

MINUTES
PENNINGTON COUNTY PLANNING COMMISSION
April 26, 2010 @ 9:00 a.m.

County Commissioners' Meeting Room - Pennington County Courthouse

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

STAFF PRESENT: Dan Jennissen, Lysann Zeller, Mandi Schmierer, Rex Fackrell and Jeri Ervin. Patrick Grode (SAO Office).

ROLL CALL

1. APPROVAL OF THE APRIL 12, 2010, MINUTES
Moved by Weishaupl and seconded by Fisk to approve the minutes of the April 12, 2010, Planning Commission meeting. Vote: unanimous (7 to 0).

2. APPROVAL OF THE AGENDA
Moved by Johnson and seconded by Kuehn to approve the April 26, 2010, Planning Commission Agenda with the addition of Item #14, including the Consent Calendar, the removal of Item #9. 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.

3. **CONDITIONAL USE PERMIT REVIEW / CU 09-10:** DTH, LLC; Tom Bodensteiner – Agent. To review a Sawmill 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 09-10 with the following seventeen (17) conditions:

1. **That the Conditional Use Permit be limited to the processing of timber I-beams into boards for Bodensteiner Beamworks, any expansion beyond this will require the Conditional Use Permit to be reviewed;**

2. That the daily hours of operation shall be 8:00 a.m. to 4:00 p.m., Monday through Friday;
3. 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;
4. That the shavings from the timbers be properly disposed of and placed in a dumpster and hauled away on a regular basis;
5. That the applicant ensures the residential character of the property is maintained;
6. That the applicants obtains the necessary permit from the South Dakota Department of Environment and Natural Resources prior to any further activity associated with the sawmill being performed on-site;
7. That no new approaches be allowed;
8. That the applicants obtains the necessary permit from the Rapid City Air Quality Department prior to any further activity associated with the sawmill being performed on-site;
9. That a total of three (3) portable fire extinguishers with a minimum 2 A-BC rating be placed within the building;
10. That an approved Floodplain Development Permit be obtained prior to any further business activity being conducted from the property;
11. That an approved Construction Permit be obtained prior to any further business activity being performed on the property;
12. That prior to the placement of any on-premise signs, the applicant must obtain approval of a Sign Permit;
13. 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;
14. 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;
15. That any trade or stock associated with the business must be stored inside a structure or behind a privacy fence;

16. 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
17. That this Conditional Use Permit be reviewed in three (3) years or on a complaint basis to ensure that all conditions are being met.

Vote: unanimous (7 to 0).

4. **CONDITIONAL USE PERMIT REVIEW / CU 09-12:** Jay Shaffer. To review a single-wide mobile home as a single-family residence and to also allow a recreational vehicle to be used a temporary residence on the property while site work is being completed for the placement of the single-wide mobile home in a General Agriculture District in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

NW1/4SE1/4SE1/4; SW1/4NE1/4SE1/4; N1/2 NE1/4SE1/4; Section 12, T1N, R9E, BHM, Pennington County, South Dakota.

To recommend approval of the extension of Conditional Use Permit / CU 09-12 with the following five (5) conditions:

1. 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;
2. That the property remains free of debris and junk vehicles;
3. That all structures and on-site utilities maintain proper setbacks from property lines, other on-site utilities, and structures as applicable;
4. That the address be posted in accordance with Ordinance #20; and,
5. That this Conditional Use Permit be reviewed on a complaint basis only.

Vote: unanimous (7 to 0).

5. **CONDITIONAL USE PERMIT REVIEW / CU 09-13:** Elsie Hultenschmidt; David Humphrey – Agent. To allow a single-wide mobile home to be used as a temporary residence while constructing a single-family residence in a General Agriculture District in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

Lot 1 less Railroad and Highway Right-of-Ways, Fairview Township #22, Section 1, T1S, R16E, BHM, Pennington County, South Dakota.

To recommend to continue the review of the extension of Conditional Use Permit / CU 09-13 to the September 13, 2010, Planning Commission meeting.

Vote: unanimous (7 to 0).

6. **CONDITIONAL USE PERMIT REVIEW / CU 09- 15:** Andrew Sage. To review a recreational vehicle to be used as a temporary residence while constructing a single-family residence in a Limited Agriculture District in accordance with Sections 206 and 510 of the Pennington County Zoning Ordinance.

Lot 12, Block 3, Pactola Estates, Section 17, T1N, R5E, BHM, Pennington County, South Dakota.

