

**LAWRENCE COUNTY COMMISSIONERS MEETING – August 22, 2023 page-1**

Chairman Robert Ewing called the regular meeting of the Lawrence County Commissioners to order and the Pledge of Allegiance was conducted at 8:00 a.m. on August 22, 2023 at Deadwood City Hall located at 102 Sherman Street, Deadwood, SD with Commissioners Brandon Flanagan, Randy Deibert, Richard Sleep and Eric Jennings.

All motions were passed by unanimous vote, by all members present, unless stated otherwise.

**AGENDA:** Moved-Seconded (Flanagan-Deibert) to approve the agenda as amended. Motion Carried.

**DECLARE CONFLICTS:** Commission Ewing declared a conflict with the 10:15 a.m. agenda item: Conditional Use Permit #487/Larson Family, LLP.

**MINUTES:** Moved-Seconded (Sleep-Deibert) to approve the minutes of July 25, 2023 County Commission meeting. Motion Carried.

Moved-Seconded (Sleep-Deibert) to approve the minutes of July 25, 2023 Board of Adjustment meeting. Motion Carried.

**AUDITOR'S ACCOUNT WITH TREASURER REPORT:** Moved-Seconded (Deibert-Jennings) to accept the Auditor's Account with the County Treasurer. Motion Carried. As of July 31, 2023, showed the following: Total amount of actual cash-\$1,350.00; total amount of checks and drafts in Treasurer's possession not exceeding three days (check deposit in transit)-\$68,954.66; total amount of cash in transit in Treasurer's possession (cash deposit in transit)-\$8,746.36; petty cash-\$2,725.00; total amount of deposits in bank include: CD's \$5,000,000.00; bank balance \$24,640,663.51; US Bank balance \$27,892,492.65; money market \$1,704,437.46. Total \$59,319,369.64. Motion Carried.

**PERSONNEL:**

**STATE'S ATTORNEY:** Moved-Seconded (Flanagan-Deibert) to approve the new hire for Rebecca Nelson as a full-time permanent CE 2 G1 at a base rate of \$21.09 per hour, effective August 14, 2023. Motion Carried.

Moved-Seconded (Flanagan-Deibert) to approve the cell phone per diem of \$50.00 per month for Rebecca Nelson, effective August 14, 2023. Motion Carried.

Moved-Seconded (Flanagan-Deibert) to approve the cell phone per diem of \$50.00 per month for Kristi Sims, effective August 14, 2023. Motion Carried.

**AUDITOR:** Moved-Seconded (Deibert-Ewing) to approve the step raise for Krista L. Schroeder as a full-time permanent CE 1 G2 at a base rate of \$20.09 per hour, effective August 27, 2023. Motion Carried.

**SHERIFF:** Moved-Seconded (Deibert-Flanagan) to approve the cell phone per Diem of \$50.00 per month for Brianna Rommen, effective August 2, 2023. Motion Carried.

Moved-Seconded (Deibert-Jennings) to approve the classification change for Zachary Wachsmuth as a full-time permanent Correctional Officer I G2 at a base rate of \$21.66 per hour, effective August 1, 2023. Motion Carried.

Moved-Seconded (Deibert-Jennings) to approve the classification change for Leonardo Cardona as a part-time fill-in Correctional Officer I G1 at a base rate of \$21.23 per hour, effective August 2, 2023. Motion Carried.

Moved-Seconded (Deibert-Ewing) to approve the step raise for Andrew Nelson as a full-time permanent Correctional Officer II G1 at a base rate of \$22.53 per hour, effective August 27, 2023. Motion Carried.

Moved-Seconded (Deibert-Ewing) to approve the step raise for Miranda Dove as a full-time permanent Correctional Officer I G2 at a base rate of \$21.66 per hour, effective August 27, 2023. Motion Carried.

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Moved-Seconded (Deibert-Ewing) to approve the step raise for Brianna Rommen as a full-time permanent Dispatcher III G3 at a base rate of \$25.14 per hour, effective August 27, 2023. Motion Carried.

Moved-Seconded (Deibert-Ewing) to approve the step raise for Brent McNeil as a full-time permanent Correctional Officer II G3 at a base rate of \$23.46 per hour, effective August 27, 2023. Motion Carried.

Moved-Seconded (Jennings-Deibert) to approve the new hire for Chantal Lewis as a full-time permanent Correctional Officer II G1 at a base rate of \$22.53 per hour, effective August 2, 2023. Motion Carried.

Moved-Seconded (Flanagan-Deibert) to approve the new hire for Michael Harris as a full-time permanent Correctional Officer I G3 at a base rate of \$22.09 per hour, effective August 7, 2023. Motion Carried.

Moved-Seconded (Flanagan-Jennings) to approve Doug Moser (Dual Role Employee) as a part-time fill-in Correctional Officer II G2 at a base rate of \$23.00 per hour, effective August 22, 2023. Motion Carried.

**PLANNING & ZONING:** Moved-Seconded (Flanagan-Deibert) to approve the cell phone per Diem of \$45.00 per month for Amie Miller, effective August 27, 2023. Motion Carried.

**EQUALIZATION:** Moved-Seconded (Deibert-Flanagan) to approve the cell phone per Diem of \$50.00 per month for Christine D. Maki, effective August 28, 2023. Motion Carried.

Moved-Seconded (Flanagan-Deibert) to approve the new hire for Tassy Rantapaa as a full-time permanent Appraiser I G1 at a base rate of \$22.26 per hour, effective September 3, 2023. Motion Carried.

**BUDGET:** Brenda McGruder, Auditor, presented an amended 2024 provisional budget for consideration. McGruder stated that while calculating the health insurance she neglected to add a 10% estimated increase for the Family, Employee/Spouse and Employee/Children categories.

Moved-Seconded (Deibert-Flanagan) to amend the 2024 provisional Budget as presented and set the public hearing for September 5, 2023 at 9:30 a.m. for consideration of the adoption of the 2024 annual budget.

**AUTOMATIC SUPPLEMENTS:**

**SHERIFF:** Moved-Seconded (Flanagan-Deibert) to approve the automatic supplement of \$3,150.35 to the Sheriff Travel Budget for reimbursement for vehicle damage. Motion Carried.

**RESOLUTION #2023-17 LIQUOR LICENSES:** Moved-Seconded (Flanagan-Ewing) to approve the following Resolution #2023-17 Liquor Licenses for 2024. Aye-Flanagan, Sleep, Jennings and Ewing. Nay-Deibert. Motion Carried. **RESOLUTION #2023-17 LIQUOR LICENSES** WHEREAS, Lawrence County has the authority to determine the number of On-Sale and Off-Sale liquor licenses it will approve for the ensuing calendar year, SDCL 35-4-11.1, and WHEREAS, the State of South Dakota by virtue of SDCL 35-4-2 determines the fees to be charged for the various classifications of licenses, and THEREFORE, BE IT RESOLVED that we, the Board of County Commissioners, will approve up to Six (6) Off-Sale, Seven (7) On-Sale Liquor Licenses and Retail On-Off Sale Wine Licenses, and BE IT FURTHER RESOLVED that the Board of County Commissioners list the following fee schedule as a matter of record and current license holders. A) On-Sale dealer-any person who sells or keeps for sale any alcoholic beverage for consumption on the premises where sold. Those current license holders being closer to Spearfish (1st class city) to be charged a renewal fee of \$1,500.00: Vezaro Inc./Guadalajara Mexican Restaurant. Those current license holders being closer to Lead, Deadwood or Whitewood (2nd class cities) to be charged a renewal fee of \$1,200.00: Lead Country Club, Inc. Black Hills Chair Lift Co./Dark Horse Saloon Spearfish Canyon Resorts, LLC/Spearfish Canyon Lodge Spearfish Canyon Resorts, LLC/Latchstring Restaurant Boulder Canyon Management, LLC/Boulder Canyon County Club Tomahawk Lake Country Club, Inc. B) Off-Sale dealer - any person who sells or keeps for sale any alcoholic beverage for consumption other than on premises where sold. Renewal Fee - \$400.00; New License Fee - \$27,000.00: The Merc Pizza and Pub LLC./Nemo Mercantile Mattingleys LLC./St. Onge Bar Black Hills, LLC./Steel Wheel C) Retail On-Off Sale Wine – Renewal Fee - \$500.00 Unlimited Licenses available Seven Down LLC./Seven Down Arena Wickham Properties LLC./Mystic Hills Hideaway The Crossing at Spearfish Canyon LLC./Cheyenne Crossing Black Hills LLC./Steel Wheel Barefoot Resort

Association Inc./Barefoot Resort Crow Peak Brewing Company LLC. BW Gas & Convenience Retail LLC./Yesway #1192 Double Diamond LLC./Recreational Springs Resort Eagle Tree Resorts Company LLC./Rimrock Lodge & Canyon Bistro RAR Hospitality LLC./Brandin' Iron Restaurant Elkhorn Ridge@Frawley Ranches LLC./Elkhorn Ridge RV Park & Campground The Barn at Aspen Acres LLC. Boar's Nest Roadhouse LLC. Muley Hill Lodge LLC. JUTRDA LLC./Fish N' Fry Campground and Café DATED at Deadwood, South Dakota, this 22nd day of August, 2023. FOR LAWRENCE COUNTY COMMISSIONERS Robert Ewing, Chairperson ATTEST: Brenda McGruder, Auditor.

