

**AGENDA
PENNINGTON COUNTY
SPECIAL PLANNING COMMISSION MEETING
March 8, 2023 @ 4:00 p.m.**

County Commissioners' Meeting Room - Pennington County Administration Building

The Planning Commission utilizes Speaker Request Forms, which are available in the Commission Chambers during the meeting.

**If unable to attend the meeting, please submit your comments via e-mail to plz@penngo.org or by mail to the attention of the Pennington County Planning Department, 130 Kansas City St., Ste. 200, Rapid City, SD 57701, or, if appearing by teleconference, contact the Planning Department at 605-394-2186, twenty-four (24) hours prior to the scheduled meeting.

ROLL CALL

1. APPROVAL OF THE AGENDA
2. MEETING PROCEDURE
3. ORDINANCE AMENDMENT / OA 23-01: Pennington County. To amend Section 319 Vacation Home Rental [to amend and supersede the existing Section 319 Vacation Home Rental] of the Pennington County Zoning Ordinance.
 - a. Presentation by Planning Department and State's Attorney's Office regarding historical and legal topics on vacation home rentals.
 - b. One acre lot size minimum.
 - c. Transfer of licenses.
 - d. Parking.
 - e. Proposed amendments from the Planning Commission members.
4. ADJOURNMENT

ADA Compliance: Pennington County fully subscribes to the provisions of the Americans with Disabilities Act. If you desire to attend this public meeting and are in need of special accommodations, please notify the Planning Department so that appropriate auxiliary aids and services are available.

STAFF REPORT

GENERAL INFORMATION:

REQUEST: **ORDINANCE AMENDMENT / OA 23-01:** To amend Section 319 – Vacation Home Rental of the Pennington County Zoning Ordinance.

REPORT BY: Brittney Molitor

GENERAL DESCRIPTION: To amend Section 319 – Vacation Home Rental, based upon the VHR Committee recommendations.

PROPOSED TEXT:

SECTION 319 – VACATION HOME RENTALS

- A. *Purpose.* To establish regulations and standards for owners of Vacation Home Rental (VHR) properties in Pennington County for the protection of the public health, safety, and welfare, and to minimize the impacts of such use.
- B. *Applicability.* This Section applies to all VHRs within Pennington County outside the jurisdiction of an incorporated municipality.
- C. *Definitions.*
 - 1. *Operator.* Any person or organization designated in charge of the day-to-day operations of a VHR.
 - 2. *Vacation Home Rental (VHR).* Any home, cabin, or similar building that is rented, leased, or furnished in its entirety to the public on a daily or weekly basis for more than 14 days in a calendar year and is not occupied by an owner or manager during the time of rental.
- D. *General Requirements.*
 - 1. *Special Permitted Use.* If all of the general requirements set forth in this Section and all performance standards set forth in § 319(E) are met, a VHR is allowed with a Special Permitted Use (SPU).
 - a. *Exceptions.* Certain uses and structures are not eligible for an SPU and require a Conditional Use Permit (CUP) subject to PCZO § 510 and the general requirements of this Section.
 - i. *Failure to meet performance standards.* If the performance standards set forth in § 319(E) are not met or an applicant refuses to meet the performance standards, then a VHR may be allowed with a CUP.

- ii. *Non-traditional structures.* Any non-traditional structures must obtain a CUP. This may include, but is not limited to, tents, efficiency dwellings, treehouses, grain bins, yurts, etc. It is within the Planning Director's full discretion to require a CUP for structures deemed by the Planning Department to be non-traditional.
 - iii. *Dead-end road system.* Any structures on a dead-end road system exceeding 40 dwelling units or 2 miles in cumulative length must obtain a CUP.
2. *Zoning.* VHRs are allowed with a SPU or a CUP in agriculture and residential zoning districts.
 - a. VHRs are a use-by-right in commercial and highway service zoning districts.
 - b. VHRs are prohibited in industrial zoning districts.
3. *Minimum Lot Size.* A minimum 1-acre lot size is required for all VHRs.
4. *Dwelling requirements.*
 - a. *One VHR per lot.* Only one VHR is allowed per lot.
 - i. *Exception.* Multiple VHRs per lot may be allowed in highway service or commercial zoning districts.
 - b. *Accessory Dwelling Units (ADUs).* VHRs are allowed in ADUs under the following conditions:
 - i. The property must be owner-occupied.
 - ii. Only one rental ADU is allowed per lot. The main home cannot be used as a VHR.
 - iii. The ADU must have an approved CUP in accordance with PCZO§ 324.
 - c. *Multiple-family and apartments.* VHRs are prohibited in units located in apartments, condominiums or other multiple-family dwellings.
 - i. *Exception.* Duplexes, under single-ownership, may be used as VHRs.
 - d. *Recreational Vehicles.* VHRs are prohibited in recreational vehicles.
5. *Special Flood Hazard Area.* VHRs are prohibited in a floodway and no portion of the structure can be within the floodway boundaries.
6. *Local contacts.* If an owner chooses to have a local contact, the contact must:
 - a. Live within 50 miles of the VHR; and,
 - b. Be reachable 24-hours a day, 7-days a week.
7. *Application.* The following information must be submitted to the Planning Department with the SPU or CUP application:
 - a. *Application Form.* On a form provided by the Planning Department.
 - b. *Fees.* In accordance with § 511.
 - c. *Site Plan.* The site plan showing the layout of the property, including all existing and proposed structures with setbacks, wells and/or water

