

Request for Commission

to Deny

Request by Cody Schad (Spring Creek Jewel or Spring
Creek Premier Properties LLC) for a Conditional Use

Permit 3/17/08

AND

A recommendation for a comprehensive assessment of compliance with statutory and regulatory requirements relating to any construction or development in progress on the property. A recommendation for suspension of any further work on this or adjoining properties pending completion of such an assessment and confirmation of compliance with applicable regulatory and/or statutory requirements.

The following requests and recommendations are made in light of the apparent repeated and continuing failure of Cody Schad to comply with requirements to submit a Notice of Intent to Obtain Coverage under the General Surface Water Permit for Storm Water Discharges Associated with Industrial or Construction Activities on properties related to this Conditional Use Permit Request. The majority of the construction/development activity already done on this and adjoining properties should not have begun until this permit process was complete. The need for such submission was identified to applicant as early as 2006 (CP 06-34) in the process to obtain a permit to construct a trail Cody Schad and/or Spring Creek Jewel/Premier Properties has also failed to obtain an approved Flood Plain Development Permit as identified to Cody Schad during the permitting process to build said trail to Spring Creek in both 2006 (CP 06-34) and 2007 (CP 07-13). The approval of Construction Permit 07-13 related to this property was recommended with 9 conditions (see attached). All evidence indicates that Conditions 1, 2, 3, 4, and 7 have not been fulfilled.

The County Commission should deny or suspend consideration of this Conditional Use Permit request by Cody Schad/Spring Creek Jewel pending confirmation that Conditions stipulated in prior permits have been fulfilled. Any consideration regarding further permits on this property and/or adjoining properties owned by Spring Creek Jewel Properties, LLC, Spring Creek Premier Properties, LLC, and, Cody Schad, should also be suspended.

A complete assessment of the all construction/development activity in progress on these properties should also be done to determine if other work is occurring without required Pennington County, Rapid City, or State of South Dakota permits in place. Cody Schad and any he is working on behalf of should be required, in a manner that ensures compliance, to

immediately cease any activity that is covered by any permits needed and/or related to storm water discharges or Flood Plain Development and/or any other regulatory or statutory requirements. These recommendations appear reasonable considering the applicant's apparent continued disregard of his obligation to taking action to comply with statutory/regulatory requirements before continuing extensive construction activity. This construction continues taking place in and adjacent to a flood plain, a protected watershed, and waters designated as having beneficial uses. People who use Spring Creek Canyon for recreation and people whose water wells could be adversely impacted have observed the construction activity on the property related to this request. The manner in which the construction activity has been conducted, as well as what appears to be wrongful actions on these and related properties, has caused concern. These concerns led to contact with Pennington County Planning and Zoning; Rapid City Planning and Zoning; SD Department of Environment and Natural Resources; Pennington County Sheriff representatives; SD Game, Fish and Parks personnel and other agencies. Suspected wrongful actions include:

- Building a dam on Spring Creek.
- Building up and filling in areas of the creek bed with spoil from hole dug in creek bed.
- Crossing Spring Creek with a road.
- Cutting roads to the canyon floor on both sides of Spring Creek on terrain and in a manner that is highly likely to cause serious erosion and run-off into creek.

AUTHORED BY: STEVE STEPHENSON
PRESENTED BY: H JIM MARLOW



**PENNINGTON COUNTY
PLANNING DEPARTMENT**
Pride in the past; faith in the future.

MEMORANDUM

APPROVED

DATE: July 9, 2007

TO: Dan Jennissen

FROM: Mandi Schmierer, Planner I

RE: Construction Permit 07-13
Cody Schad, Applicant
Wayne & Rebecca Jones, Owners

Legal Description: NE1/4NW1/4 Less Pt Lot 6 of Copper Oaks #2 Section 7, T1S, R7E, BHM, Pennington County, South Dakota.

