

**PENNINGTON COUNTY BOARD OF COMMISSIONERS
PROPOSED WORK SESSION SPECIAL AGENDA
JANUARY 29, 2021
10:00 A.M.
COMMISSION CONFERENCE ROOM
COUNTY ADMINISTRATION BUILDING**



*Gary Drewes, Chair, District 5
Ron Rossknecht, Vice Chair, District 1*

*Lloyd LaCroix, District 2
Deb Hadcock, District 3
Travis Lasseeter, District 4*

Agenda disclaimer: The preferred practice of the Board is to proceed through the agenda in the order it is published. From time to time, agenda items may be disposed of quickly leaving a gap in the meeting agenda prior to the next advertised agenda item start time. To utilize time effectively in those circumstances, the Board may move items up on the agenda to fill those gaps.

1. Call to Order
2. Review and Approve Agenda
3. Executive Session per SDCL 1-25-2
 - a. Consulting with legal counsel per SDCL 1-25-2(3)
4. Commission Work Session

Discussion topics to include:

 - Road Committee
 - a. Goals and objectives
 - b. Composition
 - c. Separation from HWY responsibilities
 - Zoning and Rezoning
 - a. Future Land Use Designations
 - b. Appellate structure
 - Subdivision Regulations Amendments
 - a. Platting
 - Conditional Use Permits
 - a. Criteria for Approval
 - b. Appellate structure
 - Staff Reports
 - a. Feedback with proposed changes
 - Ordinance Violations
 - a. Procedure
 - Future Zoning Ordinance Amendments
 - a. Section 100 – Statutory Authorization, Jurisdiction and Definitions
 - b. Section 106 - Nuisance
 - c. Section 204i & 304 – Mobile Homes
5. Adjourn

Pennington County fully subscribes to the Americans with Disabilities Act. If you desire to attend this public meeting and need accommodations, please notify the Commissioners' Office at (605) 394-2171 at least 24 hours prior to the meeting so that appropriate services and auxiliary aids are available.



Scan the code to access the agenda packet online.

PLANNING WORK SESSION

January 29, 2021

ROAD ADVISORY COMMITTEE

- **GOAL:**
 - To address road improvements, operations, and services within Pennington County due to future development.
- **OBJECTIVES:**
 - Identify traffic and transportation safety, capacity and performance needs;
 - Develop policy, educational, capital and operating improvements (as appropriate) to address the needs;
 - Assess the benefits, costs and risks of the proposed improvements; and
 - Set out a multi-year transportation action program.
- **JOB:**
 - To advise the Highway Superintendent and Board of Commissioners on transportation needs and recommend actions and priorities for the transportation action program.
- **COMPOSITION:**
 - Seven members – One representative from the Planning Commission, one representative from the Board of Commissioners and five Pennington County residents appointed by the Board of Commissioners.
 - The Highway Superintendent, Drainage Engineer, and Planning Director provide technical information and assistance as requested by the committee.

ZONING AND REZONING

- **PURPOSE:**
 - The purpose of zoning is to allow local communities the ability to regulate and control land and property use.
 - Provide the opportunity to stimulate or slow down development in specific areas.
 - The comprehensive plan, the zoning ordinance, and other land-use regulations must work together to achieve orderly growth.
- **OBJECTIVE:**
 - Protect individual property owners from harmful, inconsistent or undesirable uses of adjacent property.
 - Provide orderly and systematic transition in land use that benefit all land uses through public hearings and local decisions.
 - Zoning is the most common technique local governments use to influence the location and density of development.
- **AUTHORITY:**
 - How a property is zoned determines the types of “uses by right” allowed on the property.
 - Access road capacities (width and composition) should be considered when rezoning property.
 - Control of development is in ZONING.

