

**MINUTES**  
**PENNINGTON COUNTY PLANNING COMMISSION**  
**July 9, 2012 @ 9:00 a.m.**

County Commissioners' Meeting Room - Pennington County Courthouse

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

STAFF PRESENT: Dan Jennissen, Lysann Zeller, Mandi Schmierer, Kelsey Rausch, Jeri Ervin, and Patrick Grode (State's Attorney's Office).

ROLL CALL

1. ELECTION OF OFFICERS

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

**Moved by Coleman and seconded by Litzen to nominate Karen Hall as First Vice-Chairperson. Moved by Trautman and Litzen to cease nominations. Vote: unanimous (6 to 0).**

**Moved by Landers and seconded by Litzen to nominate Jim Coleman as Second Vice-Chairperson. Moved by Trautman and Landers to cease nominations. Vote: unanimous (6 to 0).**

2. APPROVAL OF THE JUNE 25, 2012, MINUTES

**Moved by Landers and seconded by Litzen to approve the June 25, 2012, Planning Commission minutes, with a correction on page 11. Vote: unanimous (6 to 0).**

3. APPROVAL OF THE AGENDA

**Moved by Coleman and seconded by Trautman to approve the July 9, 2012, Planning Commission Agenda, with the removal of Item #12 from 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 94-28:** Patrick and Linda Payne. To review a mobile home being used as a caretaker's residence in accordance with Section 204 and 206 of the Pennington County Zoning Ordinance.

NE1/4SW1/4 less Rapid City Airport #4 and less right-of-way, Section 6, T1N, R9E, BHM, Pennington County, South Dakota.

**To recommend approval of the extension of Conditional Use Permit / CU 94-28 with the following four (4) conditions:**

1. The mobile home have a peaked shingled or factory pitched roof and hardboard or simulated hardboard siding;
2. That the addition of structures (i.e. mobile homes, decks, sheds, garages, additions to the mobile home, etc.) shall be allowed through the issuance of Building Permits, which will include necessary site plans to be reviewed and approved by the Planning Director;
3. The mobile home be removed when no longer used as a caretaker's residence; and,
4. This Conditional Use Permit be reviewed in one (1) year or on a complaint basis.

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

5. **CONDITIONAL USE PERMIT REVIEW / CU 11-15:** The Royal Company; Roger Johnson – Agent. To review an aircraft landing strip in a General Agriculture District in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

The W1/2 of Section 33, T1N, R8E, BHM, Pennington County, South Dakota.

**To recommend to continue the review of Conditional Use Permit / CU 11-15 to the July 23, 2012, Planning Commission meeting.**

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

6. **CONDITIONAL USE PERMIT REVIEW / CU 08-31:** Verizon Wireless. To review a 150 foot communications tower in a General Agriculture District in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

Lot 1, North Haines Subdivision, Section 18, T2N, R8E, BHM, Pennington County, South Dakota.

**To recommend to continue Conditional Use Permit / CU 08-31 to the July 23, 2012, Planning Commission meeting.**

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

7. **CONDITIONAL USE PERMIT REVIEW / CU 08-25:** Longhorn Enterprises, Inc./ Twila Merrill-Agent. To review an off-premise sign in a General Agriculture District in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

Lot 1 of Lot 4 of Outlot A less Right-of-Way, Scenic Platted Land, Section 15, T3S, R13E, BHM, Pennington County, South Dakota.

**To recommend to continue Conditional Use Permit / CU 08-25 to the August 13, 2012, Planning Commission meeting.**

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

8. **CONDITIONAL USE PERMIT REVIEW / CU 11-17:** Duane Brink, LLB Investments Limited Partnership. To review a well drilling business and accessory exterior equipment and material storage in a Highway Service District in accordance with Sections 210 and 510 of the Pennington County Zoning Ordinance.

Lot 2, Heavlin #2 Addition, Sections 19 and 30, T1N, R9E, BHM, Pennington County, South Dakota.

**To recommend approval of the extension of Conditional Use Permit / CU 11-17 with the following ten (10) conditions:**

1. **That an approved Floodplain Development Permit be obtained prior to any work that is to be done within the boundaries of the 100-year floodplain;**
2. **That storage of materials or vehicles be prohibited within the boundaries of the 100-year floodplain unless an approved Floodplain Development Permit is obtained;**
3. **That the watercourse for Rapid Creek traversing the property be protected in accordance with Section 507-A.4.g of the Zoning Ordinance;**
4. **That restroom facilities be provided on-site and the on-site wastewater treatment system be maintained in accordance with the requirements of the City of Rapid City;**
5. **That a minimum of one (1) off-street parking space be provided per employee, plus one (1) parking space per company vehicle normally stored on-site and an additional two (2) parking spaces for visitors be provided on-site. Each space must be a minimum of 162 square feet, or nine (9) by eighteen (18) feet, and maintained in a dust-free manner;**
6. **That the approaches and property be maintained in a dust-free manner, in accordance with Pennington County's Subdivision Regulations;**

7. That a landscape buffer be provided along the front property line abutting E. Highway 44, consisting of natural vegetation at least five (5) feet tall at the time of planting, so as to significantly shield the visibility of the exterior storage from the highway right-of-way year-round. The vegetation must be maintained in a live state. Additional landscaping or alternate screening method may be required upon subsequent reviews of this Conditional use Permit if it is determined that an adequate buffer is not being provided. Alternatively, a solid eight (8) foot tall fence may be installed along the front property line to create a screen;
8. That the property remains free of debris and junk vehicles;
9. That the hours of operation of the well drilling business be limited between 6 a.m. and 8 p.m.; and,
10. That this Conditional Use Permit be reviewed in three (3) years or else on a complaint basis to verify that all conditions of approval are being met.