- lines, on-site wastewater treatment system and/or sanitary sewer lines, and on-site parking spaces.
- d. *Floorplan*. An interior diagram/floorplan of the dwelling to be used as a VHR.
 - e. *Utility Plan*. The location and type of all utilities serving the dwelling. This must include:
 - i. On-site wastewater treatment system information and location.
 - ii. Water supply information and location.
 - iii. Propane tank(s) locations, if applicable.
 - f. *Performance Standard Information*. All information supporting compliance with the required performance standards set forth in § 319(E). This must be submitted for both CUP applicants and SPU applications. An applicant for a CUP must set forth why they cannot meet the general requirements of this Section or the performance standards in §319(E).
 - g. *Dead-end Road System*. Properties on a dead-end road system are required to complete and submit an additional exterior evacuation plan.
- 8 *Density Cap*. Pennington County has a cap on the allowable number of VHRs in its unincorporated limits. The cap is based on the number of single-family residences (hereinafter “SFR” refers to the percentage of residences the total cap is calculated from) that can be utilized as VHRs. The calculation is based upon the following:
- a. That there is a 5% cap on the number of VHR rentals permitted in Pennington County based upon the total number of SFR in the unincorporated portion of the County.
 - b. That an additional 1% (for a total of 6%) is permitted after the compliance grace period as outlined PCZO § 601.
 - c. SFR is equal to the single-family resident estimates published by the United States Census Bureau for each even-numbered year.
- E. *SPU Performance Standards*.
1. *Bedrooms*. The maximum number of bedrooms in the dwelling cannot exceed 5.
 2. *Maximum Occupancy*.
 - a. *Overnight Occupancy*. The maximum occupancy is 14 people (guests) or the maximum allowed based on the size of the existing onsite wastewater treatment system (see South Dakota Administrative Rules 74:53:01:20, 74:53:01:25 and 74:53:01:31) serving the VHR under the approval from South Dakota Department of Agriculture and Natural Resources (DANR) for the on site wastewater treatment system, whichever is smaller.
 - i. All ages count towards the number of people.
 - b. *Allowable Daily Guests*. The maximum overnight occupancy plus 4 people.
 3. *Campers and tents*. No campers or tents are permitted to be occupied by guests or guest’s visitors on a property approved under an SPU.

4. *Parking.*
 - a. *Minimum parking requirement.* One parking spot is required per bedroom.
 - b. *Maximum parking requirement.* No more than two parking spots per bedroom is allowed.
 - c. *Off-street parking.* All motor vehicles and trailers, including all-terrain vehicles (ATV), utility terrain vehicles (UTV), etc., must be parked off- street in a designated parking spot.
 - d. *Designated parking.* All guests and guest’s visitors must park in a designated parking spot.

5. *Fire Restrictions.* Only UL[®]-approved propane or professionally installed natural gas fire pits and grills are permitted.
 - a. The following is prohibited:
 - i. wood burning fire pits;
 - ii. charcoal grills;
 - iii. fireworks of any kind; and,
 - iv. any other open flame which is not specifically allowed above.
 - b. Any VHR located within the Black Hills Area Fire Protection District must obtain all permits as required by South Dakota Law and regulation prior to the use of fire on the property.

6. *Liability Insurance.* The owner must provide a Certificate of Insurance indicating short-term rental coverage for the VHR, with “Pennington County” listed as a Certificate Holder.

7. *Wastewater Treatment and Water.* The owner must provide a letter from DANR approving the number of guests allowed for the wastewater system.
 - a. All septic tank lids must be secured and locked.
 - b. All cisterns must be locked.

8. *Department of Health (DOH) Inspection Report.* The owner must submit the VHR Inspection Report performed by the DOH at the time of application.
 - a. Any corrective action required by DOH must be completed prior to application to the Planning Department.

9. *Evacuation Plan.* The owner must provide an evacuation plan to the guests. This will include an interior plan showing all exits.
 - a. *Special Flood Hazard Area.* For those properties located within a Special Flood Hazard Area, an additional exterior evacuation plan is required.

10. *Severe Weather Safety Plan.* In the event of a severe weather condition (i.e. thunderstorms, wind, hail, lightning, tornadoes, or winter storm events) a plan must be provided to guests. This plan should include location(s) of a disaster supply kit or safe room/shelter area.

11. *Noise and Quiet Hours.* Quiet hours for VHRs are from 10 p.m. to 7 a.m.
 - a. Quiet hours apply to noise levels in the interior and exterior of the VHR.
 - b. Noise levels during quiet hours should be appropriate to accommodate sleep of neighboring properties.
 - c. During all times, amplified sound beyond the property boundaries is prohibited and no unreasonable noise in violation of SDCL § 22-18-35 is allowed.
12. *Department of Revenue (DOR).* All owners must have a DOR Sales Tax License.
13. *DOH Lodging License.* All owners must have a current DOH Lodging License for a VHR.
14. *Interior Signage.* The following signage is required on the interior of the VHR or alternatively in a guest book. A copy of the signage/book must be provided to the Planning Department at the time of application:
 - a. Local contact plus one additional contact.
 - i. Name, phone number and email address must be provided to the guests.
 - b. Property address.
 - c. Emergency numbers. This includes the local police and fire departments and emergency dispatch numbers.
 - d. Internal and External Evacuation Plan(s).
 - e. Severe Weather Shelter Plan.
 - f. Maximum occupancy – both overnight and daily maximums.
 - g. Parking space allotments and locations.
 - h. Quiet hours.
 - i. Pet rules and applicable leash laws.
 - j. Fire restriction information.
 - k. Trash and refuse locations and pick up day information.
 - l. Special Flood Hazard Information, if applicable.
 - m. A copy of the DOH Lodging License.
 - n. A copy of the DOR Sales Tax License.
 - o. Notification to guests and guest’s visitors that they are subject to all requirements of Pennington County Ordinance and South Dakota State law and may be subject to any penalties prescribed by law if violations occur.
 - p. Notification that failure to conform to the parking and occupancy regulations of the VHR unit is a Violation of County Ordinance.
 - q. A map or description of the property lines so as to clearly identified the property limitations and prevent trespassing by guests onto neighboring properties.
 - r. A statement that: “Guests are expected to be courteous to all neighbors and to respect property boundaries”.

