

MINUTES
PENNINGTON COUNTY PLANNING COMMISSION
September 9, 2013 @ 9:00 a.m.
County Commissioners' Meeting Room - Pennington County Courthouse

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

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

ROLL CALL

1. APPROVAL OF THE AUGUST 26, 2013, MINUTES
Moved by Hall and seconded by Litzen to approve the August 26, 2013, Planning Commission minutes. Vote: unanimous (7 to 0).
2. APPROVAL OF THE AGENDA
Moved by Landers and seconded by McCollam to approve the September 9, 2013, Planning Commission agenda, with the removal of Items #3, #4, and #5, and to place Item #13 on the Consent Calendar. Vote: unanimous (7 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.

6. **CONDITIONAL USE PERMIT REVIEW / CU 01-18:** Randy and June Guliuzza. To review a Bed and Breakfast as a home occupation in a Low Density Residential District in accordance with Section 207-C-1 of the Pennington County Zoning Ordinance.

Tract 2 of Shelter in the Hills Subdivision, Section 24, T1S, R6E, BHM, Pennington County, South Dakota.

(Continued from the June 10, 2013, Planning Commission meeting.)

To continue the review of Conditional Use Permit / CU 01-18 to the October 28, 2013, Planning Commission meeting.

Vote: unanimous (7 to 0).

7. **CONDITIONAL USE PERMIT REVIEW / CU 08-06:** Robert and Melody Riggins. To review a single-wide mobile 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.

(Continued from the May 28, 2013, Planning Commission meeting.)

To continue the review of Conditional Use Permit / CU 08-06 to the October 28, 2013, Planning Commission meeting.

Vote: unanimous (7 to 0).

8. **CONDITIONAL USE PERMIT REVIEW / CU 12-22:** Steve and Dorothy Wilkison. To review multiple RV sites on the subject property in a General Agriculture District in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

The NE1/4SW1/4 less DW Hansen Tract, less Tract Sires and less Right-of-Way, Section 33, T1N, R4E, BHM, Pennington County, South Dakota.

To approve of the extension of Conditional Use Permit / CU 12-22 with the following fourteen (14) conditions:

1. **That the family recreation vehicle park consists of a 40 foot by 100 foot pole barn and five (5) recreation vehicle sites;**
2. **That the recreational vehicle park be limited to private use and is not to be used commercially;**
3. **That the lot address be clearly posted on the property so it is visible from both directions along Mystic Road in accordance with Pennington County's Ordinance #20;**
4. **That use of the family recreational vehicle park be limited to 180 days of the year;**
5. **That if the applicant intends to have any open fires or fire pits the appropriate permits must be obtained from South Dakota Forestry;**
6. **That the property remains free of debris and junk vehicles and the property, itself, and structures be well-maintained;**
7. **That the applicant has at least one (1) #20 ABC dry chemical fire extinguisher accessible at all times;**

8. That a 25 foot setback be maintained for all structures located on the property or else an approved Setback Variance be obtained;
9. That a Building Permit 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;
10. The Planning Director may allow additional development or construction, which is consistent with the existing development on this property. Significant changes in the use or impact on adjacent land uses as determined by the Planning Director shall require a review of this Conditional Use Permit;
11. That no additional tent camping be allowed;
12. That upon sale or transfer of the property, if the property is transferred beyond the applicant's immediate family or a closely held corporation owned by the applicant's immediately family, the Conditional Use Permit is revoked, and this Conditional Use Permit is only for the purchasers, Steve and Dorothy Wilkison, and the Conditional Use Permit shall be revoked if it reverts back to the seller of the property (the original holder of the land);
13. That garbage storage and disposal shall be handled in such a manner so as not to create a health hazard, rodent harborage, insect breeding areas, accident or fire hazards, or air pollution; and,
14. 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.

Vote: unanimous (7 to 0).

9. **CONDITIONAL USE PERMIT REVIEW / CU 12-23:** Vergil Kjerstad. To review a Vacation Home Rental in a Suburban Residential District in accordance with Sections 208, 319, and 510 of the Pennington County Zoning Ordinance.

Lot 31, Block E, Edelweiss Mountain Development, Section 20, T1N, R5E, BHM, Pennington County, South Dakota.

To approve of the extension of Conditional Use Permit / CU 12-23 with the following six (6) conditions:

1. That the three (3) bedroom Vacation Home Rental be allowed up to ten (10) overnight guests;
2. That a minimum of three (3) off-street parking spaces be provided and each parking space shall not be less than 162 square feet, nor less than nine feet

(9') by eighteen feet (18'), 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 is visible in both directions in accordance with Pennington County's Ordinance #20;
4. That all applicable Federal, State, and Local regulations be adhered to at all times, including South Dakota Administrative Rule 44:02:08, which regulates Vacation Home Rentals;
5. That the applicant complies with the requirements of Section 319 of the Zoning Ordinance at all times, including the Performance Standards and the requirement to post an Interior Informational Sign; and,
6. That this Conditional Use Permit be reviewed in three (3) years or on a complaint basis to verify that all conditions of approval are being met.