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

9. **CONDITIONAL USE PERMIT / CU 12-04:** Glenn and Della Wishard. To bring a multi-family dwelling unit (tri-plex) into compliance in a Suburban Residential District in accordance with Sections 208 and 510 of the Pennington County Zoning Ordinance.

SW1/4SW1/4SW1/4NW1/4 of Section 16, T1N, R8E, BHM, Pennington County, South Dakota.

(Continued from the May 29, 2012, Planning Commission meeting.)

**To recommend to continue Conditional Use Permit / CU 12-04 to the July 23, 2012, Planning Commission meeting.**

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

10. **MINING PERMIT / MP 12-09:** Gareth Patton; Cody Schad – Agent. To excavate material to mine rocks.

Blue Lead Lode, MS, Sections 18 and 19, T1S, R6E, BHM, Pennington County, South Dakota.

(Continued from the May 29, 2012, Planning Commission meeting.)

**To recommend to continue Mining Permit / MP 12-09 to the August 13, 2012, Planning Commission meeting.**

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

11. **PRELIMINARY PLAT / PL 12-13:** Marv and Chris Matkins. To create Lots 1, 2, and 3 of Matkins Addition #9 in accordance with Section 400.2 of the Pennington County Subdivision Regulations.

EXISTING LEGAL: That Pt of GL 24 Lying S Of Hwy 16 Less Lots 3,4 and 5 Of Mewonitoc Lode Sub., Less Lot 4 Bar Placer MS 824, Less Lot 1R, 4, and 5 of Matkins Addn #6 and Less Row, Section 30, T1S, R5E, BHM, Pennington County, South Dakota.

PROPOSED LEGAL: Lots 1, 2, and 3 of Matkins Addition #9, Section 30, T1S, R5E, BHM, Pennington County, South Dakota.

(Continued from the May 29, 2012, Planning Commission meeting.)

**To recommend to continue Preliminary Plat / PL 12-13 to the July 23, 2012, Planning Commission meeting.**

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

13. **CONDITIONAL USE PERMIT REVIEW / CU 11-03:** Rushmore Cave, LLC/Tom Hagen-Agent. To review a Recreational Resort in a General Agriculture District in order to bring the existing cave operation into compliance and to expand the uses to include a zip line in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

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

**To recommend to revoke Conditional Use Permit / CU 11-03.**

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

## **END OF CONSENT CALENDAR**

12. **CONDITIONAL USE PERMIT / CU 12-05:** Walter Banovic. To bring a multi-family dwelling unit (duplex) into compliance in a Low Density Residential District in accordance with Sections 207 and 510 of the Pennington County Zoning Ordinance.

Lot 1 and 1/2 vacated road less Lot A, Hisega Subdivision, Section 16, T1N, R6E, BHM, Pennington County, South Dakota.

(Continued from the June 25, 2012, Planning Commission meeting.)

Commissioner Hall asked to have this item removed from the Consent Calendar.

Schmierer explained that the applicant's wastewater installer has been out the month of June and this is why staff has not received further ongoing information regarding the upgrade to the system. Schmierer further noted that staff would like to have this item continued to the August 13<sup>th</sup> Planning Commission meeting.

**Moved by Hall and seconded by Litzen to continue Conditional Use Permit / CU 12-05 to the August 13, 2012, Planning Commission meeting.**

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

14. PRELIMINARY PLAT / PL 12-25 AND SUBDIVISION REGULATIONS VARIANCE / SV 12-09: Rushmore Cave, LLC/Bobby Sundby-Agent. To combine lots in order to create Lot 1R of Rushmore Cave Subdivision and to waive platting requirements in accordance with Sections 400.2 and 700.1 of the Pennington County Subdivision Regulations.

EXISTING LEGAL: Lots 1 and 2 of Rushmore Cave Subdivision; the Balance of Government Lot 5 less Rushmore Cave Subdivision; and a portion of the Balance of Government Lot 4 less Right-of-Way, all located in Section 18, T2S, R7E, BHM, Pennington County, South Dakota.

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

Zeller reviewed the Staff Report indicating the applicant has submitted a Preliminary Plat request to combine existing lots, Lots 1 and 2 of Rushmore Cave Subdivision, the Balance of Government Lot 5, and a portion of the Balance of Government Lot 4 in order to create Lot 1R of Rushmore Cave Subdivision. The purpose of the platting is to combine all the lots owned by Rushmore Cave and to obtain a portion of the neighboring property (the Balance of Government Lot 4) so that proposed Lot 1R will border highway right-of-way. Currently, Lot 1 of Rushmore Cave Subdivision contains a seasonal tourist attraction, bunkhouse, and outbuildings; Lot 2 of Rushmore Cave Subdivision contains a single-family residence; and, Government Lots 4 and 5 are currently vacant.