To recommend approval of the extension of Conditional Use Permit / CU 09-15 with the following nine (9) conditions:

1. 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;
2. That the applicant ensures all natural drainage paths are maintained and not blocked;
3. That the address for the property be posted at the entrance to the driveway in 6-inch lettering in accordance with Pennington County's Ordinance #20 and be visible from either direction on Pactola Drive;
4. That an On-Site Wastewater Construction Permit be obtained if any alterations are made to the existing On-Site Wastewater System;
5. That once the single-family residence is habitable, the applicant disconnects the recreational vehicle from the On-Site Wastewater System;
6. That the stick-built residence may not be used as a vacation rental on a nightly or weekly basis;
7. That proper setbacks be maintained for any construction on the property;
8. That the usage of the RV is not to exceed expiration of the Building Permit for the single-family residence on August 3, 2011; and,
9. That this Conditional Use Permit be reviewed in July of 2011 or on a complaint basis to verify that all conditions of approval are being met.

Vote: unanimous (7 to 0).

7. **CONDITIONAL USE PERMIT REVIEW / CU 09-16:** Lord of Life Lutheran Church; Bradley Johnson - Agent. To review an illuminated, on-premise sign within 1,500 feet of a residential zoning district/dwelling unit in a General Commercial District in accordance with Sections 209 and 510 of the Pennington County Zoning Ordinance.

Part of Tract D located in NE1/4NW1/4, Section 9, T1N, R8E, BHM, Pennington County, South Dakota.

To recommend approval of the extension of Conditional Use Permit / CU 09-16 with the following eight (8) conditions:

1. **That all lighting be installed and maintained so as to minimize spillage of light outside of the sign face so as not to create a nuisance and the sign must be effectively shielded to prevent beams or rays from being directed toward any portion of the traveled ways, and must not be of such intensity or brilliance to cause glare or impair the vision of the driver of any motor vehicle or otherwise interfere with any driver's operation of a motor vehicle;**
2. **That the sign be located outside of the boundary easement for the Hawthorn Ditch;**
3. **That the sign conform to all regulations in Section 312 of the Pennington County Zoning Ordinance;**
4. **That the sign shall be painted and maintained in muted colors as to blend into the natural surroundings;**
5. **That the sign be maintained so as to have an aesthetically pleasing appearance at all times and not appear dilapidated;**
6. **That no debris, such as wood, posts, metal or other materials, from the construction or maintenance of the sign shall be left at the location or the vicinity of the sign;**
7. **That only on-premise advertising be allowed on the existing sign and no off-premise advertising is allowed unless an approved Zoning Variance is obtained from the Pennington County Board of Commissioners waiving the distance to the nearest dwelling unit requirement and this CUP is amended to allow for an off-premise sign; and,**
8. **That this Conditional Use Permit be reviewed on a complaint basis only.**

Vote: unanimous (7 to 0).

8. **CONDITIONAL USE PERMIT / CU 10-09:** Leonard and Sally Haberstroh; Jeff Haberstroh – Agent. To allow for a caretaker’s residence in a General Agriculture District in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

All HES #313, Section 1, T2S, R6E, BHM, Pennington County, South Dakota.

To recommend approval of Conditional Use Permit / CU 10-09 with the following ten (10) conditions:

1. That the addresses for both the existing single-family residence and the proposed caretaker’s residence be posted in accordance with Ordinance #20 so that they are visible from Forest Service Road #718 and S. Rockerville Road;
2. That the applicant obtains an approved On-Site Wastewater System Construction Permit to be reviewed and approved by the Environmental Planner prior approval of a Building Permit for the caretaker’s residence;
3. That a reserve drainfield area be dedicated on the site plan for the Building Permit for the caretaker’s residence;
4. That the caretaker’s residence be removed from the property once care is no longer needed by Mrs. Haberstroh;
5. That a new doctor’s note be provided by the applicant if the caretaker’s residence continues to be utilized on the property for the care of Mr. Haberstroh;
6. That prior to issuance of a Building Permit for the caretaker’s residence, staff will ensure all structure located on the property are in conformance with the Building Permit history and Department of Equalization’s records for the property;
7. That prior to issuance of a Building Permit for the caretaker’s residence, the applicant provide proof of legal access from the numbered Forest Service road (718) to the subject property in the form of a Special Use Permit;
8. 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;
9. That this Conditional Use Permit is not valid until the applicant signs the Statement of Understanding, which is available at the Planning Office; and,

10. **That this Conditional Use Permit be reviewed in two (2) years or on a complaint basis to verify that all conditions of approval are being met.**

Vote: unanimous (7 to 0).

