

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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*Mary -
I believe
this man made
pond might be
in Section line
right of way
Joe*

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

July 21, 2009

Harold Marlow
6003 Pioneer Circle
Rapid City SD 57702

Cody Schad
2948 Dundee Street
Rapid City SD 57702

Gentleman:

The Water Rights Program is in receipt of Mr. Marlow's June 16th letter requesting a hearing before the Water Management Board regarding an alleged pond dredged in Spring Creek. The location of the pond in question is the NE ¼ NW ¼ Section 7, T1S, R7E in Pennington County.

Based on the request, the Water Rights Program intends to schedule this matter before the Water Management Board meeting to be held October 7 – 8, 2009 in Pierre. Future notice will be provided to both of you regarding the date, time and place of the hearing. In addition, the Water Management Board has appointed a prehearing officer for the purpose of ruling on any motion that may be made prior to the hearing.

I am enclosing my June 10th letter and Mr. Marlow's June 16th request in this mailing so Mr. Schad is aware of the request for hearing.

If either of you have questions regarding the hearing process, please contact Eric Gronlund at (605) 773-3352.

Sincerely,

Garland Erbele, Chief Engineer
Water Rights Program, DENR

enclosures

c: Diane Best, Assistant Attorney General
Kurt Solay, Attorney, PO Box 8030, Rapid City SD 57709

RECEIVED

JUL 27 2009

Rapid City Growth
Management Department

June 16, 2009

RECEIVED

JUN 17 2009

WATER RIGHTS
PROGRAM

DENR
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3182

Attention: Garland Erbele, Chief Engineer
Water Rights Program

Dear Mr. Erbele:

Your letter of June 10, 2009, belies the facts as I know them to be regarding the pool located at NE $\frac{1}{4}$ NW $\frac{1}{4}$ less Pt Lot 6 of Copper Oaks #2, Section 7, T1S, R7E, BHM, Pennington County, S.D.

The excavation in question took place during the fall of 2006 and I observed the pool January 3, 2007, when it was dry. How could such a pool be naturally made during a severe drought with the creek dry? It seems highly problematic that the pool would be naturally formed at approximately the same time as the dam was built.


The pool formation begins before the two boulders that could cause a restriction and the sides are very steep; especially where the dam was beached. I don't understand why that would occur when there are two large rocks at the breach location that could be a restriction and should narrow the flow and cause erosion in the stream bed.

I have walked every pool on Spring Creek from Highway 16 to Sheridan Lake Road and the pools seem to be naturally made when the creek runs into an obstacle, such as a large boulder or vertical cliff, causing turbulence to create the pool. The sides of these pools are not steep, but sloped to the obstacle that created the pool.

There is another unnatural pool (hole) on the upstream side of the creek crossing. This is an inverted cone about 15-20 feet across and the same depth. When I observed this hole in January 2007, it was dry and the sides were so steep it would not be possible to climb out if the hole were full of water as it is now. It is my opinion that this hole was dug to use as fill to surround the downstream side of the hole and build the path that led to the dam.

We request a Water Management Board meeting to be held in Rapid City, South Dakota, because there will be many witnesses to be heard as to the violation of SDCL 46.5-1.1.

I await your early reply


Harold "Jim" Marlow
6003 Pioneer Circle
Rapid City, SD 57702

cc: Aaron Tieman
SSSC File
KOTA News
Wooster@RCJournal



COPY

**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

June 10, 2009

H. J. Marlow
6003 Pioneer Circle
Rapid City, SD 57702

Dear Mr. Marlow:

This letter is in response to your letter dated May 14, 2009, in which you state that a pond dredged by the current landowner is now restricting public access on Spring Creek in Pennington County, South Dakota.

On April 14, 2008, Aaron Tieman, a staff engineer from the Department of Environment and Natural Resources Water Rights Program, conducted an investigation on Spring Creek to determine the availability of public access along the creek. During this investigation, it was noted that public access does exist along Spring Creek. The pond you question is located in an area where there are numerous natural obstructions, such as ponds and boulders, that could reduce the amount of access and in times of elevated water flow may remove access all together. The pond you refer to in your letter is one of several ponds located in this stretch of Spring Creek which form naturally due to the local geology consisting of limestone rock.

Public access can be acquired as long as a person does not have to cross private property to gain such access. If public access does not exist due to natural obstructions, such as in this case, the state of South Dakota cannot force a landowner to grant public access.

Sincerely,

A handwritten signature in cursive script that reads "Garland Erbele".

Garland Erbele, Chief Engineer
Water Rights Program