

**MINUTES**  
**PENNINGTON COUNTY PLANNING COMMISSION**  
**May 28, 2013 @ 9:00 a.m.**

County Commissioners' Meeting Room - Pennington County Courthouse

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

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

ROLL CALL

1. APPROVAL OF THE MAY 13, 2013, MINUTES  
**Moved by Hall and seconded by Litzen to approve the May 13, 2013, Planning Commission minutes. Vote: unanimous (5 to 0).**

Commission Landers appeared at the meeting at 9:01 a.m.

2. APPROVAL OF THE AGENDA  
**Moved by Davis and seconded by Hall to approve the May 28, 2013, Planning Commission Agenda. 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.

3. **CONDITIONAL USE PERMIT REVIEW / CU 08-06:** Robert and Melody Riggins. To review a single-wide manufactured home as a temporary residence while constructing a stick-built home in a General Agriculture District in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

SW1/4SE1/4 of Section 12, T1N, R9E, BHM, Pennington County, South Dakota.

**To recommend to continue the review of Conditional Use Permit / CU 08-06 to the September 9, 2013, Planning Commission meeting.**

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

4. **CONDITIONAL USE PERMIT REVIEW / CU 11-11:** Gerald and Barbara Wittler. To review a horse trailer with living quarters parked on the property and utilized as a residence in a General Agriculture District in accordance with Sections 210 and 510 of

the Pennington County Zoning Ordinance.

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

**To recommend approval of the extension of Conditional Use Permit / CU 11-11 with the following eight (8) conditions:**

- 1. That the horse trailer no longer be used as sleeping quarters on the premises once the applicants build a single-family residence on the property;**
- 2. That the wastewater from the trailer be properly disposed of at all times and, if the trailer utilizes an on-site wastewater treatment system, it be disconnected once the new residence is habitable;**
- 3. That prior to the sale of the property, an Operating Permit for the existing on-site wastewater treatment system be obtained;**
- 4. That the applicant utilize the existing approach off of 161<sup>st</sup> Avenue and no new approaches be constructed without prior approval from the County Highway Department;**
- 5. That the property remains free of debris and junk vehicles;**
- 6. That the property address be properly posted at the approach so it be clearly visible from the road and in both directions in accordance with Pennington County's Ordinance #20;**
- 7. That a Building Permit be obtained for any structure exceeding 144 square feet or located on a permanent foundation which requires a site plan to be reviewed and approved by the Planning Director; and,**
- 8. 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 (6 to 0).**

- 5. CONDITIONAL USE PERMIT REVIEW / CU 12-08: Michael and Marella Anderson; Cousin Construction – Agent. To review the existing residence to be used as a temporary residence while constructing a stick-built residence in a Low Density Residential District in accordance with Sections 207 and 510 of the Pennington County Zoning Ordinance.**

Lot 9, Stratmeyer Subdivision, Section 13, T1S, R6E, BHM, Pennington County, South Dakota.

**To recommend to revoke Conditional Use Permit / CU 12-08 with the applicants' concurrence.**

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

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

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

**To recommend approval of the extension of Conditional Use Permit / CU 12-10 with the following fifteen (15) conditions:**

- 1. That this Conditional Use Permit be limited to the processing of timber I-beams into boards for Bodensteiner Beamworks and the processing of bug wood trees behind the shop building for another year, any expansion beyond this will require the Conditional Use Permit to be reviewed;**
- 2. That the bug wood trees stored on-site be placed in a designated area;**
- 3. That the daily hours of operation shall be 8:00 a.m. to 4:00 p.m., Monday through Friday;**
- 4. That the lot address be clearly posted on the residence as well as at both entrances to the property so it is visible from both directions along in accordance with Pennington County's Ordinance #20;**
- 5. That the shavings from the timbers and the bug wood trees be properly disposed of and placed in a dumpster and hauled away on a regular basis;**
- 6. That the applicant ensures the residential character of the property is maintained;**
- 7. That the applicant maintains the necessary permits from the South Dakota Department of Environment and Natural Resources, the Rapid City Air Quality Department, and any other applicable Federal, State, or Local agency;**
- 8. That no new approaches be allowed;**
- 9. That a total of three (3) portable fire extinguishers with a minimum 2 A-BC rating be placed within the building;**

10. That prior to the placement of any on-premise signs, the applicant must obtain approval of a Sign Permit;
11. That a minimum of four (4) off-street parking spaces be provided. Each parking space shall measure at least nine (9) feet by 18-feet and shall be kept in a dust free manner;
12. That any trade or stock associated with the business must be stored inside a structure or behind a privacy fence;
13. That a Building Permit be obtained for any structure exceeding 144 square feet or located on a permanent foundation, which requires a site plan to be reviewed and approved by the Planning Director;
14. That green infested MPB trees not be moved from July through September unless trees are debarked; and,
15. That this Conditional Use Permit be reviewed in one (1) year or on a complaint basis to ensure that all conditions are being met.