15. *Miscellaneous requirements.*
 - a. All Operators of a VHR are required to keep records of guests in accordance with South Dakota Administrative Rules.
 - b. All VHRs are required to list their County Issued Identification Number on all booking sites.

- F. *Local Contact.* An Owner may retain a Local Contact as the Operator to comply with the requirements of § 319, including, without limitation, the filing of an application for a SPU or CUP, the management of the VHR, and compliance with the conditions of the Permit.

- G. *Notice.*
 1. *Special Permitted Use.*
 - a. Notice must be made in accordance with § 517(C)(2).
 - b. Notice must include Local Contact or owner information.

 2. *Conditional Use Permits.*
 - a. Notice must be made in accordance with § 510(B)(2).
 - b. A Hearing is required for a CUP in accordance with § 510(B)(3).

- H. *Registration.* All Operators of a VHR (regardless of permit type) are required to register with Pennington County and pay a bi-annual permit fee by March 1st January 31st. All Operators must pay the bi-annual permit fee set forth in § 511.

- I. *Approval of VHR Permit.* A SPU will be approved in accordance with PCZO § 517(G). A CUP is approved in accordance with PCZO § 510.

- J. *Review of VHR Permit.*
 1. *Special Permitted Use.*
 - a. *Power-to-Review.* Special Permitted Uses are subject to review by the Planning Department for compliance with the designated criteria. A review will occur under the following circumstances:
 - i. The Planning Department receives a substantiated complaint that the property is in violation of any Zoning Ordinance or designated criteria; or,
 - ii. Upon the third year of operation, to include a site visit by Planning Staff.
 - b. All Owners or Local Contacts must pay review fees set forth in § 511 and this Section.
 - c. *Determination.* In issuing a determination on a review, the Planning Director or his/her designee may:
 - i. approve the Special Permitted Use subject to the designated criteria;
 - ii. continue the review for no more than 90 days for the applicant to come into compliance with the designated criteria; or,
 - iii. terminate the Special Permitted Use.

2. *Conditional Use Permit.*
 - a. *Power-to-Review.* The Planning Commission has the authority to review a CUP for a VHR to ensure compliance with the PCZO, any conditions imposed, and state law.
 - b. *Procedure.* The procedure for the review will be done in accordance with
 - i. § 510(F).
 - c. *Revocation.* The procedure for the revocation will be done in accordance with § 510(I).
- K. *Fees.* All fees set forth in § 511 are applicable. Additionally, a penalty fee of \$1,500 will be assessed in the following circumstances:
 1. Operating a VHR without an approved SPU;
 2. Operating a VHR without an approved CUP; or
 3. Operating a VHR with an expired SPU or CUP.
- L. *Sale or Transfer of a Dwelling with a Special Permitted Use or Conditional Use Permit for a VHR.*
 1. SPUs and CUPs for VHRs are not transferable.
 2. All new Owners or Operators must apply the appropriate permit in accordance with all the requirements of PCZO § 319.
- M. *Termination or Revocation.* Termination or revocation of any permit granted under § 319 shall be done in accordance with PCZO §§ 510 (CUP) or 517 (SPU).
- N. *Building Permit.* Building permits will be issued in accordance with PCZO §§ 506, 510, and 517.
- O. *Expiration.* Permits issued in accordance with PCZO § 319 expire as outline in PCZO §§ 510 (CUP) or 517(SPU).
- P. *Appeals.* Appeals from PCZO § 319 should be conducted in accordance with PCZO §§ 510 (CUP) or 517 (SPU).
- Q. *Enforcement.* Failure to comply with conditions of approval of a SPU or CUP is a violation of Pennington County Zoning Ordinance and subject to the enforcement provisions of § 514. County enforcement actions, including revocation or termination, may be taken based on guests and invitee's acts or failure to conform to the provisions of this Ordinance.

Recommendation: Staff recommends approval of Ordinance Amendment / OA 23-01.