The applicant is requesting a Construction Permit to construct a walking and small vehicular trail. The proposed trail will traverse through the legally above-described property towards Spring Creek. The Construction Permit is only for the construction of the trail up to the south side of Spring Creek and outside of the floodplain boundaries. The applicant has indicated he would like to construct a bridge over Spring Creek. At this time, the applicant has not submitted a Floodplain Development Permit for the work to be done within the boundaries of the 100-year floodplain.

The legally above-described property is zoned General Agriculture District, Suburban Residential District and Limited Agriculture. The owners of the property, Mr. & Mrs. Jones, have granted a Perpetual Right of Way and Access Easement to the applicant for the construction of the trail. The proposed trail will be approximately 8 feet wide by 2,750 feet in length. The applicant intends on constructing a bridge over Spring Creek and the trail will eventually end up crossing onto Government Lot 1, which is owned by the applicant, and end on Government Lot 6, which is also owned by the applicant.

As previously mentioned, there is floodplain located on the property. The applicant is aware that he must obtain a Floodplain Development Permit for the work to be done within the 100-year floodplain.

In addition, there is a Section Line located along the north boundary of the above-described property. Staff has notified the applicant, that prior to work being done within the Section Line

right-of-way, he must obtain an SDCL 11-6-19 approval from the Rapid City Growth Management Office.

The Construction Permit was routed through the interdepartmental review process. Responses from the reviewing agencies are as follows:

Pennington County Highway Department: Approval of this Construction Permit does not imply Pennington County approval for a future road for commercial or residential use. Ensure appropriate erosion control measures are taken and adequately sized drainage structures are provided.

Pennington County Fire Coordinator: County Fire has no objections.

Pennington County Sheriff: The Pennington County Sheriff's Office has no position on this.

Pennington County Environmental Planner: There is 100-year floodplain located on the subject property (FIRM panel #0011F). If any work is to be done within the limits of the 100-year floodplain ensure an approved Flood Plain Development Permit is obtained. Ensure that no material from the land disturbance enters the waters of Spring Creek (i.e. silt fence). Any work that encompasses over one (1) acre will require a Storm Water Construction Permit from the South Dakota Department of Environment and Natural Resources. Ensure natural drainage ways are maintained.

Pennington County Weed and Pest: Appears to be noxious weed free.

Rapid City Air Quality: This property is outside of the Air Quality control zone. No permit is required.

Rapid City Growth Management: The property is located outside of the City limits of Rapid City but within the City's three-mile platting jurisdiction. Any construction within the section line highway will require that a SDCL 11-6-19 Review be reviewed and approved by the Rapid City Planning Commission prior to the start of construction.

The Pennington County Environmental Planner has indicated there is 100-year floodplain on the property. The applicant must obtain a Storm Water Construction Permit from DENR, if one (1) or more acres of property are disturbed during the course of the construction activities on the property. The applicant must also ensure that a silt fence is installed and that natural drainage ways are maintained.

Comments from the Rapid City Growth Management Office indicate that prior to any construction within the Section Line highway, the applicant must obtain SDCL 11-6-19 Review and approval from the City Planning Commission.

No other significant issues were identified through the interdepartmental routing process.

RECOMMENDATION: Staff recommends approval of Construction Permit 07-13 with the following nine (9) conditions:

1. If the area to be disturbed by the proposed construction is 1-acre or larger, the applicant will be required to obtain a Storm Water Construction Permit from the South Dakota Department of Environment and Natural Resources (DENR);
2. That prior to any construction occurring within the Section Line right-of-way the applicant obtains SDCL 11-6-19 approval from the Rapid City's Planning Commission;
3. That erosion control measures (i.e. silt fence) be implemented to prevent silt from leaving the property and entering Spring Creek;
4. That any natural drainage ways and paths be continually maintained and culverts added as necessary, in accordance with Pennington County Ordinance #14;
5. Dust control measures must be used once any surface disturbance has begun;
6. That any monuments establishing property boundaries be replaced as necessary;
7. That any work within the boundaries of the 100-year floodplain requires the applicant to obtain an approved Floodplain Development Permit;
8. That the Construction Permit expires one (1) year from the date of approval; and,
9. That approval of this Construction Permit does not constitute approval of any further application to be submitted for the above-described property.



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