Vote: unanimous (7 to 0).

10. **CONDITIONAL USE PERMIT REVIEW / CU 12-24:** Vergil Kjerstad. To review a Vacation Home Rental in a Suburban Residential District in accordance with Sections 208, 319, and 510 of the Pennington County Zoning Ordinance.

Lot 15 (also in Section 17), Block D, Edelweiss Mountain Development, Section 20, T1N, R5E, BHM, Pennington County, South Dakota.

To approve of the extension of Conditional Use Permit / CU 12-24 with the following six (6) conditions:

1. That the three (3) bedroom Vacation Home Rental be allowed up to ten (10) overnight guests;
- 2.. That a minimum of three (3) off-street parking spaces be provided and each parking space shall not be less than 162 square feet, nor less than nine feet (9') by eighteen feet (18'), 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 is visible in both directions in accordance with Pennington County's Ordinance #20;
4. That all applicable Federal, State, and Local regulations be adhered to at all times, including South Dakota Administrative Rule 44:02:08, which regulates Vacation Home Rentals;

5. That the applicant complies with the requirements of Section 319 of the Zoning Ordinance at all times, including the Performance Standards and the requirement to post an Interior Informational Sign; and,
6. That this Conditional Use Permit be reviewed in three (3) years or on a complaint basis to verify that all conditions of approval are being met.

Vote: unanimous (7 to 0).

11. **REZONE / RZ 13-15 AND COMPREHENSIVE PLAN AMENDMENT / CA 13-09:** Neil Tschetter. To rezone .26 acre from General Agriculture District to Suburban Residential District and to amend the Pennington County Comprehensive Plan to change the Future Land Use from Planned Unit Development Sensitive to Suburban Residential District in accordance with Section 508 of the Pennington County Zoning Ordinance.

Lot 10 (of Gov't Lot 9), Black Forest Village, Section 22, T1N, R5E, BHM, Pennington County, South Dakota.

To continue Rezone / RZ 13-15 and Comprehensive Plan Amendment / CA 13-09 to the October 14, 2013, Planning Commission meeting.

Vote: unanimous (7 to 0).

13. **CONDITIONAL USE PERMIT / CU 13-19:** Ken and Cory Tomovick. To allow for events of 20 people or less and to allow for a Vacation Home Rental in a General Agriculture District in accordance with Sections 205, 319, and 510 of the Pennington County Zoning Ordinance.

Lot 1 of Bonanza Bar MC 970 and the Unplatted Part of Bonanza Bar MC 970 (also in Section 1), Section 12, T1S, R6E, BHM, Pennington County, South Dakota.

To continue Conditional Use Permit / CU 13-19 to the September 23, 2013, Planning Commission meeting.

Vote: unanimous (7 to 0).

END OF CONSENT CALENDAR

3. **CONSTRUCTION PERMIT REVIEW / CP 99-43:** Pete Lien & Sons. To review a Construction Permit in accordance with Section 507 of the Pennington County Zoning Ordinance.

SW1/4SE1/4, Section 20, T2N, R7E, BHM, Pennington County, South Dakota.

Commissioner Landers asked to have this Item removed from the Consent Calendar to discuss the subject property. She wanted to know why the report was submitted under a Memorandum format rather than the Staff Report format, which is submitted for other applications.

Jennissen explained that reports for Construction Permits are submitted in a Memorandum format.

Commissioner Landers also wanted to know who prepared the Memorandum.

Jennissen stated that Brittney Molitor, the Water Protection Coordinator, prepared the Memorandum.

Commissioner Landers further spoke of the maps that were submitted with the report and noted they are not current in regards to the notation of surrounding property ownership, and she also questioned if the Construction Permit was discussed with the surrounding landowners.

Jennissen stated that the maps submitted with the Memorandum do show the property of Pete Lien & Sons that have Construction Permits associated with them. He noted that the maps can be updated to show the current property ownership surrounding Pete Lien & Sons' property. Jennissen also noted that applicants who apply for Construction Permit do not have to notify surrounding property owners.

Commissioner Coleman asked Commissioners Lander's if her concern is the impact on the neighboring property owners.

Commissioner Landers said yes.

Commissioner Litzen clarified that the applicant follows the guidelines and regulations that Pennington County has adopted for Construction Permits, but it does not include notification to surrounding property owners.

Jennissen said that is correct.