END OF CONSENT CALENDAR

9. CONDITIONAL USE PERMIT / CU 10-11: Dale and Karen Geiman. To allow for an existing residence to be used as a temporary residence, while a new home is setup on-site in a General Agriculture District in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

Part of Newton Tin Lode #652, Newton Tin Lode M.S. #652, Section 25, T1S, R4E, BHM, Pennington County, South Dakota.

Commissioner Schmidt asked to have this item pulled from the Consent Calendar to discuss the applicants providing proof of an access easement.

Zeller explained that the applicants did provide her with a copy of the recorded easement that she was unable to locate at the Register of Deeds, prior to today's meeting.

Commissioner Fisk added that an easement can exist without being recorded.

Moved by Weishaupl and seconded by Kuehn to approve of Conditional Use Permit 10-11 with the following nine (9) conditions:

1. **That the address of the property be changed from a Deerfield Road address to a Geiman Drive address and the property address be properly posted in accordance with Pennington County's Ordinance #20 so it visible from the intersection of the road and driveway;**
2. **That prior to issuance of a Building Permit for the new, modular home, the applicant provide proof of legal access, such as an access easement, to the subject property;**
3. **That the existing on-site wastewater system servicing the single-wide mobile home be upgraded to handle the additional bedroom in the new, modular home and that the upgrade be installed in compliance with the On-Site Wastewater Construction Permit approved by the Environmental Planner;**

4. **That the fee for the On-Site Wastewater Construction Permit be paid by the applicants prior to or at the same time as applying for the Building Permit for the new, modular home;**
5. **That the single-wide mobile home be disconnected from the existing septic system once the new, modular home is habitable;**
6. **That the single-wide mobile home be removed from the property once the new, modular home is habitable and the applicants have moved in;**
7. **That a Removal Permit be obtained for the single-wide mobile home and addition prior to its removal from the property;**
8. **That this Conditional Use Permit is not valid until the applicant signs the Statement of Understanding, which is available at the Planning Office; and,**
9. **That this Conditional Use Permit be reviewed in one (1) year or on a complaint basis to verify that all conditions of approval are being met.**

All voting aye, the Motion carried 7 to 0.

10. CONDITIONAL USE PERMIT REVIEW / CU 09-14: Ryan and Gail Wells. To review a recreational vehicle to be used as a temporary residence while remodeling the interior of an existing agriculture building into a single-family residence in a General Agriculture District in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

NW1/4SE1/4, Section 12, T1N, R9E, BHM, Pennington County, South Dakota.

Schmierer reviewed the Staff Report indicating this is a review of a recreational vehicle to be used as a temporary residence while remodeling the interior of an existing agriculture building into a single-family residence.

Staff recommended Conditional Use Permit 09-14 be revoked and the RV no longer be allowed to be utilized as a residence on the property because the applicants have not met the original Conditions of Approval. Specifically, a Building Permit has not been obtained and staff has also not received any receipts from the applicant with regards to the dumping of the waste off-site.

Schmierer further discussed that the applicant did visit with her prior to the meeting today and wanted to apply for a Building Permit and provided a receipt for the dumping of the waste.

Commissioner Andrews asked if there was a Building Permit issued for the structure on the property.

Schmierer stated yes and added that the previous owner, Ryan Kelly, obtained the permit.

Commissioner Andrews also questioned whether a septic tank had been installed on the property where some of the dirt has been excavated.

Schmierer responded yes, but it is not hooked up at this time.

Commissioner Schmidt asked staff if the owners were aware of the conditions when the item was approved in April of 2009.

Schmierer said yes and added that the applicants did sign a Statement of Understanding noting the conditions of approval.

Commissioner Hoffmann asked staff if the applicants had contacted the Planning Office with regards to any delays in building or asking for an extension.

Schmierer stated staff was not contacted.

Mrs. Gail Wells, applicant, appeared and reviewed their application. She discussed the septic system, adding that they were given the wrong pipe in October and because of winter weather conditions, they were unable to finish it. Then with the recent rains, the road conditions have been unbearable to travel on. They are hoping to get the leach field done by the second week in May. She further explained that they also tried to contact the previous owner to get more information on the building because the septic line and water line may be located too close together, but he has not returned their phone calls. And with some medical conditions she has experienced in the past year, this has also delayed the project. Mrs. Wells requested a six month extension in order to get everything done.

Commissioner Kuehn asked Mrs. Wells why the remodel had not started until October of 2009 when the review was done in April of 2009.