**PARADISE ACRES ROAD DISTRICT:** Moved-Seconded (Sleep-Jennings) to canvass the Paradise Acres Road District Election showing the whole number of ballots cast was sixteen (16), together with the number of sixteen (16) voting for and the number of zero (0) voting against incorporation and authorize the signing of the official canvass. Motion Carried.

Moved-Seconded (Sleep-Jennings) to approve and authorize the Chairman to sign the following Order Declaring Paradise Acres Road District Incorporated. Motion Carried. ORDER DECLARING PARADISE ACRES ROAD DISTRICT INCORPORATED WHEREAS, SDCL 31-12A-5.1 requires the approval of the petition, if the territory is within the subdivision jurisdiction of a municipality, to first be submitted to the municipality's governing body for approval at its discretion and upon approval shall be presented to the county board of commissioners, WHEREAS, an election was held among the eligible voters in the Paradise Acres Road District to determine whether or not a Road District should be incorporated, WHEREAS, this vote was held on August 18, 2023, WHEREAS, the vote has been cast and canvassed and a verified statement from the judges of the election has been received showing the whole number of ballots cast was Sixteen (16), together with the number of Sixteen (16) voting for and the number of Zero (0) voting against incorporation, WHEREAS, The Territory organized as a district is as follows: Map of Paradise Acres Road District, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11; 12A (Formerly Lots 12 and 13); 14, 15, 16, 17, 18; 20A (Formerly Lot 20 and portions of Golden Age and Golden Slipper Lodes, M.S. 1678); 22A (Formerly Lots 22 and 23); 24, 25, 26, 27; 28 (Formerly Lot 27A and a portion of Tract H); 30, 32; 34A (Formerly Lots 33 and 34); 35; 36R (Formerly Lot 36 and a portion of Extension Lode, M.S. 1237); Extension Lot Revised and Poorman Lot Revised (Formerly a portion of the Poorman Lot M.S. 1237 and a portion of Extension Lot M.S. 1678); of Paradise Acres, being all of the Ibex, Rodman, L. Fraction, Poorman; being in portions of the Monte Carlo, Penobscot No.1, Penobscot No.2, Tacoma, M.S. 1237; being all of Smoky City Fraction and a portion of the Smoky City Lode, M.S. 1682, being in all of the Golden Ledge, Contention, Annex Fraction and Extension, M.S. 1678; being in portions of the Golden Slipper, Golden Age, Combination, Anticipation, Bessie Fraction, Realization and Virginia Lodes, M.S. 1678; being in a portion of the Richards Fraction, M.S. 1333), being in a portion of the Beulah No.1 Lode, M.S. 1656; Tract H (being in portions of the Monte Carlo and Tacoma Lodes, M.S. 1237, being in portions of the Virginia and Realization Lodes, M.S. 1678; Tract I (being in portions of the Wedge Fraction, Monte Carlo and Tacoma Lodes, M.S. 1237 and being in a portion of the Realization Lode, M.S. 1678); all located in the E½ of Section 18, and in the W½ of Section 17, T5N, R3E, BHM, Lawrence County, South Dakota. Lots 38, 39, 40; 41R (Formerly Lot 41 and a portion of Tract K); 42, 43, 44; 45A, (Formerly lots 45 and 46); 47, 48, 49, 50, 51, 52, 53, 54, 55, 56; 57R (Formerly Lot 57 and a portion of Golden Horn Fraction and Leghorn No.1 Lodes, M.S. 1678); 58, 59, 60; 61 Revised (Formerly Lot 61 and a portion of Tract K); 62, 63, 64, 65, 66 of Paradise Acres II; located in Tract K of Paradise Acres II, and a portion of Tract M of Paradise Acres III; being all of XXX, XXX No.3, Lookout Fraction, Lookout Fraction No.2, Dublin No.2, Golden Treasure, Golden Era, Kellar, Hoagland M.S. 1678 and portions of Langshan Fraction, Annex Fraction, Little Sticks Fraction, Little Sticks, Antoinette, Alma, Independence, Leghorn No.1, Leghorn, Golden Horn Fraction, Extension and Golden Slipper, M.S. 1678 and a portion of Poorman M.S. 1237; located in the E1/2E1/2 of Section 18, SE1/4 of Section 7, SW1/4 of Section 8 and the W1/2 of Section 17, T5N, R3E, B.H.M., Lawrence County, South Dakota. Lots 67, 68, 69, 70, 80, 81; 82R and 83R (Formerly Lots 82 and 83); 84; 85A (Formerly Lots 85 and 86), 87, 88, 89, 90, 91, located in a portion of Tract M of Paradise Acres III; and the unplatted portion of Tract M of Paradise Acres III; being all of Agate No.4 Lode, M.S. 1394, Ella No.1, Golden Wedge No.2 & Golden Wedge No.4 Lodes, M.S. 1396, J.C., R.G., Freeport & Newport Lodes, M.S. 1425, Government Lots 3 & 4 of Section 17 and Government Lot 3 of Section 18; Portions of Uncle Sam Lode, M.S. 285, Harrison Lode M.S. 992, Blacktail Chief, Valet Chief, Maggie Fraction, Blaine Fraction & Levi P. Morton Lodes, M.S. 1439 and Henniger No.1 & Three V. Lodes, M.S. 1835, all located in Sections 17, 18, 19 & 20, T5N, R3E, B.H.M., Lawrence County, South Dakota. Tract 1AR and Tract 2AR (Formerly Tract 1A and Tract 2A) and Tract 1B (Formerly Tracts 1 and 2), a subdivision of Dublin Lode M.S. 1678, located in the NW1/4 of section 17, T5N, R3E, B.H.M., Lawrence County, South Dakota. WHEREAS, the Board of County Commissioners are satisfied with the legality of such election, WHEREAS, it appearing that a majority of the voters at the election have voted in favor of incorporation of such territory, NOW THEREFORE BE IT ORDAINED by the Lawrence County Board of Commissioners that the Paradise Acres Road District is hereby incorporated pursuant to SDCL 31-12A, DATED

this 22<sup>nd</sup> day of August, 2023. Robert Ewing, Chairperson Lawrence County Commission  
ATTEST: Brenda McGruder, Auditor.

**RAFFLE REQUEST:**

**NORTHERN HILLS REPUBLICAN WOMEN:** Moved-Seconded (Flanagan-Deibert) to not object to the request to conduct a raffle by Northern Hills Republican Women, with the drawing taking place October 28, 2023. Motion Carried.

**EMERGENCY MANAGEMENT:**

**STURGIS VOLUNTEER FIRE DEPARTMENT:** Bruce Outka, Deputy State's Attorney, presented a letter from Scott Lensegrav, Sturgis Volunteer Fire Department, requesting a meeting in reference to funds received by the department. Outka stated that Brian Dean, Sheriff, Paul Thomson, Emergency Management Director and himself would be part of the discussion but would like to have a Commissioner present as well.

Moved-Seconded (Flanagan-Deibert) to appoint Commissioner Jennings to discuss the funding for the Sturgis Volunteer Fire Department. Motion Carried.

**JUVENILE JUSTICE GRANT:** Moved-Seconded (Flanagan-Jennings) to approve and authorize the Chairman to sign the Juvenile Justice Reinvestment Initiative Fiscal Incentive Diversion Program Grant application and designate the Lawrence County Teen Court as the recipient of the grant if approved. Motion Carried.

**PARKING RAMP USE:** Moved-Seconded (Sleep-Flanagan) to approve the request from McPherson Auction & Realty to use the employee parking in the ramp in conjunction with the Deadwood Mountain Grand on August 24 & 25, 2023 with Deadwood Mountain Grand making alternative parking arrangements for employees to park on the upper level of the parking ramp and coordinating with the Sheriff's Office. Motion Carried.

**FOREST PLAN AMENDMENT ANALYSES:** Moved-Seconded (Jennings-Deibert) to appoint Mitch Iverson and Jennifer Sietsema as principal points of contact for the Forest Plan amendment analyses. Motion Carried.

