

**HERMOSA TOWN BOARD
REGULAR MEETING
TUESDAY, MAY 4, 2021 @ 6:00 PM**



- 1) ROLL CALL:
 - A. BOT Roll Call: Flug, Henrichsen, Holsworth, King & Schumack
 - B. Acknowledgement of other attendees
 - C. Pledge of Allegiance to be led by Henrichsen

- 2) CALL FOR CHANGES:
 - A. Review of current agenda items
 - B. Motion to accept the agenda as presented/amended

- 3) CONSENT CALENDAR:
 - A. Approval of 4-19-21 Special Meeting and 4-20-2021 Regular Meeting minutes

- 4) CLAIMS:
 - A. Review Payroll and Claims

- 5) LAW ENFORCEMENT/ ABATEMENTS/ COMPLAINTS:
 - A. Local updates
 - B. SD Public Assurance Alliance LE Policies, pending

- 6) LEGAL:
 - A. Conflict of Interest issues
Platted properties pertaining to tap fees

- 7) ENGINEER:
 - Item 7A: Water Rehab Project
 - Item 7B: N Second Street Box Replacement:
 - Item 7C: Sewer Project
 - Item 7D: Hermosa Sidewalk Project
 - Item 7F: Water Project

GIS Mapping

- 8) PUBLIC WORKS:
 - A. Streets, streetlight repairs, water & sewer department updates
 - B.

- 9) FINANCE OFFICER:
 - A. Department updates
 - B. Western Dakota Missouri River Development
 - C. 2020 Annual Report
 - D. SD Association of Code Enforcement
 - E. Zoning of Old Fire Hall

- 10) PLANNING & ZONING:
 - A. April 27, 2021 P&Z Meeting Minutes
 - B. Permit #2021-10; 24549 Hwy 79-Permanent Sign Permit Application
 - C. Walnut Grove-Zoning issue on homes on N Wilder
 - D. Pre-inspection Form
Discussion: Charge \$? Who does pre-inspection? Town or citizens pays for pre-inspection?
 - E. 1st Reading
Chapter 154: Accessory Dwelling Units (ADU) (154.02)
 - F. Radon Testing

11) OLD BUSINESS:

- A. Annexation: Gumbo Lilly, Fairgrounds Place
- B. Southern Black Hills Water System Presentation
- C. Southern Hills RV Park and Campground, pending
- D. Preston Family Inc, pending
 Bids for water/sewer lines
- E. Water/sewer infrastructure

12) ITEMS TO REMOVE FROM AGENDA:

- A. GIS Mapping
- B. Road at N Ferguson/Pop's Grocery
- C. Gravel by school property
- D. Volunteer of the Year

13) NEW BUSINESS:

- A. N Ferguson/Pop's Grocery
- B. Gravel by school property
- C. Financial agreement with SD DOT, pending
- D. Volunteer of the Year, pending
- E. 1st Reading
 Chapter 50: Application for Water Connection Permit (Amended), (50.01)
- F. Resolution No. 04-2021
 Rates and Charges for Municipal Sewer Tap Fees
- G. Custer County Ordinance No. 20

14) ITEMS FROM CITIZENS: No action will be taken (3-minute time limit per speaker)

15) TRUSTEE INPUT:

16) EXECUTIVE SESSION:

- A. Motion to enter Executive Session allowable by SDCL 1-25-2.1 - Personnel
- B. Motion to exit out of Executive Session
- C. Motions resulting from Executive Session

17) ADJOURN:

Motion by _____; second by _____ to adjourn the meeting at _____pm.

**HERMOSA TOWN BOARD
SPECIAL MEETING
MONDAY, APRIL 19, 2021 @ 4:00 PM**



ROLL CALL: Henrichsen called the meeting to order at 4:02 pm with the following members present: Flug, Henrichsen, Holsworth, King and Schumack. Ferguson, Boddicker, and three interested citizens also present. Pledge of Allegiance led by Henrichsen.

CALL FOR CHANGES: Motion by Flug, second by King, to accept the agenda as presented; vote; all aye, motion carried.