Public Comments – VHR Public Hearing – February 15, 2023

- Notice of Staff's decision on SPU sent to neighbors.
- Broaden categories for when a CUP is required.
- Address concentration of VHRs in a neighborhood.
- MUST provide a local contact.
- Two people per bedroom plus four as an occupancy restriction.
- Limit bed capacity to the number of people allowed.
- Remove the one-acre minimum.
- SPU is better than a CUP.
- Fees are too high.
- A 24-7 contact is asking a great deal.
- Make SPU/CUP transferrable to family and heirs.
- Need to broaden the SPU notification to more than just adjacent landowners.
- VHRs change the character of the neighborhood.
- Concerned with water use for those on private well systems.
- Non-complaint operators that continue without permits.
- No accountability with SPU.
- VHRs are well-kept, mowed and cleaned regularly in comparison to long-term renters.
- Require VHR operators to obtain a Property Manager License from Real Estate Commission.
- One acre minimum is too restrictive.
- Market will dictate the number of VHRs in an area.
- VHR prohibition should be addressed in covenants, not County ordinances.
- One acre minimum is too restrictive.
- Property owners need ability to have a VHR as income in tough situations.
- What data was used to determine that VHRs were affecting housing stock?
- Safety concerns with out-of-state, unscreened renters.
- Noise and traffic concerns in quiet neighborhoods.
- How do you protect residents in areas with VHRs?
- Property owners are better managers than companies – vested interest.
- A standard homeowner's insurance policy does not cover short-term rentals.
- Limited insurance companies that cover VHRs for property owners.
- More difficult to remove a bad long-term renter than having several short-term renters.
- Covenants should manage VHRs in a neighborhood, not the government.
- Concerns over how short-term renters are screened.
- Support SPU versus CUP process.
- Screening of VHR renters through reviews.
- Don't rent a VHR to renters with bad reviews.

- SD DOH takes care of everything, do not need County oversight.
- The one acre minimum is too restrictive.
- Local contact and making them available is a good idea.
- Most VHR owners in the area are locals.
- Emotional issue on both sides.
- A way for locals to make money in an economic downturn.
- The VHR season is short and shouldn't have significant impact.
- Families are most of the short-term renters.
- Rate renters so others know if they are a bad short-term renter.
- Most VHR properties are remodeled and refurbished.
- Long-term renters put a bigger footprint on the neighborhood.
- One acre minimum too restrictive – if on city water and sewer.
- Fees are too high.
- Need opportunities to make extra money in bad times.

Occupancy limits speak directly to the character of the neighborhood and the occupancy rates of the local homes. Please give heavy weight to the community character when defining the parameters of the VHRs in question. The draft document states in the opening sentence of Part A. "...for the protection of public health, safety and welfare, AND TO MINIMIZE THE IMPACTS OF EACH USE" (Emphasis mine.)

Thank you.

Regards,
Byron Aultmann

From: [Desyl Peterson](#)
To: [Molitor Brittney](#); [Theunissen Jason](#); [Krueger Megan](#); [Sack Cody](#)
Subject: Re: FINAL Draft of Section 319 VHR Ordinance
Date: Sunday, January 15, 2023 11:33:21 AM
Attachments: [image004.png](#)
[image005.png](#)

CAUTION: This email is from an outside source. Use caution before opening attachments, clicking links or providing confidential information.

To staff,

I am providing my comments below only to you in order to not violate any constraints by the open meeting law. .

Here are my comments based on what was discussed and approved by the committee:

1. Under D.7.b., you say that an additional 1% of VHRs are allowed as outlined in section 601. You have not provided the language for that section, and we need to see it. The understanding of the committee was that an additional 1% would be allowed only if the 5% cap was met within the initial grace period of 6 months after adoption of the ordinance.
- 2 . I'm confused by your language regarding approval from DANR. You delete reference to their approval in E.2.a, but you still require it in E.7. Is that inconsistent?
3. Under J.1.a, I believe there should be an "and" between subparagraphs i and ii, instead of an "or".
4. Under J.1.c.iii, I think that the language should say, "...deny or terminate...."
5. Under L.2., I think a word is missing: "All new Owners or Operators must apply for the appropriate permit....."

On Fri, Jan 13, 2023 at 9:09 AM Molitor Brittney <brittneym@pennco.org> wrote:

Good morning-

I have attached the FINAL draft of the Section 319 Ordinance pertaining to VHRs. Please note that there are a few changes (highlighted in yellow) that Staff made based upon SAO review of the proposed Ordinance or recommendations from of current Planning Staff.

Please note: DANR has no desire to provide Pennington County with an approval letter for VHRs. We have had discussions with current applicants and the process has been extremely cumbersome and time-consuming to get anything from DANR. In light DANR's position regarding VHR letters, we have proposed a change to the process. The Planning Department has qualified Staff and feel they can review information (we will provide VHR applicants with a calculation sheet to help determine the number of people based on the

septic size) and provide approval. That change is reflected in the FINAL draft.

In addition, due to the way the statute reads regarding Special Permitted Uses, the Licensing cycle was changed to every two years (determination from SAO).

I am updating the Board on the progress of the committee at their January 17, 2023, meeting. In addition, I am asking the Planning Commission at their January 23, 2023 meeting to set a public meeting date for the first reading and review of the proposed Section 319 update. You are more than welcome and encouraged to attend either or both meetings.

Please review the attached documents and let me know if you have any concerns or questions. These documents will be posted on the Planning webpage and provided to the Planning Commission and Board of Commissioners.

Thank you for all of the hard work and I appreciate the hours you put in developing the ordinance.

Brittney Molitor, AICP, CFM, MAS

Planning Director

Planning and Zoning Department

130 Kansas City St., Suite 200

Rapid City, SD 57701

Phone: (605) 394-2186 ext. 1408

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To: Pennington County Planning Commission

From: Desyl Peterson, Member of Vacation Home Rental Committee

Date: February 15, 2023

Re: Comments on Draft Vacation Home Rental Ordinance

First, let me say thank you for giving me the opportunity to serve on the most recent Vacation Home Rental Committee. Although we did not agree on everything, we were all courteous to each other and respected each other's right to have differing opinions.

