

MINUTES
PENNINGTON COUNTY PLANNING COMMISSION
August 25, 2014 @ 9:00 a.m.

County Commissioners' Meeting Room - Pennington County Courthouse

MEMBERS PRESENT: Sig Zvejnieks, Karen Hall, Lori Litzen, Bill McCollam, and Barbara Landers.

STAFF PRESENT: Lysann Zeller, PJ Conover, Jeri Ervin, and Kinsley Groote (SAO).

ROLL CALL

1. APPROVAL OF THE AUGUST 11, 2014, MINUTES
Moved by Hall and seconded by McCollam to approve the minutes of the August 11, 2014, Planning Commission Meeting. Vote: unanimous (5 to 0).

2. APPROVAL OF THE AGENDA
Moved by McCollam and seconded by Litzen to approve the Agenda of the August 25, 2014, Planning Commission Meeting, including 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 10-38:** Robert Mills. To review a home occupation, an auto restoration shop, in a Suburban Residential District in accordance with Sections 208 and 510 of the Pennington County Zoning Ordinance.

The N1/2 Lot E of E1/2SE1/4, Section 9, T1N, R8E, BHM, Pennington County, South Dakota.

To approve of the extension of Conditional Use Permit / CU 10-38 with the following ten (10) conditions:

1. **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;**

2. **That the applicant adheres to all necessary County, State, and Federal regulations, and maintains the necessary permits to conduct the business;**

3. That there is no more than one (1) additional employee, excluding family members;
4. That there is a minimum of three (3) off-street parking spaces available at all times;
5. That all aspects of the business be conducted entirely within an enclosed structure (structure being building) and no stock in trade shall be displayed outside the enclosed structure;
6. That the hours of operation will be conducted between the hours of 7:00 a.m. and 6:00 p.m.;
7. That if the amount of waste generated from the restoration shop and disposed of in the sanitary sewer exceeds 10,000 gallons per month, Rapid Valley Sanitary District and City of Rapid City must be notified and pretreatment (i.e. sand filter) implemented prior to disposal;
8. That an address be posted on the shop building in accordance with Ordinance #20;
9. That this Conditional Use Permit be reviewed in one (1) year or on a complaint basis to verify that all conditions of approval are being met; and,
10. That historic auto restoration be defined as working on motor vehicles 20 years or older.

Vote: unanimous (5 to 0).

4. **CONDITIONAL USE PERMIT REVIEW / CU 12-02:** Rushmore Cave, LLC/Tom Hagen and Bobby Sundby - Agents. To review a Recreational Resort in a General Agriculture District in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

Lot 1 of Rushmore Cave Subdivision, Section 18, T2S, R7E, BHM, Pennington County, South Dakota.

To approve of the extension of Conditional Use Permit / CU 12-02 with the following eleven (11) conditions:

1. That this Conditional Use Permit allows for the existing cave operation, including the use of cave tours, a visitor's center/gift shop, the bunkhouse as a seasonal residence, and associated maintenance buildings, a zip line ride, and the addition of an interactive dark theater on the property. These uses are allowed to occur up to a maximum of six (6) months per year. Any

further expansion of these uses will require the Conditional Use Permit to be amended;

2. That the applicant maintains visitation records and that these numbers be available to Planning Department staff at subsequent reviews of this Conditional Use Permit to ensure the facilities are adequate for the actual number of guests using the property;
3. That the initial and annual inspection results for the zip line ride be made available to the Planning Department;
4. That the cave tours and interactive dark theater only be operated between the hours of 8 a.m. and 8 p.m. and the zip line ride only be operated between the hours of 9 a.m. and 7 p.m.;
5. That a minimum of 63 parking spaces be provided on-site, each measuring a minimum of nine (9) feet by 18 feet and maintained in a dust-free manner in accordance with Section 310 of the Pennington County Zoning Ordinance;
6. That a Construction Permit be obtained prior to any excavation or land disturbance greater than 10,000 square feet;
7. That if the approach off of Highway 40 is relocated, it be constructed in accordance with the South Dakota Department of Transportation's Highway Access Permit;
8. That Sign Permits be obtained for any new signage and that it meet the requirements of Section 312 of the Pennington County Zoning Ordinance;
9. That the lot address be clearly posted so it is visible from both directions along Highway 40 in accordance with Pennington County's Ordinance #20;
10. That this Conditional Use Permit only applies to the land described as Lot 1 of Rushmore Cave Subdivision and the uses allowed not be extended onto any adjoining property, in the case Lot 1 is combined with other lots to create Lot 1R; and,
11. 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).

