

MINUTES
PENNINGTON COUNTY PLANNING COMMISSION
February 8, 2010 @ 9:00 a.m.

County Commissioners' Meeting Room - Pennington County Courthouse

MEMBERS PRESENT: Charlie Johnson, Jeff Hoffmann, Warren Fisk, Kevin Kuehn, Russell Andrews, Fred Weishaupl, and Nancy Trautman.

STAFF PRESENT: Dan Jennissen, Lysann Zeller, Mandi Schmierer, Brittney Molitor, and Jeri Ervin.

ROLL CALL

1. APPROVAL OF THE JANUARY 25, 2010, MINUTES
Moved by Weishaupl and seconded by Kuehn to approve the minutes of the January 25, 2010, Planning Commission meeting. Vote: unanimous (6 to 0).

Commissioner Andrews arrived at the meeting at 9:03 a.m.

2. APPROVAL OF THE AGENDA
Moved by Hoffmann and seconded by Weishaupl to approve the February 8, 2010, Planning Commission meeting, including the Consent Calendar, with the removal of Items #3 and #4 to the Agenda and to place Item #5 on the Consent Calendar and to have Item #9 be heard first on the Agenda. 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.

5. CONDITIONAL USE PERMIT REVIEW / CU 08-48: Spring Creek Premier Property/Cody Schad. To review accessory structures (garage and pump house) without a primary structure in a Limited Agriculture District in accordance with Sections 206 and 510 of the Pennington County Zoning Ordinance.

Lot 2, Bighorn Sheep Preserve, Section 7, T1S, R7E, BHM, Pennington County, South Dakota.

To recommend to continue the review of Conditional Use Permit / CU 08-48 to the April 12, 2010, Planning Commission meeting.

Vote: unanimous (7 to 0).

END OF CONSENT CALENDAR

9. ORDINANCE AMENDMENT / OA 09-02: Pennington County. Clean Water Ordinance.

(Continued from the December 7, 2009, Planning Commission meeting.)

Moved by Johnson and seconded by Weishaupl to continue this item to the February 22nd Planning Commission meeting in order for staff to meet to propose public meeting dates and to gather information that has been requested by the public.

Discussion followed by both the Commission and the public on the necessity of the Ordinance, the request for factual data to be provided to the public, and the location of the public meetings.

Moved by Weishaupl and seconded by Hoffmann to call the Question. Vote on Question: unanimous.

Moved by Johnson and seconded by Weishaupl to continue Ordinance Amendment 09-02 to the February 22, 2010, Planning Commission meeting in order for staff to meet to propose public meeting dates and to gather information that has been requested by the public.

All voting aye, the Motion carried 7 to 0.

3. CONDITIONAL USE PERMIT REVIEW / CU 09-06: Dennis and Carol Kauer. To review two private air strips and a hangar located in a General Agriculture District in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

PT SE1/4 S of Hwy, Section 10, T1S, R10E, BHM, Pennington County, South Dakota.

Commissioner Trautman asked to have this item removed from the Consent Calendar to discuss adding another condition.

Jennissen stated he would like the condition to read as follows: "That any expansion to the airstrip will require a review of the Conditional Use Permit with review from Ellsworth Air Force Base."

Commissioner Weishaupl questioned if the airstrip is being expanded by the applicant.

Jennissen stated no and added that the condition is being added for possible future expansion.

Commissioner Johnson commented that he would like to include Condition #9 from the original Conditions of Approval to the conditions being approved today.

Discussion followed.

Moved by Hoffmann and seconded by Andrews to approve of the extension of Conditional Use Permit 09-06 with the following nine (9) conditions:

- 1. That a sign be posted along South Dakota Highway 44 indicating low flying aircraft within 30-days of approval;**
- 2. That the air strip be used for personal use only;**
- 3. That the applicant adheres to FAA rules and regulations as all times;**
- 4. 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;**
- 5. That applicant be in radio contact with RAP Air Traffic Control Tower when within Rapid City Regional Airport's Class D airspace;**
- 6. That the applicant obtain a Storm Water Construction Permit from DENR if one (1) or more acres of property are disturbed during the course of the runway construction on the property and the applicant must take appropriate measures to protect any/all existing drainage ways and limit runoff from the subject property;**
- 7. That the applicant contacts the Planning Department upon the sale or transfer of ownership of the property and the CUP shall be reviewed and possibly revoked;**
- 8. That any expansion to the airstrip will require a review of the Conditional Use Permit with review from Ellsworth Air Force Base; and,**
- 9. That this Conditional Use Permit be reviewed on a complaint basis only.**

All voting aye, the Motion carried 7 to 0.