Moved by Landers to continue the review of Construction Permit 99-43 in order for an updated map to be attached to the report.

Jennissen noted that the review of this Construction Permit has been ongoing since 1999, and the applicant's paperwork and applications are up-to-date.

Motion to continue died for lack of a second.

Discussion followed.

Moved by McCollam and seconded by Hall to approve of the extension of Construction Permit 99-43 and to include updated maps for future reviews

Jennssen asked the Planning Commission if they would also make the same motion for Item #4.

Commissioners McCollam and Hall both responded yes, they would include this as part of the Motion.

Moved by McCollam and seconded by Hall to approve of the extension of Construction Permit 99-43 and Construction Permit 99-44 and to include updated maps for future reviews

Moved by McCollam and seconded by Hall to approve of the extension of Construction Permit 99-43, to include updated maps for future reviews, with the following six (6) conditions:

- 1. That the applicant reclaims the disturbed areas. This includes replacing topsoil, vegetating the disturbed areas, all necessary grading, and all necessary backfilling, which can include the use of clean concrete or brick;**
- 2. That the conditions of approval of the “Part 70 Air Quality Permit” (Air Quality Permit #28.1143-02) be continually met as required by the South Dakota Department of Environment and Natural Resources;**
- 3. That the conditions of approval of the South Dakota Department of Environment and Natural Resources Mining & Minerals Permits (Mining License #383-100 and Mining Permit #216) be continually met;**
- 4. That a “Haul Road Agreement” be obtained from the Pennington County Highway Department prior to utilizing Hidden Valley Road as a haul road to transport the proposed mining materials;**
- 5. That a maximum of 10 million tons of mined material be quarried from the property; and,**
- 6. That the Construction Permit be reviewed in three (3) years to ensure that the conditions of approval are being met.**

All voting, the Motion carried 5 to 2. Commissioners Petersen, McCollam, Coleman, Hall, and Zvejnieks voted yes. Commissioner Landers voted no.

Commissioner Litzen voted no and stated she is not in agreement to have the applicant providing updated maps, since these applications are also approved at the State levels.

4. CONSTRUCTION PERMIT REVIEW / CP 99-44: Pete Lien & Sons. To review a Construction Permit in accordance with Section 507 of the Pennington County Zoning Ordinance.

Sections 12, 13, 24, and 25, T2N, R6E and Sections 7, 17, 18, 19, 20, 30, T2N, R7E, BHM, Pennington County, South Dakota.

Commissioner Landers asked to have this Item removed from the Consent Calendar to discuss the subject property.

Moved by McCollam and seconded by Hall to approve of the extension of and Construction Permit 99-44, to include updated maps for future reviews, with the following nine (9) conditions:

1. **That the fifteen-foot high berm, located along the residential district, remain in place;**
2. **That the applicant reclaims the disturbed areas. This includes replacing topsoil, vegetating the disturbed areas, all necessary grading, and all necessary backfilling, which can include the use of clean concrete or brick;**
3. **That the conditions of approval of the “Part 70 Air Quality Permit” (Air Quality Permit #28.1143-02) be continually met as required by the South Dakota Department of Environment and Natural Resources;**
4. **That the conditions of approval of the South Dakota Department of Environment and Natural Resources Mining & Minerals Permits (Mining License #383-100 and Mining Permit #216) be continually met;**
5. **That Mining License #383-100 and Mining Permit #216 be extended to include the property located in Section 13, T2N, R6E, and in Section 24, T2N, R6E, prior to any mining being allowed within that portion of the subject property;**
6. **Due to new the new floodplain maps released in June 2013, the existing Floodplain Development Permit (FP #06-15) shall be reaffirmed prior to any construction, mining, or development within that portion of the property located within federally designated floodplain;**
7. **That a maximum of 100 million tons of mined material be quarried from the property;**
8. **That a “Haul Road Agreement” be obtained from the Pennington County Highway Department prior to utilizing Hidden Valley Road as a haul road to transport the proposed mining materials; and,**

9. **That the Construction Permit be reviewed in three (3) years to ensure the conditions of approval are being met.**

All voting, the Motion carried 5 to 2. Commissioners Petersen, McCollam, Coleman, Hall, and Zvejnieks voted yes. Commissioner Landers and Litzen voted no.

Commissioner Litzen stated that she voted no because she is not in agreement to have the applicant providing updated maps, since these applications are also approved at the State levels.

5. MINOR PLANNED UNIT DEVELOPMENT AMENDMENT REVIEW / PU 11-03: Roland and Joyce Good. To review an amendment to the Planned Unit Development for High Country Guest Ranch to increase the allowed size of the footprint of the residence located on the lot, to not limit the number of bedrooms allowed per drainfield, and to change the minimum setback requirement from the rear and side property lines, in accordance with Section 213-E-2 of the Pennington County Zoning Ordinance.