5. **REZONE / RZ 14-06:** Mick Harris; Davis Engineering - Agent. To rezone 1.35 acres from Limited Agriculture District to General Agriculture District in accordance with Section 508 of the Pennington County Zoning Ordinance.

Metes and Bounds description: Beginning at the NW corner of Tract A of Harris Addition which is a 5/8 rebar with a cap marked "Davis Eng-3095" which is the TRUE POINT OF BEGINNING: hence, S 89° 55' 30" E a distance of 50.00 feet; Thence, S 01° 40' 28" W a distance of 342.19 feet; Thence, S 25° 48' 24" E a distance of 353.15 feet; Thence, N 89° 55' 30" W a distance of 213.00 feet; Thence, N 01° 40' 28" E a distance of 660.00 feet to the TRUE POINT OF BEGINNING, containing 1.35 acres "more or less." Located in Section 16, T1S, R7E, BHM, Pennington County, South Dakota.

To recommend approval of Rezone / RZ 14-06.

Vote: unanimous (5 to 0).

6. **REZONE / RZ 14-07:** Pacifica Loan Pool, LLC; Davis Engineering – Agent. To rezone 1.64 acres from General Agriculture District to Limited Agriculture District in accordance with Section 508 of the Pennington County Zoning Ordinance.

Metes and bounds description: Beginning at the NE corner of Tract A of Harris Addition which is a 5/8 rebar with a cap marked "Davis Eng-3095" which is the TRUE POINT OF BEGINNING: Thence, N 89° 55' 30" W a distance of 609.68 feet; Thence, N 01° 40' 28" E a distance of 16.56 feet; Thence, N 71° 55' 18" E a distance of 647.55 feet; Thence, S 01° 40' 28" W a distance of 218.39 feet to the TRUE POINT OF BEGINNING, containing 1.64 acres "more or less". Located in Section 16, T1S, R7E, BHM, Pennington County, South Dakota.

To recommend approval of Rezone / RZ 14-07.

Vote: unanimous (5 to 0).

7. **CONDITIONAL USE PERMIT / CU 14-25:** Jeff and Cheryl DeVeny. To allow for two storage units to be located on the subject property in a Highway Service Zoning District in accordance with Sections 210 and 510 of the Pennington County Zoning Ordinance.

Lot 2 of Lot D, Murray Subdivision, Section 21, T1S, R5E, BHM, Pennington County, South Dakota.

To recommend to continue Conditional Use Permit / CU 14-25 to the September 8, 2014, Planning Commission meeting, with the applicants' concurrence.

Vote: unanimous (5 to 0).

END OF CONSENT CALENDAR

8. SPECIAL CONSIDERATION TO TRAILWOOD VILLAGE PLANNED UNIT DEVELOPMENT / PU 14-03: Steve and Kandy Barrs. A special consideration to PUD 79-02 to reduce the minimum front yard setback from 25 feet to 20 feet to allow for an existing attached front porch in accordance with Section 213 of the Pennington County Zoning Ordinance.

Lot 17, Block 7, Trailwood Village, Section 10, T1N, R8E, BHM, Pennington County, South Dakota.

Zeller reviewed the Staff Report indicating the applicants have applied to reduce the minimum front yard setback from 25 feet to 20 feet to bring an existing deck into compliance so that the applicants can obtain a Building Permit for an attached garage.

Staff recommended approval of the Special Consideration to the Trailwood Village PUD 14-03 with one (1) condition:

1. That approval of this Special Consideration allows for the front yard setback encroachment of the existing attached, front deck. All other structures must maintain the setback requirements as outlined in the Trailwood Village PUD or obtain approval of a separate Special Consideration to the Trailwood Village PUD.

Chairman Zvejnieks questioned if the applicants will be applying for a Building Permit for the deck that was built larger than initially planned.

Zeller said the applicants have already applied for Building Permits for the larger deck and proposed attached garage.

Commissioner Hall spoke of the Ordinance Amendment done in 2009 to allow uncovered decks to have a 15 foot front yard setback in a Suburban Residential District. She further discussed amending the conditions of the Trailwood Village PUD to match the setback requirements for uncovered decks in a Suburban Residential Districts and wanted to know if this could be done.