Zeller further added that the applicant has also submitted a Subdivision Regulations Variance request to waive several platting requirements, including: 1) A site plan of existing structures and improvements on the lot in relation to the proposed lot lines; 2) Road improvements to Highway Service District Road Standards, including 66 feet or right-of-way with a 32 foot paved driving surface, for the easement providing access the proposed lot; 3) Engineered road construction plans for the required road improvements; 4) The scale of the plat to be no greater than one (1) inch equals 100 feet (plat was drawn at a scale of one (1) inch equals 200 feet); and, 5) Topography to be provided at a five (5) foot contour interval (topography was submitted at a 20 foot contour interval).

Staff recommended approval of Preliminary Plat #12-25 with the following seven (7) conditions:

1. That an updated site plan be provided prior to Final Plat submittal showing the location of all existing structures and utilities and their respective setbacks to lot lines or else an approved Subdivision Regulations Variance be obtained waiving this requirement;
2. That the existing Conditional Use Permit for a Recreational Resort in a General Agriculture District only applies to the portion of the property currently described as Lot 1 of Rushmore Cave Subdivision and may not be expanded to the Balance of Government Lot 5 or the portion of Government Lot 4 being obtained, unless the Conditional Use Permit is amended to allow for such. In the case where the property is rezoned to Highway Service District, the Conditional Use Permit shall be revoked;
3. That the remaining Balance of Government Lot 4 shall be considered an illegal, non-conforming lot in regards to its lot size and may not be developed until such time the lot size is brought into compliance by either obtaining a Lot Size Variance or Rezoning the property to Low Density Residential;
4. That the existing easement providing access to proposed Lot 1R be improved in accordance with the Road Standards for Low Density Residential, including 66 feet of right-of-way (or easement) with a 24-foot-wide graveled driving surface, or else a Subdivision Regulations Variance be obtained waiving this requirement;
5. That engineered road plans for the required road improvements to the access easement be provided or else a Subdivision Regulations Variance be obtained waiving this requirement;
6. That a signature block be added to the certificate page for Paul Thorstenson, current owner of Lot 2 of Rushmore Cave Subdivision; and,
7. That the legal description be changed in accordance with the Register of Deed's comments.

Staff also recommended approval of a portion of Subdivision Regulations Variance #12-09 to waive the requirements for the scale of the plat to be no greater than one (1) inch equals 100 feet and for topography to be provided at a five (5) foot contour interval.

Staff recommended denial of the portion of Subdivision Regulations Variance #12-09 to waive the requirements for a site plan to be provided, for road improvements to be conducted, and for engineered road constructed plans to be provided.

Commissioner Trautman spoke of the County Fire Coordinator's comments regarding concern for a secondary means of ingress/egress and questioned when this would be required of the applicants.

Zeller stated that the road providing access to the subject property does not exceed the length requirements, as outlined in the definitions for a Dead End Road System; therefore, staff is unable to require this during the platting process for the property at this time. Zeller further stated that the applicants' Conditional Use Permit is up for review and the Planning Commission could make this a requirement in the Conditions of Approval. Also, emergency access can be taken into consideration, if the applicants apply to rezone the property.

Commissioner Trautman noted the increase of traffic to the property with the addition of the zip line and the interactive dark theater.

Commissioner Coleman asked staff to clarify the recommended denial of waiving road improvements.

Commissioner Trautman indicated the roads are also for safety standards so that the public may get in and out of the property safely.

Zeller explained the road improvements are required since they do not currently meet County Standards; however, they were previously waived when Lots 1 and 2 were platted. If the applicants apply to rezone the property in the future to Highway Service District, staff would recommend the roads be improved to Highway Service Standards before the rezone request is approved.

Commissioner Hall questioned if the existing roads are improved, would the existing easements across Lot A and Lot G also need to be improved.

Zeller noted that staff did not require road improvements on those lots, since Lot A does not have a dedicated easement and the easement across Lot G does not require road improvements, just 66 feet of right-of-way.

Mr. Bobby Sundby, owner/applicant, appeared and discussed the easements and stated he did not know if the adjoining property owner to the west, the Fergusons, would give them additional easement width. He further spoke of the roads and stated they are in good condition and added that it is very important to them that traffic moves smoothly through the property.

Commissioner Trautman expressed concern and asked if there is an evacuation plan in place, since the applicants are improving and adding to their business.

Mr. Sundby explained that the neighbors are requesting an access easement through the applicants' property, which would be located in the upper northeast corner of the property, and wondered if this would be sufficient. Mr. Sundby further noted that the



southern portion of the property is a flat meadow and he doesn't think they need to put in another road right now, but they would look at this option in the future.