Lot 3 of High Country Ranch Subdivision, Section 15, T1S, R4E, BHM, Pennington County, South Dakota.

Zeller reviewed the Staff Report and provided a brief history of the subject property.

Commissioner Hall asked to have this Item removed from the Consent Calendar to discuss how many guests will be allowed to stay at the cabin and the number of bedrooms in the cabin.

Zeller explained that the zoning of the property, Planned Unit Development, allows the cabin to be used as a Vacation Home Rental. The application does not fall under Section 319 (Vacation Home Rental), so the number of guests is not specifically regulated.

Commissioner Hall wanted to know how many beds are located in the structure.

Zeller stated staff is not required to obtain that information, under the zoning of a Planned Unit Development, so she is unsure of the number of beds in the structure.

Commissioner Hall also spoke of the aquifer and questioned how far the cabin is located from it. She expressed concern that the septic system will be maxed out, and she further suggested revising the definition of a bedroom in the Zoning Ordinance.

Commissioner Zvejnieks concurred with Commissioner Hall.

Zeller commented that staff could look at revising the definition of a bedroom and also review not just rooms with closets, but the number of beds allowed, too.

Moved by Hall and seconded by Landers to approve the extension of Minor Planned Unit Development 11-03 with the following seven (7) conditions:

- 1. That the size of the cabin not be specifically restricted as long as it is constructed in conformance with all other requirements of the High County Ranch PUD and Pennington County Zoning Ordinance;**
- 2. That reduced setbacks be allowed for the cabin, including a 14 foot rear-yard setback for the addition and a 23 foot side-yard setback for the existing deck. This Minor PUD Amendment only applies for the portion of the rear and side yard setback requirements that are encroached upon by the cabin addition and existing deck. All other structures must maintain the proper setback requirements or obtain separate PUD Amendments for that structure;**
- 3. That the address for the property be properly posted in accordance with Pennington County's Ordinance #20;**
- 4. That prior to any work being done within the 100-year floodplain boundary, in excess of what was previously approved by FP #11-08, approval of a Floodplain Development Permit be obtained;**
- 5. That the cabin only be allowed to contain a total three (3) bedrooms, due to the capacity of the existing wastewater treatment system servicing the development. If the applicant desires to construct additional bedrooms or install closets in more than two (2) of the existing bedrooms, additional wastewater treatment system capacity will need to be provided, an On-Site Wastewater Construction Permit will need to be obtained from Pennington County, and the South Dakota Department of Environment and Natural Resources will need to review and approve the system design;**
- 6. That use of the cabin on the subject property as a vacation home rental be in conformance with all South Dakota Administrative Rules as enforced by the South Dakota Department of Health and all other Local, State, and Federal regulations, as applicable; and,**
- 7. That this Minor PUD Amendment be reviewed on a complaint basis only.**

Commissioner Coleman discussed the wastewater system and questioned if the other residents in the Planned Unit Development are full-time residents.

Zeller said no and explained that all the cabins are seasonal, to the best of staff's knowledge.

Commissioner Litzen asked if the wastewater system is also permitted through SD DENR.

Zeller said yes, but it is actually State approved when the system is initially installed.

All voting aye, the Motion carried 7 to 0.

12. CONDITIONAL USE PERMIT / CU 13-20: Gary Schauer; Jim Peterson – Agent. To allow for a Vacation Home Rental in a General Agriculture District in accordance with Sections 205, 319, and 510 of the Pennington County Zoning Ordinance.

Part of Sherman Placer MS 821 and Lot A of Sherman Placer MS 821, Section 30, T1S, R5E, BHM, Pennington County, South Dakota.

Zeller reviewed the Staff Report indicating the applicant has applied for a Conditional Use Permit to allow an existing two-bedroom residence to be used as a Vacation Home Rental (VHR).

Zeller further explained that the agent has indicated there is a potential buyer intending to purchase the property if this Conditional Use Permit to allow a VHR on the property is approved. Conditional Use Permits are generally approved for a property and can be transferred ownership; however, Section 319 of the Zoning Ordinance (Vacation Home Rental) specifically states that “The Conditional Use Permit shall be revoked upon sale or transfer of ownership of the property.” As such, even though the prospective buyer is known and ownership of the property would likely be transferred prior to operation of the VHR, this Conditional Use Permit will be automatically revoked upon transfer of ownership to the new buyers. Therefore, the new buyers will be required to submit a new Conditional Use Permit application and obtain approval of a separate Conditional Use Permit to be able to operate a VHR on the subject property.