Zeller explained that while staff does agree with this, the Trailwood Village PUD is very large and would require notification within the PUD, as well as outside of the PUD boundaries, and would cost the County a considerable amount of money.

Mr. Steve Barrs, applicant, appeared and discussed his application and informed the Planning Commission that there are other property owners in the neighborhood who also have decks in the setback and did not obtain Building Permits for them.

Chairman Zvejnieks noted that they are aware of this.

Moved by Landers and seconded by Hall to approve of the Special Consideration to the Trailwood Village Planned Unit Development / PU 14-03 with one (1) condition:

- 1. That approval of this Special Consideration allows for the front yard setback encroachment of the existing attached, front deck. All other structures must maintain the setback requirements as outlined in the Trailwood Village PUD or obtain approval of a separate Special Consideration to the Trailwood Village PUD.**

All voting aye, the Motion carried 5 to 0.

9. LAYOUT PLAT / PL 14-17: Josiah Frink / Pamela Frink. To create Lots A, B, and C of Russ Frink Addition in accordance with Section 400.1 of the Pennington County Subdivision Regulations.

EXISTING LEGAL: The unplatted part of the N1/2SE1/4 located west of Co. Road 318 and the unplatted balance of S1/2NE1/4 located in Section 8, T1N, R4E, BHM, Pennington County, South Dakota.

PROPOSED LEGAL: Lots A, B, and C of Russ Frink Addition, Section 8, T1N, R4E, BHM, Pennington County, South Dakota.

(Continued from the August 11, 2014, Planning Commission meeting.)

Zeller reviewed the Staff Report indicating the applicant, Josiah Frink, has submitted a Layout Plat request to create three (3) lots, Lots A, B, and C of Russ Frink Addition, from an existing 59.6 acre parcel. Proposed Lot A is to measure 8.50 acres, proposed Lot B 14.84 acres, and proposed Lot C 33.95 acres. The purpose of the subdivision is to allow for the owner of the property to sell the individual lots.

Zeller stated the applicant has also submitted Rezone (RZ #14-05) and Comprehensive Plan Amendment (CA #14-05) requests to rezone the property from General Agriculture District to Limited Agriculture District and to change the Future Land Use from Planned Unit Development Sensitive to Limited Agriculture District, respectively, to allow for the smaller lot sizes. Proposed Lots B and C will exceed the minimum lot size requirement of 10 acres for Limited Agriculture District, while proposed Lot A at 8.50 acres will not. The agent has indicated that rather than rezoning proposed Lot A to Low Density Residential, which allows for a minimum three (3) acre lot size, the applicant will be requesting a Lot Size Variance to allow Lot A to be zoned Limited Agriculture District. Alternatively, the lot size of Lot A could be increased to 10 acres as the subject property apparently has sufficient acreage to do so, however, the agent has indicated the smaller lot size is desired by the applicant since the proposed lot configuration provides proposed Lot B with creek frontage. Specifically, the agent has indicated that if the shared lot line of proposed Lots A and B was altered to increase the size of proposed Lot A, Lot B would no longer be provided with creek frontage.

Zeller noted that Mystic Road appears to currently consist of a 66-foot-wide right-of-way with an approximate 24-foot-wide driving surface and according to the Pennington

County Comprehensive Plan is classified as a Minor Arterial Road. Therefore, as a result of the proposed platting, Mystic Road is required to be improved to Minor Arterial Road Standards for a Limited Agriculture District, which consists of a 66-foot-wide right-of-way with a 32-foot-wide, six (6) inch gravel driving surface, in accordance with Section 500.5-Table 1 of the Subdivision Regulations. Engineered road construction plans will also be required for the road improvements. The applicant will be responsible for conducting the road improvements prior to Minor Plat approval, posting a surety or bond for the road improvements, or, alternatively, the applicant may apply for a Subdivision Regulations Variance to request to waive the required road improvements, which is subject to County Board approval.