Ms. Wells stated electricity had to be brought to the property and they also needed to receive approval on a few other projects before they could start remodeling.

Commissioner Andrews questioned if there is a well on the property.

Ms. Wells stated there is but when it was tested, fecal matter was found in the well and they have shocked it twice in order to hopefully use it. If not, they have a cistern to use.

Discussion followed.

Moved by Hoffmann and seconded by Kuehn to continue the review of Conditional Use Permit 10-11 to the October 25, 2010, Planning Commission meeting.

Commissioner Weishaupl asked staff if the applicants still need to meet the original conditions of approval.

Commissioner Johnson discussed the original Conditions of Approval, specifically Conditions #7 and #10. He encouraged the applicant to work with staff to meet those conditions and asked Mrs. Wells to provide receipts regarding the dumping of the waste.

Ms. Wells explained that they dump the waste on EAFB and are not given a receipt.

Commissioner Schmidt asked about the site on EAFB and asked if this is a campground.

Ms. Wells stated yes.

Jennissen added that Conditions #11 and #15 would need to be changed to reflect the motion that this item is continued to the October 25, 2010, Planning Commission meeting.

Moved by Hoffmann and seconded by Kuehn to continue the review of Conditional Use Permit 09-14 to the October 25, 2010, Planning Commission meeting.

All voting aye, the Motion carried 7 to 0.

11. CONDITIONAL USE PERMIT / CU 10-08: Chris and Jolene Hinckley. To allow for an Adult Foster Care Home in a Suburban Residential District in accordance with Sections 208 and 510 of the Pennington County Zoning Ordinance.

Lot 4, Block 1, Palmer Subdivision Addition, Section 14, T2N, R6E, BHM, Pennington County, South Dakota.

Schmierer reviewed the Staff Report indicating the applicants have applied for a Conditional Use Permit to allow for an Adult Foster Care Home in order to care for two elderly women.

Staff recommended approval of Conditional Use Permit #10-08 to allow for an Adult Foster Care Home with the following fourteen (14) conditions

1. That a maximum of two (2) clients, not related to the owners of the property, be allowed to stay at the home at one time;
2. That the business be conducted by members of the family residing on the premises;
3. That a Building Permit, for which Administrative Fees will be applied, be obtained for the basement finish;
4. That prior to the continued operation of the proposed use, the existing septic system shall be upgraded to handle the increase in use which will require that the

applicants obtain an On-Site Wastewater Construction Permit from the Pennington County Planning Office;

5. That the applicants obtain approval from the South Dakota Department of Environment and Natural Resources for the existing means of wastewater disposal servicing the residence prior to operation of the Adult Foster Care;
6. That the applicants identify the location of a reserve drainfield area on a site plan for the property;
7. That the applicants ensure the residential character of the property is maintained;
8. That a minimum of three (3) off-street parking spaces be provided; and that each parking space shall not be less than one hundred sixty two square feet, nor less than nine feet by eighteen feet, surfaced with gravel, concrete or asphalt and maintained in such a manner that no dust will result from continuous use;
9. That the applicants comply with South Dakota Administrative Rules 44:04:19 which regulates Adult Foster Care Homes and requires a license to be maintained;
10. That Building Permits be obtained for any structure exceeding 144 square feet or located on a permanent foundation that includes the necessary site plans to be reviewed and approved by the Planning Director;
11. That the address be properly posted on both the residence and at the approach so it be visible in both directions in accordance with Pennington County's Ordinance #20;
12. That if the home is to have handicapped clients the applicants provide for handicapped accessibility, which would include a handicapped ramp;
13. That this Conditional Use Permit not be valid until the applicant signs the Statement of Understanding, which is available at the Planning Office; and
14. That this Conditional Use Permit be reviewed in one (1) year.

Commissioner Weishaupl questioned the number of clients allowed with regards to Condition #1.

Schmierer stated the applicants are only licensed to provide care for two clients in their home.

Commissioner Weishaupl wanted to know what would be required if the applicant's parents needed care. Would they be able to move in without any notification to the Planning Department?

Schmierer explained that that type of request would be considered a caretaker's residence.

Commissioner Hoffmann asked staff how long the applicants have been providing care for the two ladies.

Schmierer believed the use had been occurring since October or November of 2009. She further explained that the applicant was informed that she would need a Conditional Use Permit before she proceeded with care for anyone in their home.

Commissioner Johnson expressed concern that this use may be considered a home occupation and the owner is the one to operate a home business, not a renter.

