

PENNINGTON COUNTY BOARD OF COMMISSIONERS  
Meeting of April 6, 2023

The Pennington County Board of Commissioners met at 9:02 a.m. on Thursday, April 6, 2023, in the Commission Chambers in the County Administration Building, Rapid City, South Dakota. Chair Lloyd LaCroix called the meeting to order with the following Commissioners present: Deb Hadcock & Ron Rossknecht.

**REVIEW AND APPROVE AGENDA**

MOVED by Hadcock and seconded by Rossknecht to approve the agenda as presented. Vote: Unanimous.

**EXECUTIVE PROCLAMATION**

MOVED by Hadcock and seconded by Rossknecht to approve the Chair's signature on the executive proclamation declaring April 9-15, 2023, as "National Telecommunicator's Week". Vote: Unanimous.

MOVED by Hadcock and seconded by Rossknecht to table the Oaths of Office for the 2023 Board of Equalization. Vote: Unanimous.

**CONSENT AGENDA ITEMS**

MOVED by Hadcock and seconded by Rossknecht to approve the Consent Agenda with the removal of items 11 and 12. Vote: Unanimous.

7. Approve the minutes of the March 21, 2023, regular meeting.
8. Approve the minutes of the March 27, 2023, special meeting.
9. Acknowledge the filing of petitions as application for incorporation of the proposed Cliff View Lane Road District by the voters within the proposed district boundaries.
10. Approve of Bid Authorization for the Courthouse 3<sup>rd</sup> Floor Buildout Project.
11. Removed for separate consideration.
12. Removed for separate consideration.
13. Approve of the Adopt-A-Highway Application for a portion of Lower Spring Creek Road by The Spring Creek Kids.
14. Approve the Adopt-A-Highway Application for a portion of Twilight Drive & Covington Street by The Holz Haus Home Services.

**End of Consent Agenda Items**

11. **SIGNATURE AUTHORIZATION**: MOVED by Hadcock and seconded by Rossknecht to authorize the Chair or Vice Chair to sign correspondence to encourage the full reauthorization of PILT (Payment in Lieu of Taxes) going forward on behalf of the County. Vote: Unanimous.

12. **TO RESCIND THE MOTION MADE**: MOVED by Hadcock and seconded by Rossknecht to rescind the motion made February 7, 2023 to approve the State Infrastructure Bank Loan Application for South Rochford Road Reconstruction in the amount of \$11,962,000. Vote: Unanimous.

Commissioner Travis Lasseter joined the meeting at 9:17 a.m.

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**ITEMS FROM HIGHWAY DEPARTMENT**

A. **RESOLUTION 2023-04-04-1**: MOVED by Hadcock and seconded by Lasseter to continue this item until the May 2, 2023, meeting. Vote: Unanimous.

**PENNINGTON COUNTY RESOLUTION**: MOVED by Hadcock and seconded by Lasseter to approve the resolution requesting a backstop fund for Pennington County litigation expenses that led to the National Opioid Settlement. Vote: Unanimous.

**PENNINGTON COUNTY RESOLUTION REQUESTING A BACKSTOP  
FUND FOR PENNINGTON COUNTY LITIGATION EXPENSES  
THAT LED TO THE NATIONAL OPIOID SETTLEMENT**

**BY THIS RESOLUTION**, Pennington County, by and through its Commissioners, hereby requests the South Dakota Attorney General, Marty J. Jackley, and the Honorable Kristi Noem, Governor of the State of South Dakota, to authorize a South Dakota Attorney Fees Backstop Fund in the existing and future MOA's by amendment or otherwise, in the *Distributor's Settlement, Janssen Settlement*, and all future settlements to compensate Pennington County for its litigation expenses as a participant that lead to the National Opioid Settlement.

1. **WHEREAS**, Pennington County participated in the opioid MDL, IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION, MDL NO. 2804, along with the State of South Dakota in *State of South Dakota v. Purdue Pharma L.P., et al*, in Circuit Court, County of Hughes, Sixth Judicial Circuit, 32CIV18-000065. Pennington County's and the State of South Dakota's litigation against distributors/suppliers led to the National Opioid Settlement.

2. **WHEREAS**, Pennington County is the only governmental subdivision out of 67 governmental subdivisions in the State of South Dakota that filed a Complaint and participated in the multidistrict (MDL) opioid litigation.

3. **WHEREAS**, on settlement of the litigation under the National Opioid Settlement, the settlement funds distributions were expanded to all governmental subdivisions nationwide to distribute funds more equally to the injured governmental subdivisions.

