

**MINUTES**  
**PENNINGTON COUNTY PLANNING COMMISSION**  
**January 19, 2012 @ 5:30 p.m.**  
County Commissioners' Meeting Room - Pennington County Courthouse

MEMBERS PRESENT: Charlie Johnson, Sig Zvejnieks, Jim Coleman, Barbara Landers, Lori Litzen, and Ken Davis.

STAFF PRESENT: Dan Jennissen, Lysann Zeller, and Jeri Ervin.

ROLL CALL

1. APPROVAL OF THE AGENDA

**Moved by Zvejnieks and seconded by Coleman to approve the January 19, 2012, Planning Commission Agenda and to include OA 11-11 – Radon Gas as Agenda Item #7 and OA 11-12 – Violation and Penalties as Agenda Item #8. Vote: unanimous (6 to 0).**

2. ORDINANCE AMENDMENT / OA 11-05. Pennington County. Amendment to Section 209-C “General Commercial District” to include RV Parks as a Conditional Use Permit.

Jennissen stated this Ordinance Amendment would allow RV parks in a General Commercial Zoning District with an approved Conditional Use Permit. Jennissen added the proposed use is compatible with uses already listed under the General Commercial Zoning District.

Staff recommended approval of Ordinance Amendment 11-05 to allow RV Parks as a conditional use in a General Commercial Zoning District.

Commissioner Johnson discussed minimum lot size requirements.

Jennissen and Commissioner Zvejnieks both noted that Section 209-D addresses lot size requirements.

Discussion followed.

**Moved by Litzen and seconded by Zvejnieks to approve of Ordinance Amendment 11-05 to allow RV Parks as conditional use in a General Commercial Zoning District.**

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

3. ORDINANCE AMENDMENT / OA 11-06. Pennington County. Amendment to Section 103 “Definitions” to include all definitions from Sections 204-J, 312, 316-B, 317-C, and 507-A-2.

Jennissen stated this Ordinance Amendment would move all definitions from Sections 204-J, 312, 316-B, 317-C, and 507-A-2 to Section 103 – Definitions to create conformity throughout the Zoning Ordinance. In addition, staff also identified duplicate definitions and included a revision to the definition of an airport in the Zoning Ordinance.

Staff recommended approval of Ordinance Amendment 11-06.

Discussion further followed between the Planning Commission, staff, and the public regarding minor changes to the definitions

Moved by Zvejnieks to approve of Ordinance Amendment 11-06 with a modification to some of the definitions.

Commissioner Litzen expressed concern that the intent of a definition would change from a particular section, if a word is added in front of it to better define the definition, when placed in the definitions section.

Commissioner Johnson recommended approving the Ordinance Amendment at this time and then later performing an administrative review of Section 103.

Commissioner Zvejnieks withdrew his original Motion.

Discussion followed.

**SUBSTITUTE MOTION: Moved by Zvejnieks and seconded by Coleman to approve of Ordinance Amendment 11-06 to move all definitions from Sections 204-J, 312, 316-B, 317-C, and 507-A-2 to Section 103; with minor changes to a few definitions and removal of duplication definitions.**

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

4. ORDINANCE AMENDMENT / OA 11-07. Pennington County. Amendment to Section 103 “Definitions – Developmental Lot” and to amend Sections 401-G and 401-H to change the April 28, 1982, date to February 1, 1994.

Jennissen stated this Ordinance Amendment would amend the date of “April 28, 1982,” to “February 1, 1994,” in Sections 103, 401-G, and 401-H. This will decrease the need for Variances on properties that were created prior to February 1, 1994.

Staff recommended approval of Ordinance Amendment 11-07.

Commissioner Litzen asked staff what information was found when they researched the April 28, 1982, date.

Jennissen stated that when the Zoning Ordinance was adopted on February 1, 1994, the date of April 28, 1982, date was also included. He added that documents were found

referring to the April 28, 1982, date and changing it to the February 1, 1994, would clear up discrepancies for properties created prior to February 1, 1994.

**Moved by Zvejnieks and seconded by Coleman to approve of Ordinance Amendment 11-07 to amend the date of April 28, 1982, to February 1, 1994, in Sections 103, 401-G, and 401-H.**

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

5. ORDINANCE AMENDMENT / OA 11-08. Pennington County. Amendment to Section 204-J “On-Site Wastewater Treatment Systems” to eliminate duplicate section numbers.

Jennissen stated this Ordinance Amendment would eliminate duplicate section numbers in Section 204-J to make the Zoning Ordinance clearer and easier to read.

Staff recommended approval of Ordinance Amendment 11-08.

**Moved by Zvejnieks and seconded by Coleman to approve of Ordinance Amendment 11-08 to eliminate duplicate section numbers in Section 204-J.**

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

6. ORDINANCE AMENDMENT / OA 11-09. Pennington County. Amendments to Section 512, Section 513, Section 514, and Section 515 to define and clarify established limits on application submittals and to revise section numbers.