Mr. Tom Hagen, owner/applicant, appeared and showed the Planning Commission where another approach is located on Highway 40 to the subject property. Mr. Hagen stated the road is not developed but he has been able drive on it with a two-wheel drive vehicle and they would have no problem getting people in and out of the property from this access. He further indicated that there is an emergency access plan in place that has been reviewed with the Hayward Fire Department and Keystone Fire Department and employees are also provided training for emergencies at the property, including an emergency evacuation plan.

Moved by Litzen and seconded by McCollam to approve of Preliminary Plat 12-25 with the removal of Conditions #4 and #5 and to waive the submittal of engineered road construction plans and to waive road improvements.

Zeller noted that Conditions #4 and #5 do not need to be removed from Preliminary Plat 12-25, as they are noted that the applicant would need to obtain approval of the Subdivision Regulations Variance to waive these.

**SUBSTITUTE MOTION: Moved by Litzen and seconded by McCollam to approve of a portion of Subdivision Regulations Variance 12-09 to waive the requirements for the scale of the plat to be no greater than one (1) inch equals 100 feet and for topography to be provided at a five (5) foot contour interval, waive submittal of engineered road constructed plans, and waive road improvements to be conducted and denial of the portion of Subdivision Regulations Variance 12-09 to waive the requirement for a site plan to be provided, and approve of Preliminary Plat 12-25 with the following seven (7) conditions:**

- 1. That an updated site plan be provided prior to Final Plat submittal showing the location of all existing structures and utilities and their respective setbacks to lot lines or else an approved Subdivision Regulations Variance be obtained waiving this requirement;**
- 2. That the existing Conditional Use Permit for a Recreational Resort in a General Agriculture District only applies to the portion of the property currently described as Lot 1 of Rushmore Cave Subdivision and may not be expanded to the Balance of Government Lot 5 or the portion of Government Lot 4 being obtained, unless the Conditional Use Permit is amended to allow for such. In the case where the property is rezoned to Highway Service District, the Conditional Use Permit shall be revoked;**
- 3. That the remaining Balance of Government Lot 4 shall be considered an illegal, non-conforming lot in regards to its lot size and may not be developed until such time the lot size is brought into compliance by either obtaining a Lot Size Variance or Rezoning the property to Low Density Residential;**

4. **That the existing easement providing access to proposed Lot 1R be improved in accordance with the Road Standards for Low Density Residential, including 66 feet of right-of-way (or easement) with a 24-foot-wide graveled driving surface, or else a Subdivision Regulations Variance be obtained waiving this requirement;**
5. **That engineered road plans for the required road improvements to the access easement be provided or else a Subdivision Regulations Variance be obtained waiving this requirement;**
6. **That a signature block be added to the certificate page for Paul Thorstenson, current owner of Lot 2 of Rushmore Cave Subdivision; and,**
7. **That the legal description be changed in accordance with the Register of Deed's comments.**

**All voting, the Motion carried 5 to 1. Commissioner Trautman voted no.**

15. 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.

Zeller stated that the review date for this Conditional Use Permit was scheduled for four months following its original approval to ensure all conditions of approval are being met and also in order for staff to perform a site visit to the subject property while the Recreational Resort is in operation, particularly to observe the zip line in operation. This Conditional Use Permit #12-02 was an amendment to the original Conditional Use Permit (#11-03) for a Recreational Resort in order to allow for the addition of an interactive dark theatre.

Zeller noted that Mr. Hagen contacted the Planning Department on June 19, 2012, to inform staff that the quieter braking system installed earlier this year to alleviate noise concerns had not been working effectively and had broken down several times. Mr. Hagen inquired if it would be possible to reinstall the original spring braking system, which creates the "boing" noise previously discussed at a Planning Commission meeting. Staff informed Mr. Hagen that since the approved conditions of this Conditional Use Permit do not specifically state which braking system must be utilized, the use of the original spring braking system would not be considered a violation of these conditions. Mr. Hagen stated the speed of the zip line has also been slowed so as to make the braking noise at the end of the ride less severe, and further indicated a new quieter air braking system, different than the braking system installed earlier this year, is currently being

worked on by their engineer, which they hope to have installed and operating by next summer season (2013). No complaints have been received from the public or nearby landowners since either the original approval of this Conditional Use Permit four months ago or the recent reinstallation of the spring braking system.

Staff recommended approval of the extension of Conditional Use Permit 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 10 a.m. and 6 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 one (1) year or on a complaint basis to verify that all conditions of approval are being met.

Commissioner Trautman questioned why the Conditional Use Permit is being reviewed in the middle of the season/operation for the business.

Zeller explained that staff set the review date while the Recreational Resort is in operation, in order to observe the zip line and to ensure adequate parking is available.

Mr. Tom Hagen, owner/application, appeared and stated he requested to have staff on their property, during the operation of the zip line, to see if there is a noise issue. He further addressed the hours of operation for the zip line and asked that it be extended, from the hours of 10 a.m. to 6 p.m., to be reinstated to 9 a.m. to 7 p.m., because of loss of revenue.

Commissioner Coleman spoke in favor of extending the hours of operation for the zip line.

Commissioner Litzen spoke of changing the hours of operation in Condition #4 from 8 a.m. to 8 p.m. for the entire operation of the Recreational Resort.