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4. **WHEREAS**, all of the other South Dakota governmental subdivisions declined to participate in the MDL and accordingly, incurred no legal expenses or attorney fees to obtain their allocated amounts.

5. **WHEREAS**, these governmental subdivisions, as non-litigants, now share equally on a pro rata basis with Pennington County under the National Opioid Settlement without incurring litigation expenses.

6. **WHEREAS**, neither Pennington County, nor its attorneys have received payment for attorney fees or expenses from the MDL or the National Opioid Settlement.

7. **WHEREAS**, a State Created Attorney Fee Backstop Fund is the vehicle to compensate governmental subdivisions, like Pennington County, who have incurred attorney fees and expenses, without payment from the MDL, or the National Opioid Settlement.

8. **WHEREAS**, an Attorney Fees Backstop Fund would place Pennington County on an equal footing with the non-participating litigants on a pro rata basis.

9. **WHEREAS**, without an Attorney Fees Backstop Fund, Pennington County is left alone to shoulder the burden of attorney fees and expenses for recovery that benefited all of South Dakota's governmental subdivisions.

10. **WHEREAS**, it is inequitable for Pennington County to bear all of the attorney fees and expenses incurred to make a recovery benefiting all local subdivisions in South Dakota, who incurred no such expense.

11. **WHEREAS**, this inequity requires an adjustment, by creating a backstop fund in the MOA, future MOA, or an amendment to the existing MOA's, for expenses incurred by Pennington County in the amount of 15% IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION, MDL NO. 2804 of Pennington County's share. In the Janssen Settlement, the backstop amount pending distribution would be approximately \$7,500.

12. **WHEREAS**, any decrease in the allocation for other South Dakota local governmental subdivisions to compensate Pennington County for its expenses as a participant of the litigation that led to the National Opioid Settlement, is de minimis. In the Janssen settlement, the distribution amount to the City of Rapid City would be reduced by \$521.25, and the City of Sioux Falls by \$1,627.50.

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13. **WHEREAS**, there is precedent, the State of Montana, finding itself in a similar position, amended or modified its MOA to create an Attorney Fees Backstop Fund to compensate its governmental subdivisions that participated in the MDL, which lead to the National Opioid Settlement.

**ACCORDINGLY**, Pennington County, by and through its Commissioners, hereby requests the South Dakota Attorney General, Marty J. Jackley, and the Honorable Kristi Noem, Governor of the State of South Dakota, to authorize a South Dakota Attorney Fees Backstop Fund in the existing or future MOA's by amendment or otherwise, in the *Distributor's Settlement, Janssen Settlement*, and all future settlements to compensate Pennington County for its litigation expenses as a participant that lead to the National Opioid Settlement.

Dated this 6<sup>th</sup> day of April, 2023.

/s/ Chair Lloyd LaCroix  
Pennington County Board of Commissioners

ATTEST: (SEAL)  
/s/ Cindy Mohler, Auditor

**ITEMS FROM AUDITOR**

A. OPERATING TRANSFER TO CAPITAL PROJECTS FUND: MOVED by Rossknecht and seconded by LaCroix to continue this item until the April 18, 2023, meeting. The motion carried 3-1 on a roll call vote: Hadcock – no; Rossknecht – yes; Lasseter – yes; LaCroix – yes.

**ITEMS FROM BUILDINGS & GROUNDS**

A. BUILDING COMMITTEE AND FACILITY NEEDS ASSESSMENT PROJECT RECOMMENDATIONS: No action taken.

Commission Gary Drewes joined the meeting at 10:01 a.m.

**ITEMS FROM EQUALIZATION**

A. 2023 PENNINGTON COUNTY ASSESSMENT PRESENTATION: No action taken.

**ITEMS FROM FIRE ADMINISTRATION**

A. EASEMENT AGREEMENT: MOVED by Hadcock and seconded by Lasseter to approve the Agreement for the Establishment of a Permanent Utility Easement, a Permanent Access and Utility Easement, and Temporary Construction Easements, with West River Lyman Jones Rural Water Systems, Inc., for construction of a radio tower at their Creighton, SD water tower site. Vote: Unanimous.