Discussion further followed between staff and the Planning Commission regarding the commercial nature of the request, upgrade required for the septic system, and the potential for increased traffic to the area.

Chris and Jolene Hinckley, applicants, appeared and addressed concerns from the Planning Commission. She stated the property is being purchased as a Contract for Deed and they moved into the house in December of 2009 and the two elderly ladies were not brought to the house until January 4, 2010. They purchased the house with the basement finished and are agreeable to the upgrade in size of the septic system and are working with the previous owners to get this done.

Commissioner Weishaupl asked Mrs. Hinckley if she had been providing care for her two clients at another location.

Mrs. Hinckley stated no and explained that her place of work (The Daisy House) had originally been interested in acquiring the Hansen's property in order to provide care for elderly people but then decided not to move forward with the project.

Commissioner Weishaupl wanted to know if the two elderly women are in decent health because the property is located at least eight miles from the nearest medical facility.

Mrs. Hinckley responded that they are: one lady is 96 years old and moves around really well, but she does have some dementia issues. The other lady has Parkinson disease, but walks by herself. She further added that the two ladies are taken to the Daisy House during the day and are at home with them at night and they are never left alone.

Commissioner Hoffman asked Mrs. Hinckley if they knew they needed the proper permits to do this, even when staff had informed them of such, prior to the operation of the Adult Foster Care Home.

Mrs. Hinckley stated she spoke with other Adult Foster Care Homes in Rapid City and they were unaware that a Conditional Use Permit was required.

Commissioner Schmidt asked Mrs. Hinckley if she spoke with the State of South Dakota.

Mrs. Hinckley responded yes, the Department of Health, and they came to the property in January of 2010 and they were also unaware a Conditional Use Permit was also needed. She and her husband became aware when a note was left in their door by the Ordinance Officer from Pennington County, and she spoke with him in regards to the Zoning Ordinance and what was needed for approval.

Commissioner Schmidt asked Mrs. Hinckley if she was aware of the Palmer Subdivision Water Association rules where water is provided only for residential and domestic use.

Ms. Hinckley responded that she did not know about that and has not spoken to anyone about it.

Commissioner Weishaupl questioned Mrs. Hinckley about the other Adult Foster Care Homes they had contacted and asked the location of them.

Mrs. Hinckley explained that the care facilities she contacted are located within the city limits of Rapid City.

Commissioner Schmidt wanted to know who takes care of the two ladies while the applicants work during the day.

Mrs. Hinckley explained that she transports both of her clients to the Daisy House during the day and she also works there and then brings them home with her at night.

Mr. Ken Murphy, neighbor, appeared and expressed opposition to the application. He stated that his property is located next to the applicants and he was told when he purchased his property, the neighbors were thinking of operating an Adult Foster Care Home. He expressed concern with property values and this application opening the door for other businesses to come into a residential area. He is opposed to the commercial nature of the operation, and feels the applicants are putting the community in jeopardy.

Mr. Mike Kubal, neighbor, appeared and expressed opposition to the application. He expressed concern that an RN is not on-site, since the two clients are elderly in age. He further discussed the applicants transporting the two clients every day to the Daisy House, especially during the winter, when the roads are icy and snow covered. Mr. Kubal also spoke of the limited water supply in the area and the required upgrade for the wastewater system. He wanted to know the conditions the applicants would have to abide by and who will enforce them.

Commissioner Kuehn questioned if the holding tank for the water system is sized wrong and wanted to know if the subdivision is short on water or on water pressure.

Mr. Kubal stated there is a 50,000 gallon holding tank and they are short on water pressure at times and, at certain times, they have run out of water and then restrictions are enforced for the days and times when water can be used.

Commissioner Schmidt discussed the Water Association's By-Laws where water use is for residential and domestic purposes only and wanted to know if this would limit the applicants to allow their proposed use.

Mr. Kubal responded yes, but the Association would have to meet to see whether the applicant's application would be included as a use under those restrictions. The use would have to be approved as a group.

Ms. Wanda Gladback, neighbor, appeared and stated the owners of the property, the Hansens, were mailed a copy of the Water Association's By-Laws many times. She also spoke of the applicants visiting her property last summer and of their intentions to run an Adult Foster Care Home. She further added that she later spoke to the Hansens and they were told that the applicants had decided not to proceed with providing care and decided to do something different, but then they still went ahead and brought the two clients into their home. She asked that the use not be approved because of setting precedence in the area.

Commissioner Kuehn asked Ms. Gladbeck when she was told by Mrs. Hinckley when they would have their Conditional Use Permit heard.