Jennissen stated this Ordinance Amendment would define and clarify a decision/ruling of the Planning Commission and Board of Commissioners regarding restrictions on submittal of applications and the interpretation and enforcement of the Zoning Ordinance. Jennissen further added that it has always been assumed that any application, if denied, could not be resubmitted a year from the time it was denied. However, the restriction only applied to Ordinance Amendments, which included Rezoning requests. This amendment will include all applications and it will also define and clarify the decision of “Deny without prejudice.”

Staff recommended approval of Ordinance Amendment 11-09.

Commissioner Coleman noted that an application may not be resubmitted unless there is a material change in the application for submittal. He questioned who would make the decision to accept or not accept another application regarding the same item.

Jennissen explained that he would and the applicant could then appeal the decision to the Planning Commission or Board of Commissioners.

Discussion followed.

**Moved by Landers and seconded by Zvejnieks to approve of Ordinance Amendment 11-09 to amend Section 512, Section 513, Section 514, and Section 515 to define and clarify established limits on submittals of applications and to revise section numbers.**

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

7. ORDINANCE AMENDMENT / OA 11-11. Radon Gas.

Jennissen stated the proposed Ordinance Amendment would require radon gas limiting construction practices to reduce or eliminate gas from seeping into homes within Pennington County.

Jennissen informed the Planning Commission that this item had been forwarded on for further legal advice and research. He added that Pennington County does not have building codes and the Deputy State's Attorney recommended against adopting it for this reason. Jennissen noted that brochures could possibly be made available to the public, at the Planning Office, to address the dangers of radon gas.

Commissioner Zvejnieks further discussed adding a link on the County's website addressing to radon gas.

Mrs. Tonya Gomez appeared and acknowledged the County does not have building codes, but agreed with having information about the dangers of radon gas on the county's website or having brochures available for the public. She also added that January is Radon Gas Awareness Month and recommended placing notices in the Courthouse and information on the television during the month of January.

Commissioner Coleman recommended staff bring ideas back to the Planning Commission to formalize the process of informing the public of radon gas within six months.

**Moved by Coleman and seconded by Litzen to deny adopting Ordinance Amendment 11-11 and to have staff bring recommendations back to the Planning Commission, in six months, regarding radon gas awareness in Pennington County.**

Commissioner Davis suggested adding information on radon gas to the Code of the West handbook published the County.

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

8. ORDINANCE AMENDMENT / OA 11-12. Section 504 (Violations and Penalties) of Section 204-J - On-Site Wastewater Treatment Systems and Section 513 (Violations and Penalties) in the Zoning Ordinance.

Commissioner Johnson stated the proposed Ordinance Amendment would remove the language of "Each day the violation continues shall constitute a separate violation. The

date of the first violation shall be the date upon which the property owner first received notice of the violation.”

Jennissen informed the Planning Commission that this item had been forwarded on for further legal advice and research and the Deputy State’s Attorney recommended against adopting it.

Commissioner Johnson wanted to know what is considered official legal notice.

Mr. Patrick Grode, State’s Attorney’s Office, stated the person would have to sign for either a certified letter, have a phone call with Planning staff, or a face-to-face visit with the Planning staff. Before the State’s Attorney would process the necessary paperwork, the person in violation would knowingly have to know what they were in violation of, for example: not obtaining a Building Permit to build, not obtaining a Floodplain Development Permit to do work in the floodplain, etc.

Commissioner Johnson asked how the process would proceed once the paperwork has been sent from the State’s Attorney Office to the person in violation.

Mr. Grode indicated the person will receive a Summons to appear in court, they do not get arrested. The Summons states the person has to appear in magistrate court on a scheduled date and time. At that hearing, the person can plead guilty or not guilty. If they plead not guilty, the file will be scheduled for a dispositional conference so that they may meet with the State’s Attorney to further resolve the matter. Mr. Grode further added that the goal is to work with the property owner and resolve the violation to bring the property into compliance.

**Moved by Coleman and seconded by Zvejnieks to deny the adoption of Ordinance Amendment 11-12.**

Mr. George Ferebee, appeared, and added that this Ordinance violates the Constitution of the United States and the State of South Dakota. He indicated that only the Court system can deprive you of property and this Ordinance will deprive you of property. He suggested the State’s Attorney’s Office study the court case he submitted with the Ordinance Amendment text change, and added the rule of law in this Country is what they should go by, not the rule of man.

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

9. ITEMS FROM THE PUBLIC

Mr. Gayle Jorgenson, appeared, and discussed setbacks and recommended records are kept noting when different sections are updated and why they were updated.

Mr. George Ferebee further added that there is discrimination on setbacks.

10. ITEMS FROM THE STAFF

There were no items from staff.

11. ITEMS FROM THE MEMBERSHIP

There were no items from the membership.

12. DISCUSSION ITEMS

There were no discussion items.

13. ADJOURNMENT

**Moved by Davis and seconded by Coleman to adjourn.**

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

The meeting adjourned at **7 p.m.**

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Charlie Johnson, Chairperson