater system.

Ms. Lynne Kinsley, applicant, appeared and discussed the proposed application. She stated that most of the time the home is idle, and, during the off-season, she and her mother are usually there. It is only rented three months out of the year and an occasional Thanksgiving or Christmas. This will give the septic system a chance to recoup, by chance of possible overuse. Ms. Kinsley said the property is rented by the couple(s) or

number of bedrooms and further stated that she would change the site for the number of bedrooms allowed to make it work and be in compliance.

Commissioner Trautman wanted to know why the applicant is renting it out as a seven bedroom rental unit.

Ms. Kinsely said the house was built this way and she does receive a lot of requests for larger groups that want to stay under one roof.

Commissioner Trautman noted that if the applicant only allowed the 5 bedroom rental, she would not need to apply for a PUD to operate as a Vacation Home Rental, she could apply through a Conditional Use Permit.

Commissioner Coleman spoke of the Vacation Home Rental Ordinance and it is continually being changed and expanded and that was not the intent of it.

Commissioner Litzen commented that the Planning Commission is trying to accommodate a situation that is really between the purchaser and the seller and believes the matter should be between them and not the Planning Commission.

Chairman Zvejnieks agreed with Commissioner Litzen. He further stated that there a lot of commercial lodges in the Black Hills that allow multiple families to stay at one place and now commercial lodging is being moved into residential neighborhoods and this is not the intent of the Vacation Home Rental Ordinance.

Mrs. Kathy Jackson, landowner in Sun Country Estates, appeared and spoke in opposition to the proposed application. She expressed concern with noise from the vacation home rental and the area is residential area in nature and the surrounding landowners have to put up with the property being rented out and she wants to live in a residential family neighborhood. She spoke of the area having only a small eight home neighborhood and they don't want to put up with the noise from a rental business. She further discussed covenants and property ownership stating they would have bought if they knew there was to be a vacation home rental in the area. Ms. Jackson asked that the application be denied since this will set a precedent in the neighborhood.

Chairman Zvejnieks stated the County is not able to enforce covenants because it is a civil matter.

Jennissen said the Vacation Home Rental Ordinance does recognize covenants, but the language needs to state Vacation Home Rentals are not allowed.

Mr. Richard Schumacher, landowner in Sun Country Estates, appeared and spoke of the proposed application. He discussed the narrow, steep and winding road leading up to the vacation home and stated there are barrels along the road filled with sand to place on the roads during the winter time. During one winter, one of the renters in the vacation home used up half of the sand at one time. The neighborhood homeowners had spent around \$847 on sand and half of it was used then. Mr. Schumacher said this money comes out of all the homeowner's pockets and not just the vacation home. There are other times people are not able to get to the vacation home and leave their cars at the bottom of the



hill on private property. Mr. Schumacher added that they are not going to plow the road anymore with their atvs because of the liability and they are looking at spending more money on water, water chemicals, and insurance. He moved there for peace and quiet and feels it doesn't belong in their neighborhood.

Commissioner Coleman asked if Mr. Schumacher if he is opposed to a Vacation Home Rental only having one bedroom.

Mr. Schumacher said yes and also commented that people renting the house trespass at times and it becomes a liability issue.

Mr. Ryan Wiley, landowner in Sun Country Estates, appeared and also spoke in opposition. Mr. Wiley stated is it unfair to have the neighbors share in the costs associated with the vacation home rental. He would like to build and live on his lot in a residential area. He asked that the application be denied.

Mr. Matt Jackson, landowner in Sun Country Estates, appeared and also spoke in opposition and strongly opposed it operating it as a Vacation Home Rental since it is against their covenants. The residence being used as a vacation home more than doubles the population in their neighborhood; doubles the water use; the strain on their water system; and the use of the roads. He spoke of the increased costs being imposed on the other seven landowners because of the vacation home, even though their use stays the same. Mr. Jackson asked that the application be denied.

Commissioner Coleman also asked Mr. Jackson if he is also opposed to a Vacation Home Rental only having one bedroom.

Mr. Jackson said yes.

Mr. Bernard Christner, landowner in Sun Country Estates for 12 years, appeared and stated that every car which travels into Sun Country Estates passes by his property. He further discussed the By-Laws and covenants and said he was aware the previous owners, the Hansens, did have a CUP for the apartment in the garage but were not aware that they did not obtain approval to use the residence as a Vacation Home Rental. He said he was appalled when the new owner bought the property and continued to use it as a rental. The realtor and the previous homeowner did not advise the new owner that the property could not be used as a vacation home rental. He added that he does have concerns that the property is being as a vacation home rental.

**Moved by Trautman and seconded by Landers to deny Planned Unit Development 14-02.**

Commissioner Litzen commented that this use is located in the wrong area and the dispute is between the seller and the buyer.

Commissioner Coleman expressed concern with the expansion of the property and allowing the use of it as a seven bedroom vacation home.