4. CONDITIONAL USE PERMIT / CU 10-03: Gwen Zelfer. To allow a dog/cat boarding kennel in a Limited Agriculture District in accordance with Sections 206 and 510 of the Pennington County Zoning Ordinance.

Lot 1, Engesser Subdivision, Section 24, T1N, R8E, BHM, Pennington County, South Dakota.

Schmierer reviewed the Staff Report indicating the applicant, Gwen Zelfer, is requesting a Conditional Use Permit to allow for a dog/cat boarding kennel on the property. The applicant indicated the kennel would have the potential to house approximately 30 animals.

Staff recommends approval of Conditional Use Permit/CU 10-03 with the following twelve (12) conditions:

1. That the Conditional Use Permit be limited to a dog and cat boarding kennel only and that a maximum of two (2) additional employees not residing on the premises may be employed by the home occupation. Any expansion beyond this will require the Conditional Use Permit to be reviewed;
2. That the boarding of dogs/cats not exceed a maximum of 30 animals at one time. Any additional animals would require a review by the Planning Department and an amendment to the Conditional Use Permit;
3. That reasonable measures are taken to control odors and noises produced by the dogs so as to not constitute a nuisance to the general public;
4. That the applicant adhere to all necessary County, State and Federal regulations, including those of the Environmental Protection Agency (EPA) and maintain the necessary permits to conduct the organization's activities;
5. That the address, 8507 Dunn Road, be posted both at the approach to the property and on the primary structure itself in accordance with Ordinance #20;
6. That prior to the placement of any on-premise signs, the applicant must obtain approval of a Sign Permit;
7. That a Floodplain Development Permit shall be submitted for review and approval prior to any work or placement of any structure within the boundaries of the 100-year floodplain;
8. That a minimum of eight (8) 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;
9. That the applicant obtains an approved On-Site Wastewater Construction Permit for a septic system designed to handle the conditional use prior to the issuance of a Building Permit and that the means of wastewater disposal also be approved by the South Dakota Department of Environment and Natural Resources;
10. 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;
11. That this Conditional Use Permit is not 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 ensure that all conditions are being met.

Schmierer further added that staff would like to modify Condition #1 to state: “That the Conditional Use Permit be limited to a dog and cat boarding kennel only. Any expansion beyond this will require the Conditional Use Permit to be reviewed.” Schmierer commented that the application is not for a home occupation; therefore, the number of employees cannot be limited. The applicant has indicated the business may employ up to four employees, including three family members, and the applicant intends to purchase the property contingent upon approval of the Conditional Use Permit.

Commissioner Johnson asked if the current property owner has also signed the application.

Schmierer stated yes.

Ms. Gwen Zelfer, applicant, appeared and discussed the proposed application. She commented that her sons will be living on-site and she will also be on the property on a part-time basis.

Moved by Kuehn and seconded by Fisk to approve of Conditional Use Permit with the following twelve (12) conditions:

- 1. That the Conditional Use Permit be limited to a dog and cat boarding kennel only. Any expansion beyond this will require the Conditional Use Permit to be reviewed;**
- 2. That the boarding of dogs/cats not exceed a maximum of 30 animals at one time. Any additional animals would require a review by the Planning Department and an amendment to the Conditional Use Permit;**
- 3. That reasonable measures are taken to control odors and noises produced by the dogs so as to not constitute a nuisance to the general public;**
- 4. That the applicant adhere to all necessary County, State and Federal regulations, including those of the Environmental Protection Agency (EPA) and maintain the necessary permits to conduct the organization’s activities;**
- 5. That the address, 8507 Dunn Road, be posted both at the approach to the property and on the primary structure itself in accordance with Ordinance #20;**
- 6. That prior to the placement of any on-premise signs, the applicant must obtain approval of a Sign Permit;**

7. That a Floodplain Development Permit shall be submitted for review and approval prior to any work or placement of any structure within the boundaries of the 100-year floodplain;
8. That a minimum of eight (8) 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;
9. That the applicant obtains an approved On-Site Wastewater Construction Permit for a septic system designed to handle the conditional use prior to the issuance of a Building Permit and that the means of wastewater disposal also be approved by the South Dakota Department of Environment and Natural Resources;
10. 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;
11. That this Conditional Use Permit is not 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 ensure that all conditions are being met.