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

## **END OF CONSENT CALENDAR**

7. REZONE / RZ 13-06: Doug Sletten. To rezone two (2) acres from Limited Agriculture District to Suburban Residential District in accordance with Sections 210 and 508 of the Pennington County Zoning Ordinance.

Parcel A of S1/2SW1/4, Section 14, T1N, R8E, BHM, Pennington County, South Dakota.

(Continued from the May 13, 2013, Planning Commission meeting.)

Jennissen reviewed that this item had been continued from the May 13, 2013, Planning Commission meeting to allow the applicant additional time to clean up his property.

Jennissen further added that the Ordinance Officer performed a site visit to the property and Mr. Sletten is now in compliance.

Staff recommended approval of Rezone / RZ 13-06 to rezone two acres from Limited Agriculture District to Suburban Residential District.

**Moved by Davis and seconded by Hall to approve of Rezone / RZ 13-06.**

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

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

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

Jennissen reviewed the Staff Report indicating the applicant has applied for a Conditional Use Permit to bring the property into compliance to allow for an existing accessory structure to be located on the subject property without a principal structure. Jennissen further stated the applicant indicated the accessory structure is a playhouse for her granddaughters; however, staff has recently received complaints that the accessory structure is being used as sleeping quarters.

Jennissen also explained that there is an outhouse located on the property and the outhouse must be removed or filled in, prior to approval of the Conditional Use Permit.

Staff recommended that, prior to Planning Commission approval, it must be verified that the outhouse does not have a pit privy beneath it and, if a pit privy is present, it must be filled in.

If Planning Commission approves of Conditional Use Permit 13-09, the following six (6) conditions are included:

1. That the structure not be used as living quarters or sleeping quarters;
2. That a lot address be assigned for the property and the applicant post it so it is clearly visible from both directions of travel along Main Street in accordance with Pennington County Ordinance #20;
3. That prior to approval of the CUP, the outhouse must be removed or filled in and verified by the environmental planner;
4. That if any plumbing is to be installed in the accessory structures, it be hooked into an approved means of wastewater disposal. If an on-site wastewater treatment system is to be installed, an approved On-Site Wastewater Construction Permit must be obtained;
5. That the applicant obtain any necessary Building Permits for the accessory structures prior to construction; and,

6. 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 questioned if staff has verified if the outhouse has been filled in.

Jennissen stated that staff has not been to the property to verify this, but the applicant's agent has provided pictures showing it is being used as storage.

Commissioner Hall asked if there are two levels inside the structure.

Mr. Nate Oviatt, agent, appeared and stated that there is a small loft area above the initial walk-in on the inside of the playhouse.

Commissioner Davis confirmed with Mr. Oviatt that the structure will not be used as sleeping quarters and it will also not be used as a rental during the Sturgis Motorcycle Rally.

Mr. Oviatt responded and said the structure will not be used as sleeping quarters or as a rental.

**Moved by Litzen and seconded by Landers to approve of Conditional Use Permit 13-09 with the following six (6) conditions:**

- 1. That the structure not be used as living quarters or sleeping quarters;**
- 2. That a lot address be assigned for the property and the applicant post it so it is clearly visible from both directions of travel along Main Street in accordance with Pennington County Ordinance #20;**
- 3. That prior to approval of the CUP, the outhouse must be removed or filled in and verified by the environmental planner;**
- 4. That if any plumbing is to be installed in the accessory structures, it be hooked into an approved means of wastewater disposal. If an on-site wastewater treatment system is to be installed, an approved On-Site Wastewater Construction Permit must be obtained;**
- 5. That the applicant obtain any necessary Building Permits for the accessory structures prior to construction; and,**
- 6. 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 Zvejnieks asked staff if other complaints were received.

Jennissen said yes, but they wished to remain anonymous.