NEW BUSINESS: Special meeting scheduled to discuss the water issues pertaining to purchasing water from Southern Black Hills Water, water system options, and water rates. Discussion on the current water infrastructure for west town citizens, Hermosa Hills properties, and others north of Hermosa Hills. Motion by Holsworth, second by Flug, to ask for Request for Proposals from engineering firms ACES, Renner Associates, and Interstate Engineering, to perform engineering and construction administration services for the WRT system newly modified specs; vote; Flug, aye; Henrichsen, nay; Holsworth, aye; King, nay; Schumack, aye; motion carried. Motion by Holsworth, second by Schumack, to send an email to DENR to retain the funds from the 2005 well rehab project, as there was a bore and booster involved and use the funds to correct the pressure and volume of gravity feed across the highway; vote; Flug, aye; Henrichsen, nay; Holsworth, aye; King, aye; Schumack, aye; motion carried. Motion by Holsworth, second by Flug, to increase water and sewer tap fees as follows; vote; all aye, motion carried:

Sewer Tap Fees:

	<u>Current Rates</u>	<u>New Rates</u>
Residential	\$600.00	\$1000.00
Commercial	\$850.00	\$2000.00

Water Tap Fees:

Residential:		
1" size pipe	\$375.00	\$1000.00
1 ½ size pipe	\$500.00	\$1000.00
2" size pipe	\$750.00	\$1250.00

Larger size residential pipes will be increased by \$250.00 increments.

Commercial:		
1" size pipe	\$750.00	\$2000.00
1 ½ size pipe	\$1000.00	\$2000.00
2" size pipe	\$1500.00	\$2500.00

Larger size commercial pipes will be increased by \$500.00 increments.

Motion by Holsworth, second by Schumack, to allow for all existing plats and permits for taps within the city limits that have been applied for at the time of the present meeting, to be charged at the (above) "Current Rates" and any newly-platted properties will be charged at the "New Rates"; vote; all aye, motion carried.

ADJOURN: Motion by Holsworth, second by King, to adjourn the special meeting at 5:58 pm; vote; all aye, motion carried.

Vicki Henrichsen, Town Board President

ATTEST:

Gail Boddicker, Finance Officer

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**HERMOSA TOWN BOARD
REGULAR MEETING
TUESDAY, APRIL 20, 2021 @ 6:00 PM**



ROLL CALL: Henrichsen called the meeting to order at 6:03pm with the following members present: Flug, Henrichsen, Holsworth, King and Schumack. Attorney Johnson, Daggett, Westergard, Ferguson and Boddicker also present. Several interested citizens also present.

CALL FOR CHANGES: Motion by Henrichsen to amend the agenda to move Item 12B to Item 5, second by Flug; vote; all aye, motion carried.

CONSENT CALENDAR: Motion by Holsworth, second by King, to amend the 4-6-2021 minutes to add under, "Trustee Input" Holsworth had asked Henrichsen to resign and request King finish the term; vote on amending the minutes; Flug, aye; Henrichsen, nay; Holsworth, aye; King, aye; Schumack, aye; motion carried. For the record, Henrichsen stated she is not stepping down as board president nor resigning from the board. Motion by Holsworth, second by Schumack, to amend both sets of the April 14, 2021, special meeting minutes to revise the minutes to reflect the agenda(s) were approved as presented, rather than amended as written in the minutes; vote; all aye, motion carried.

CLAIMS: Motion by Holsworth, second by Flug, to approve claims as presented; vote; all aye, motion carried. Belt, Vonda, Bug banner spray, \$13.77; Black Hills Electric Coop, Monthly charges, \$3,251.44; Code Works, Hermosa school addition inspection, \$232.62; Golden West, Monthly charges, \$561.50, Johnson Law Office, Monthly charges, \$255.00; Midcontinent Testing Laboratories, Inc., Water testing for 1st quarter 2021, \$301.25; Rural Development 1, \$1,278.00; Rural Development 2, \$417.00; Rural Development 3, \$222.00; Rushmore Communications, Radar troubleshooting, \$110.00; SD Governmental Finance Officers Assoc, Finance Officer Registration Form, \$75.00; Technichem, Inc., Sludgebugs, \$349.20; US Bank, TIF Sewer, \$3820.54 plus \$7,000.00 extra payment, \$10,820.54; Verizon Connect, Monthly services, \$32.38; Westergard, Brad, Monthly services, \$300.00; Payroll related: Finance Department, \$2,466.50; Law Enforcement, \$808.55; Janitorial, \$102.00; Meter, \$182.00; Gail Boddicker, Health insurance, \$200.00; Jim Daggett, Health insurance, \$200.00; EFTPS, 941 payroll tax deposit, \$808.39. Total: \$22,987.14. Motion by Henrichsen, second by King, to amend the 4-6-2021 claims to decrease by \$485.00; vote; all aye, motion carried.