All voting aye, the Motion carried 7 to 0.

6. LAYOUT PLAT / PL 10-07 AND SUBDIVISION REGULATIONS VARIANCE / SV 10-02: Richard & Jody McKee; Fisk Land Surveying – Agent. To create Lots 1 and 2 of Tract 2 of McKee Subdivision and to waive platting requirements in accordance with Sections 400.1 and 700.1 of the Pennington County Subdivision Regulations.

EXISTING LEGAL: Tract 2, McKee Subdivision, Section 23, T1S, R3E, BHM, Pennington County, South Dakota.

PROPOSED LEGAL: Lots 1 and 2 of Tract 2, McKee Subdivision, Section 23, T1S, R3E, BHM, Pennington County, South Dakota.

Jennissen reviewed the Staff Report indicating the applicants have submitted a Layout Plat to create two lots and a Subdivision Regulations Variance request to waive the requirement for the scale of the plat to be no greater than 1 inch equals 100 feet, to waive the requirement to dedicate and improve the Section Lines bordering the property to the north, south and east sides, to waive the requirement for the proposed lots to be served by dedicated right-of-way, and to waive the requirement for the access easement to be improved to a 24-foot-wide driving surface.

Staff recommended approval of a portion of Subdivision Regulations Variance 10-02 to waive the requirement for the scale of the plat to be no greater than 1 inch equals 100 feet and to waive the requirement to dedicate and improve the Section Lines bordering the property to the north, south and east sides and denial of the portion to waive the requirement for the proposed lots to be served by dedicated right-of-way and denial to waive the requirement for the access easement to be improved to a 24-foot-wide driving surface. Staff also recommended approval of Layout Plat 10-07 with the following eight (8) conditions:

1. That prior to County Board approval of the Final Plat, a 66-foot easement be constructed to a minimum of Local Road Standards or a Subdivision Regulations Variance be obtained waiving this requirement;
2. That at the time of Preliminary Plat submittal, the applicant submits percolation tests and soil profile information for proposed Lots 1 and 2 to be reviewed and approved by the Environmental Planner or obtain approval of a Subdivision Regulations Variance waiving this requirement;
3. That at the time of submittal of the Preliminary Plat, the applicant submits topography or obtains approval of a Subdivision Regulations Variance waiving this requirement;
4. That a turnaround be constructed in accordance with Table 1 of the Pennington County Subdivision Regulations or the applicant obtains approval of a Subdivision Regulations Variance waiving this requirement;
5. That the applicant submits engineered road construction plans for the access road to be improved to Local Road standards or obtains approval of a Subdivision Regulations Variance waiving this requirement;
6. That the plat identifies the width of Medicine Mountain Road right-of-way on the plat;
7. That the Section Line Highway be improved to Ordinance 14 Standards or the applicant obtains approval of Subdivision Regulations Variance waiving this requirement; and,
8. That approval of this Layout Plat does not constitute approval of any further applications to be submitted for the above-described property.

Commissioner Weishaupl questioned that there is already a 66-foot-wide easement to the property and he wanted to know if the applicants are asking to reduce it.

Jennissen said no and stated the applicants are requesting a Subdivision Regulations Variance to reduce the required road width from a 24-foot-wide driving surface to an 18-foot-wide driving surface.

Commissioner Fisk stated he would abstain from voting on this item.

Discussion followed on access to the property and possible subdivision of the lots in the future.

Ms. Janelle Finck, agent, appeared and discussed the proposed application. She stated the applicants are in agreement with the conditions of the Layout Plat but do not agree with having to improve the access easement and for the lots to be served by a dedicated right-of-way. She explained that the applicants do not have the ability to dedicate the road as right-of-way because it traverses through an adjoining piece of property. She further responded that they do not see potential problems with development issues, such as topography, because the property is an open area and requested that the denial of the access easement and dedicated right-of way be granted.

Commissioner Weishaupl further discussed his support for improvement of the access easement.

Commissioner Kuehn wanted to know if Forest Service property is located to the south of subject property and asked if there is access to that property.

Ms. Finck stated yes.

Commissioner Johnson asked Ms. Finck to explain where the applicants would be required to improve the access easement from.

Ms. Finck responded that the easement must be improved from Medicine Mountain Road to the proposed lots.