Ms. Gladbeck stated it was in September or October of 2009.

Ms. Jan Osheim-Kubal, neighbor, appeared and spoke in opposition to the request and indicated the applicant's gesture is very noble but providing elderly care in a residential area turns it into a business/commercial venture. She loves her quiet residential area and doesn't believe the applicants were being honest in letting the neighbors know what their intentions were. She expressed concern with one of the clients having dementia. She feels this requires a substantial amount of attention and care. She also spoke of concern for water in the area and that each homeowner purchases water rights when each property is purchased. Each homeowner is given of a copy of the Water Association rules which is for domestic and residential use only. She further explained that the water tank is located on top of a hill and, during the summertime, the subdivision usually runs out of water.

Commissioner Weishaupl addressed that the area is residential and stated the proposed use would be an intrusion and feels this is a business venture.

Commissioner Andrews also expressed concern allowing this type of use in a residential area. He further spoke of water problems for the area and the use being commercial.

Mrs. Hinckley addressed the concerns of the neighborhood and stated she did know that she needed a Conditional Use Permit and explained that the date the neighbors are

referencing is when the Daisy House wanted to apply for the business at that time, not them. She also stated they are not allowed to have an RN on-site. There are alarms on the doors and she can see the bedrooms. She addressed the water issues and stated she will pay more to the Water Association, if that is what is needed to have water to the property. She feels they are not a nuisance to the area.

Commissioner Hoffmann asked Mrs. Hinckley if she had spoken to the neighbors prior to proceeding with the Adult Foster Care Home.

Ms. Hinckley stated yes, but only when the Daisy House was looking to do the Adult Foster Care Home in the area.

Commissioner Hoffmann expressed concern that the applicants knew they needed to apply for a Conditional Use Permit and stated he could not support approval of the use.

Commissioner Schmidt asked the Hinckleys if they received information or knew about the Water Association regulations.

Mr. Hinckley stated yes.

Commissioner Johnson reviewed the five factors in considering a Conditional Use Permit and reviewed these with the Planning Commission.

Moved by Weishaupl and seconded by Hoffmann to deny Conditional Use Permit 10-08.

Commissioner Hoffmann spoke of a reasonable timeframe for compliance and discussed a date for compliance and review.

Jennissen explained that anyone can appeal the decision of a Conditional Use Permit within five working days. The appeal will then be heard before the Board of Commissioners.

Commissioner Johnson asked the Ordinance Officer to also explain compliance with any violations.

The Ordinance Officer, Rex Fackrell, responded that homeowners are generally given 30 days and then the matter would be turned over to the State's Attorney's Office.

Commissioner Weishaupl stated that 30 days is too short of a timeframe and recommended 6 months for the applicants to come into compliance and amended his Motion as such.

Commissioner Kuehn stated he could not support the motion to deny.

Commissioner Schmidt questioned what would happen if the applicants did not comply within the six month timeframe.

Patrick Grode, from the State's Attorney's Office, suggested the Motion could reflect that enforcement would not begin for a period of 6 months and, in the event the applicants do not comply, this would be a violation under the terms of the Zoning Ordinance. For every day the applicants do not comply, including the 6 months, they would be facing a fine. If the applicants do comply, then there would be no enforcement and no violation.

Moved by Weishaupl and seconded by Hoffmann to call the Question. Vote on Question. Motion carried 6 to 1. Commissioner Schmidt voted no.

Vote on Original Motion to deny. Commissioner Johnson asked Attorney Grode what language would be incorporated in the Motion. Attorney Grode state: "That enforcement would not begin for six months." Commissioner Schmidt added that with the incorporation of that language, he would then agree to calling the Question.

Moved by Weishaupl and seconded by Hoffmann to call the Question. Vote on Question. Motion carried 7 to 0.

Vote on Original Motion to deny Conditional Use Permit 10-08 and that enforcement would not begin for six months. All voting, the Motion carried 6 to 1. Commission Kuehn voted no.

12. CONDITIONAL USE PERMIT / CU 10-07: Kim Smith/I-90 Cold Storage. To allow for a 198 foot tall wind generator tower in a Heavy Industrial District in accordance with Sections 212-C and 510 of the Pennington County Zoning Ordinance.

Lot 1 of Tract B in N1/2SE1/4 and the west 606.12 feet of Lot H-2 of Tract B, Section 27, T2N, R8E, BHM, Pennington County, South Dakota.