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

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

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

(Continued from the May 13, 2013, Planning Commission meeting.)

Jennissen stated this item had been continued from the May 13, 2013, Planning Commission meeting, at the request of the applicant, as he was unable to attend the meeting. Jennissen further reviewed the Staff Report indicating the applicant has applied for a Conditional Use Permit to bring the property into compliance to allow for the continued operation of a dude ranch, to include lodging and horse trail rides in a General Agriculture District.

Jennissen provided a brief history of the subject property and spoke of access to the property explaining that the applicant is currently utilizing Greyhound Gulch Road, a private access easement and a gravel road through private property and U.S. Forest Service land. The applicant, at one time, indicated that he would be obtaining a lease agreement between himself and the private property owner that was to be renewed on an annual basis for the portion of the road that is on private property. The lease agreement was to be an easement providing legal access to the property. The two parties did not come to an agreement and the lease was never implemented. However, the property does have legal access via the Forest Service easement and then onto a Section Line located between Forest Service land and the private individual's land to the north of the applicant's, but the applicant is not currently using the easement in whole. The easement continues on to the Section Line that has been opened, but never fully constructed and is currently not being utilized. All the roads out of Keystone are in poor shape and difficult to navigate. Staff is concerned about emergency services getting to the property in case of an emergency.

Jennissen indicated that, on May 10, 2013, staff received a letter from Ms. Meegan Buehler of the U.S. Forest Service regarding the easement providing access to the applicant's property. The letter indicates that the U.S. Forest Service is granting a Special Use Permit for the access road, for a term of 20 years, with a condition prior to issuance of the Special Use Permit. The condition stated that the Section Line Road be constructed and improved by Pennington County to meet their road standards and specifications. Jennissen noted that, on November 21, 1994, the Board of Commissioners had approved the Section Line opening with two (2) conditions:

1. That the roadway and drainage are installed in compliance with County Highway Department standards; and,

2. That Jack Dier, County Highway Superintendent, write a letter to the Planning Commission stating that the road meets County Standards.

Jennissen stated staff performed a site visit to the property and drove the Forest Service Easement and the Section Line Road that was previously constructed. A portion of the Forest Service easement and the Section Line road is a two-track trail with little to no maintenance on the road and is currently not being utilized as access to the subject property. The applicant is using a portion of the Forest Service Easement and then traversing across private property to obtain access to his property. The applicant must either obtain an easement from the private property owner or improve the remaining Forest Service easement and Section Line road prior to approval of this CUP.

Staff recommended Conditional Use Permit 13-07 be continued until the applicant either improves the remaining Forest Service Road to a minimum of a 16-foot-wide driving surface or obtains an easement from the private property owner.

If Planning Commission approves Conditional Use Permit 13-07, staff recommends the following twelve (12) conditions are included:

1. That the permitted uses be a dude ranch (recreational resort) which is to include; duplex, ranch hand residence, one bedroom guest quarters (garage), single-family residence and trail riding;
2. That the existing onsite wastewater disposal system be pumped and observed;
3. That Building Permits be obtained for any structure exceeding 144 square feet or located on a permanent foundation, which includes the necessary site plans to be reviewed and approved by the Planning Director;
4. That a guest list is maintained and smoke detectors placed in each sleeping room;
5. That each smoke detector be tested semi-annually for proper function. The smoke detectors must be Underwriters Laboratory (UL) listed and be either AC or battery operated;
6. That the applicant has at least one 2ABC dry chemical fire extinguisher accessible to all guests at all times on each floor or structure;
7. That one (1) wall sign and one (1) free-standing sign be allowed not to exceed twenty-four (24) square feet in area and that the free-standing sign shall not be located closer than seventeen (17) feet to the nearest street right-of-way line;
8. That the applicant obtains a Sales Tax License and a Specialty Resort License from the State of South Dakota;

9. That within 120 days the applicant obtain approval from the U.S. Forest Service to utilize the Forest Service easement and improve the Section Line Road to a minimum of a 16 foot wide driving surface or obtain a minimum of a 40 foot wide access easement across private property;
10. That the address be clearly posted on the property and the address be shown in each guest room for emergency purposes;
11. That a Building Permit be obtained for the conversion of the garage to living quarters; and,
12. That this Conditional Use Permit be reviewed at the September 23, 2013, Planning Commission meeting or upon a complaint basis.