**SHERIFF:**

**SHERIFF'S REPORT:** Brian Dean, Sheriff, advised the jail is housing an inmate with significant health issues and the County will be incurring the costs of his care.

Dean also reported on An Ordinance Prohibiting Jumping or Diving from Bridges that will be presented at the next meeting.

**PUBLIC SAFETY & SERVICES CENTER:** Brian Dean, Sheriff, and Bruce Outka, Deputy State's Attorney, gave an update on the Public Safety and Services Center to include the Public Safety & Services Center communications tower and waiver of water tap fees with the City of Deadwood.

Moved-Seconded (Flanagan-Deibert) to set the bid opening for the October 10, 2023 at 8:15 a.m. for the Public Safety & Services Center communications tower. Motion Carried.

Moved-Seconded (Flanagan-Deibert) to authorize Bruce Outka, Deputy State's Attorney to request a waiver of the water tap fees with the City of Deadwood. Motion Carried.

**PROFESSIONAL SERVICES AGREEMENT/FISCHER:** Moved-Seconded (Flanagan-Jennings) to approve and authorize the Chairman to sign the Professional Services Agreement between Lawrence County and Shawn Fischer. Motion Carried.

**PETITION FOR VACATION OF SECTION LINE/HIGHWAY/RIGHT-OF-WAY/**

**JACOBS & RAKOW:** The request for a Petition for Vacation of Section Line Right-of-Way Resolution 2023-15 has been withdrawn. LEGAL DESCRIPTION FOR THE VACATION: EXHIBIT A SHOWING THE LOCATION OF A PROPOSED SECTION LINE RIGHT OF WAY VACATION LOCATED ON LOT 1 AND TRACT 2, A SUBDIVISION OF LOT 2 OF SOUTH, DALO, CATTIE AND CAVOURE LODES, M.S. 1726, LOCATED IN THE W1/2W1/2 OF SECTION 30, T5N, R3E AND THE E1/2E1/2 OF SECTION 25, T5N, R2E, B.H.M., LAWRENCE COUNTY, SOUTH DAKOTA AFFECTING THE LANDOWNERS: JOEL A JACOBS AND DEBRA A JACOBS; JASON RAKOW.

**HIGHWAY:**

**FUEL QUOTES:** The following fuel quote was submitted as of August 14, 2023: **Spearfish Unleaded 1200 gallons:** (prices per gallon) CBH Cooperative – \$3.528; Olson Fuels – \$3.499\*\*; MG Oil –\$3.795. \*\*Represents accepted quote.

**PERMITS:**

**HEAVY CONSTRUCTORS INC.:** Moved-Seconded (Deibert-Flanagan) to continue the utility permit and permit to occupy right-of-way for Heavy Constructors, Inc. until the next meeting. Motion Carried.

**BLACK HILLS ENERGY:** Moved-Seconded (Flanagan-Sleep) to follow the recommendation of John Bey, Highway Superintendent, and approve the utility permit for Black Hills Energy to install an aerial crossing over Galena Road approximately 2.75 miles from HWY 385 for construction of an overhead powerline beginning in Section 9 T4N, R4E and ending in Section 9, T4N, R4E and approve the permit to occupy County Highway Right-of-Way submitted by Black Hills Energy located in Section 9, T4N, R4E along County Road: Galena Road, to install an overhead powerline. Clarification of Dimensions for Ordinance #07-01. Approval upon the condition that: 1. The depth is no less than 36 inches the full length of the excavation and the depth is closely monitored. 2. The location of the excavation is as far as possible away from the edge of the road. This is to protect your utility from future disturbances such as drainage repairs, or road surface expansion. The 36-inch depth and the 5-foot clearance measurement in the current ordinance is only a minimum and will only be allowed if there is proof that the maximum depth and clearance is not possible. Aye-Flanagan, Sleep, Jennings and Ewing. Nay-Deibert. Motion Carried.

**FENN:** Moved-Seconded (Sleep-Flanagan) to follow the recommendation of John Bey, Highway Superintendent, and approve the private approach permit for Mickey W. Fenn to construct a private approach on the east side of North Rainbow Road located as shown on the Plat of Tract M being a portion of the S1/2NW1/4 of Section 9. Motion Carried.

**ROAD RESTORATION AGREEMENT/SOUTH DAKOTA NETWORK LLC.:** Moved-Seconded (Flanagan-Deibert) to follow the recommendation of John Bey, Highway Superintendent, specifically addressing the onsite issues, and to use the existing utility permit on file. Aye-Flanagan, Sleep, Deibert and Ewing. Nay-Jennings. Motion Carried.

**HIGHWAY AUTHORITY/PLAT:** John Bey, Highway Superintendent requested guidance from the Board as to whether he should sign as Highway Authority on the Plat of Lot 3 of Block 1 of Thomson Addition of the City of Spearfish formerly a portion of an unplatted parcel, located in the NE corner of land in the NE1/4 NE1/4 of Section 16, T6N, R2E, B.H.M. Lawrence County, South Dakota.

Marlo Kapsa, City of Spearfish Planning Director, presented her staff report.

Moved-Seconded (Flanagan-Ewing) to authorize John Bey, Highway Superintendent, to sign as Highway Authority on the Plat of Lot 3 of Block 1 of Thomson Addition of the City of Spearfish formerly a portion of an unplatted parcel, located in the NE corner of land in the NE1/4 NE1/4 of Section 16, T6N, R2E, B.H.M. Lawrence County, South Dakota. Aye-Flanagan and Ewing. Nay-Sleep, Deibert and Jennings. Motion Failed.

Kapsa added that the City of Spearfish would be taking over this section of the road and asked if there was anything the City could do to get the plat approved?

Moved-Seconded (Deibert-Jennings) to authorize John Bey, Highway Superintendent, to sign as Highway Authority on the Plat of Lot 3 of Block 1 of Thomson Addition of the City of Spearfish formerly a portion of an unplatted parcel, located in the NE corner of land in the NE1/4 NE1/4 of Section 16, T6N, R2E, B.H.M. Lawrence County, South Dakota noting that no approach permit will be allowed until the jurisdiction of the road is changed. Aye-Flanagan, Deibert, Jennings and Ewing. Nay-Sleep. Motion Carried.

John Bey, Highway Superintendent requested guidance from the Board as to whether he should sign as Highway Authority on the Plat of Tract A, Tract B and Tract C of Backens Estates and dedicated public right of way, formerly portions of the SE1/4NW1/4, the NE1/4SW1/4 and the

N1/2SE1/4 of Section 32, All Located in Township 7 North, Range 2, East, BHM, Lawrence County, South Dakota.

Commissioner Deibert declared a conflict as he prepared the plat and would not be participating.

Marlo Kapsa, City of Spearfish Planning Director, presented her staff report.

Moved-Seconded (Flanagan-Ewing) to authorize John Bey, Highway Superintendent, to sign as Highway Authority on the Plat of Tract A, Tract B and Tract C of Backens Estates and dedicated public right of way, formerly portions of the SE1/4NW1/4, the NE1/4SW1/4 and the N1/2SE1/4 of Section 32, All Located in Township 7 North, Range 2, East, BHM, Lawrence County, South Dakota as long as the statutory language is listed on the plat. Aye-Flanagan, Sleep, Jennings and Ewing. Not participating due to conflict-Commissioner Deibert. Motion Carried.

**PROJECT UPDATES:** John Bey, Highway Superintendent, gave an update on the St. Onge bridge, Fogelsong Road, South Rapid Creek Road and permit fees.

**PLANNING & ZONING:**

**PRELIMINARY PLAT/HUBBARD:** APPLICANT: Lance & Peggy Hubbard LEGAL DESCRIPTION: Plat of WBI Utility Tract located in N ½ of the NE ¼ Section 17, T6N, R4E. VICINITY LOCATION: Hwy 34 SUMMARY: Increasing the size of a utility tract ZONING: A-1.

Amber Vogt, Planning & Zoning Administrator, presented her staff report.

Moved-Seconded (Flanagan-Jennings) declaring that the plat for APPLICANT: Lance & Peggy Hubbard meets exemption criteria per the subdivision ordinance, Chapter 4, Article 3. Motion Carried.

Moved-Seconded (Deibert-Sleep) to approve the preliminary plat for APPLICANT: Lance & Peggy Hubbard based upon the Planning and Zoning Commission recommendation for approval and the concurrent recommendation of P&Z staff, as reflected in the staff report. LEGAL DESCRIPTION: Plat of WBI Utility Tract located in N ½ of the NE ¼ Section 17, T6N, R4E. VICINITY LOCATION: Hwy 34 SUMMARY: Increasing the size of a utility tract ZONING: A-1. Motion Carried.