Second, I'd like to thank the County planning and attorney staff for their professional help and guidance as we went through the process.

Regarding the proposed ordinance, I do not agree with everything that is in the final draft. I consider myself a representative of the many county residents who oppose vacation home rentals (VHRs) in their neighborhoods and particularly the residents who have suffered negative effects from those rentals. I believe the proposed ordinance does not adequately protect the rights of those property owners. I understand and defend the rights of property owners, but one person's property rights can come into conflict with another's. That's the point where government must intervene to achieve a balancing of those conflicting interests. I outline below the points where I think there could be improvements in the ordinance.

I also am concerned about the availability of workforce housing in the county, which is reaching a crisis point. I believe that the ordinance makes a reasonable attempt to help address that lack of housing. I discuss this more below.

Requested Changes to the Proposed Ordinance

1. The ordinance proposes that most VHRs can obtain a Special Permitted Use (SPU) issued by staff, instead of a Conditional Use Permit (CUP). There is provision in the zoning ordinance for notice of the application to the neighbors, but there is no provision for notice to the neighbors of the staff's decision. It's not like a public hearing where the neighbors can attend and learn the decision. There is a right to appeal to the Board of Zoning Adjustment, but how can neighbors appeal if there is no obligation to notify them of the decision? And what is the Board of Zoning Adjustment? Shouldn't the appeal be to the Planning Commission which has history with approving VHRs? I think the SPU procedure should be deleted. It just makes it easier to obtain a VHR permit to the detriment of the neighbors.
2. If you keep the SPU procedure, please broaden the categories for when a CUP is required. (Section D.1.a) Include all of the types of situations where the Planning Commission has previously denied a CUP. Some that should be included are: when the

applicant has operated the VHR before obtaining the proper permit, when the applicant has failed to cooperate with staff, and when the applicant has been previously denied or not approved for a VHR. Those provisions will give neighbors the opportunity to present valuable information directly to the Planning Commission.

3. Many property owners purchase their land with the expectation that they are buying into a typical residential area. A concentration of VHRs in a neighborhood can severely detract from that residential character. Please add language to D.1.a for another category that requires a CUP. This language would be: "*Concentration of VHRs*. A conditional use permit is required for property that is located within 250 feet of another vacation home rental or bed and breakfast. The applicant must show that the proposed use is reasonable given the circumstances and is not detrimental to the character of the neighborhood." An example of when a concentration of VHRs is detrimental is when a person's home would be surrounded by VHRs and that person objects.

4. The current ordinance requires the VHR owner to appoint a local contact if the owner does not live in the area. The proposed ordinance makes that optional. Please keep the requirement for a local contact so that the neighbors can contact someone nearby when there are issues. Please keep the language that the failure of a local contact is deemed non-compliance by the Owner. The proposed ordinance has language about the local contact in two places (proposed D.5 and F). All of the information about a local contact should be in one place.

5. The ordinance does not contain language that was approved by the committee on July 8, 2022. Under the performance standards in Section E.2, the maximum overnight occupancy should be two people per bedroom plus four, not 14 as contained in the draft.

6. Regarding the maximum overnight occupancy (E.2.a), please add language limiting the bed capacity to that number. You are asking for trouble if there isn't a physical limitation on occupancy. Without it, owners will push to allow as many people as physically possible in order to maximize profit. As an example, in a recent application before the Planning Commission, the applicant had one bedroom with a bunk-bed arrangement that allowed for six people in that room alone.

I have some other minor changes that I think are clerical in nature. I will include them at the end of this memo.

Workforce Housing

The committee was presented information about numerous independent and peer-reviewed studies showing that the rise in VHRs negatively affects workforce housing. This is particularly evident in tourist destinations. A recent housing study by Elevate Rapid City found the same to be true in the Black Hills area. Additionally, South Dakota

Ellsworth Development Authority Executive Director Scott Landguth was quoted in the November 5, 2022 Rapid City Journal as saying that the rise in popularity of Airbnb and VRBO homes have contributed to the shortage of housing in the Box Elder area. A number of governmental agencies have attempted to address the issue by imposing a maximum on the number of VHRs allowed. The committee recommends that Pennington County address this issue in two ways.

First, the committee recommends that the minimum lot size for a VHR remain at one acre. Housing on smaller lot sizes is generally more affordable than larger lots and should be kept available for workforce housing. (Additionally, the larger size lot helps provide some spacing between adjacent homes and the VHR.)

Second, the committee recommends imposing a maximum number on the properties used for VHRs. Rather than an absolute number, the committee recommends a cap of 5% of the single family residences in unincorporated Pennington County, which allows the number of VHRs to grow as the housing stock increases. The committee agreed that the number of VHRs could go to 6% if the 5% limit is reached within 6 months after the adoption of the new ordinance. ***Language explaining the increase to 6% is not correctly stated in the draft ordinance and should be changed.***

Fee Increases

The committee recommends that the fees be increased, to ensure that staff time is adequately covered. The County currently has only one enforcement staff member. Please consider adding another person, at least in the summer, to help with enforcement of the VHR ordinance. Usage of VHRs increases in the summer, and neighborhood issues are greater during that time.