ZONING CONSIDERATIONS

- WHAT TO CONSIDER:
 - Planning Principles.
 - E.g., character of the area, harmony with existing land uses, etc.
 - Staff identifies these in their report.
- WHAT NOT TO CONSIDER:
 - Convenience and pecuniary gain “are not proper grounds upon which to rezone property or declare a zoning law unconstitutional.”
 - *Chokecherry Hills Estates, Inc. v. Deuel Cty.*, 294 N.W.2d 654, 657 (S.D. 1980).

ZONING AND REZONING

- GOVERNING STATUTE:
 - SDCL 7-8-27. All matters properly before the Board may be appealed by an aggrieved person.
- REVIEWED FOR ARBITRARINESS:
 - Rezoning is a Legislative act, so the Board's decision is reviewed for arbitrariness.
 - In other words, courts won't substitute their judgment for the Board's.
- WHAT IS ARBITRARINESS:
 - A decision is arbitrary if the Board "has relied on factors which [the Legislature] has not intended for it to consider, entirely failed to consider and important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the [Board], or is so implausible that it could not be ascribed to a difference in view or the product of . . . expertise."
 - Examples: (1) convenience, (2) money, (3) personal dislike.

SUBDIVISION REGULATIONS AMENDMENTS

- **PURPOSE:**
 - To simplify the platting process in Pennington County.
 - To address concerns regarding utilities, road improvements, and grading and drainage during development.
 - To provide for assurances that improvements are installed and completed by the developer.
- **PROPOSED PROCESS:**
 - Proposed subdivision development plans must be approved by the County in accordance with the following procedures which include three principal steps.

| | | |
|----------------|-------------|--|
| Step 1: | | Layout (Concept) Plan |
| | Review by | Planning Director, County Floodplain Administrator, and Highway Superintendent |
| | Approval by | None |
| Step 2: | | Preliminary Plan (in coordination with rezoning) |
| | Review by | Planning Director, County Floodplain Administrator, and Highway Superintendent |
| | Approval by | Planning Commission and Board of County Commissioners |
| Step 3: | | Final Plan and the Plat (before a building permit is approved) |
| | Approval by | Planning Director |

SUBDIVISION REGULATIONS AMENDMENTS (CON'T)

- PROPOSED PROCESS:
 - Subdivision Plan Exemptions - Minor Plat and Replats
 - Minor Plat Requirements - ***A minor plat is a plat containing not more than three lots fronting on an existing road*** and meet ALL of the following requirements:
 1. Does not require the dedication of right-of-way or construction of new roads;
 2. Does not require the creation of easements;
 3. Does not create a lot or tract eligible for any public or private improvements other than sidewalks;
 4. Does not landlock or otherwise impair convenient ingress or egress to or from the rear side of the subject tract or any adjacent property;
 5. Does not significantly change any plans that have been prepared for the placement of any other utilities in the subdivision;
 6. Does not adversely affect the remainder of the parcel or adjoining property; and,
 7. Does not conflict with any provision or portion of the comprehensive plan, official map, zoning ordinance, or these regulations.
 - Replat Requirements. -
 1. A replat **includes all the requirements of a minor plat.**
 2. A replat must include the minor vacation of existing platted lines to achieve either a reconfiguration of the existing recorded plat or change the number of recorded lots in the subdivision only where the perimeter of the tract being replatted is not altered by the replat.
 3. A replat must certify that the platting vacates the existing plat.

CONDITIONAL USE PERMITS

- PURPOSE:

- A conditional use permit is a mechanism by which the county may require special conditions on development or on the use of land in order to ensure that designated uses or activities are compatible with other uses in the same land use district and in the vicinity of the subject property.

- CRITERIA FOR APPROVAL:

- Criteria 1: The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, or general welfare.
 - Application guideline: Explain how the proposed land use will fit into the neighborhood. If there is going to be lighting, noise, outdoor storage, traffic, or other outside activities, explain how the activities will be limited to a reasonable level.
- Criteria 2: The uses, values and enjoyment of other property in the neighborhood for purposes already permitted may not be in any foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use.
 - Application guideline: Explain how the proposed land use will fit into the neighborhood and what will be done to avoid potential nuisances, such as limiting the hours of operation, noise control measures, adequate parking, paving the parking area, or the screening of outdoor storage.
- Criteria 3: That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
 - Application guideline: Explain how the proposed land use will not interfere with the development of the surrounding property.