Mr. Hagen stated they would still like the operation of the zip line to be from 9 a.m. to 7 p.m.

Mr. Jeff Sugrue, Council Member for the BH Boy Scouts, appeared and spoke in favor of the applicants and stated they are good neighbors and good stewards to the area.

**Moved by Landers and seconded by Trautman to approve of the extension of Conditional Use Permit 12-02, with a change in Condition #4, 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 one (1) year or on a complaint basis to verify that all conditions of approval are being met.

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

16. CONDITIONAL USE PERMIT / CU 12-15: Kari Fruechte. To allow for a Vacation Home Rental in a Limited Agriculture District in accordance with Sections 206, 319, and 510 of the Pennington County Zoning Ordinance.

Lot 1, Block 3, Pactola Estates, Section 17, T1N, R5E, BHM, Pennington County, South Dakota.

Schmierer reviewed the Staff Report indicating the applicant has applied for a Conditional Use Permit to allow for an existing three (3) bedroom residence to be used as a Vacation Home Rental. The residence has been used for nightly rentals in the past. According to the permit history, staff received two different complaints in 2011 for the

use of the home as a Vacation Home Rental, and the owner was told in both instances to stop renting the home on a short-term basis and to remove the advertising from the internet.

Schmierer noted that, when staff researched the Building Permit history for the property, staff was unable to find a Building Permit for the deck on the front, rear, and side of the structure.

Schmierer further added that, based on the criteria outlined in Section 319 of the Zoning Ordinance, the maximum number of overnight guests allowed in the three bedroom residence is ten. However, due to the size of the wastewater system, the maximum number of overnight guests allowed shall be no more than six.

Staff recommended to continue Conditional Use Permit 12-15 to the July 23, 2012, Planning Commission meeting in order for the applicant to address the violation on the property and obtain a Building Permit for the deck.

Commissioner Trautman wanted to know the response received by staff from the applicant regarding the violations last year.

Schmierer explained that the Ordinance Officer is the one who contacted the applicant regarding the violations.

Commissioner Hall also informed the Planning Commission that she found the property advertised on the Internet in two places: Black Hills Vacations.com and also on vrbo.com and it has been booked for the month of July and nine days in August and it continues to be operated in violation and without the proper permits.

Ms. Kari Fruechte, applicant, appeared and stated she would get the Building Permit for the deck after the meeting today. She stated the reason she is advertising and renting is that she had hoped the VH Rental Ordinance would have passed before the tourist season started. She further spoke of the past violations and explained that her sister was staying there when the Planning Department received the complaint.

Commissioner Coleman asked the applicant how many times the property has been rented.

Ms. Fruechte said in June it was rented four or five times.

Mr. Kevin Tiede, neighboring landowner, appeared and spoke in opposition to the applicant's request and stated he does not want vacation home properties in the area.

Mr. Duane Knutson, homeowner in the area, appeared and also spoke in opposition to the applicant's request. He indicated the covenants state no commercial activity and the Homeowner's Association will also be adding that VH Rentals are not allowed.

Mr. Jack Ziemer, homeowner in the area, appeared and also spoke in opposition to the applicant's request. He stated he built his house to retire in the area, it's nice and quiet and he wants to know his neighbors. He provided the Planning Commission with a picture of trash that is located on the property and not cleaned up, and said that he could not find a posted phone number for the agent to call if there is a problem. He believes this is not a good use for the area.

Mr. Andy Sage, Secretary/Treasurer for Pactola Estates, appeared and spoke in opposition to the applicant's request. He also indicated the applicant was told she was not allowed to rent the residence, based on the covenants.

Mr. Jim Dugger and Mr. Bob Riley, homeowners, also appeared and spoke in opposition to the applicant's request.

Mr. Patrick Grode, Deputy State's Attorney, appeared and spoke of covenants, the State Law, and the Zoning Ordinance.

Mr. Adrian Goodhue, homeowner, appeared and spoke in opposition to the applicant's request. He stated the community is on a well and he is concerned about water usage.

Ms. Kari Fruechte, applicant, discussed the concerns of the Planning Commission and homeowners in Pactola Estates. She spoke of the garbage issue and said she knew the garbage would be picked up by today and stated her phone number should be listed in the Association Membership and knows that she does need to post it inside the residence. Ms. Fruechte further indicated that, when she purchased the property in 2010, the realtor was from Century 21 in Spearfish and he did not know of the Penning County Zoning Ordinance in place regarding vacation homes and he also reviewed the covenants with them and they both felt it was very vague in addressing rentals. Ms. Fruechte further asked that her application be approved.

Commissioner Hall commented that the Planning Commission should have Mr. Grode perform research regarding case law with Conditional Use Permits and changes in covenants.

Commissioner Trautman expressed concern and spoke of other issues needing to be addressed by the applicant where she is still renting the property without prior approval and SD DENR is noting that only six people can be allowed, when the applicant thought she could have ten people.

Commissioner Hall also expressed concern the property is still being advertised and is being rented out without prior approval.

Ms. Rita Chapman, appeared, and spoke of the lack of information being brought to the community and the public regarding VH Rentals.