Staff recommended approval of Layout Plat #14-17 with the following eight (8) conditions:

1. That the boundaries of the 100-year floodplain as designated by FEMA be drawn on the plat;
2. That percolation tests be conducted for both proposed Lots B and C and the results be submitted to the Planning Department prior to or along with Minor Plat application or else a Subdivision Regulations Variance be obtained;
3. That Mystic Road be improved to Minor Arterial Road Standards for a Limited Agriculture District, including a 32-foot-wide, six (6) inch gravel driving surface, in accordance with Section 500.5-Table 1 of the Subdivision Regulations, and that engineered road construction plans be provided for these improvements, prior to Minor Plat approval, or a surety or bond be posted for these road improvements, or else a Subdivision Regulations Variance be obtained;
4. That if an easement or right-of-way exists for Castle Peak Road, it be demonstrated on the plat in accordance Local/Collector Road Standards for a Limited Agriculture District, including a 66-foot-wide right-of-way, or if any portion of Castle Peak Road is located on the subject property, an appropriate easement or right-of-way be dedicated, or else a Subdivision Regulations Variance be obtained;
5. That the subject property be rezoned to Limited Agriculture District to allow for the smaller lot sizes prior to recording the plat and that the non-compliant lot size of Lot A be addressed either with approval of a Lot Size Variance, alternatively rezoning this lot to Low Density Residential, or increasing its lot size to 10 acres;
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 approval of this Layout Plat does not constitute approval of any further applications submitted for the above-described property.

Chairman Zvejnieks spoke of proposed Lot B and creek frontage for this lot and discussed that the lots could be reconfigured to meet the minimum lot size of 10 acres in a Limited Agriculture District. He further expressed concern that the applicant needs to show that there is a hardship to obtain approval of a Variance in order to reconfigure the lot lines as submitted with Lot A bring less than 10 acres.

Zeller stated that staff agreed and expressed this to the agent and noted this in the Staff Report.

Commissioner Hall wanted to know where the buildable sites are.

Zeller stated she has not been to the site since she took over the Staff Report after the Planning Director resigned.

Commissioner Landers suggested the item be continued to the September 8th Planning Commission meeting in order for the agent or applicants to appear to address concerns of the Planning Commission.

Discussion further followed on the 80 foot right-of-way Mystic Road and implementation of a Fire Mitigation Plan.

Moved by Litzen and seconded by Hall to approve of Layout Plat / PL 14-17 with the following ten (10) conditions:

- 1. That the boundaries of the 100-year floodplain as designated by FEMA be drawn on the plat;**
- 2. That percolation tests be conducted for both proposed Lots B and C and the results be submitted to the Planning Department prior to or along with Minor Plat application or else a Subdivision Regulations Variance be obtained;**
- 3. That Mystic Road be improved to Minor Arterial Road Standards for a Limited Agriculture District, including a 32-foot-wide, six (6) inch gravel driving surface, in accordance with Section 500.5-Table 1 of the Subdivision Regulations, and that engineered road construction plans be provided for these improvements, prior to Minor Plat approval, or a surety or bond be**

posted for these road improvements, or else a Subdivision Regulations Variance be obtained;

4. That an additional seven (7) feet of right-of-way be dedicated for Mystic Road;
5. That if an easement or right-of-way exists for Castle Peak Road, it be demonstrated on the plat in accordance Local/Collector Road Standards for a Limited Agriculture District, including a 66-foot-wide right-of-way, or if any portion of Castle Peak Road is located on the subject property, an appropriate easement or right-of-way be dedicated, or else a Subdivision Regulations Variance be obtained;
6. That the subject property be rezoned to Limited Agriculture District to allow for the smaller lot sizes prior to recording the plat and that the non-compliant lot size of Lot A be addressed either with approval of a Lot Size Variance, alternatively rezoning this lot to Low Density Residential, or increasing its lot size to 10 acres;
7. 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;
8. 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;
9. That a Fire Mitigation Plan be submitted and approved by the County Fire Coordinator prior to Minor Plat approval; and,
10. 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 5 to 0.

10. REZONE / RZ 14-05 AND COMPREHENSIVE PLAN AMENDMENT / CA 14-05: Josiah Frink / Pamela Frink. To rezone 59.6 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 Section 508 of the Pennington County Zoning Ordinance.

The unplatted part of the N1/2SE1/4 located west of Co. Road 318 and the unplatted balance of S1/2NE1/4 located in Section 8, T1N, R4E, BHM, Pennington County, South Dakota.

(Continued from the August 11, 2014, Planning Commission meeting.)