**PRELIMINARY & FINAL PLAT/REYNOLDS AND LIVINGSTON LLC.:** APPLICANT: Reynolds and Livingston LLC. LEGAL DESCRIPTION: Lots 1A and 2A of Boyle Sub, Section 7, T2N, R5E. VICINITY LOCATION: Hwy 385 SUMMARY: Splitting existing lot - no fire plan needed ZONING: PF.

Amber Vogt, Planning & Zoning Administrator, presented her staff report.

Moved-Seconded (Flanagan-Deibert) declaring that the plat for APPLICANT: Reynolds and Livingston LLC. meets exemption criteria per the subdivision ordinance, Chapter 4, Article 3. Motion Carried.

Moved-Seconded (Deibert-Flanagan) to approve the preliminary & final plat for APPLICANT Reynolds and Livingston LLC. based upon Pennington County approval and based upon the Planning and Zoning Commission recommendation for approval and the concurrent recommendation of P&Z staff, as reflected in the staff report. LEGAL DESCRIPTION: Lots 1A and 2A of Boyle Sub, Section 7, T2N, R5E. VICINITY LOCATION: Hwy 385 SUMMARY: Splitting existing lot - no fire plan needed ZONING: PF. Motion Carried.

**LAYOUT PLAN/RANTAPAA & LISTMAN:** APPLICANT: Mark & Cassandra Rantapaa and Cleo Listman LEGAL DESCRIPTION: Lots 1, 2, and 3 of Lot R-1 of HES 246, Section 20 and 21, T3N, R4E. (legal shortened) VICINITY LOCATION: Hwy 385 SUMMARY: breaking up land for family members - no fire plan needed ZONING: PF.

Amber Vogt, Planning & Zoning Administrator, presented her staff report.

The board requested that the access to all lots be depicted on the plat.

**LAYOUT PLAN/KELLER & RAMBO:** APPLICANT: Bruce Keller and Traci Rambo LEGAL DESCRIPTION: Proposed Lots 4, 5, 6B, N and G (legal shortened) VICINITY LOCATION: Nemo Road SUMMARY: moving lot lines - no fire plan needed ZONING: PF/SRD.

Amber Vogt, Planning & Zoning Administrator, presented her staff report.

**PRELIMINARY PLAT/BH DEVELOPMENT:** APPLICANT: BH Development LEGAL DESCRIPTION: Lots 28, 29 & 30, Blk 5 Dedicated Public ROW of Trailside Addition of Powder House Pass Section 17, T4N, R3E (legal shortened) VICINITY LOCATION: Hwy 14A SUMMARY: New Lots - 1st Final ZONING: PUD.

Amber Vogt, Planning & Zoning Administrator, presented her staff report.

Moved-Seconded (Flanagan-Deibert) to approve the preliminary plat for APPLICANT BH Development based upon the Planning and Zoning Commission recommendation for approval and the concurrent recommendation of P&Z staff, as reflected in the staff report. LEGAL DESCRIPTION: Lots 28, 29 & 30, Blk 5 Dedicated Public ROW of Trailside Addition of Powder House Pass Section 17, T4N, R3E (legal shortened) VICINITY LOCATION: Hwy 14A SUMMARY: New Lots - 1st Final ZONING: PUD. Motion Carried.

**REVISED PRELIMINARY PLAT/BH PROPERTIES, LLC.:** APPLICANT: BH Properties, LLC. LEGAL DESCRIPTION: Lots 11, 12 and 13, Blk 3; Lots 3, 4, 6, 7,13,14 and 15, Blk 4; dedicated public ROW of Auburn Acres being a sub of a portion of Tract 2 of Powder House Pass located in the SE ¼ of Section 18, SW ¼ of Section 17 and the NE ¼ of Section 19, T4N, R3E. (legal shortened) VICINITY LOCATION: Hwy 14A SUMMARY: Revised lots/bonding is in place/fire plan is in process ZONING: PUD.

Amber Vogt, Planning & Zoning Administrator, presented her staff report.

Moved-Seconded (Flanagan-Deibert) to approve the revised preliminary plat for APPLICANT BH Properties, LLC. based upon the Planning and Zoning Commission recommendation for approval and the concurrent recommendation of P&Z staff, as reflected in the staff report. LEGAL DESCRIPTION: Lots 11, 12 and 13, Blk 3; Lots 3, 4, 6, 7,13,14 and 15, Blk 4; dedicated public ROW of Auburn Acres being a sub of a portion of Tract 2 of Powder House Pass located in the SE ¼ of Section 18, SW ¼ of Section 17 and the NE ¼ of Section 19, T4N, R3E. (legal shortened) VICINITY LOCATION: Hwy 14A SUMMARY: Revised lots/bonding is in place/fire plan is in process ZONING: PUD. Motion Carried.

**PRELIMINARY & FINAL PLAT/BH DEVELOPMENT, LLC. & POWDER HOUSE PASS:** APPLICANT: BH Development LLC and Powder House Pass LEGAL DESCRIPTION: Lots 2, 3 & 4, Blk 10 Dedicated Public ROW of Trailside Addition of Powder House Pass Section 18, T4N, R3E (legal shortened) VICINITY LOCATION: Hwy 14S SUMMARY: New Lots - fire plan received ZONING: PUD.

Amber Vogt, Planning & Zoning Administrator, presented her staff report.

Moved-Seconded (Deibert-Flanagan) to approve the preliminary plat for APPLICANT BH Development LLC and Powder House Pass based upon the Planning and Zoning Commission recommendation for approval and the concurrent recommendation of P&Z staff, as reflected in the staff report. LEGAL DESCRIPTION: Lots 2, 3 & 4, Blk 10 Dedicated Public ROW of Trailside Addition of Powder House Pass Section 18, T4N, R3E (legal shortened) VICINITY LOCATION: Hwy 14S SUMMARY: New Lots - fire plan received ZONING: PUD. Aye-Flanagan, Deibert, Jennings and Ewing. Nay-Sleep. Motion Carried.

Moved-Seconded (Deibert-Flanagan) to approve the final plat for APPLICANT BH Development LLC and Powder House Pass based upon the Planning and Zoning Commission recommendation for approval and the concurrent recommendation of P&Z staff, as reflected in the staff report. LEGAL DESCRIPTION: Lots 2, 3 & 4, Blk 10 Dedicated Public ROW of Trailside Addition of Powder House Pass Section 18, T4N, R3E (legal shortened) VICINITY LOCATION: Hwy 14S SUMMARY: New Lots - fire plan received ZONING: PUD. Aye-Flanagan, Deibert, Jennings and Ewing. Nay-Sleep. Motion Carried.

**PRELIMINARY PLAT/WINSELL:** APPLICANT: Dennis and Dorothy Winsell LEGAL DESCRIPTION: Lots A, B, C, D, E, F and Green Space Tract W of Spring Run Estates Section 16, T4N, R4E (legal shortened) VICINITY LOCATION: Elk Creek Road SUMMARY: New Lots (original prelim for this sub approved 2019, but has since expired) ZONING: PF.

Amber Vogt, Planning & Zoning Administrator, presented her staff report.

Moved-Seconded (Deibert-Flanagan) to approve the preliminary plat for APPLICANT Dennis and Dorothy Winsell conditioned upon the removal of the vacation of public right-of-way and follow due process and resubmit with the final plat, and based upon the Planning and Zoning Commission recommendation for approval and the concurrent recommendation of P&Z staff, as reflected in the staff report. LEGAL DESCRIPTION: Lots A, B, C, D, E, F and Green Space Tract W of Spring Run Estates Section 16, T4N, R4E (legal shortened) VICINITY LOCATION: Elk Creek Road SUMMARY: New Lots (original prelim for this sub approved 2019, but has since expired) ZONING: PF. Aye-Flanagan, Deibert and Ewing. Nay-Sleep and Jennings. Motion Carried.

**PRELIMINARY & FINAL PLAT/FULLER & HILLBERG:** APPLICANT: Kelly and Bonnie Fuller and Dean & Teresa Hillberg LEGAL DESCRIPTION: Fuller Tract and Hillberg Tract being a sub of Lots A and B of COD No 1; COD No 2, No 3, No 4, M.S. 1276 located in the SE ¼ of Section 17 and SW ¼ of Section 16, T5N, R3E VICINITY LOCATION: Tetro Rock Road SUMMARY: Lot line change both neighbors purchased middle lot and are adding acreage to their original lots ZONING: PF.

Amber Vogt, Planning & Zoning Administrator, presented her staff report.

Moved-Seconded (Flanagan-Ewing) declaring that the plat for APPLICANT: Kelly and Bonnie Fuller and Dean & Teresa Hillberg meets exemption criteria per the subdivision ordinance, Chapter 4, Article 3. Motion Carried.