Clerical Changes to the Draft Ordinance

1. The ordinance deletes reference to the DANR approval in E.2.a, but that approval is still required in E.7. It should be deleted throughout the ordinance.
2. Under J.1.a, I believe there should be an "and" between subparagraphs i and ii, instead of an "or".
3. Under J.1.c.iii, I think that the language should say, "...deny or terminate...."
4. Under L.2., I think a word is missing: "All new Owners or Operators must apply for the appropriate permit....."

From: [Jess Ginger](#)
To: [Molitor Brittney](#)
Subject: Re: FINAL Draft of Section 319 VHR Ordinance
Date: Monday, January 16, 2023 12:29:31 PM

Hi Brittney,

Welcome back!

I just have a couple comments on the final draft. It's been awhile so I might not be remembering all fo the discussions accurately.

Section D, ii: I thought we were going to not allow non-traditional structures at all?

Section E, #2, a. This reads confusing. Did we decide that it was 2 people per bedroom +4 maximum occupancy? This reads as though they can have 14, pending septic tank size. So if they have a 2 bedroom house and the septic is approved for 14 people, are we going to allow 14 people in that size of house?

Section U, #1. Should it be \$1500 / occurrence? What if the county has to reprimand multiple times because they continue to operate out of compliance? The flat fee might not be steep enough to grab attention. Just my thoughts. Maybe a note to give to the commission.

Also, I am in Arizona for the winter. Am I able to Zoom the meetings?

Thanks!

Jessica L. Ginger, GM
9705 Clarkson Rd.
Rapid City, SD 57702
Ph: 605-593-1745
jess@wclsd.com

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Brittney Molitor, AICP, CFM, MAS
Planning Director
Planning and Zoning Department
130 Kansas City St., Suite 200
Rapid City, SD 57701
Phone: (605) 394-2186 ext. 1408
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From: [Larry Teuber](#)
To: value@hills.net
Cc: [Molitor Brittney](#); [Patrick Briesemeister](#); [Theunissen Jason](#)
Subject: Re: FINAL Draft of Section 319 VHR Ordinance. Teuber comments
Date: Monday, January 16, 2023 3:38:46 PM

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Ron

Thanks for forwarding emails .

The proposed ordinance was developed by a volunteer committee of county citizens. They and staff put many hours into meetings and research . The committee was composed of folks that had both liberal and restrictive opinions of VRs and came to a very reasonable compromise as reflected in the draft ordinance .

A few of my views :

The current recommended fee of \$1000 for 2 year application / lisc/ permit is very reasonable and consistent with many other locations. As a side note , whenever possible in government programs the goal of lisc fees, permits and penalty fees should be to adequately financially support all administrative and enforcement activity relative to that program . Some programs may be welfare in nature and not revenue/cost neutral and some may be revenue - cost positive . In the VR space it is reasonable to expect the program would revenue / cost positive to a small degree.

Insurance issues. Operators utilize private realestate/ homes in the VR activity . VR is considered short term lease and as such are not covered under common home owners / rental insurance policies and in fact are a listed exclusion in polices (similar to flood and war coverage) . To obtain coverage one must request and pay for additional rider coverage which usually doubles the premium expense. VR liability coverage is widely and commonly required at \$1M. A wise homeowner would also have umbrella coverage . Requiring , by ordinance, liability coverage that is uncommonly high is no problem for me personally but I do believe it is unreasonable in an ordinance . In any event , requiring an insurance binder before a permit is issued is protection for consumers , which should be considered in the ordinance. The ordinance does not and should not be drafted to protect permit holders - its generally isn't the duty of government to protect people from this sort of risk. The county bears no risk whatsoever with the insurance decision - for many reasons.

VR stats . Research of VR platforms in the area yielded the

following: Of the nearly 900 in Penn County around 500 are in the RC city limits and 400 in Penn Co out of the city limits. Of those 400 only 100 have obtained proper Penn Co and SD state lisc/ permits and likely pay required taxes (sales). 3 things come to mind here . 100 operators are legal , 300 are bootleggers (illegal). The other clear issue here is Penn Co has no authority to regulate VR within the RC city limits - therefore there should be no further discussion about what happens within RC city limits .

Non Traditional structures . Bad idea . There should be a clear prohibition . The non traditional question can be addressed in the future however I wouldn't do so now . There are plenty of issues currently without adding unnecessary complexity to the ordinance . The types of structures, electrical , plumbing , structural , fire , septic code compliance issues will be endless .

Failure to pay lisc and penalties . The cost must get one's attention in terms of monetary amount and future restrictions. Restrictions should be binding on the address , not the person- to apply for future permits . A penalty less than the application fee is foolish , failure to pay should be escalating . Repeat offenders should not be permitted in the future . The restriction should be on the physical address - as violators can swap operation to a family member at the same address and with property sales the opportunity to operate a VR gets a premium which should not be rewarded to profiteering bootleggers .

The propose allowed number of permits to be issued. The base number from what I understand is the number single family residences in Penn Co not including those in RC. I look at it this way, 20% of the base number is too many and 0.2% is too few . The Committee made a recommendation based on their extensive discussion - second guessing that number would not be constructive and is beyond microevaluating the topic . All of these issues to include the permit number can be revisited in a year or 2. My bet is the total number of permitted VRs after the ordinance and 1 year out will be less than <1% of the base reference number (considering today the legal permit holders are .6% of the base).