Ms. Fruechte indicated that she did take her rental off the website last year when she was contact by the Planning Department.

Planning Commission recessed at 10:50 a.m.

Planning Commission reconvened at 11:00 a.m.

Commissioner Trautman asked what decisions have been made by the Planning Commission regarding other VH Rental applications.

Commissioner Hall stated two applications were submitted by Rita and Tally Chapman and both were denied without prejudice in order to allow the applicants' time to work with the neighbors in the area.

Moved by Landers to deny Conditional Use Permit 12-15.

Commissioner Trautman recommended to deny without prejudice in order for the applicant to work with the neighbors.

Moved by Landers and seconded by Trautman to deny Conditional Use Permit 12-15 without prejudice and the applicants work with the neighbors in the area.

Commissioner Litzen noted that she would like to have the applications for VH Rentals either approved or denied.

SUBSTITUTE MOTION: Moved by Litzen to approve. Motion died for lack of a second.

Discussion followed.

Commissioner Coleman called the Question. Seconded by Trautman. Vote on Question: all voting aye, 6 to 0.

**Vote on Original Motion to deny without prejudice. Motion passes 5 to 1. Commissioner Litzen voted no.**

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

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

Jennissen explained the applicants did not submit the SD Department of Health Lodging License application until June 6, 2012 for this property. The property is zoned Suburban Residential District, which required the applicant to have submitted the application by



May 23, 2012. The applicant explained that there was a misunderstanding and she submitted both 101 and 109 Sherman Street properties under one application and the SD Department of Health did not notify her that she needed two separate applications until after May 23, 2012. Technically, the license for this property was not submitted until June 6, 2012, which makes it ineligible for a Vacation Home Rental, unless Planning Commission accepts the applicants' explanation for not meeting the May 23, 2012 deadline.

Ms. Penny Fosheim, applicant, appeared and stated that, when the two properties were purchased, they did know they were two separate properties, but she did not know there are two separate addresses for each lot.

Discussion followed.

Jennissen reviewed the Staff Report indicating the applicants have submitted a Conditional Use Permit to allow for an existing one bedroom cabin to be used as a Vacation Home Rental for 109 Sherman Street in Silver City.

If the Planning Commission grants forgiveness for the late submittal, staff recommends approval of Conditional Use Permit/ CU 12-16 with the following ten (10) conditions:

1. That the Vacation Home Rental be allowed to have a maximum occupancy of four (4) people;
2. That prior to operation of the Vacation Home Rental, a minimum of one (1) off-street parking spaces be provided and each parking space shall not be less than one hundred sixty two square feet, nor less than nine feet by eighteen feet, surfaced with gravel, concrete or asphalt and maintained in a dust free manner;
3. That the address be properly posted on both the residence and at the approach so it be visible in both directions in accordance with Pennington County's Ordinance #20;
4. That the applicants comply with South Dakota Administrative Rule 44:02:08, which regulates Vacation Home Rentals;
5. That the applicants obtain all the necessary permits from the State pertaining to the use of the Vacation Home Rental;
6. That applicants comply with the Performance Standards outlined in Section 319 of the Zoning Ordinance, which regulates Vacation Home Rentals;
7. That prior to operation of the Vacation Home Rental, an Operating Permit for the existing on-site wastewater treatment system be obtained

8. That records be kept by the owner or local contact for the off-site disposal of the holding tank contents, which shall include receipts with dates, times, contractor names, and disposal information;
9. That this Conditional Use Permit not be valid until the applicant signs the Statement of Understanding, which is available at the Planning Office; and,
10. 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.

Commissioner Coleman also questioned how the State realized there were two residences for the one application.

Jennissen explained the State did go to the property and found two residences and informed the applicants they would need to apply for a Specialty Resort License and not a VH Rental License.

Commissioner Coleman asked the applicant if the properties are rented separately or together.

Ms. Fosheim said together.

Commissioner Hall recommended Items #17 and #18 be discussed together.

**Moved by Litzen and seconded by Landers to discuss Items #17 and #18 together. All voting aye, the Motion carried 6 to 0.**

Jennissen reviewed the Staff Report for Conditional Use Permit 12-17 and staff recommended approval with ten conditions.

Commissioner Trautman expressed concern with the Lodging License Applications submitted to the State Department of Health by the applicants, noting the physical addresses were changed on the applications.

Ms. Fosheim commented that the representative from Executive Lodging may have changed the address.

Mr. Patrick Breen, homeowner in Silver City, appeared and addressed concerns of VH Rentals and the changing of the community from residential to rentals. He further spoke in opposition to the applicants' request.

Ms. Judy Tobin, homeowner in Silver City, appeared and spoke in opposition to the applicant's requests. Ms. Tobin stated the Fosheims are good property managers, but there are issues with parking.

Mr. Jeff Sugrue, homeowner in Silver City, appeared and questioned how a Conditional Use Permit for a VH Rental could be allowed after the deadline application and he also spoke in opposition to allowing VH Rentals in Suburban Residential Districts. He further read a letter in opposition from Mr. Todd Tobin.

Ms. Joyce Sugrue, Silver City VF Department, appeared and spoke of the Silver City Community and VH Rentals in SRDs and parking issues experienced by the fire department.