VOLUNTEER OF THE YEAR: Candace Leigh was recognized to receive the 2019 Volunteer of the Year. Since we were unable to present the award to her last year due to COVID, the board made the presentation at this meeting. Lilah Pengra was selected to receive the 2020 Volunteer of the Year and the award was presented to Lilah at this meeting. Both citizen/volunteers have been instrumental to the success of the Hermosa Arts and History Association.

LAW ENFORCEMENT/ ABATEMENTS/ COMPLAINTS: Daggett provided updates including assisting with GF&P pursuit coming from the east; incident with a citizen walking on Highway 40, law enforcement received three medical calls involving ambulance, complaint of a juvenile being left alone, continue problem with a high-speed motorcyclist in the area, call regarding a person being held against their will, which was false. Neighborhood Watch held their second meeting and had a great turnout. Daggett and Westergard responded to a wildfire by assisting with traffic control. SD Public Assurance Alliance LE Policies, pending.

LEGAL: None.

ENGINEER: Water Rehab Project: Holsworth requested approval to contact Bill Lass, Black Hills Council of Local Government, to discuss the discrepancy with the original loan agreement in the original well rehab project. Question what was in the full bid package for scope. N Second Street Box Replacement: pending. Sewer project: PER has been re-submitted to Bill Lass with a recommendation of a lagoon expansion. Motion by Holsworth, second by Flug, to have Flug and King work with Boddicker to make several revisions to the Sanitary Sewer Preliminary Engineering Report (PER) to be sent to engineer for revisions; vote; all aye, motion carried. Hermosa Sidewalk Project: final plans being submitted to SD DOT this week. Harris also reported as part of the Walk Audit Grant, the non-infrastructure portion of the grant allows for three bike racks (school, library, and ballfield), with installation. Harris would like to see the ballfield and the library get their bike racks as soon as possible. In addition, the "Earn a Bike" safety program is part of the Safe Routes to School initiative and will be handing out permission/sign up forms as well as Hold Harmless document. The program prepares students to learn to ride safely and encourages them to start riding bicycles. Westergard will be handing out informational flyers with the goal of May 5 as the return date. Attorney instructed Boddicker to send the Permission Sign Up and Hold Harmless documents to the town's insurer company for approval. Hermosa GIS Asset Management: Hermosa was provided a trial basis program through the Midwest Assistance Program to collect water and wastewater features in Hermosa for online mapping. MAP extended the assistance through August of 2022 at no cost to the town. Motion by Holsworth, second by Schumack, to allow the town to continue with the MAP program with One Field Worker, One Viewer Licenses, plus any hourly that may be needed through the MAP program; with discussion.

Flug to follow up with MAP on the available options and will present to the board at a future meeting. Vote; all aye; motion carried. Motion by Holsworth, second by King, to contact Interstate Engineering to inform them the town is declining their program as the town plans to continue with the MAP assistance; vote; Flug, aye, Henrichsen, nay; Holsworth, aye; King, aye; Schumack, aye; motion carried. Water project: project on state water plan, funding application has been delayed and needs to be submitted by December 2021. Renner Associates, ACES, and Interstate Engineering will be asked to provide proposals for plumbing and Ferguson to put together information on the pressure line.

PUBLIC WORKS: Ferguson spoke with R. Zacher with the SD DOT to discuss the town purchasing millings which will be available from a state project on Highway 40. Holsworth will provide Ferguson with measurements for 4th, 5th, Vilas, and Manning Street(s) to understand the quantity of millings needed to improve town roads. Consensus to lay 2", another 2", then compact with an end result of a 4" lift. Motion by King, second by Flug, to purchase 22 ton of base course for \$330.00, to expend \$480 to screen the existing pile of millings by Miller Construction; vote; all aye, motion carried. Citizen voiced concern with the product placed on roads; seems to be more like clay than gravel. Although it was discussed to bring in clean rock to add to the top of the road, no action was taken. Streetlights: there are a few old bulbs to be replaced with the new LED bulbs; continuing process. Water: during the three water line breaks on North Second Street, the master meter on the north side of town was compromised as it is not working; Ferguson will plan to work on it immediately. Ferguson spoke with representative at DENR regarding the water test results indicating the water is in non-compliance. Ferguson was told DENR is willing to work with us to get the issue resolved as long as the town is addressing the issue. Sewer: Pond Doctor is back in the lagoon and working. If the town plans to pump the lagoon, it must be completed before May 1 as crop planting will occur soon after May 1.