Moved-Seconded (Jennings-Flanagan) to approve the preliminary & final plat for APPLICANT Kelly and Bonnie Fuller and Dean & Teresa Hillberg based upon the Planning and Zoning Commission recommendation for approval and the concurrent recommendation of P&Z staff, as reflected in the staff report. LEGAL DESCRIPTION: Fuller Tract and Hillberg Tract being a sub of Lots A and B of COD No 1; COD No 2, No 3, No 4, M.S. 1276 located in the SE ¼ of Section 17 and SW ¼ of Section 16, T5N, R3E VICINITY LOCATION: Tetro Rock Road SUMMARY: Lot line change both neighbors purchased middle lot and are adding acreage to their original lots ZONING: PF. Motion Carried.

**CHANGE OF ZONING #361/KROH/SHINING DAWN ELEMENT, LLC.:** Second Reading was held on COZ #361 OWNER/APPLICANT: Jennifer Kroh/Shining Dawn Element, LLC. LEGAL DESCRIPTION: Tract B a subdivision of McLeod M.S. 1153 located in Section 18, T4N, R3 VICINITY LOCATION: Hwy 85 SUMMARY: Rezone from RC to HSC ZONING: RC.

Amber Vogt, Planning & Zoning Administrator, presented her staff report.

Moved-Seconded (Flanagan-Ewing) to approve the Change of Zoning #361 for OWNER/APPLICANT: Jennifer Kroh/Shining Dawn Element, LLC. based upon the Planning and Zoning Commission recommendation for approval and the concurrent recommendation of P&Z staff, as reflected in the staff report. LEGAL DESCRIPTION: Tract B a subdivision of McLeod M.S. 1153 located in Section 18, T4N, R3 VICINITY LOCATION: Hwy 85 SUMMARY: Rezone from RC to HSC ZONING: RC. Motion Carried.

**DEVELOPMENT PLAN #2023-04/KROH/SHINING DOWN ELEMENT, LLC.:** A public hearing was held on July 25, 2023 and the public hearing was closed for development plan DP # 2023-04 OWNER/APPLICANT: Jennifer Kroh/Shining Dawn Element, LLC LEGAL DESCRIPTION: Tract B a subdivision of McLeod M.S. 1153 located in Section 18, T4N, R3 VICINITY LOCATION: Hwy 14A/Hwy 85. SUMMARY: Development Plan for Storage Units next to Powder House Pass. ZONING: HSC.

Amber Vogt, Planning & Zoning Administrator, presented her staff report.



Moved-Seconded (Flanagan-Ewing) to approve the Development Plan #2023-04 OWNER/APPLICANT: Jennifer Kroh/Shining Dawn Element, LLC. noting that if lighting is installed it must be down throw and based upon the Planning and Zoning Commission recommendation for approval and the concurrent recommendation of P&Z staff, as reflected in the staff report. LEGAL DESCRIPTION: Tract B a subdivision of McLeod M.S. 1153 located in Section 18, T4N, R3. VICINITY LOCATION: Hwy 14A/Hwy 85. SUMMARY: Development Plan for Storage Units next to Powder House Pass. ZONING: HSC. Aye-Flanagan, Deibert, Jennings and Ewing. Nay-Sleep. Motion Carried.

**CHANGE OF ZONING #362/OLD APOSTOLIC LUTHERAN CHURCH/WILLIAMSON:** Second Reading was held on COZ #362 OWNER/APPLICANT: Old Apostolic Lutheran Church/Donahue Williamson LEGAL DESCRIPTION: Tract 2 of the NE ¼ of Section 32, T7N, R2 VICINITY LOCATION: Vista Hills Place/Old Belle Rd SUMMARY: Rezone from A-1 to SRD in order to subdivide ACREAGE: 26.613 acres.

Amber Vogt, Planning & Zoning Administrator, presented her staff report.

Commissioner Jennings voiced his concern with the Old Belle Road and the high traffic turning onto the gravel road to the property.

Moved-Seconded (Deibert-Flanagan) to approve the Change of Zoning #362 for OWNER/APPLICANT: Old Apostolic Lutheran Church/Donahue Williamson based upon the noncompliance use that exist today and bringing it into compliance and based upon the Planning and Zoning Commission recommendation for approval and the concurrent recommendation of P&Z staff, as reflected in the staff report. LEGAL DESCRIPTION: Tract 2 of the NE ¼ of Section 32, T7N, R2 VICINITY LOCATION: Vista Hills Place/Old Belle Rd SUMMARY: Rezone from A-1 to SRD in order to subdivide ACREAGE: 26.613 acres. Aye-Flanagan, Sleep, Deibert and Ewing. Nay- Jennings. Motion Carried.

**CONDITIONAL USE PERMIT #484/GF DEVELOPMENT, LLC./NORTH STAR CONSTRUCTION, INC.:** A public hearing was held on Conditional Use Permit #484 OWNER/APPLICANT: GF Development, LLC/North Star Construction, Inc. LEGAL DESCRIPTION: S ½ SE ¼ & SE ¼ SW ¼ of Section 34, T7N, R1E and N ½ of Govt Lot 1 & part of Govt Lot 2 lying North of Homestake Rd Section 3, T6N, R1E VICINITY LOCATION: Homestake Road SUMMARY: Small Scale Gravel Pit ZONING: A-1 ACREAGE: 81.00 acres.

A recording of the public hearing is on file at the Lawrence County Auditor's Office or <https://www.lawrence.sd.us/237/County-Commission>

Commissioner Deibert disclosed that he spoke to landowners in Wild Turkey Estates.

Amber Vogt, Planning & Zoning Administrator, listed the names of those who submitted written comment: Mary Ellerman, Mick Ellerman, Richard & Helen Tjader, Pamela Mansfield, Dave & Cori Engelhardt, Robert & Karen Deis, Len & Darceen Mitchell, Bret & Jennifer Stephens, Sarah Eklund, Myron & Nadine Compton, Jessy Dietrich, Stanley DeCook, Marie Heberling, Jansen Culver, Neal Bowman, Lyle Griess, Teresa Bartlett, Carrie McClaughry, Betsy Biggerstaff, Jeff & Naomi Merchant, Barbara Running, Bonnie Gebhardt, Rebecca & Calvin Tinenko, Richard Raichel, Tom & Brenda Vennes, Judith Lamb, Bruce Wing, Todd Akes, Kasondra Brooke, Lynn Levengood, Amy Deppe, Charlie Larson, Karen Zimmerman, Dave Czerny, Emily & William Bush, Scott Parsons, Dr. Meghan & David O'Bryan, Leslie & Karen Turgeon, Staci & James Lewis, Sandra Johnson, Carol Welbig, Kristin Anderson-Wing. Dane Goetz, Jodi Forgey and Phillip Christian.

Vogt presented her staff report.

Matt Polich, North Star Construction, Inc. and Heath Gran, GF Development, LLC. were present to answer questions.

Public Comment:

Opponents: William Johnson, 2011 Cody Ct, Les Turgeon, 19963 Merriam Loop, Emily Busch, 19940 Gobbler Road, Naomi Merchant, 19941 Gobbler Road, Kristen Wing, 22986 Cedar Berry Ave, Bill Wells, 19968 Merriam Loop, Teresa Ciani, 19727 Red Hill Road, Dave Ciani, 19727 Red Hill Road, Karen Turgeon, 19963 Merriam Loop, Don Simons, 20069 Crow Peak Bench

Road, Ron Moeller, 11221 Sheep Tail Gulch Road, Neal Bowman, 19864 Datum Creek Place, Lynn Levensgood, 10305 Homestake Road, Lori Wells, 19968 Merriam Loop, Larry & Sandy Jebens, 19960 Gobbler Road, Calvin & Becky Tininenko, 19965 Cobbler Road, Phillip Christian, 20105 Crow Peak Bench Road, Carol Welbig, 19925 Gobbler Road, Lloyd Welbig, 19925 Gobbler Road, Staci Lewis, 20 Laurie Lane, Judith Lamb, 19932 Gobbler Road. Reasons for opposition included concerns with noise, dust, water, wildlife and nature in the area, decreasing land values, traffic, jake brake use, bridge condition, close to residential areas, recreation, children at play along the road, and health issues caused by silica dust.

Proponents: Jeff Sleep, 10438 W Highway 14, Paula Halstead, 4425 Hillsvie Road, Martha Wierzbicki, 1106 N 10<sup>th</sup> Street, Charles Hallsted, 1222 Foothills Drive, James Metzger, 10563 Homestake Road, Donna Halstead, 126 Washington, Alice Spargur, 4315 W Highway 14, Jim Flory, 927 Verdale Drive. Reason for support included zoning and the area being used for agriculture, mining and forestry as it was intended, provides jobs, materials and landowner rights.