Commissioner Zvejnieks noted that the applicant is not in attendance at the meeting to answer questions.

Discussion followed regarding the condition of the roads, the Special Use Permit from the Forest Service, the Conditions of Approval, and access across private property.

Zeller also spoke of staff's concern for Condition #10 where each of the structures on the property needs to be addressed for emergency purposes, the applicant using the correct address for the subject property, and that a road sign needs to be in place indicating Stanmark Road, which is a new road name that he applicant gains access to his property from.

Moved by Davis and seconded by Landers to approve of Conditional Use Permit 13-07 and if the Special Use Permit from the Forest Service allows the applicant to use the current road, that this be included in Condition #9 or if the Court allows the applicant to use the road by prescriptive right and to also amend Condition #10 to include each structure to be addressed and that the applicant places a sign to designate Stanmark Road.

Mr. Jack Bradt, applicant, appeared at the meeting at 9:30 a.m.

Jennissen reviewed the Motion for approval with the applicant.

Mr. Jack Bradt stated he is actually located off of Old Cemetery Road and not either Stanmark Road or Greyhound Gulch Road, and further provided a history of the property.

Mr. Bradt then proceeded to review each of the Conditions of Approval with the Planning Commission starting with Condition #2. Mr. Bradt stated the wastewater system was put in 2006 and approved by the State and the last time he had it pumped was in 2009. He said he is willing to compromise and have it pumped and observed during the summer time, but doesn't feel it needs to be a Condition of Approval. He is also questioning whether this is a requirement, as he considers their property as exempt.

Jennissen explained Conditions #2 and #3 with the Planning Commission and applicant.

Commissioner Davis asked Mr. Bradt if intends to have the wastewater system pumped.

Mr. Bradt commented that he did not know if he would do that.

Commissioner Davis explained to the applicant that this is a requirement of the Conditional Use Permit.

Jennissen spoke of amending Condition #2 to also include the language that the wastewater system be pumped and observed and an Operating Permit is obtained within six months from issuance of the Conditional Use Permit.

Commissioner Coleman spoke of the applicant needing to comply with the conditions just like every other applicant who applies for a Conditional Use Permit.

Mr. Bradt discussed Condition #7.

Jennissen explained to Mr. Bradt that this allows him to place a sign on the property advertising his business.

Mr. Bradt discussed Condition #8 stating he does have a Bed and Breakfast License through the State, but their operation does not fit for a Specialty Resort License.

Jennissen explained that a dude ranch is listed under a Specialty Resort classification through the State and the applicant also has sleeping quarters to qualify the use as such. Jennissen indicated that Condition #8 could state: "That the applicant obtains a Sales Tax License and any applicable licenses through the State of South Dakota."

Mr. Bradt objected to Condition #9. He stated that when they purchased the property, there were access issues at that time, too. They agreed with the Forest Service to improve the easement road, which is 363-1A, and have spent over \$14,000 to improve the road. They also constructed a portion of it that had been wiped out during the 1972 flood and a portion of the Section Line Road. Mr. Bradt said they were also required to obtain a Construction Permit before they could use the Section Line Road.

Mr. Bradt also spoke of the County Board minutes from November 10, 1994, regarding the request to use the Section Line Right-of-Way, and stated the information in the Staff Report is incorrect, as there are three conditions of approval and not two. He also provided a letter from Jack Dier, County Highway Superintendent, and discussed the Construction Permit that was obtained to make the Section Line Road a 12-foot-wide driving surface.

Jennissen explained that Ordinance 14 Standards for a Section Line Road would require it to be improved to a minimum of a 24-foot-wide driving surface and 4 inches of gravel

and inslopes and backslopes. Since the applicant's use is commercial, the road should be improved to at least a minimum of a 16-foot-wide driving surface.

Commissioner Davis suggested Condition #9 be changed to a 12-foot-wide road from a 16-foot-wide road, based on information provided by the applicant from prior County Board minutes.

The Planning Commission again reviewed Conditions #1 through #12 with the applicant and recommended minor changes.

Mr. Bradt asked that the word "new" be inserted before structures in Condition #3.

Commissioner Davis suggested the wording of "smoke detectors be placed in each sleeping room" be included with Condition #5.

Commissioner Litzen also asked that Condition #9 include language that the road be maintained.

Commissioner Davis would also like to include "in a driveable condition" in Condition #9.

Mr. Bradt said he did not have a problem with this change.