FINANCE OFFICER: Boddicker provided the monthly financial reports; no action. The application submitted to the SDDOT program to conduct transportation studies using the Statewide Planning & Research funds was denied; town encouraged to apply in 2022. Western Dakota Missouri River – no update. Boddicker requested an extension on submitting annual report but was denied due to the state statute does not allow for extension. Annual report must be presented at first meeting in May. Motion by Holsworth, second by Henrichsen, to allow overtime for Boddicker to complete 2020 Annual Report; vote; all aye, motion carried. Finance Officer training is scheduled for June 9-11 in Pierre; Hermosa was awarded a \$175.00 scholarship. Discussion regarding federal stimulus funds available for municipal infrastructure projects; Boddicker requested to follow up.

PLANNING & ZONING: Citizen questioned the validity of Permit 2017-23, 105 2nd St., Residential Building Permit as the original permit had been submitted in 2017; requested the permit be reevaluated to ensure the permit is valid. Motion by King, second by Henrichsen, to obtain the 2017 original permit and extensions to understand if the permit is currently valid; vote; Flug, nay; Schumack, nay; Henrichsen, aye; King, aye; Holsworth, abstained; motion failed. Motion by Flug, second by Schumack, to approve Permit 2017-23 with discussion; vote; Flug, aye, Schumack, aye; King, aye, Henrichsen, nay; Holsworth, abstained; motion carried. Motion by Flug, second by King, to approve Permit 2021-08 per Staff Report for Lots 9-14, Digging Permit Hermosa Hills; vote; all aye, motion carried. Motion by Holsworth, second by King, to approve Permit 2021-09, 267 Main St., Conditional Use Permit per Staff Report; vote; all aye; motion carried. Pre-inspection form, pending. Boddicker to ensure the ADU Ordinance is on the May 4, 2021, agenda for First Reading.

OLD BUSINESS: Henrichsen received a request from Southern Black Hills Water (SBHW) requesting the Hermosa trustees delay making decisions so they can present a proposal to the town at the first meeting in May. Motion by Henrichsen, second by Flug with discussion, to delay any decisions until SBHW is able to present their proposal. Flug recommends the town continue on the path with obtaining bids for the projects, Holsworth does not think there should be a motion for this issue, no motion to stall or stop our direction, give them permission, make sure they are on the agenda, vote; Flug, aye; Henrichsen, aye; Holsworth, nay; King, aye; Schumack, aye; motion carried. Hermosa will continue on the path to obtain engineering design proposals for the WRT System, High Pressure Water Line and the Town Water and Sanitary Sewer. Southern Hills RV Park and Campground; waiting for final drawings, pending. Preston Family Inc: Preston requested a timeline for when the water and sewer infrastructure to his new development will be in place. Motion by Holsworth, second by King, to bring from town infrastructure at Lazy R, to the DOT ROW, to provide the Preston Family Development, Inc. with water and sewer infrastructure and to request ACES, Interstate Engineering, and Renner Associates to provide proposals for the costs associated to provide the professional engineering services for the project, discussion; vote; Flug, aye; Henrichsen, nay; Holsworth, aye; King, aye; Schumack, aye; motion carried. April 24, 2021, Annual Clean Up Day: motion by Schumack, second by King, to remove this item from the agenda; vote; all aye, motion carried. Southern RV Park Owner Concerns: citizen withdrew agenda item at this time. Motion by Holsworth, second by Schumack, to approve the renewal of Retail (On-Off Sale) Malt Beverage & SD Farm Wine Licenses: Corner Pantry Travel Center, License #RB2776 and Pop's Grocery, License #RB25133; vote; all aye, motion carried. Trails West Request: town received request from Lakota Funds bank to forgive penalties on past due water/sewer invoices on the Trails West property. Lakota Funds has paid the invoice in full and the property has been sold. Motion by Flug, second by Holsworth, to deny the request as the ordinance provides for full payment; vote; all aye, motion carried.