Staff recommended approval of Conditional Use Permit 13-20 with the following eleven (11) conditions:

1. That the maximum overnight occupancy, based on DENR’s approval, be limited to four (4) people and the maximum daytime occupancy be limited to six (6) people;
2. That if an addition is constructed and/or the on-site wastewater treatment system is upgraded in the future, this Conditional Use Permit be reviewed so that the maximum occupancy may be adjusted accordingly, which will require approval from DENR;
3. That the applicant maintain current licenses with the South Dakota Department of Health (Vacation Home License) and the Department of Revenue (Sales Tax License) and that copies of these Licenses be provided to the Planning Department prior to operation of the Vacation Home Rental;
4. That a minimum of two (2) off-street parking spaces be provided on-site, each measuring a minimum of nine (9) by eighteen feet and maintained in a dust-free manner;

5. That an interior informational sign be posted in accordance with the requirements of Section 319-G., during operation of the residence as a VHR;
6. That the lot address be posted at all times so it is clearly visible from Old Hill City Road, in accordance with Ordinance #20;
7. That the applicant ensure the VHR is operated in accordance with the requirements of Section 319-F. (Performance Standards) at all times;
8. That prior to any work being conducted within the boundaries of the 100-year floodplain, a Floodplain Development Permit be obtained;
9. That if the subject property is sold or ownership is transferred, this Conditional Use Permit shall be automatically revoked. If the new owners of the property desire to operate a Vacation Home Rental on the property, approval of a new Conditional Use Permit will need to be obtained;
10. That if the person designated as the Local Contact is ever changed from Jim Peterson, the interior informational sign be updated and the applicant re-notify the surrounding landowners within 500 feet via notices sent first-class; and,
11. That this Conditional Use Permit be reviewed in two (2) years or on a complaint basis to verify that all conditions of approval are being met.

Commissioner Zvejnieks spoke of the pending sale of the property and questioned why the application would be submitted, if the potential buyer is also intending to operate a VH Rental, but is aware that this Conditional Use Permit will be revoked upon sale of the property

Zeller stated that the pending buyer is likely looking for some assurance that this Conditional Use Permit will be approved, but the agent could likely answer this.

Commissioner Hall spoke of the General Agriculture Zoning of the property and questioned the lot size of 1.29 acres.

Zeller explained that it is a “grandfathered” lot.

Mr. Jim Peterson, agent, appeared on behalf of the potential buyer. He stated the potential buyer just wanted some assurance that the property could be used as a VH rental before it was purchased. He further spoke of the regulations for VH Rentals and recommended the revocation of the VH Rental requirement be looked at in the future.

Discussion followed.

Moved by Landers and seconded by Hall to approve of Conditional Use Permit 13-20 with the following eleven (11) conditions:

- 1. That the maximum overnight occupancy, based on DENR's approval, be limited to four (4) people and the maximum daytime occupancy be limited to six (6) people;**
- 2. That if an addition is constructed and/or the on-site wastewater treatment system is upgraded in the future, this Conditional Use Permit be reviewed so that the maximum occupancy may be adjusted accordingly, which will require approval from DENR;**
- 3. That the applicant maintain current licenses with the South Dakota Department of Health (Vacation Home License) and the Department of Revenue (Sales Tax License) and that copies of these Licenses be provided to the Planning Department prior to operation of the Vacation Home Rental;**
- 4. That a minimum of two (2) off-street parking spaces be provided on-site, each measuring a minimum of nine (9) by eighteen feet and maintained in a dust-free manner;**
- 5. That an interior informational sign be posted in accordance with the requirements of Section 319-G., during operation of the residence as a VHR;**
- 6. That the lot address be posted at all times so it is clearly visible from Old Hill City Road, in accordance with Ordinance #20;**
- 7. That the applicant ensure the VHR is operated in accordance with the requirements of Section 319-F. (Performance Standards) at all times;**
- 8. That prior to any work being conducted within the boundaries of the 100-year floodplain, a Floodplain Development Permit be obtained;**
- 9. That if the subject property is sold or ownership is transferred, this Conditional Use Permit shall be automatically revoked. If the new owners of the property desire to operate a Vacation Home Rental on the property, approval of a new Conditional Use Permit will need to be obtained;**
- 10. That if the person designated as the Local Contact is ever changed from Jim Peterson, the interior informational sign be updated and the applicant re-notify the surrounding landowners within 500 feet via notices sent first-class; and,**
- 11. That this Conditional Use Permit be reviewed in two (2) years or on a complaint basis to verify that all conditions of approval are being met.**

All voting aye, the Motion carried 7 to 0.

14. REZONE / RZ 13-13 AND COMPREHENSIVE PLAN AMENDMENT / CA 13-07: Mitch Morris. To rezone 151.36 acres and 30.49 acres from General Agriculture District and Light Industrial District to General Commercial District and to amend the Pennington County Comprehensive Plan to change the Future Land Use from Limited Agriculture District to General Commercial District in accordance with Section 508 of the Pennington County Zoning Ordinance.