Commissioner Davis discussed Condition #10 regarding addressing for the structures and a road sign.

Zeller stated staff would work with the applicant to address Condition #10.

Mr. Bradt objected to Condition #11 to obtain a Building Permit for the conversion of the garage to living quarters. He said that they didn't know they needed a Building Permit to make it into living quarters.

Commissioner Zvejnieks commented that the applicant did modify the garage into living quarters without obtaining the proper Building Permit.

Mr. Bradt said it was converted in 1995 to living quarters for his son.

Commissioner Davis asked the estimate of the Building Permit.

Jennissen said he did not have an estimate, but it would be roughly around \$100 to \$150 and the fee would be doubled.

Commissioner Davis recommended adding language in Condition #11 where the Planning Commission recommends the double fee be waived by the Board of Commissioners.

Jennissen explained that the applicant would need to appear in front of the Board of Commissioners in order to request the fees to be waived for the Building Permit in Condition #11.

Commissioner Coleman further spoke of the road to the property and discussed if it is maintained by the applicant.

Commissioner Litzen asked the applicant if they provide snow removal in the wintertime.

Mr. Bradt said they do not, but keep it in good condition.

Discussion followed on the condition of the road.

**SUBSTITUTE MOTION: Moved by Davis and seconded by Landers to approve of Conditional Use Permit 13-07 with the following twelve (12) conditions:**

- 1. That the permitted uses be a dude ranch (recreational resort) which is to include: a duplex, a ranch hand residence, a one bedroom guest quarters (garage), a single-family residence and trail riding;**
- 2. That the existing onsite wastewater disposal system be pumped and observed and an Operating Permit be obtained within six (6) months of approval of this Conditional Use Permit;**
- 3. That Building Permits be obtained for any new structure(s) exceeding 144 square feet or located on a permanent foundation, which includes the necessary site plans to be reviewed and approved by the Planning Director;**
- 4. That a guest list is maintained;**
- 5. That smoke detectors are placed in each sleeping room and each smoke detector be tested semi-annually for proper function. The smoke detectors must be Underwriters Laboratory (UL) listed and be either AC or battery operated;**
- 6. That the applicant has at least one 2ABC dry chemical fire extinguisher accessible to all guests at all times on each floor or structure;**
- 7. That one (1) wall sign and one (1) free-standing sign be allowed not to exceed twenty-four (24) square feet in area and that the free-standing sign shall not be located closer than seventeen (17) feet to the nearest street right-of-way line;**
- 8. That the applicant obtain a Sales Tax License and any applicable license(s) from the State of South Dakota;**

9. That within 120 days the applicant obtain approval from the U.S. Forest Service to utilize the Forest Service easement and the Section Line Road be maintained to a minimum of a 12-foot-wide driving surface and a driveable condition or obtain a minimum of a 40-foot-wide access easement across private property or a prescriptive easement;
10. That the address be clearly posted on the property and the address be shown in each guest room for emergency purposes;
11. That a Building Permit be obtained for the conversion of the garage to living quarters and the Planning Commission recommended the applicant apply to the Board of Commissioners to waive the doubled penalty fee; and,
12. That this Conditional Use Permit be reviewed in one (1) year or upon a complaint basis.

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

10. COUNTY BOARD REPORT

The Board of Commissioners concurred with the Planning Commission's recommendations from the May 13, 2013, Planning Commission meeting with the exception of Rezone 13-05 and Comprehensive Plan Amendment 13-01 (Jude Wildeman). These applications were approved by the Board of Commissioners.

11. ITEMS FROM THE PUBLIC

There were no items from the public.

12. ITEMS FROM THE STAFF

A. General Agriculture District and Limited Agriculture District Uses.

Zeller reviewed the Memo prepared by staff and discussed inconsistencies between uses in General Agriculture Districts and Limited Agriculture Districts. Zeller further discussed preparing an Ordinance Amendment to alleviate future confusion and making the two zoning districts more consistent.

Discussion followed with minor changes noted from the Planning Commission.

**Moved by Davis and seconded by Hall to proceed with the recommendations for an Ordinance Amendment.**

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

13. ITEMS FROM THE MEMBERSHIP

There were no items from the membership.

14. DISCUSSION ITEMS

There were no discussion items.

15. ADJOURNMENT

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

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

The meeting adjourned at **10:58 a.m.**

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Chairperson, Sig Zvejnieks