Jennissen reviewed the Staff Report indicating the applicant has applied for a Conditional Use Permit to allow for a 198 foot tall wind generator tower. In accordance with SDCL 43-13-24, the applicant must obtain written permission from the adjacent property owners. Staff recommends prior to Planning Commission approval, the applicant obtain written permission from the three affected property owners.

Commissioner Schmidt left the meeting at 11:01 a.m.

Commissioner Schmidt returned to the meeting at 11:02 a.m.

Jennissen requested this item be continued to the May 10, 2010, Planning Commission meeting in order for the applicant to obtain written permission from the adjacent property owners.

Commissioner Weishaupl wanted to know if the applicant also needs permission from the properties across the railroad, which are not adjacent to the property.

Jennissen stated no and further explained that written permission is only needed from the adjacent property owners, according to State Law.

Commissioner Schmidt questioned if the 122 foot wind generator tower approved in February was built.

Jennissen stated it has not been built.

Commissioner Hoffmann commented that an Ordinance needs to be in place to coordinate where wind generators are placed.

Commissioner Andrews asked staff if the new residential area located south of the proposed wind tower received notices about the change in height of the tower.

Jennissen responded that this area is located more than 500 feet from the subject property and would not have received notices.

Commissioner Andrews expressed concern about the line of sight for these residences and the height of the tower.

Commissioner Schmidt spoke of the Planning Commission recommending the applicant notify more surrounding property owners and also spoke of the Planning Commission placing a moratorium on wind generator towers until an Ordinance is in place.

Jennissen responded that the Planning Commission may suggest the applicant notify more surrounding property owners than what is required, but it is not required, according to the Zoning Ordinance.

Discussion followed.

Moved by Weishaupl and seconded by Kuehn to continue Conditional Use Permit 10-07 to the May 10, 2010 Planning Commission meeting.

All voting aye, the Motion carried 7 to 0.

13. CONDITIONAL USE PERMIT / CU 10-10: Trevor and Laura Bryan. To allow for a Recreational Resort to operate Crystal Caverns in a General Agriculture District in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

The N1/2NW1/4SW1/4, Lot A of S1/2NW1/4 SW1/4 and one acre in the NE1/4SW1/4, all located in Section 12, T1N, R6E, BHM, Pennington County, South Dakota.

Jennissen reviewed the Staff Report indicating the applicants have applied for a Conditional Use Permit to allow for a Recreational Resort to operate Crystal Caverns. The applicants have indicated the recreational resort is to consist of cave tours, hiking trails, a zip line, and wine tours within the cave.

The property is the location of the former Crystal Caverns, located at the very end of Nameless Cave Road. Existing structures consist of a renovated singlewide manufactured home, gift shop/entrance to the cave, picnic shelter and a small single-family residence. The property has been vacant since August of 2008. Section 401-C states: "If a nonconforming building, structure, or portion thereof becomes vacant and remains unoccupied for a continuous period of one (1) year, any subsequent use or occupancy of the land and premises shall be in conformance with the official controls pursuant to the provisions of SDCL 11-2-26 and 11-2-27." The property was a legal non-conforming use; however, since the cave has not been in operation for a period of greater than one (1) year, the commercial use cannot operate without obtaining a Conditional Use Permit for a Recreational Resort.

Staff viewed this use as a new use to the area and given the proposed commercial use on a dead end road, septic issues and topography, staff cannot recommend approval of the proposed uses.

Staff recommended denial of Conditional Use Permit 10-10.

Commissioner Weishaupl questioned what staff would recommend for a use to the area, if not a commercial use. He feels the use is appropriate for the area.

Jennissen stated staff would recommend a residential use for the area.

Commissioner Weishaupl also spoke of the City of Rapid City's comments indicating Nameless Cave Road as a collector street extending through the property.

Jennissen reviewed an aerial photo showing Nameless Cave Road to be extended through the property.

Commissioner Johnson asked staff to clarify the comments from the Highway Department where it indicates the Highway Department maintains the gate to the resort entrance.

Jennissen responded that this should state: "That the road be maintained up to the gate."

Commissioner Schmidt spoke of staff's recommendation to deny and also the requested second means of ingress/egress.

Jennissen commented that Condition #2 would have to be modified if the Planning Commission does not recommend a second means of ingress/egress.

Trevor and Laura Bryan, applicants, appeared and discussed the proposed application. Mrs. Bryan spoke of the required turnaround and then discussed Nameless Cave Road designated as a collector street by the City of Rapid City. She stated this would deter their parking spots and they would need to revisit the city and reconfigure their parking

area, based upon this issue. Mr. Bryan stated the cave has been in business since 1935 and welcomed the opportunity to move forward to bring the property into compliance.