No other public input was voiced and the hearing was closed.

Bruce Outka, Deputy State's Attorney, cited SDCL 11-2-17.3, Conditional use of real property--Ordinance--Content--Approval or disapproval. A county zoning ordinance adopted under this chapter that authorizes a conditional use of real property shall specify the approving authority, each category of conditional use requiring approval, the zoning districts in which a conditional use is available, the criteria for evaluating each conditional use, and any procedures for certifying approval of certain conditional uses. The approving authority shall consider the stated criteria, the objectives of the comprehensive plan, and the purpose of the zoning ordinance and the relevant zoning districts when making a decision to approve or disapprove a conditional use request. Approval of a conditional use request requires the affirmative majority vote of the members of the approving authority who are present and voting. Outka added that this is the context for the Commission's consideration.

Commissioner Flanagan commented on the hours of operation, vehicles hauling, jake braking, truck speed limit and truck hauling signs.

Commissioner Sleep stated the John Bey, Highway Superintendent, did install some narrow road ahead signs and 25 mph speed limit signs.

Commissioner Deibert, questioned the applicant, Matt Polich, regarding the required state permit and bond, total depth of the planned extraction and MSHA air quality inspections.

Deibert questioned Brian Dean, Sheriff, on speed limits, weight limits and jake brake signs and whether such regulations were enforceable.

Referencing the proposed conditions in the staff report, Deibert proposed amendments to condition #2 adding, "and County Commission", #3 adding, "Haul Road and Operating Agreement", #5 adding, "Haul Road and Operating Agreement", #15 adding, "Planning & Zoning Staff". Deibert proposed an additional condition #33 - All trucks should have a logo or company name and contact on truck for easy identification.

Deibert questioned Polich in reference to the Haul Road and Operating Agreement and how truck traffic leaving the pit would be prevented from turning left on Homestake Road? Polich stated signage was the key.

Deibert proposed a 100,000 lb. weight limit on Homestake Road and Red Hill Road with a monthly weight limit report to be submitted to Planning and Zoning to verify compliance.

Deibert added that Homestake built Homestake Road to haul logs.

Deibert asked Bey what his opinion is in reference to the structures (bridges) and whether they can handle the 100,000 lb. load limits? Bey stated that the two structures have not been inspected. Bey added that if an inspection is completed the engineer can make the determination on load limits. Bey added that once an inspection is done that would help set the weight limit to be included in the Haul Road and Operating Agreement.

Deibert stated that any approval granted today is only a first step as the CUP permit is not issued until the Haul Road and Operating Agreement are approved.

Commissioner Ewing commented that most trucks already have the name and DOT number listed on the truck. Ewing also added that a 120,000 lbs. weight limit is more appropriate rather than a 100,000 lb. limit.

Ewing stated he takes issue with having all truck traffic being directed to the west as many of the single dump truck owner/operators have been using and making a living hauling on Homestake Road without a prohibition limiting travel to the east.

Commissioner Sleep stated that berms can be put up to direct the dust.

Commissioner Jennings stated that most of his concerns have been voiced by the other commissioners. Jennings stated he supports some type of load limits due to safety issues, commenting that the bigger the truck the harder it is to stop and further noting that the section of road under discussion also has a lot of recreational traffic.

Jennings added that he would like to see the load limits be placed in the Haul Road and Operating Agreement and that the bridge/structure inspections be completed to give an accurate measure of their respective capacity.

Commissioner Sleep added that cattle also have issues with dust and he has not had any issues with his cattle kept near the Edwards pit.

Commissioner Flanagan questioned if water for dust suppression will be installed at the end of the crusher head? Polich stated that they have lots of tools in the tool box for dust suppression.

Flanagan commented on his past experience with mining and added that if the CUP is approved by the County, and if dust is spotted, a phone call can be made to address the issue and complaints can be filed and the permit can be revoked.

Commissioner Ewing commented that he has been a huge advocate of landowner rights and gravel extraction been an allowed use in the community forever. Ewing added that if a landowner meets the requirements, they have a right to apply and utilize the resource. Ewing added that gravel extraction is an Ag use and that he supports granting the CUP.

Commissioner Deibert stated that the conditions can include a requirement that the applicant have a Haul Road and Operating Agreement in place prior to the operation commencing.

Moved-Seconded (Sleep-Jennings) to approve Conditional Use Permit #484 OWNER/APPLICANT: GF Development, LLC/North Star Construction, Inc. consistent with SDCL 11-2-17.3. The decision to approve is based upon the Planning and Zoning Commission recommendation for approval and the concurrent recommendation for approval by P&Z staff (as reflected in the staff report which is incorporated herein), and the applicant's Findings and Fact of Conclusions of Law (which are also incorporated herein).

The proposed conditions included in the P&Z staff report are adopted in full with the following modifications: 2. Haul route shall be approved by the Highway Superintendent *and County Commission* prior to start of operation. All access points will have to be determined by the Lawrence County Highway Department. A haul road agreement, if and when deemed necessary by the County, shall identify repair and maintenance responsibilities and consider the potential impact on County highways to be used for haul routes. 3. Maintenance (including but not limited to grading, gravel, mag water and dust control) shall be determined by the Lawrence County Highway Department *and Haul Road and Operating Agreement*. 5. All parking including truck loading and unloading shall conform to Chapter 7 of the Lawrence County Zoning Ordinance *and Haul Road and Operating Agreement*. 15. The owner or operator shall have 90 days prior to any planned permanent closure or long term cessation of the small-scale sand, gravel, and rock quarry, give notice to said closure or cessation to the Office of Planning and Zoning and the County Commission. The owner/operator shall cooperate with any inspections by the County Commissioners; *Planning & Zoning Staff* and the Highway Department for the purpose of identifying any impacts on affected roads and compliance to reclamation plans. 33. *All trucks should have a logo or company name and contract on truck for easy identification.*

It is specifically noted that final approval is contingent upon the approval of the Haul Road and Operating Agreement and bridge/structure inspection.

LEGAL DESCRIPTION: S ½ SE ¼ & SE ¼ SW ¼ of Section 34, T7N, R1E and N ½ of Govt Lot 1 & part of Govt Lot 2 lying North of Homestake Rd Section 3, T6N, R1E VICINITY

LOCATION: Homestake Road SUMMARY: Small Scale Gravel Pit ZONING: A-1 ACREAGE: 81.00 acres. Aye-Flanagan, Sleep, Jennings and Ewing. Nay-Deibert. Motion Carried.

**12:21 p.m. Chairman Ewing turned the meeting over to Vice-Chairman Flanagan and left the table.**

**CONDITIONAL USE PERMIT #487/LARSON FAMILY, LLP.:** A public hearing was held on Conditional Use Permit #487 OWNER/APPLICANT: Larson Family, LLP LEGAL DESCRIPTION: S ½ SE ¼ of Section 35, T7B, R1E and NE ¼ of Section 2, T6N, R1E VICINITY LOCATION: Spearfish/Off Homestake Road SUMMARY: Small Scale Gravel Pit ZONING: A-1 ACREAGE: 129.60 acres.

A recording of the public hearing is on file at the Lawrence County Auditor's Office or <https://www.lawrence.sd.us/237/County-Commission>

Amber Vogt, Planning & Zoning Administrator, listed the names of those who submitted written comment: Mary Ellerman, Mick Ellerman, Richard & Helen Tjader, Pamela Mansfield, Dave & Cori Engelhardt, Robert & Karen Deis, Len & Darceen Mitchell, Bret & Jennifer Stephens, Sarah Eklund, Myron & Nadine Compton, Jessy Dietrich, Stanley DeCook, Marie Heberling, Jansen Culver, Neal Bowman, Lyle Griess, Teresa Bartlett, Carrie McClaughry, Betsy Biggerstaff, Jeff & Naomi Merchant, Barbara Running, Bonnie Gebhardt, Rebecca & Calvin Tinenko, Richard Raichel, Tom & Brenda Vennes, Judith Lamb, Bruce Wing, Todd Akes, Kasondra Brooke, Lynn Levengood, Amy Deppe, Charlie Larson, Karen Zimmerman, Dave Czerny, Emily & William Bush, Scott Parsons, Dr. Meghan & David O'Bryan, Leslie & Karen Turgeon, Staci & James Lewis, Sandra Johnson, Carol Welbig, Kristin Anderson-Wing, Dane Goetz, Jodi Forgey and Phillip Christian.

Vogt presented her staff report.

Brian Marchant, Croell, Inc. was present to answer questions and made a power point presentation.