CONDITIONAL USE PERMITS (CON'T)

- Criteria 4: That adequate utilities, access roads, drainage and other necessary site improvements will be provided.
 - Application guideline: Explain what impact the proposed use has on such things as water, septic, storm water, electricity, and traffic. Provide information on improvements that may be needed or if additional buildings are needed.
- Criteria 5: Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
 - Application guideline: Provide information on vehicle traffic that the proposed use will generate include frequency and types of vehicles.
- Criteria 6: That the Conditional Use will conform to all applicable regulations of the district in which it is located.
 - Application guideline: Review the current zoning districts to ensure your project is compliant and in harmony with current land use guidelines.
- Criteria 7: That the Conditional Use is consistent with the adopted County Comprehensive Plan.
 - Application guideline: Review the current Pennington County Comprehensive Plan to ensure your project is compliant and in harmony with future land use guidelines.

STAFF REPORTS

- What is needed to make an informed decision?
- Simplification of Staff Reports
 - Tables and photos.
 - Bottom Line Up Front
 - What is being requested.
 - Who is requesting it.
 - Location of the request.
 - Compliance with ordinances.
 - Compatible with surrounding land uses.
 - Recommendation / Conditions of Approval.
- What other information can we provide to help you make your decision?

ORDINANCE VIOLATION PROCEDURE

- WHAT IS AN ORDINANCE VIOLATION?
 - It's essentially a criminal action that's punishable by a fine, incarceration in the county jail, or both.
 - Maximum penalty: \$500 fine, 30 days' incarceration in the jail, or both.
 - Civil remedies are also available.
 - Example: injunction.
- PLANNING DEPARTMENT'S ROLE:
 - Planning's role is to investigate violations—to gather the facts.
 - Looking for probable cause a violation exists: more probable than not that a crime has been committed and it's been committed by you.
 - Planning also works with the person and offer solutions to get the property into compliance.
 - Examples: (1) property needs either a CUP or a PUD overlay; (2) get building permit.

ORDINANCE VIOLATION PROCEDURE

- SAO'S ROLE:
 - Prosecute case.
 - (1) Work with owner to bring the property into compliance.
 - This is the normal procedure in Pennington County.
 - (2) Proceed with formal charges or pursue civil remedies.
- BOARD'S ROLE:
 - The Board is like the Legislature: it passes ordinances (local laws) based on the authority delegated by Legislature.
 - The ordinances set expectations for how people act in Pennington County.
 - In other words, what a person may lawfully do or what a person may not lawfully do.
- RESOLUTION OF VIOLATION:
 - Resolving an ordinance violation should be left to the Planning Department and the SAO.

ORDINANCE VIOLATION PROCEDURE

- PROCEDURE

- Complaint basis only.
- Site visit / contact with owner to substantiate the complaint.
- First Notice is sent.
- Contact with owner to determine plan of compliance.
- Final Notice if no action is taken, contact ceases or notices ignored.
- Turned over to SAO.
- Letter sent by SAO.
- If no action is taken, contact ceases or notice ignored, an Affidavit is created and sent to Sheriff's Office for "serving of notice".
- Court date is set.

FUTURE ZONING ORDINANCE AMENDMENTS

- Section 100 – Definitions (Concerns of Planning Commission and Board of Commissioners)
- Ordinance 106 – Nuisance.
- Section 204i and 304 – Mobile, Manufactured and Modular Homes.
 - Currently a CUP is required for any structure under 20' x 20'.
 - Remove the CUP requirement if mobile home meets HUD requirements and is at least a 14' x 56' mobile, manufactured, or modular home.
 - Set basic criteria for Building Permit approval.
 - Variance required if criteria is not met.