The 2 polices question. Currently VR require a CUP . All CUPs consume staff and commission time and budget . Among the many purposes of the ordinance is to regulate (very unrepubican like) VR activity and to reduce its drag on staff and the commission. A comprehensive ordinance seeks to make the permit issuance an administrative staff function (special use). Those applications that don't meet ordinance requirements are forced into the burdensome CUP process . This is similar to septic system and many other permit processes. Can you imagine the commissioners addressing every

septic system permit?

Renewals after an ordinance passes . There are rule followers and their are bootleggers and bullshitters . As a matter of fairness the current permit holders should be grandfathered into any ordinance if they have historically followed the letter of the law. They should not be grouped into the bootlegger and bullshiter group. As a matter of law I suspect those that are legal operators today , if denied or restricted in any way their current lisc may have a legal remedy to not be stripped of what they lawfully obtained.

The VR story is a story that isn't going to be outlawed. What it requires , for neighbors, operators . consumers and those in the same “lodging” space (campgrounds, hotels , motels...) is thoughtful , fair regulation by ordinance which is enforced aggressively .

Many Thanks, LT

Larry Teuber, M.D., SSA,
Fellowship Trained Pivotologist
9705 Clarkson Rd.
Rapid City, SD 57702
Cell: 605-484-1616
Fax: 605-394-9307
Email: lteuber@wclsd.com
BHSI, LLC
MDC, LLC
WCL, LLC

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Thanks again for sending.

Regards,

Patrick

On Friday, January 13, 2023 at 12:18:23 PM MST, Patrick Briesemeister <breeze7847@att.net> wrote:

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LT

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<Section 319 - VHR - 01.13.23 FINAL.pdf>

<Section 511 Fees - VHR 01.13.23.pdf>

Ervin Jeri

Subject: FW: Question relative to vacation rental ordinance proposal

-----Original Message-----

From: Larry Teuber <lteuber@wclsd.com>
Sent: Sunday, February 12, 2023 4:33 PM
To: Theunissen Jason <Jason.Theunissen@pennco.org>
Subject: Question relative to vacation rental ordinance proposal

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Jason

You have advocated the need for a CUP rather than a special application for vac rentals in single road egress developments .

My question is : what it your theory, reasoning , logic and supportive evidence that a single road egress should be handled differently than any other property owner than meets the ordinance requirements for a special ?

Other than # of single dwelling units on a single road egress , are there any other restrictive ordinances ? Things like number of cars per house , length of campers , whether a camper can be set up for a few days, fire mitigation requirements ?

I intent to oppose the notion. Before I do I would like to understand the reasoning supporting it. If it makes sense , I will stand down. If not I believ it is arbitrary , without supportive evidence and assumes vac renters who may be locals or from another country do not carry cell phones and don't know how to use Google maps. I know this isn't the case because we pin locate for many the vac rental location so they can drive to it .

Many Thanks, LT

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Rapid City, SD 57702
Cell: 605-484-1616
Fax: 605-394-9307
Email: lteuber@wclsd.com
BHSI, LLC
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February 15, 2023

Planning Commission,

Thank you for the opportunity to address you today. I am grateful a Vacation Home Rental Committee was formed and has worked to establish better guidelines.

I agree with Desyl Peterson regarding the need to broaden the categories of when a Conditional Use Permit (CUP) is needed and add language regarding the Concentration of VHRs.

However, I am also very concerned about applicants being able to obtain a Special Permitted Use (SPU) rather than a Conditional Use Permit (CUP) because although notices will be sent to property owners there is no mention of a public hearing and the SPU process limits the number of property owners notified compared to the CUP process. The CUP process requires letters sent to property owners within 500 feet of the subject property and requires a sign be posted advertising the change. The SPU process simply states letters will be sent to those persons who own land adjacent (touching or sharing a common boundary) to the subject property. No sign is required, and no public hearing will be held. In addition, in the CUP process, the applicant must prove they have mailed the letters by turning in the certified mail receipts, but this is not required in the SUP process.

When a VHR is planned, I believe the way the CUP process informs property owners should be used so more people are notified than just those who are adjacent. Following are my reasons:

1. Without proper notice to many property owners, VHRs can appear in neighborhoods without most of those living in the area even knowing. These rentals change the dynamics of a neighborhood bringing in more vehicles, noise, activity, unknown people, as well as safety and environmental concerns. People have a right to know who reside in the homes in their neighborhood. I do believe in most instances people are good. However, we won't know if the vacationers are drug dealers, murders, rapists, pedophiles, etc. Not to be dramatic, however, there is a reason sex-offender information is made public.
2. Many VHRs are in areas with private wells. VHRs almost always have a higher occupancy rate than a regular home and therefore, will draw much more water than usual homeowners. If the water levels of the wells run low, all the residents suffer...not just the one VHR owner.
3. As a landowner, I certainly believe in property rights. However, I also believe it is essential neighbors have some accountability to each other. In the past months, some of our neighbors took advantage of the public hearing to voice our substantial concerns over VHRs in our neighborhood. We appeared to ensure the rules this County has in place were followed, and as there is no body which monitors VHRs at this point, without our input, the rule-breaking and some dangerous activities would have continued.
4. It appears there are always a large number of VHR applications which the Planning Staff is responsible for researching and I'm sure this is an overwhelming task. In the past, there were mistakes made by the Planning Staff (for example: not investigating all VHR websites, taking the word of an applicant who was not truthful) which led to an application going forward when it was not appropriate.
5. Finally, it is important I can contact my elected County Commissioner before permits are awarded. Communication with my County Commissioner has been an invaluable asset and allows my voice to be heard, which is why they are elected.