Commissioner Weishaupl asked staff if the applicants would need to be in contact with the city for any of the Conditions of Approval.

Jennissen explained that the applicants would need to contact them with regards to the proposed collector street.

Commissioner Schmidt suggested the applicants contact the City of Rapid City first and then come back to the Planning Commission before proceeding.

Commissioners Hoffmann and Kuehn also supported the applicants working to resolve the collector street issue before proceeding with the County.

Commissioner Weishaupl asked the applicants if they had any problems with the Conditions of Approval.

Mr. Bryan stated no and further spoke of the turnaround for the emergency vehicles.

Jennissen indicated the applicants should work with the Fire Coordinator to see what will be needed for emergency vehicles.

Commissioner Hoffmann suggested that approval is received from the City, that an emergency turnaround is constructed, and adequate parking spaces be provided prior to the operation of the proposed uses.

Jennissen responded that a site plan still needs to be provided from the applicant showing that adequate parking will be provided.

Commissioner Johnson recommended this item be continued for 90 days in order for the applicant to work with the City and to also provide information to the Planning Office on the requirements needed for approval.

Discussion followed on continuing the item and vacating Nameless Cave Road as a collector street through the city.

Moved by Weishaupl and seconded by Fisk to continue Conditional Use Permit 10-10 to July 26, 2010, Planning Commission meeting.

Mrs. Bryan asked if they resolved the collector street issues and received approval of the wastewater before July 26, 2010, can they appear earlier before the Planning Commission.

Commissioner Hoffmann stated no.

Discussion followed.

SUBSTITUTE MOTION: Moved by Weishaupt and seconded by Fisk to continue Conditional Use Permit 10-10 to the May 24, 2010, Planning Commission meeting.

All voting aye, the Motion carried 7 to 0.

14. CONDITIONAL USE PERMIT REVIEW / CU 08-38: Jef Wilsey/Esther Merrill. To review a single-wide mobile home as a permanent residence in a General Agriculture District in accordance with Sections 205 and 510 of the Pennington County Zoning Ordinance.

The E1/2NE1/4 less Right-of-Way; SE1/4SE1/4; Government Lots 1-2, Section 21, T6N, R17E, BHM, Pennington County, South Dakota.

(Continued from the March 22, 2010, Planning Commission meeting.)

Moved by Fisk and seconded by Kuehn to continue the review of Conditional Use Permit 08-38 to the May 10, 2010, Planning Commission meeting.

All voting aye, the Motion carried 7 to 0.

15. COUNTY BOARD REPORT

The Board of Commissioners concurred with the Planning Commissions' recommendations from the April 12, 2010, Planning Commission meeting with the exception of Planned Unit Development Amendment 10-01 (Tammy Brodie-Gusmano). A motion was made to bring this item back before the Planning Commission.

16. ITEMS FROM THE PUBLIC

Mr. George Ferebee appeared and spoke of the legal notice for the Planning Commission meeting scheduled for April 27th at 6 p.m. He questioned if the wording from the legal advertisement provides sufficient notice.

Patrick Grode, from State's Attorney's Office, appeared and stated it appears the advertised legal notice does provide sufficient notice.

Mr. Ferebee further stated that, in his opinion, an Ordinance cannot be added to an already existing Ordinance.

Patrick Grode reiterated again that the notice is sufficient and you can add an Ordinance to the Zoning Ordinance.

Discussion followed.

Mr. Ferebee also spoke of jurisdictional matters and feels the Planning Commission cannot move forward with the scheduled meeting on the proposed On-Site Wastewater Treatment Systems Ordinance since they do not have the authority to review it.

Commissioner Johnson stated the legal notice will be reviewed later today for another legal opinion and Mr. Ferebee will be notified if the meeting is cancelled.

17. ITEMS FROM THE STAFF

A. 319 Project – Spring Creek: Jennissen informed the Planning Commission that there is an Open House scheduled for Thursday, April 27th at 6 p.m. at the Senior Center in Hill City.

18. ITEMS FROM THE MEMBERSHIP

There were no items from the membership.

19. DISCUSSION ITEMS

There were no discussion items.

Commissioner Schmidt left the meeting at 12:17 p.m.

20. ADJOURNMENT

Moved by Hoffmann and seconded by Kuehn to adjourn.

All voting aye, the Motion carried 6 to 0.

The meeting adjourned at **12:19 a.m.**

Charlie Johnson, Chairperson