Zeller reviewed the Staff Report indicating the applicant, Josiah Frink, is requesting to rezone the subject property from General Agriculture District to Limited Agriculture District. In addition, the applicant is also requesting a Comprehensive Plan Amendment to change the designated Future Land Use of the subject property from Planned Unit Development Sensitive to Limited Agriculture District. The purpose of these requests is to allow for the subject property to be subdivided into three (3) lots, Lots A, B, and C of Russ Frink Addition. A Layout Plat request (#14-17) for this subdivision has concurrently been submitted by the applicant.

Zeller added that the subject property is surrounded by properties zoned General Agriculture District and Limited Agriculture District. The former range in size from approximately nine (9) to 29 acres, while the latter range in size from approximately four (4) to 25 acres. Directly adjacent to the west and south of the subject property is a 480 acre parcel managed by the U.S. Forest Service. Two of the adjacent LAD parcels were rezoned in 1996 and another in 1981. The remainder of the properties in the area has not changed zoning since the adoption of the zoning map in Pennington County in 1978.

Zeller further explained that the Pennington County Comprehensive Plan shows the Future Land Use of the subject property to be designated as Planned Unit Development Sensitive. Thus, the applicant is also required to amend the Comprehensive Plan in order to rezone the subject property to ensure the rezone is in compliance with this Plan. Staff feels amending the designated Future Land Use to Limited Agriculture District, in this case, is appropriate as the proposed rezoning is consistent with other nearby zoning districts and would allow for uses that appear to be compatible with the existing uses in the surrounding area.

Staff recommended approval of Rezone #14-05 and Comprehensive Plan Amendment #14-05.

Commissioner Hall wanted to know if the applications are approved and then the applicant applies for a Lot Size Variance, will that application be heard in front of the Board of Commissioners.

Zeller said yes, the Lot Size Variance will be heard in front of the Board of Adjustment, but not the Planning Commission.

Moved by Litzen and seconded by McCollam to approve of Rezone / RZ 14-05 and Comprehensive Plan Amendment / CA 14-05.

All voting aye, the Motion carried 5 to 0.

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

(From the July 28, 2014, Planning Commission meeting.)

Conover explained that this item was continued from the August 5, 2014, Board of Commissioners' meeting, at the request of the Board, in order for staff to review and make suggested changes to the Ordinance Amendment. Conover further explained that the Ordinance Amendment will be readvertised to incorporate the changes.

Ms. Joyce Sugrue, appeared, and stated the language changes will help the public better understand the process when a Conditional Use Permit VH Rental property is sold or transferred.

12. DISCUSSION OF ASSEMBLIES OF PEOPLE (Section 314 of the Zoning Ordinance).

Chairman Zvejnieks asked to have this item on the agenda for discussion to address issues associated with assemblies of people. Discussion followed.

Commissioner Hall spoke of reviewing other state/county regulations addressing assemblies of people with similar population sizes.

Conover stated he would review other state regulations and also contact a representative from the Sheriff's Department and Planning staff to obtain feedback on issues associated with gatherings of people and report back to the Planning Commission.

13. COUNTY BOARD REPORT

The Board of Commissioners concurred with the Planning Commission's recommendations from the August 11th Planning Commission meeting, with the exception of Minor Plat 14-18 and Subdivision Regulations Variance 14-06 (William and Nancy Ewing), these items were continued to the September 2, 2014, Board of Commissioners meeting.

14. ITEMS FROM THE PUBLIC

There were no items from the public.

15. ITEMS FROM THE STAFF

- A. SD Planners Association Conference. Conover informed the Planning Commission that the 2014 SD Planners Association Conference is scheduled for October 22nd and October 23rd in Watertown.

- B. Planning Commission Minutes. Conover stated the Planning Department staff is researching whether or not to record only Motions in the minutes versus incorporating all the discussion of the item in the minutes.

16. ITEMS FROM THE MEMBERSHIP

Commissioner McCollam discussed simplifying the platting process for three lots or smaller, so that applicants would not have to apply for Subdivision Regulation Variances to waive those requirements.

Commissioner Hall spoke of forming a committee for rural road development. She also stated she would be on the committee and perform some research and bring forth the information back to the Planning Commission for discussion.

17. ADJOURNMENT

Moved by Hall and seconded by McCollam to adjourn.

All voting aye, the Motion carried 5 to 0.

The meeting adjourned at **10:04 a.m.**

Sig Zvejnieks, Chairperson