**Public Comment:**

Opponents: William Johnson, 2011 Cody Ct, Les Turgeon, 19963 Merriam Loop, Emily Busch, 19940 Gobbler Road, Naomi Merchant, 19941 Gobbler Road, Kristen Wing, 22986 Cedar Berry Ave, Bill Wells, 19968 Merriam Loop, Teresa Ciani, 19727 Red Hill Road, Dave Ciani, 19727 Red Hill Road, Karen Turgeon, 19963 Merriam Loop, Don Simons, 20069 Crow Peak Bench Road, Ron Moeller, 11221 Sheep Tail Gulch Road, Neal Bowman, 19864 Datum Creek Place, Lynn Levengood, 10305 Homestake Road, Lori Wells, 19968 Merriam Loop, Larry & Sandy Jebens, 19960 Gobbler Road, Calvin & Becky Tininenko, 19965 Cobbler Road, Phillip Christian, 20105 Crow Peak Bench Road, Carol Welbig, 19925 Gobbler Road, Lloyd Welbig, 19925 Gobbler Road, Staci Lewis, 20 Laurie Lane, Judith Lamb, 19932 Gobbler Road, Dan Adams, 11057 Homestake Road. Reasons for opposition included concerns with noise, dust, water, wildlife and nature in the area, decreasing land values, traffic, jack brake use, bridge condition, close to residential areas, recreation, children and health issues caused by silica dust.

Proponents: Kimberly Larson, 10499 W Highway 14, Jeff Sleep, 10438/ W Highway 14, Paula Halstead, 4425 Hillsvie Road, Martha Wierzbicki, 1106 N 10<sup>th</sup> Street, Charles Hallsted, 1222 Foothills Drive, James Metzger, 10563 Homestake Road, Donna Halstead, 126 Washington, Alice Spargur, 4315 W Highway 14, Jim Flory, 927 Verdale Drive, Rob Eddy, 4610 Old Belle Road, Mark Hertel, 931 Jackson, Michael McGuigan, 2350 Dairy Lane, Monty Pedersen, 10210 Homestake Road, Cameron Larson, 10437 Homestake Road, TJ Ewing, 6455 Pendo Road. Reason for support included zoning and the area being used for agriculture, mining and forestry as it was intended, provides jobs, materials and landowner rights.

No other public input was voiced and the hearing was closed.

Commissioner Flanagan commented on the bridge inspections, hours of operation, speed limits and signage and the Wyoming reclamation standards.

Commissioner Sleep commented on the reclamation standards in Wyoming compared to South Dakota.

Brian Marchant explained the process as to how a back slope is created.

Commissioner Deibert, commented on the loads to be hauled on a daily basis and the intersection of Homestake Road and Crow Peak Bench. John Bey, Highway Superintendent, stated a T intersection with a 3 way stop would be safer.

Commissioner Deibert asked if there was any way to reduce the noise in reference to the backup beepers. Marchant stated that is a MSHA requirement.

Commissioner Deibert referenced the section line falling within the permit area noting that it cannot be obstructed. Deibert added that a petition to vacate that portion of section line would be required.

Referencing the proposed conditions in the staff report, Deibert proposed amendments to condition #2 adding, “and County Commission”, #3 adding, “Haul Road and Operating Agreement”, #5 adding, “Haul Road and Operating Agreement”, #15 adding, “Planning & Zoning Staff”. Deibert proposed an additional condition #33 - All trucks should have a logo or company name and contact on truck for easy identification.

Deibert added that the Larson’s have been a good steward of the land.

Commissioner Flanagan commented on dust control. Marchant referenced a prior lawsuit between Croell, Inc. and Pennington County. Marchant recommended that county staff contact Pennington County as to its standards for dust control.

Commissioner Jennings stated that there is some concern whether the public comments do any good? Jennings added that he appreciates everyone that came to express their concerns, whether through letters or in person.

Jennings noted that the property that is the subject of the permit is zoned A-1, and that one of the allowed conditional uses in this zoning classification is mining. Jennings elaborated that mining is part of the culture of our County and that the County was formed and settled because of mining, timber and agriculture. He added that roads like the Homestake Road were built to transfer products to market.

Jennings also noted potential safety issues related to increased traffic on Homestake Road, and that these concerns will be addressed in the Haul Road and Operating Agreement.

Jennings offered that the Commission does not take these decisions lightly.

Commissioner Flanagan noted that the bridge/structure inspections will answer many questions to include whether any upgrades will be required and what additional conditions, if any, will be included in the Haul Road and Operating Agreement.

Commissioner Flanagan offered the assurance that dust control will be watched closely by the Commission.

Moved-Seconded (Sleep-Jennings) to approve Conditional Use Permit #487 OWNER/APPLICANT: Larson Family, LLP consistent with SDCL 11-2-17.3. The decision to approve is based upon the Planning and Zoning Commission recommendation for approval and the concurrent recommendation for approval by P&Z staff (as reflected in the staff report which is incorporated herein), and the applicant’s Findings and Fact of Conclusions of Law (which are also incorporated herein).

The proposed conditions included in the P&Z staff report are adopted in full with the following modifications: 2. Haul route shall be approved by the Highway Superintendent *and County Commission* prior to start of operation. All access points will have to be determined by the Lawrence County Highway Department. A haul road agreement, if and when deemed necessary by the County, shall identify repair and maintenance responsibilities and consider the potential impact on County highways to be used for haul routes. 3. Maintenance (including but not limited to grading, gravel, mag water and dust control) shall be determined by the Lawrence County Highway Department *and Haul Road and Operating Agreement*. 5. All parking including truck loading and unloading shall conform to Chapter 7 of the Lawrence County Zoning Ordinance *and Haul Road and Operating Agreement*. 15. The owner or operator shall have 90 days prior to any planned permanent closure or long term cessation of the small-scale sand, gravel, and rock quarry, give notice to said closure or cessation to the Office of Planning and Zoning and the County Commission. The owner/operator shall cooperate with any inspections by the County Commissioners; *Planning & Zoning Staff* and the Highway Department for the purpose of

identifying any impacts on affected roads and compliance to reclamation plans. 33. *All trucks should have a logo or company name and contract on truck for easy identification.*

It is specifically noted that final approval is contingent upon the approval of the Haul Road and Operating Agreement and bridge/structure inspection.

LEGAL DESCRIPTION: S ½ SE ¼ of Section 35, T7B, R1E and NE ¼ of Section 2, T6N, R1E  
VICINITY LOCATION: Spearfish/Off Homestake Road SUMMARY: Small Scale Gravel Pit  
ZONING: A-1 ACREAGE: 101.63 acres. Motion Carried.

**2:37 p.m. Chairman Ewing returned to the table and took over the meeting.**

**ANNUAL REVIEW:**

**HOMESTAKE C.U.P. 124 AND 144 & LAC MINERALS C.U.P. 116, 125 AND 202:** Mark Tieszen, Environmental Manager for Homestake/LAC Minerals Mines was present to review the 2022 Mine Activities Report.

**ITEMS FROM THE PUBLIC:** The Board acknowledged an email from Erica Douglas in reference to cleaning up voter rolls, hand counting and election integrity.

Nichole Braithwait, 3135 American Eagle Road, Spearfish expressed her concern with the safety and transparency of our elections. Braithwait stated she feels the 2020 election was stolen and that there has been election fraud in South Dakota. Braithwait noted she provided a copy of the South Dakota Canvassing group presentation and a link to the video presentation that was presented in Lawrence County in July. Braithwait quoted Jessica Pollema of the South Dakota Canvassing group. Braithwait urged the use of paper ballots and hand counting the ballots at precinct level and to ban all machine and to advocate for every election integrity measures that the Commissioners can.

Karen Brandt, 20728 Morning Star Road, Lead spoke of her own election experience as an election official. Brandt explained the 2020 election that was held at the Deadwood Mountain Grand where the County Auditor went through extraordinary measures to provide a safe and accurate election with many absentee ballots coming in. Brandt commented on the public test held before an election to watch the ballot count being tested. Brandt stated that one can't control the behavior of the voters and feels Lawrence County does a great job of keeping its voter rolls accurate. Brandt encouraged involvement in our elections and to understand the process. Brandt commented on poll watchers not providing feedback as to what they are observing. Brandt stated that she has full confidence that our elections in Lawrence County are fair and honest according to her experience.

**ITEMS FROM THE COMMISSIONERS:** Commissioner Deibert commented on a timber sale that is proposed in the Mystic Ranger District and that Lawrence County was not informed as a Cooperating Agency.