Being 151.36 acres of land located in the E1/2 of Section 32, Township 1 North, Range 8 East of the Black Hills Meridian, Pennington County, South Dakota, said 151.36 acres of land being more particularly described by metes and bounds as follows, all measurements are to be considered as being followed by the words "more or less"; BEGINNING at the southwest corner of Lot 1 of the SW1/4 SE1/4 of Section 32, Township 1 North, Range 8 East of the Black Hills Meridian, on the south line of Section 32 at the intersection of the east right-of-way line of South Dakota Highway 79; Thence, North 06°32'53" West, along the west line of said Lot 1 of the SW1/4 SE1/4 of Section 32 and east right-of-way line of SD Highway 79, a distance of 4310.98 feet to a point on the easterly line of Lot A of the NW1/4 NE1/4 of Section 32 as shown on plat recorded in Highway Plat Book 9, Page 93, in the office of the Pennington County Register of Deeds, in a curve from which the center of curvature bears North 48°17'34" West a distance of 103.00 feet; Thence, southwesterly, following the easterly line of said Lot A of the NW1/4 NE1/4 of Section 32, along a curve to the right having a radius of 103.00 feet, a central angle of 35°53', for an arc distance of 64.51 feet to a point of tangency; Thence, South 77°35'27" West, continuing to follow the easterly line of said Lot A of the NW1/4 NE1/4 of Section 32, a distance of 4.12 feet to a point for corner on the east right-of-way line of SD Highway 79, in a curve from which the center of curvature bears South 73°13'38" West a distance of 3920 feet; Thence, northwesterly, along a curve to the left having a radius of 3920 feet, a central angle of 00°29'02", for an arc length of 33.11 feet to point for corner on the centerline of the alignment of said Lot A of the NW1/4 NE1/4 of Section 32; Thence, North 77°35'27" East, following the centerline of the alignment of said Lot A of the NW1/4 NE1/4 of Section 32, a distance of 6.78 feet to a point of curvature; Thence, northeasterly, continuing to follow the centerline of the alignment of said Lot A of the NW1/4 NE1/4 of Section 32, along a curve to the left having a radius of 70.00 feet, a central angle of 84°05'03", for an arc length of 102.73 feet to a point of tangency; Thence, North 06°29'36" West, continuing to follow the centerline of the alignment of said Lot A of the NW1/4 NE1/4 of Section 32, a distance of 606.16 feet to a point of curvature; Thence, northwesterly, continuing to follow the centerline of the alignment of said Lot A of the NW1/4 NE1/4 of Section 32, along a curve to the left having a radius of 1432.39 feet, a central angle of 05°45'52", for an arc length of 144.11 feet to point for corner on the west line of the E1/2 of Section 32; Thence, North 00°01'24" East, along the west line of the E1/2 of Section 32, a distance of 206.71 feet to the northwest corner of the E1/2 of Section 32; Thence, South 89°48'35" East, along the north line of the E1/2 of Section 32, a distance of 2656.84 feet to the northeast corner of Section 32; Thence, South 00°04'45" West, along the east line of Section 32, a distance of 500.00 feet to a point for corner; Thence, North 89°48'35" West, parallel to and 500 feet distant from the

north line of the E1/2 of Section 32, a distance of 1514.54 feet to a point for corner; Thence, South 06°22'35" East, a distance of 4844.00 feet to a point for corner on the south line of the E1/2 of Section 32; Thence, North 89°36'35" West, along the south line of the E1/2 of Section 32, a distance of 1088.72 feet to the POINT OF BEGINNING and containing 151.36 acres, more or less, of land.

Being 30.49 acres of land located in the N1/2 NW1/4 of Section 33, Township 1 North, Range 8 East of the Black Hills Meridian, Pennington County, South Dakota, said 30.49 acres of land being more particularly described by metes and bounds as follows, all measurements are to be considered as being followed by the words "more or less"; BEGINNING at the northwest corner of Section 33, Township 1 North, Range 8 East of the Black Hills Meridian; Thence, South 89°51'35" East, along the north line of the NW1/4 of Section 33, a distance of 2656.84 feet to the northeast corner of the NW1/4 of Section 33; Thence, South 00°08'05" West, along the east line of the NW1/4 of Section 33, a distance of 500.00 feet to a point for corner; Thence, North 89°51'35" West, parallel to and 500 feet distant from the north line of the NW1/4 of Section 33, a distance of 2656.35 feet to a point for corner on the west line of the NW1/4 of Section 33; Thence, North 00°04'45" East, a distance of 500.00 feet to the POINT OF BEGINNING and containing 30.49 acres, more or less, of land.