Discussion followed.

Moved by Weishaupl and seconded by Kuehn to approve Layout Plat 10-07 with the following eight (8) conditions:

- 1. That prior to County Board approval of the Final Plat, a 66-foot easement be constructed to a minimum of Local Road Standards or a Subdivision Regulations Variance be obtained waiving this requirement;**
- 2. That at the time of Preliminary Plat submittal, the applicant submits percolation tests and soil profile information for proposed Lots 1 and 2 to be reviewed and approved by the Environmental Planner or obtain approval of a Subdivision Regulations Variance waiving this requirement;**
- 3. That at the time of submittal of the Preliminary Plat, the applicant submits topography or obtains approval of a Subdivision Regulations Variance waiving this requirement;**

4. That a turnaround be constructed in accordance with Table 1 of the Pennington County Subdivision Regulations or the applicant obtains approval of a Subdivision Regulations Variance waiving this requirement;
5. That the applicant submits engineered road construction plans for the access road to be improved to Local Road standards or obtains approval of a Subdivision Regulations Variance waiving this requirement;
6. That the plat identifies the width of Medicine Mountain Road right-of-way on the plat;
7. That the Section Line Highway be improved to Ordinance 14 Standards or the applicant obtains approval of Subdivision Regulations Variance waiving this requirement; and,
8. That approval of this Layout Plat does not constitute approval of any further applications to be submitted for the above-described property.

All voting aye, the Motion carried 6 to 0. Commissioner Fisk abstained.

Vote on Subdivision Regulations Variances:

Moved by Weishaupl and seconded by Andrews to approve a portion of Subdivision Regulations Variance 10-02 to waive the requirement for the scale of the plat to be no greater than 1 inch equals 100 feet; to waive the requirement to improve the Section Lines bordering the property to the north, south and east sides; to waive the requirement for the proposed lots to be served by dedicated public right-of-way and denial to waive the requirement for the access easement to be improved to a 24-foot-wide driving surface.

Vote on Motion: Commissioners Andrews and Weishaupl voted yes. Commissioners Hoffmann, Kuehn, Johnson, and Trautman voted no. Motion failed 2 to 4. Commissioner Fisk abstained.

SUBSTITUTE MOTION: Moved by Kuehn and seconded by Hoffmann to approve Subdivision Regulations Variance 10-02 to waive the requirement for the scale of the plat to be no greater than 1 inch equals 100 feet; to waive the requirement to improve the Section Lines bordering the property to the north, south and east sides; to waive the requirement for the proposed lots to be served by dedicated public right-of-way and to waive the requirement for the access easement to be improved to a 24-foot-wide driving surface and require that it be improved to an 18-foot-wide driving surface.

Commissioner Weishaupl responded that he would not support the motion because there are no topography problems with the subject property that would create a hardship to waive improving the access easement.

All voting, the Motion carried 4 to 2. Commissioners Weishaupl and Andrews voted no. Commissioner Fisk abstained.

7. ORDINANCE AMENDMENT / OA 10-01: Pennington County. To amend Section 500.10 of the Pennington County Subdivision Regulations.

Jennissen reviewed the Staff Report indicating the Ordinance Amendment will amend Section 500.10 of the Subdivision Regulations.

Commissioner Weishaupl questioned the numbered paragraphs in Section 500.9 and 500.10 and also suggested Section 500.10 be renamed to On-Site Wastewater Disposal and Treatment Systems.

Jennissen explained why the changes were being made and further explained the difference between the two Sections.

Commissioner Johnson recommended the Ordinance Amendment be continued to the February 22, 2010, Planning Commission meeting in order to thoroughly review the proposed changes.

Moved by Johnson and seconded by Weishaupl to continue Ordinance Amendment 10-01 to the February 22, 2010, Planning Commission meeting.

Mr. George Ferebee appeared and stated percolation tests should be in one place and not in two places. He would like to have them addressed in the Clean Water Ordinance.

Commission Trautman also commented that she would like to have this item continued to review the proposed changes.

Mr. George Ferebee responded that he would like to see State Legislative Rules followed when items are presented for change.

Moved by Johnson and seconded by Weishaupl to continue Ordinance Amendment 10-01 to the February 22, 2010, Planning Commission meeting.

All voting aye, the Motion carried 7 to 0.