Michelle Hovland
22595 Norris Peak Road
Rapid City, SD 57702
605-343-2123

From: [mikal.d.lewis](#)
To: [Molitor Brittney](#)
Subject: New VHR code --
Date: Saturday, January 14, 2023 3:26:18 PM

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Some thoughts: 5a - 50 mi too far, 7 - Density cap, too broad, need some sort of limiting factor by district, or only so many per square mile (some sort of figure that citizens understand). 15a - SD Admin Rules?, 15h Jii - fee every 2 yrs, inspection every 3 yrs, kinda like a board member's term is 2 yrs, but he can be a officer 3 yrs. Need to mesh - simple. How about the current VHR that we already oked?. Fees: Seem high, I'm sure you've checked other counties, that would be a selling point. Just some thoughts, maybe I missed something! Overall it looks good -- When we run it up the pole at the special meeting, it should be interesting!

Thanks,
Mikal

From: [Patrick Briesemeister](#)
To: [Molitor Brittney; value@hills.net](mailto:value@hills.net)
Subject: Re: Vacation rental's/Airbnb updates Request
Date: Tuesday, January 3, 2023 12:42:37 PM

Brittney, upon review are the rules applicable to all VHR's? Existing as well as new?

Can you please explain what is required for the bold statement below? This is from item 9, page 3 of your attached. CUP 21-04 (Cole & Renae Foster- 24028 Stoneridge Road) is located on the same dead end road system for SV22-11 that dropped their application to split their lot on December 20,2022. As we are all aware currently there is not a secondary evacuation plan in place for the 82 of us living on the "only 40 units/homes allowed" on a dead end road law (sorry don't know the Codified law number).

*9. Evacuation Plan. The owner must provide an evacuation plan to the guests. This will include an interior plan showing all exits. a. Dead-end Road System. For those properties on a dead-end road system, **an additional exterior evacuation plan is required.***

Also on page 3, item 6. What is the amount of coverage and does it protect the landowners who's land touches the VHR property in case of a fire etc.? Also does a copy of that go to the lien holder or mortgagor? I would think they would want to know, since the financial institution really owns the property. Most likely they are not even aware of a rental on their property

6. Liability Insurance. The owner must provide a Certificate of Insurance indicating short-term rental coverage for the VHR, with "Pennington County" listed as a Certificate Holder.

Thanks again for quick response to review the attached. Its very much appreciated

Have a great year.

Regards,

Patrick

On Tuesday, January 3, 2023 at 12:06:07 PM MST, Patrick Briesemeister <breeze7847@att.net> wrote:

Thanks much to both
Happy New Year

On Monday, January 2, 2023 at 07:00:46 PM MST, <value@hills.net> wrote:

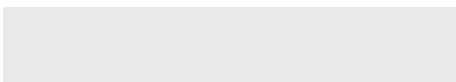
Thank you, Brittney for your quick response.

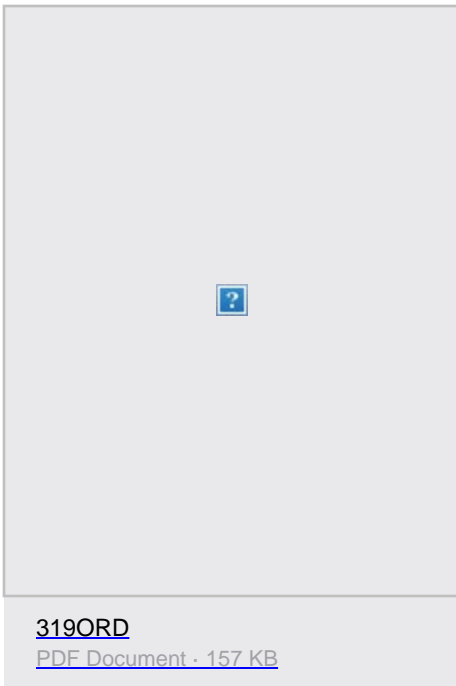
Ron R

From: Molitor Brittney <brittneym@pennco.org>
Sent: Monday, January 2, 2023 6:47 PM
To: value@hills.net
Cc: Patrick Briesemeister <breeze7847@att.net>
Subject: Re: Vacation rental's/Airbnb updates Request

Good evening-

Here is the link to the most recent draft of the VHR Ordinance:





If you have any questions or comments, please let me know.

Brittney

On Jan 2, 2023, at 6:44 PM, value@hills.net wrote:

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Happy New Year Brittney,

Would you please send Pat a copy of our most current VHR ordinance for his review. And please CC myself on your response for my files going forward.

Thank you,

Ron Rosknecht
(605) 391-1162 (24/7)

From: Patrick Briesemeister <breeze7847@att.net>

Sent: Monday, January 2, 2023 6:27 PM

To: value@hills.net

Subject: Vacation rental's/Airbnb updates

Ron please send me any updates the county has regarding the above
Happy New Year

Thanks
Patrick

[Sent from AT&T Yahoo Mail for iPhone](#)

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From: value@hills.net
To: [Molitor Brittney](#)
Cc: "[Patrick Briesemeister](#)"; "[Larry Teuber](#)"
Subject: FINAL Draft of Section 319 VHR Ordinance
Date: Monday, January 16, 2023 12:11:26 PM

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