(Continued from the August 12, 2013, Planning Commission meeting.)

Jennissen stated this item was continued from the August 12, 2013, Planning Commission meeting so that the applicant could submit a Conditional Use Permit applicant, obtain signatures from the potential buyers that they are in agreement with the proposed rezoning of the properties, and to address removing the Contractor's Equipment Yard. As of September 5, 2013, Mr. Morris has not provided any documentation or applied for the Conditional Use Permit.

Staff recommended Rezone 13-13 and Comprehensive Plan Amendment 13-06 be denied without prejudice.

Mr. Mitch Morris, applicant, appeared and stated that he didn't know he needed to submit the signatures from the potential buyers stating they are in agreement. He thought that was something the Planning Commission didn't require, but just wanted to see.

Commissioner Zvejneiks explained to Mr. Morris that this is one of the reasons why the Planning Commission continued the request to this meeting in order to have that information submitted to them.

Mr. Morris also informed the Planning Commission that his attorney told him that if this is required, his attorney would like to see something in writing requesting the information and also something in writing explaining the denial without prejudice procedure.

Jennissen again discussed the denied without prejudice procedure with the applicant and the Planning Commission. He further stated the applicant was to also submit a Conditional Use Permit application.

Mr. Morris indicated that he still intends to apply for the Conditional Use Permit but is waiting for a metes and bounds description from a surveyor. Mr. Morris also spoke of the property to be rezoned to Suburban Residential and thought the Planning Director was to also research other information to be brought forth to be discussed.

Jennissen explained that the Conditional Use Permit is needed before the Rezone is approved to allow the residence to remain in the proposed General Commercial Zoning District. The residence is an accessory to the commercial use.

Mr. Morris asked that this item be continued so that he can obtain the metes and bounds legal description to submit with the Conditional Use Permit application.

Commissioner Litzen clarified that the Planning Commission is getting input from potential owners, when they technically do not own the property yet.

Mr. Patrick Grode, Deputy States Attorney, said the Planning Commission can look at whether the proposed zoning of the property is consistent with the Future Land Use policy of Pennington County. He further stated that it is not out of line that the Planning Commission request that the future property owners also be in agreement with the proposed rezoning.

Commissioner Coleman asked Mr. Morris if rezoning of the property is part of his redemption process.

Mr. Morris responded yes and further added that the potential buyers do not want to buy it until the property is rezoned. He also stated that he is not asking for approval today, but continuance until he can submit a Conditional Use Permit application.

Jennissen stated that, if this is continued, it will need to be continued to the October 14, 2013, Planning Commission meeting.

Commissioner Hall asked Mr. Morris if he would like the Planning Commission to approve of the rezone so that he can sell the property in order to make money to pay back loans.

Mr. Morris said yes.

Commissioner Petersen recommended the City of Rapid City also be involved with the proposed rezoning, since the property is located within the three-mile platting jurisdiction. He noted that there needs to be coordination between the City and the County regarding the subject properties.

Mr. Morris said that he has been in contact with the City of Rapid City and they have recommended he proceed with the rezone first and then submit a plat.

Jennissen noted that the applicant has not submitted any documents to the City to proceed with platting the property.

Commissioner Zvejnieks further spoke of the City's comment regarding the proposed applications.

Commissioner Landers wanted to know if the applicant obtained a letter from the City stating his first step is to rezone through the County, would this be sufficient.

Jennissen clarified that the applicant cannot proceed with this Rezone application until he submits the Conditional Use Permit application and staff is okay with continuing the item.

Mr. Morris said he will not submit a Layout Plat with the City of Rapid City until he obtains approval of the property being rezoned through Pennington County.

Commissioner Zvejnieks noted that the Planning Commission cannot authorize the applicant to obtain the signatures of the potential buyers, but it would help his cause.

Commissioner Hall also wanted to make sure the Sheriff Sale Deed Holders are contacted about the proposed rezoning of the subject property.

Commissioner Coleman also agreed with Commissioners Hall and Zvejnieks.

Mr. Tony Griffith appeared and stated he is one of the certificate holders of the properties.

Commissioner Zvejnieks asked Mr. Griffith if he is opposed to rezoning of the property.

Mr. Griffith stated that, at this time, he is unsure and would need time to review this.

Moved by Zvejnieks and seconded by Landers to continue Rezone 13-13 and Comprehensive Plan Amendment 13-07 to the October 14, 2013, Planning Commission meeting, at the request of the applicant, in order for the applicant to submit a Conditional Use Permit application.

All voting aye, the Motion carried 7 to 0.