The Board acknowledged letters from Black Hills National Forest Northern Hills Ranger District in reference to three separate projects: installation of a utility line to private property, construction of a building at an existing communication site and replacement of footbridge at a campground; Department of Agriculture and Natural Resources in reference to LAC Minerals surface water discharge permit public notice; Thank you note Spearfish Economic Development for allocating \$1,000.00 for 2024; Hand County Board of Commissioners in reference to the use of eminent domain condemnation proceedings by the carbon capture pipeline companies is unconstitutional; Department of Agriculture and Natural Resources in reference to the notice of determination of special, exceptional, critical, or unique lands-Joseph Nonnast; Department of Agriculture and Natural Resources in reference to general permit authorizing storm water discharges associated with construction actives surface water discharge permit public notice and Dawn Quaschnick in reference to an Airbnb next door to her property.

**BILLS:** Moved-Seconded (Deibert-Flanagan) to approve payment of the following payroll and vouchers listed below for expenditures for insurance, professional services, publications, rentals, supplies, repairs, maintenance, travel, conference fees, utilities, furniture and equipment drawn on the proper funds and various departments. Motion Carried.

**Payroll:** Comm-\$15,685.02; Aud-\$27,163.11; Treas-\$34,083.48; States Atty-\$33,837.43; Pub Def-\$29,368.29; Gen Govt Bldg-\$22,942.23; Equal-\$33,950.74; Rod-\$20,533.73; Vso-\$4,022.80;

Ist-\$22,058.78; Sher-\$129,387.07; Jail-\$81,475.28; Coroner-\$2,948.08; 24/7-\$1,231.37; Emerg Mgnt-\$10,165.06; E911-\$37,159.15; Highway-\$107,376.23; Weed-\$17,697.08; P&Z-\$17,622.17; **Bills:** Lucio, Monica-\$63.90; Baker, Barbara-\$134.00; A To Z Shredding-\$47.78; A&A Auto Salvage-\$250.00; A&B Business,Inc Solutions-\$3,114.83; A&B Welding Supply-\$84.95; A&I Distributors-\$324.65; Aarms-\$525.00; Ace Hardware Of Lead-\$153.24; Adams-Isc-\$74.65; Air Connection-\$1,703.40; Alpine Impressions-\$284.00; Apex Software-\$655.00; At&T Mobility-\$1,818.48; Avera Mckennan Hospital-\$120.18; Axon Enterprise-\$26,316.03; BH Pest Control-\$190.00; BH Pioneer-\$1,351.09; Barnaud Law Firm-\$3,719.20; Black Hills Chemical-\$1,992.71; Black Hills Energy-\$14,142.64; Black Hills Pure-\$11.50; Blackburn & Stevens Prof-\$385.20; Bluepeak-\$1,455.81; Brosz Engineering-\$13,702.50; Brownsville Fire Dept-\$6,134.51; Butler Machinery Co-\$960.48; Butte Electric Coop-\$320.55; Cbh Cooperative- \$8,321.28; Cdw Government-\$2,416.96; Century Business Products-\$705.19; Centurylink-\$344.58; Chadams-\$3,980.00; Chris Supply Co-\$20.86; City Of Rapid City-\$1,560.00; Clinical Lab Of BH-\$3,858.00; Dakota Equip Rental/Chain Saw-\$32.28; Deadwood Vol Fire-\$19,466.46; Deadwood, City Of-\$2,335.39; Delahoyde, Katy-\$93.10; Dept Of Hlth Lab Services-\$420.00; Dept Of The Treasury-\$157,092.72; Diamond Pharmacy-\$889.42; Dustbusters-\$45,862.02; Elevatus Architecture-\$36,000.00; Federal Express Corp-\$17.68; Fmg Engineering-\$2,606.57; Grimm's Pump&Industrial Supply-\$1,013.60; Hartford-Priority Accounts-\$2,372.26; Hilpert & Hale Prof-\$412.83; Holiday Inn Express & Suites-\$231.00; Holiday Inn Express-\$600.00; Inland Truck Parts-\$220.77; Interstate Engineering-\$19,319.40; Ivory Family Dentistry-\$374.00; Jacobs Precision Welding-\$530.40; Janke, Wendy-\$1,972.00; Jerry Greer's Engineering-\$104.50; Joe's Windsheild Repair-\$460.00; Johner Gravel-\$5,470.22; Katterhagen, Mark-\$15.00; Kennedy Pier Loftus & Reynolds-\$181.90; Kimball-Midwest Co-\$801.24; Kinney Law-\$1,395.97; Koala Electric-\$1,039.39; Kosel, Joseph-\$7,434.82; Larson, Val-\$15.00; Lead Fire Protection District-\$36,611.75; Lead, City Of-\$56.29; Lead-Deadwood Sanitary-\$642.99; Legal & Liability Risk Mgnt-\$150.00; Lewis & Clark Bhs-\$426.00; Lewno, Lucy-\$166.60; Lexisnexis Risk Data Mgnt-\$75.00; Lincoln County-\$117.70; Mabey, Brooke-\$780.00; Mastercard-\$8,077.24; Midcontinent Communications-\$154.63; Montana Dakota Utilities-\$2,067.11; Monument Health Network-\$35,318.43; Monument Health Rc Hospital-\$433.00; Ms Mail-\$825.00; Nalco Company-\$1,265.79; Nemo Volunteer Fire Dept-\$1,951.33; Newman Signs-\$1,152.38; Odp Business Solutions-\$382.23; Office Of Child Support-\$956.32; Olson Fuels-\$8,157.70; On-Site First Aid & Safety-\$79.65; Pennington Co Jail-\$473.28; Percy, Melissa-\$1,560.00; Pharmchem-\$213.75; Pheasantland Industries-\$80.97; Phoenix Investigations-\$895.58; Pomp's Tire Service-\$2,350.00; Powerplan-\$937.02; Precision Kiosk Technologies-\$1,350.00; Queen City Rocket Lube-\$199.22; Queen City Tire-\$24.15; Quill-\$262.18; Radiology Associates-\$13.23; Rcs Construction-\$2,615,295.70; Rfcc-\$5,141.91; Rochford Fire Protection Dist-\$1,021.36; Ryan, Suzanne-\$780.00; Sacrison Asphalt-\$122.40; Safe Life Defense-\$1,035.56; Safety Benefits-\$150.00; Sanford Health Occupational-\$70.00; Schlimgen Law Firm-\$4,240.50; Scott County Sheriff-\$55.00; Scott Peterson Motors-\$728.26; SD Assn Of Co Comm-\$1,000.00; SD Continuing Legal Education-\$875.00; SD Dept Of Transportation-\$50,299.89; SD Emergency Mgnt Association-\$375.00; SD State Treasurer-\$611.63; Sdn Communications-\$260.00; Sdrs Supplemental Retirement-\$4,040.00; Sdvsoa-\$100.00; Servall Towel & Linen-\$308.30; Simon North Region-\$30,550.83; Sirchie Acquisition Company-\$108.20; Spearfish Auto Supply-\$404.81; Spearfish Canyon Fire-\$3,020.17; Spearfish City Of-\$212.60; Spearfish Fire Dept-\$86,036.85; Spearfish Police Dept-\$11,169.00; Spearfish Rural Fire-\$17,036.00; St Onge Fire Protection Dist-\$2,821.28; State Disbursement Unit-\$1,198.94; Stephens Law Office-\$1,380.00; Burdick, Laura-\$153.30; Sturdevant's Auto Parts-\$2,478.63; Sturgis Fire Department-\$8,529.23; Sturgis Responder Supply-\$522.55; Sysco Montana-\$7,696.07; Thomson Reuters-West-\$557.98; Tnf Properties And Storage-\$800.00; Turbiville Industrial Electric-\$584.44; Turnkey Corrections-\$16.26; Twin City Hardware & Lumber-\$741.67; Unger Motor Parts Company-\$868.00; Verizon Wireless-\$106.71; Victims Of Violence-\$1,225.00; Voice Products Service-\$12,689.00; Washington State Support Regis-\$230.76; Waste Connections-\$1,430.02; Watertree-\$54.00; Wells Fargo Banks-\$171.26; Wells Plumbing & Farm Supp-\$1,497.44; Western Communication-\$334.00; Western Sd Juvenile Serv-\$4,200.00; Wex Bank-\$1,182.84; White Drug-\$49.67; White's Canyon Motors-\$25.68; Whitewood Fire Prot District-\$10,407.82; Yankton Co Sheriff-\$100.00; Yankton County-\$270.00; Youngberg Law Prof-\$214.00; **Witness & Jurors:** \$569.94.

ADJOURN: 3:09 p.m. There being no further business, Chairman Ewing adjourned the meeting.

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Date Approved

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Robert Ewing, Chairperson

ATTEST:

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Brenda McGruder, Auditor