Mr. Jake Cameron and Mr. John Clark, homeowners in Silver City, all appeared and spoke in opposition to the applicants' requests.

Ms. Penny Fosheim, applicant, appeared and addressed the concerns of the Planning Commission and public. She stated their intent was not to originally rent out the properties but have applied to under the Conditional Use Permits, and they named it the Cowboy Country Club because of the home's interior decoration for cowboys and country stuff. She also explained that ARC Business Ventures stand for initials of their kids. She further discussed parking and said she did not realize there is no parking by the Fire Department, since there are no signs.

Commissioner Hall noted the advertisement site on the Internet stated there is sleeping for 16 people and most of July has been booked for reservations.

Ms. Fosheim commented that it needs to be changed to indicate sleeping for 14 people and, if they do not get approval, they will cancel the reservation.

Discussion followed.

Moved by Landers and seconded by Coleman to approve Conditional Use Permit 12-16 with ten conditions.

Commissioner Trautman spoke of fire safety and the parking issues along Sherman Street and in front of the Silver City Fire Department.

Ms. Joyce Sugrue asked that a condition be added implementing no parking in front of and on the side of the Fire Department and then the parking issue for this Conditional Use Permit should be addressed by the County Highway Department to maybe not allow any parking along the 100 block of Sherman Street.

**SUBSTITUTE MOTION: Moved by Landers and seconded by Trautman to approve of Conditional Use Permit 12-16 with twelve (12) conditions:**

- 1. That the Vacation Home Rental be allowed to have a maximum occupancy of four (4) people;**

2. That prior to operation of the Vacation Home Rental, a minimum of one (1) off-street parking spaces be provided and each parking space shall not be less than one hundred sixty two square feet, nor less than nine feet by eighteen feet, surfaced with gravel, concrete or asphalt and maintained in a dust free manner;
3. That the address be properly posted on both the residence and at the approach so it be visible in both directions in accordance with Pennington County's Ordinance #20;
4. That the applicants comply with South Dakota Administrative Rule 44:02:08, which regulates Vacation Home Rentals;
5. That the applicants obtain all the necessary permits from the State pertaining to the use of the Vacation Home Rental;
6. That applicants comply with the Performance Standards outlined in Section 319 of the Zoning Ordinance, which regulates Vacation Home Rentals;
7. That prior to operation of the Vacation Home Rental, an Operating Permit for the existing on-site wastewater treatment system be obtained
8. That records be kept by the owner or local contact for the off-site disposal of the holding tank contents, which shall include receipts with dates, times, contractor names, and disposal information;
9. That no parking be allowed in the 100 Block of Sherman Street;
10. That no open fires be allowed on the subject property;
11. That this Conditional Use Permit not be valid until the applicant signs the Statement of Understanding, which is available at the Planning Office; and,
12. 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.

Commissioner Hall expressed concern with the application and stated she would not vote in favor of the Motion.

Commissioner Coleman spoke in favor of the Motion to approve.

Commissioner Trautman stated she is in favor of this application and compromising, but would not vote in favor of Item #18 for Conditional Use Permit 12-17.

Commissioner Coleman called the Question. Seconded by Litzen. Vote on Question: passes 6 to 0.

**Vote on SUBSTITUTE MOTION: All voting, Motion passes 5 to 1. Commissioner Hall voted no.**

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

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

**Moved by Landers and seconded by Trautman to deny Conditional Use Permit 12-17.**

Commissioner Landers expressed concern with parking issues.

Mrs. Rita Chapman spoke in support of the applicants' request and further discussed transitions for the community.

Mrs. Fosheim spoke in support of her application.

Mr. Jake Cameron spoke in opposition of the applicants' request and he further spoke of Zoning and Ordinances.

Commissioner Coleman called the Question. Seconded by Litzen. Vote on Question: 6 to 0.

**Vote on Original Motion to deny: 3 to 3. Commissioners Trautman, Landers, and Hall voted yes to deny. Commissioners Litzen, McCollam, and Coleman voted no.**

Commissioners Hall informed the public that this item would be referred to the July 23<sup>rd</sup> Planning Commission meeting, as there is a tie vote.

Commissioner Litzen stated she will not be at the meeting on July 23<sup>rd</sup>. Commissioner Hall recommended another County Commissioner be at that meeting.

19. REZONE / RZ 12-08 AND COMPREHENSIVE PLAN AMENDMENT / CA 12-06: Shane Geidel. To rezone 80.00 acres from General Agriculture District to Suburban Residential District and to amend the 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.

The S1/2NE1/4, Section 20, T2N, R8E, BHM, Pennington County, South Dakota.

Jennissen reviewed the Staff Report indicating the applicant is requesting to rezone 80 acres from General Agriculture District to Suburban Residential District and to amend the

Comprehensive Plan to change the Future Land Use from Low Density Residential District to Suburban Residential District. The purpose of this rezone is to allow for a mobile home park. The applicant will be required to obtain approval of a Conditional Use Permit for the mobile home park, if the Rezone application is approved.