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**ITEMS FROM COMPENSATION COMMITTEE:**

- A. **ACTION – POLICY 3.18:** MOVED by Hadcock and seconded by Lasseter to approve the recommended revisions by the Compensation Committee to Policy 3.18 Compensation Administration – Promotions as it relates to unless Step 1 of higher DBM classification exceeds 10%. In this case the employee would be placed at Step 1 of the higher DBM classification. Vote: Unanimous.
- B. **ACTION – POLICY 2.15:** MOVED by Drewes and seconded by Hadcock to approve the recommended revisions by the Compensation Committee to Policy 2.15 Facility Closures as it relates to eliminating essential and non-essential employee language and creating a Facility Closure Leave Benefit, effective April 2, 2023. Vote: Unanimous.
- C. **RECOMMENDATION – POLICY 4.2 HOLIDAYS:** No action taken.
- D. **RECOMMENDATION – LIGHTCAST CONTRACT:** No action taken.

**ITEMS FROM PUBLIC:** No public comment.

MOVED by Hadcock and seconded by Lasseter to take the Oaths of Office for the 2023 Board of Equalization off the table. Vote: Unanimous.

Board of Equalization Oaths of Office were administered by Auditor Cindy Mohler.

MOVED by Rossknecht and seconded by Hadcock to approve a ten-minute recess. Vote: Unanimous.

**ITEMS FROM PLANNING & ZONING**

**BOARD OF ADJUSTMENT:** MOVED by Drewes and seconded by Lasseter to convene as the Board of Adjustment. Vote: Unanimous.

- C. **SUBDIVISION REGULATIONS VARIANCE / SV 23-01:** Argyle Properties, LLC; Anita Lee. To waive the requirement to construct the road to Ordinance 14 Road Standards in accordance with the Pennington County Subdivision Regulations.

Lot 5, Baumgartner Subdivision, Section 25, T1S, R6E, BHM, Pennington County, South Dakota.

MOVED by Hadcock and seconded by Lasseter to continue this item until the May 2, 2023, meeting. Vote: Unanimous.

- A. **VARIANCE / VA 23-04:** Charles and Kimberly Klafka. To reduce the setback to the south lot line for an existing structure in a Rural Residential District in accordance with the Pennington County Zoning Ordinance.

Lot 45, Burns Placer MS 697, Section 14, T1S, R4E, BHM, Pennington County, South Dakota.

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MOVED by Hadcock and seconded by Lasseter to continue this item until the May 2, 2023, meeting. Vote: Unanimous.

B. VARIANCE / VA 23-06: Grant and Tarah Bolt. To reduce the setback to the west lot line for an existing structure in a Highway Service District in accordance with the Pennington County Zoning Ordinance.

Lot 2, The Forks at Remmington Ranch, Section 22, T1S, R5E, BHM, Pennington County, South Dakota.

MOVED by Hadcock and seconded by Lasseter to continue this item until the May 2, 2023, meeting. Vote: Unanimous.

D. SUBDIVISION REGULATIONS VARIANCE / SV 23-02: Marjorie Helgeson. To waive the requirement to construct the road to Ordinance 14 Road Standards in accordance with the Pennington County Subdivision Regulations.

GL 14 Less Payton Addition and Less ROW; GL 6 Less Lot 1, 2, and 3 and Less ROW, Section 3, T1S, R6E, BHM, Pennington County, South Dakota.

MOVED by Hadcock and seconded by Lasseter to continue this item until the May 2, 2023, meeting. Vote: Unanimous.

MOVED by Lasseter and seconded by Hadcock to adjourn as the Board of Adjustment and reconvene as the Board of Commissioners. Vote: Unanimous.

**UNCONTESTED HEARING(S)**

E. VACATION OF PLAT / VP 23-02: Michael Huot. To vacate a portion of a private roadway easement on the plat.

Lot B Revised, Anaconda Subdivision, Section 28, T1S, R6E, BHM, Pennington County, South Dakota.

MOVED by Hadcock and seconded by Lasseter to continue this item until the May 2, 2023, meeting. Vote: Unanimous.

F. PUBLIC HEARING OF REZONE / RZ 23-04: Tara Darby; KTM Design Solutions - Agent. To rezone from Agriculture District to Suburban Residential District in accordance with the Pennington County Zoning Ordinance.

Lot C of SW1/4NW1/4, Section 14, T1N, R8E, BHM, Pennington County, South Dakota.

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MOVED by Hadcock and seconded by Lasseter to continue this item until the May 2, 2023, meeting. Vote: Unanimous.

G. PUBLIC HEARING OF REZONE / RZ 23-05: Allan Prince and Verlyne Prince; KTM Design Solutions - Agent. To rezone from Agriculture District to Suburban Residential District in accordance with the Pennington County Zoning Ordinance.

W175 feet of N90 feet of Tract G in NW1/4 and SW1/4, Section 14, T1N, R8E, BHM, Pennington County, South Dakota.