8. REZONE / RZ 09-08 AND COMPREHENSIVE PLAN AMENDMENT / CA 09-06: James Hynes/Aubrey Pope; Frances Aubrey – Agent. To rezone 1.13 acres from General Agriculture District to Highway Service District and to amend the Comprehensive Plan to change the Future Land Use from Plan (PUD Sensitive) to Highway Service District in accordance with Section 508 of the Pennington County Zoning Ordinance.

Lot B of Home Sweet Home Placer MS 804 and Lot B of (Lot 7) Tract 37, all located in Section 4, T2S, R5E, BHM, Pennington County, South Dakota.

(Continued from the January 11, 2010, Planning Commission meeting.)

Jennissen reviewed the Staff Report stating this item has been continued a number of times in order for the applicants to work with the Palmer Gulch KOA Campground. Jennissen added that the applicant has indicated that they have reached an agreement with the KOA Campground and an easement is to be created once they have located the exact location of the existing septic line that runs into the wastewater treatment facility for the KOA Campground.

Staff recommended approval of Rezone 09-08 and Comprehensive Plan Amendment 09-06.

Commissioner Weishaupl expressed concern that the agreement between the two parties be recorded prior to approving this Rezone request.

Jennissen responded that the agreement must be recorded prior to the Board of Commissioners approving the Rezone application.

Commissioner Andrews wanted to know what the residence is being used for.

Jennissen commented that it is used as a vacation home for the current property owners.

Commissioner Johnson expressed concern about access to the property and allowed uses in a Highway Service District.

Mr. Haven Stuck, agent, appeared and reported that the applicants have agreed with the campground to limit the use of the property for residential use only.

Commissioner Andrews questioned how a prospective buyer would know this.

Mr. Stuck commented that an easement would be filed later in the spring of this year indicating that the residence would be limited to residential use only and the document would be filed at the Register of Deeds. He indicated that the property has been owned by the Hynes since the KOA Campground was originally formed and there hasn't been a problem with access to the property since that time.

Mr. Al Johnson, Palmer Gulch KOA Campground, appeared and discussed the proposed zoning to Highway Service and stated he is okay with the provisions worked out through their attorney and added that the campground will also have first right of refusal to purchase the subject property if it ever sells.

Moved by Fisk and seconded by Hoffmann to approve of Rezone 09-08 and Comprehensive Plan Amendment 09-06.

Mr. Johnson asked if this item will be forwarded with the condition of the easement being filed.

Jennissen stated conditions cannot be placed on a Rezone request, but the item will be heard at the February 16th County Board meeting with the recommendation from staff that it be continued until the easement is filed at the Register of Deeds.

Moved by Fisk and seconded by Hoffmann to approve of Rezone 09-08 and Comprehensive Plan Amendment 09-06.

All voting aye, the Motion carried 7 to 0.

10. COUNTY BOARD REPORT

The Board of Commissioners concurred with the Planning Commissions' recommendations from the January 25, 2010, Planning Commission meeting.

11. ITEMS FROM THE PUBLIC

Mr. George Ferebee spoke and stated everyone appearing at the podium should state their name for the record. He also commented on the newspaper article in the *Hill City Prevailor* where the Planning Director was quoted, stating there is evidence for the Clean Water Ordinance and he would like it to be noted that the public wants the evidence to be provided to the them.

12. ITEMS FROM THE STAFF

A. Conditional Use Permit 95-26 - Darryle Johnson:

Discussion was held between Planning Commission and staff regarding a Building Permit that has been applied for by Mr. Johnson to build an attached garage onto a caretaker's residence that may create a violation on the property. The Planning Department requested direction from the Planning Commission on how to proceed with the Building Permit (BP 10-027).

The Planning Commission directed the Planning Director to seek a legal opinion from the State's Attorney's Office before issuing the Building Permit.

B. Building Permit Report. Jennissen reviewed the Building Permit Report for January 2010.

C. Year-End Report. Jennissen reviewed the Year-End Report for 2009.

13. ITEMS FROM THE MEMBERSHIP

Commissioner Johnson asked Planning Commission members to be available for the upcoming public meetings of the Clean Water Ordinance.

14. DISCUSSION ITEMS

There were no discussion items.

15. ADJOURNMENT

Moved by Hoffman and seconded by Kuehn to adjourn.

All voting aye, the Motion carried 7 to 0.

The meeting adjourned at **11:17 a.m.**

Charlie Johnson, Chairperson