Jennissen indicated the property is flat pasture land with a single family residence and a large shop building, and is located within the three-mile platting jurisdiction of Rapid City and adjacent to Rapid City incorporated limits, across Dyess Avenue. The property does have areas of 100-year floodplain. The proposed mobile home park indicates the floodplain to be an open area of the park. If any work is to be done in the area of the 100-year floodplain, a Floodplain Development Permit will be required. The Rapid City Community Planning and Development Services noted that the City's adopted Future Land Use Plan does not support all of the area to be changed to Suburban Residential District as requested.

Staff recommended approval of Rezone 12-08 and approval of Comprehensive Plan Amendment 12-06.

Mr. Shane Geidel, applicant, appeared and spoke of the proposed mobile home park and stated they would pave the streets. He further indicated that he contacted the City of Rapid City to hook up to the city sewer and water and they were denied.

Commissioner Trautman discussed the site plan submitted with the Staff Report noting there will be around 185 lots and the spaces looked like they would be located very close together.

Mr. Geidel said the smallest lot measures 100 feet by 80 feet and the larger lots are 100 feet by 120 feet.

Commissioner Trautman asked the applicant what he would do if he is unable to obtain approval of a Floodplain Development permit.

Mr. Geidel explained that the Green Space (100-year floodplain) on the site plan is open space on the property, which would not include placement of mobile homes in that area.

Commissioner Trautman also expressed concern with increased traffic on Dyess Avenue.

Commissioner Hall asked Mr. Geidel if he has spoken to the property owner to the north, Mr. Bob Young, regarding the issues he recently had to address for his wastewater systems.

Mr. Geidel responded no, but added that he does know there are difficult soils in the area. He stated he has been to the property performing percolation tests and he has also been working with the State on obtaining approval of a system they think will work very well.

Jennissen further explained that the subject property is located within the City's one-mile jurisdiction for the approval of the wastewater system and the applicant also needs to obtain approval through DENR.

Ms. Eris Tanner, adjoining landowner, appeared and spoke in opposition to the applicant's request and further stated the soils in the area have a gumbo texture. The area is a wetland area and the septic tanks have to be pumped a lot. She spoke of the sewage lagoon to the north indicating it has contaminated properties in the area and she is worried about placing 185 trailers on the subject property. Ms. Tanner further added that many of the property owners in the area haul water because their wells were contaminated and water is hard to get. She also added that Dyess Avenue is a very narrow street and doesn't believe it can handle the increase in traffic. She doesn't feel this is a good place to have a mobile home park.

Ms. Loretta Hill also spoke in opposition to the request to rezone the property. She expressed concern and stated the development in the area has been not been good planning. The roads are not good, there is a lot of traffic, and stated it should be Low Density Residential and not Suburban Residential because the land cannot handle it. Ms. Hill further stated that the trash from the other two mobile home parks is horrendous.

Mr. Lee McConnell, homeowner on Dyess Avenue, appeared and spoke of junk vehicles located in the mobile home park to the north.

Commissioner Trautman stated she is not in favor of supporting the applicant's request, based upon issues that have been brought forth regarding other properties in the area.

Moved by Trautman and seconded by Litzen to deny Rezone 12-08 and Comprehensive Plan Amendment 12-04.

Commissioner Coleman discussed the applicant providing an engineering feasibility study for the land before the applications are denied.

Ms. Patricia Johnson, landowner to the area north of Dyess Avenue, appeared and stated the weather in the winter and flooding in the area does not make it feasible for good development and asked this request be denied.

Mr. Geidel asked for approval of the rezone and then he can move forward with the requests for an engineering study.

Commissioner Hall recommended this item be continued in order for the applicant's engineer to appear before the Planning Commission to address well data, wastewater issues, flooding, etc.

**SUBSTITUTE MOTION: Moved by Trautman and seconded by Litzen to continue Rezone 12-08 and Comprehensive Plan Amendment 12-04 to the August 13, 2012, Planning Commission meeting.**

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

20. COUNTY BOARD REPORT

The Board of Commissioners concurred with the Planning Commissions' recommendations from the June 25, 2012, Planning Commission meeting.

21. ITEMS FROM THE PUBLIC

Ms. Joyce Sugrue asked the Planning Commission to be consistent in their decision making for VH Rentals and they need to also inform all the applicants to stop advertising rental of their properties.

Commissioner Hall asked Jennissen to have the Ordinance Officer contact Ms. Fosheim to inform her she needs to remove her Country Club Rental advertisement from the Executive Lodging website.

22. ITEMS FROM THE STAFF

A. Building Permit Report. Jennissen reviewed the Building Permit Report for June 2012.

23. ITEMS FROM THE MEMBERSHIP

Commissioner Litzen stated she is unable to attend the July 23<sup>rd</sup> meeting.

Commissioner Hall welcomed the new Planning Commissioner, Bill McCollam, and congratulated Commissioner Litzen on her reappointment.

24. DISCUSSION ITEMS

There were no discussion items.

25. ADJOURNMENT

**Moved by Trautman and seconded by Colman to adjourn.**

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

The meeting adjourned at **1:57 p.m.**

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First Vice-Chairperson, Karen Hall