MOVED by Hadcock and seconded by Lasseter to continue this item until the May 2, 2023, meeting. Vote: Unanimous.

**CONTESTED HEARING(S)**

H. PRELIMINARY PLAN / PPL 23-06: Argyle Properties, LLC; Anita Lee. To subdivide and create Lots 1 and 2 of Argyle Subdivision in accordance with the Pennington County Subdivision Regulations.

EXISTING LEGAL: Lot 5, Baumgartner Subdivision, Section 25, T1S, R6E, BHM, Pennington County, South Dakota.

PROPOSED LEGAL: Lots 1 and 2, Argyle Subdivision, Section 25, T1S, R6E, BHM, Pennington County, South Dakota.

MOVED by Lasseter and seconded by Hadcock to approve PPL 23-06 with eleven (11) conditions: 1) That at the time of submittal of the Final Plat, eight (8) foot Minor Drainage and Utility Easements be dedicated on the interior sides of all lot lines, or an approved Subdivision Regulations Variance be obtained waiving this requirement; 2) That at the time of submittal for the Final Plat, the plat meets all the requirements of the Pennington County Subdivision Regulations, or the applicant obtains an approved Subdivision Regulations Variance waiving any of these requirements that are not met; 3) That at the time of submittal for the Final Plat, the access easement be labeled "66 – foot-wide Access Easement"; 4) That the applicant improves Hidden Valley Road to 24-foot-wide or obtain an approved Subdivision Regulations Variance waiving this requirement; 5) That prior to the mylar being filed at Register of Deeds, any road improvements to Hidden Valley Trail be completed or surety for the road improvements be posted; 6) That at the time of submittal of the Final Plat, the proposed Plat be prepared by a Registered Land Surveyor; 7) That the applicant ensures all-natural drainage ways are maintained and are not blocked and all necessary drainage ways are noted on the plat; 8) That at the time of submittal of the Preliminary Plan, the Certifications on the Final Plat be in accordance with § 1701 and 1703 of the Pennington County Subdivision Regulations; 9) That an approved Building Permit be obtained for any structure(s) exceeding 144 square feet or permanently anchored to the ground, which requires a site plan to be reviewed and approved by the Planning Director; 10) That approval of this Preliminary Plat does not constitute approval of any further applications to be submitted for the

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above-described property; 11) That the applicant amend the legal description for the proposed to Lots 5A and 5B of Baumgartner Subdivision. Vote: Unanimous.

I. APPROVAL OF THE ANNUAL MS4 STORMWATER REPORT: MOVED by Drewes and seconded by Lasseter to approve the 2022 Annual MS4 Stormwater Report. Vote: Unanimous.

**2023 LEGISLATIVE SESSION**

A. UPDATE ON PROPOSED BILLS/SESSION ACTIVITY: No action taken.

**APPROVAL OF VOUCHERS**: MOVED by Rossknecht and seconded by Lasseter to approve the voucher for the Rose Inn, LLC in the amount of \$1,154. Vote: The motion carried 4-0 with Hadcock abstaining. MOVED by Rossknecht and seconded by Lasseter to approve the remaining vouchers entered below for expenditures for insurance, professional services, publications, rentals, supplies, repairs, maintenance, travel, conference fees, utilities, furniture and equipment totaling \$437,051.72. Vote: Unanimous.

Ashley, John W, 220.00; AT&T Mobility, 5,588.07; Avanti, 975.00; Baker Apartments, 666.00; BH Electric Cooperative Inc, 126.36; BH Energy, 38.16; BH Energy, 233.23; Bluepeak, 1,375.49; Bluepeak, 297.94; Boston, Patrick, 60.00; Century Link, 158.37; City Of Hill City, 116.27; City Of Rapid City -Water, 128.41; City Of Rapid City -Water, 2,125.20; City Of Wall, 213.50; Cornerstone Apartments, 240.00; Executive Mgmt Fin Office, 46.50; Fifth Street Properties Investment LLC, 450.00; G2 Enterprises, LLC, 119.00; Global Tel'link, 16.59; Golden West Companies, 79.95; Lazy U Motel, 220.00; Lowe's, 194.99; M & M Properties, 360.00; Maher William J, 510.00; Medical Waste Transport Inc, 664.80; Midcontinent Communications, 1,633.28; Midcontinent Communications, 3,430.13; Montana Dakota Utilities, 9,218.27; Montana Dakota Utilities, 4,063.46; Ohana Properties, 450.00; Paradis Inc, 440.00; Pennington County Housing & Redevelopment, 730.00; Pioneer Bank & Trust, 6,231.70; Pioneer Bank & Trust, 2,744.76; Reliance Telephone Inc, 17.50; Rose Inn LLC, 1,154.00; Sakura LLC, 450.00; SDML Workers', 16,533.00; The Palms Apartments LLC, 450.00; Verizon Wireless, 1,304.90; Verizon Wireless, 262.60; Wellmark, 373,382.29; Yapsody Living, 486.00.