Commissioner Trautman noted the property is not properly permitted and the applicants are continuing to be allowed to rent. She stated this is frustrating that some applicants are made to stop operating and take down their website for advertising, when others are allowed to continue to operate.

Jennissen stated the applicants paid the penalty fees to continue to operate.

Commissioner Trautman expressed concern that the number one complaint is that this is continuing to happen.

Commissioner Litzen commented that staff does work with applicants to bring the property into compliance.

Discussion followed.

**All voting aye, the Motion carried 6 to 0.**

Planning Commission recessed at 11:10 a.m.

Planning Commission reconvened at 11:18 a.m.

11. ORDINANCE AMENDMENT / OA 14-04: Pennington County. To amend Section 319-C-5 (Vacation Home Rental) of the Zoning Ordinance.

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

Jennissen stated this item was continued from the July 14, 2014, Planning Commission meeting to incorporate changes recommended by the Planning Commission.

Staff is recommending the following: Conditional Use Permits for VHRs in Suburban Residential Districts shall be revoked upon sale or transfer of ownership of the property.

Conditional Use Permits for VHRs in General Agriculture Districts, Limited Agriculture Districts and Low Density Residential Districts are transferable. The CUP holder shall apply for transfer of the CUP with the Planning Department prior to the sale or transfer of ownership of the property, which is then reviewed and approved by the Planning Commission. NOTE: Failure to apply prior to property sale or transfer of ownership shall result in revocation of the CUP. Upon sale or transfer of ownership, new local contact information shall be mailed out to all property owners within 500 feet by the owner/applicant in accordance with Section 510-A-2. A property owner's list will be provided to the applicant at fee of \$20.00.

Commissioner Litzen asked that the language in the last sentence be changed to: "A property owner's list will be provided to the applicant for a fee of \$20.00."

Commissioner Landers recommended changing the second sentence to: "The CUP holder shall apply for transfer of the CUP with the Planning Department prior to the sale or transfer of ownership of the property. The CUP is then reviewed by the Planning Commission."

Commissioner Trautman reappeared at 11:22 a.m.

**Moved by Litzen and seconded by McCollam to approve of Ordinance Amendment / OA 14-04 with the recommended changes.**

**All voting aye, the Motion carried 6 to 0.**

12. ORDINANCE AMENDMENT / OA 14-03: Pennington County. To amend sections in Section 204-J (On-Site Wastewater Treatments Systems) of the Zoning Ordinance.

(From the July 14, 2014, Planning Commission meeting.)

Molitor stated this item was originally heard at the July 14, 2014, Planning Commission and approved with a few changes. This item is being heard again since staff wanted to discuss the way the item was advertised and the Motion to approve included a section that had not been advertised. Staff had concerns on whether or not a Motion could include a section that had not been advertised, so staff spoke with Jay Alderman, from the State's Attorney's Office, and yes the Motion to include that section can be approved since the Agenda did not list the specific sections.

Molitor further explained that, in the future, when specific sections are advertised, those sections need to be included on the Agenda.

Discussion followed.

Chairman Zvejnieks asked if the Planning Commission needs to take action on this to reapprove.

Jennissen said no.

13. DISCUSSION OF MINING PERMIT ORDINANCE. Pennington County.

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

Molitor reviewed that the discussion of this item was continued in order for the Planning Commission to review the proposed Mining Permit Ordinance for comments and suggestions.

Chairman Zvejnieks spoke of the Haul Road Agreement and questioned how Pennington County handles dust control.

Molitor said the applicant is required to obtain an Air Quality Permit through Rapid City, as well as through the State.

Jennissen stated the application is routed to the County Highway Department, but he is unsure how dust control is handled and he could contact the County Highway Department about this.

Commissioner Trautman asked if the County Highway Department has been consulted and if they have been involved with the process of development of this Ordinance.

Molitor responded and stated she did speak with Hiene Junge, the previous County Highway Superintendent, and asked that he asked that the applicant be required to obtain a Haul Road Agreement and then his department would address what is needed from there.

Discussion further followed and also that staff contact local mining companies for their input before proceeding.

14. COUNTY BOARD REPORT

The Board of Commissioners will hear the Planning Commission's recommendations from the July 14<sup>th</sup> meeting at their Board of Commissioners' meeting on Tuesday, August 5, 2014.

15. ITEMS FROM THE PUBLIC

Ms. Joyce Sugrue, appeared, and spoke of the Ordinance Amendment for the Vacation Home Rental Ordinance. She clarified that, in Suburban Residential Districts, they will be revoked upon sale or transfer of ownership of the property

Jennissen said yes.

16. ITEMS FROM THE STAFF

There were no items from staff.

17. ITEMS FROM THE MEMBERSHIP

There were no items from the membership.

18. ADJOURNMENT

**Moved by Litzen and seconded by McCollam to adjourn.**

**All voting aye, the Motion carried 6 to 0.**

The meeting adjourned at **11:51 a.m.**

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Sig Zvejnieks, Chairperson