15. REZONE / RZ 13-14 AND COMPREHENSIVE PLAN AMENDMENT / CA 13-08: To rezone 200.73 acres from General Agriculture District to Suburban Residential District and to amend the Pennington County Comprehensive Plan to change the Future Land Use from Limited Agriculture District to Suburban Residential District in accordance with Section 508 of the Pennington County Zoning Ordinance.

Being 200.73 acres of land located in the NE1/4 of Section 32 and in the NW1/4 of Section 33, Township 1 North, Range 8 East of the Black Hills Meridian, Pennington County, South Dakota, said 200.73 acres of land being more particularly described by metes and bounds as follows, all measurements are to be considered as being followed by the words "more or less"; COMMENCING, for location purposes only, at the northeast corner of Section 32 also being the northwest corner of Section 33, Township 1 North, Range 8 East of the Black Hills Meridian; Thence, South 00°04'45" West, along the common line between Section 32 and Section 33, a distance of 500.00 feet to the POINT OF BEGINNING of the herein described tract; Thence, South 89°51'35" East, parallel to and 500 feet distant from the north line of the NW1/4 of Section 33, a distance of 2656.35 feet to a point for corner on the east line of the NW1/4 of Section 33; Thence, South 00°08'05" West, along the east line of the NW1/4 of Section 33, a distance of 2165.91 feet to a point for corner; Thence, North 89°41'05" West, along the south line of the NW1/4 of Section 33, a distance of 2654.26 feet to the southwest corner of the NW1/4 of Section 33 also being the southeast corner of the NE1/4 of Section 32; Thence, North 89°42'51" West, along the south line of the NW1/4 of Section 32, a distance of 1270.58 feet to a point for corner; Thence, North 06°22'35" West, a distance of 2169.92 feet to a point for corner, 500 feet south of the north line of the NE1/4 of Section 32; Thence, South 89°48'35" East, parallel to and 500 feet distant from the the north line of the NE1/4 of Section 32, a distance of 1514.54 feet to the POINT OF BEGINNING and containing 200.73 acres, more or less, of land.

(Continued from the August 12, 2013, Planning Commission meeting.)

Jennissen stated this item was continued from the August 12, 2013, Planning Commission meeting so that the applicant could obtain signatures from the potential buyers that they are in agreement with the proposed rezoning requests. As of September 5, 2013, Mr. Morris has not provided any documentation.

Staff originally recommended Rezone 13-14 and Comprehensive Plan Amendment 13-07 be denied without prejudice, and is now recommending that Rezone 13-14 and Comprehensive Plan Amendment 13-07 be denied.

Jennissen said staff is changing the recommendation to denied, based on the previous discussion of the last time item since it does not fit Pennington County's Future Land Use Plan and also because of a 2007 Noise and Vibration Study done by HDR for Basin Electric Intertie. The recommendation from that study is that there is to be a buffer in place before a residential area is built because of the possibility for noise annoyance to residences.

Jennissen further provided a brief history of the study involving property surrounding the electrical substation and complaints received.

Mr. Morris stated he also expressed concern with the substation when it was first built. He asked if the report has been adopted through the City of Rapid City and Pennington County.

Jennissen stated that it has not been adopted through Pennington County and did not know if the City has adopted it.

Commissioner McCollam commented that the area should have a buffer to address the noise concerns and also the plat should have a note on it stating the buffer should be in place.

Discussion further followed regarding the noise study done in the area.

Commissioner Zvejnieks recommended denying without prejudice in order for the applicant to also work with the City of Rapid City in order to make the Future Land Use compatible.

Mr. Morris said that he objected to this and feels this property does meet the City of Rapid City's requirements for their three-mile platting jurisdiction.

Moved by Zvejnieks and seconded by Hall to deny without prejudice Rezone 13-14 and Comprehensive Plan Amendment 13-08.

Roll call on vote. Commissioners Petersen, Coleman, Hall and Zvejnieks voted yes. Commissioners Litzen, Landers, and McCollam voted no.

All voting, the Motion carried 4 to 3.

16. COUNTY BOARD REPORT

The Board of Commissioners concurred with the Planning Commission's recommendations from the August 26, 2013, Planning Commission meeting.

17. ITEMS FROM THE PUBLIC

There were no items from the public.

18. ITEMS FROM THE STAFF

A. Building Permit Report. Jennissen reviewed the Building Permit Report for August 2013.

19. ITEMS FROM THE MEMBERSHIP

Commissioner Zvejnieks spoke of the list of items the Planning Commission would like to see addressed in the future.

20. DISCUSSION ITEMS

21. ADJOURNMENT

Moved by Coleman and seconded by Hall to adjourn.

All voting aye, the Motion carried 7 to 0.

The meeting adjourned at **10:35 a.m.**

Chairperson, Sig Zvejnieks