**EXECUTIVE SESSION – SDCL 1-25-2**

MOVED by Lasseter and seconded by Hadcock to go into Executive Session pursuant to SDCL 1-25-2(1) for the purpose of discussing personnel matters and SDCL 1-25-2(3) for contractual/pending litigation. Vote: Unanimous. The Board remained in Executive Session from 12:35 p.m. until 2:03 p.m. MOVED by Rossknecht and seconded by Lasseter to come out of Executive Session. Vote: Unanimous.

MOVED by Rossknecht and seconded by Hadcock to authorize the Chair's signature on the revised Restricted Area Agreement with No Bad Day's Campground, LLC. Vote: Unanimous.

MOVED by LaCroix and seconded by Hadcock to place Tammy Merchen at B23, Step 2, \$21.74/hr., effective May 1, 2023. Vote: Unanimous.



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**PAYROLL**

Commissioners, 12,658.41; Elections, 47,469.76; Auditor, 15,741.52; Treasurer, 42,648.53; State's Attorney, 165,256.88; Public Defender, 96,192.08; Buildings & Grounds, 69,883.85; Equazation, 46,587.30; Register of Deeds, 11,258.40; IT, 28,036.99; Human Resources, 8,718.40; Sheriff, 304,774.12; Jail, 359,898.88; JSC, 122,021.71; JSC Juvenile Alternative, 3,401.18; CCADP, 125,962.59; Innovation Reentry Grant, 2,200.80; Economic Assistance, 40,483.22; Extension, 1,585.62; Natural Resources, 7,450.80; Pest Control, 5,382.40; Planning & Zoning, 21,986.28; Road & Bridge, 114,472.90; Fire Administration, 5,734.40; Dispatch, 114,548.85; Emergency Management, 4,947.22; 24-7 Program, 10,028.65; MacArthur Safety & Justice, 3,664.79.

**AUDITOR'S ACCOUNT OF THE TREASURER:** To the Pennington County Board of Commissioners, I hereby submit the following report of my examination of the cash and cash items in the hands of the County Treasurer as of March 23, 2023: Total balances of checking/savings account 15,238,553.31; Total balance of Treasurer's Office safe cash, 17,000.00; Wells Fargo Securities Investments 20,584,170.62; Total Prime Value Investment, 28,214,119.92; Total petty cash, 17,890.00; Total NSF Paid, 1,907.51; Total Cash Items, 953.30; Total long/short, (281.68); Total, 64,074,312.98. Submitted by Lori Wessel, Deputy Auditor.

**PERSONNEL: Amounts listed are hourly, bi-weekly or per meeting depending on position.**

Care Campus: Effective 04/02/2023: Amber Kirkpatrick, \$27.18. Effective 04/03/2023: Isaiah Shortbull, \$17.34.

HHS: Effective 04/03/2023: Debra Harding, \$27.18.

Highway: Effective 04/03/2023: David Grant, \$20.76.

Jail: Effective 03/19/2023: David Oerlline, \$27.25; Travis Tenold, \$27.25. Effective 04/02/2023: Christopher Daniel, \$31.80; Robert Snyder, \$31.02. Effective 04/03/2023: Tomlyn Toy, \$24.07. Effective 04/16/2023, Daryl Robinson, \$24.07.

Planning & Zoning: Effective 05/30/2023: Kimberly Baxter, \$17.07.

Public Defender: Effective 04/02/2023: Jennifer Hall, \$23.09. Effective 04/30/2023: Jacquelyn Kantack, \$21.48.

Register of Deeds: Effective 04/16/2023: Patricia Smith, \$18.91.

Sheriff: Effective 03/19/2023, Stephanie Born, \$24.62.

State's Attorney: Effective: 05/15/2023: William Barton, \$21.48; David Donaldson, \$21.48. Effective 05/30/2023: Austin Rodgers, \$21.48; Emma Thomas, \$21.48; Connor McCormick, \$21.48.

**ADJOURN**

MOVED by Lasseter and seconded by Hadcock to adjourn the meeting. Vote: Unanimous. The meeting was adjourned at 2:05 p.m.

/s/ Cindy Mohler, Auditor

Published once at an approximate cost of \_\_\_\_\_.

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