Water/sewer tap fees and rates: water and sewer tap fees were increased at the 4-19-2021 special meeting. Boddicker requested assistance from attorney to assist with the process for legally increasing the rates; attorney will research town ordinance to understand if the rates are established by ordinance or by resolution.

ITEMS FROM CITIZENS: A plaque depicting the past awards for Volunteer of the Year was taken down when the town office was recently painted; citizen would appreciate the plaque to be put back up.

TRUSTEE INPUT: Schumack, interesting meeting; Flug, thanked everyone for coming; Holsworth, look forward to all the projects coming up and hoping everything will go well, looking forward to the Preston Family Development project; King, very good meeting, good exchange, hope we can move forward for the good of the community and citizens.

EXECUTIVE SESSION: None

ADJOURN: Motion by King; second by Henrichsen to adjourn the meeting at 8:40 p.m.

Vicki Henrichsen, Town Board President

ATTEST:

Gail Boddicker, Finance Officer

Published once at the approximate cost of ___

4A

Delaying Claims information until Monday so that the beginning of the month claims are all in.

Will email you on Monday with Claims.

What Is a Conflict...What Do I Do If It Applies to Me?

City officials are required to abide by specific laws regarding behavior and business decisions to prevent situations involving a conflict of interest. There are several types of "conflict:" holding concurrent offices with conflicting interests, involvement in a government contract and personal or pecuniary interest in a vote. If identified and handled correctly a "conflict" is not an issue.

Each official shall decide if any conflict of interest requires such official to be disqualified from participating in a discussion or voting. So, if a conflict exists, how can an individual be impartial enough to make this judgment call? When you begin to have a personal vested interest in a particular issue, it may be time to voluntarily excuse yourself from the issue. It is part of your responsibility as an elected official to recognize when this exists and remedy it. The law goes on to occasionally FORCE you to remove yourself. NO SUCH official may participate in discussing or vote on an issue if the following circumstances apply (SDCL 6-1-17):

- the official has a direct pecuniary interest in the matter before the governing body or (this applies to any financial interest in the decision...such as family member employees, a new street in front of your business, etc.)
- at least 2/3 of the governing body votes that an official has an identifiable conflict of interest that should prohibit such official from voting on a specific matter.

Next is the contract issue: It is unlawful for any public officer or his agent to be interested in any contract entered into by the municipality. There are, however, some exceptions to this rule (SDCL 6-1-2):

- Any contract involving five thousand dollars or less regardless of whether other sources of supply or services are available within the county, municipality, township, or school district, provided that the consideration therefore is reasonable and just;
- Any contract involving more than five thousand dollars but less than the amount for which competitive bidding is required, and there is no other source of supply or services available within the county, municipality, township, or school district provided that the consideration therefore is reasonable and just and further provided that the accumulated total of such contracts paid during any given fiscal year shall not exceed the amount specified in SDCL 5-18A-14;
- Any contract with any firm, association, corporation, or cooperative association for which competitive bidding is not required and where other sources of supply and services are available within the county, municipality, township, or school district, and the consideration therefore is reasonable and just, unless the majority of the governing body are members or stockholders who collectively have controlling interest, or any one of them is an officer or manager of any such firm, association, corporation, or cooperative association then any such contract shall be null and void;
- Any contract for which competitive bidding procedures are followed pursuant to SDCL 5-18A or 5-18B, and where more than one such competitive bid is submitted;
- Any contract for professional services with any individual, firm, association, corporation or cooperative, if the individual or any member of the firm, association, corporation or cooperative is an elected or appointed officer of a county, municipality, township or school district, whether or not other sources of such services are available within the county, municipality, township or school district, provided the consideration therefore is reasonable and just.
- Any contract for commodities, materials, supplies, or equipment found in the state price list established pursuant to SDCL 5-18D-6 and 5-18A-28, at the price there established or below.
- Any contract or agreement between a governmental entity specified in SDCL 6-1-1 and a public post secondary educational institution when an employee of the Board of Regents serves as an elected or appointed officer for the

governmental entity, provided that the employee does not receive direct compensation or payment as a result of the contract or agreement.

- Any contract with any firm, association, corporation, individual, or cooperative association for which competitive bidding procedures are followed pursuant to chapter 5-18A, and where only one such competitive bid is submitted, provided the procedures established in SDCL 6-1-2.1 are followed.

All of the conditions in each subsection must be met fully in order for the contract to be valid. (SDCL 6-1-2) Another statutory exemption to the provisions of SDCL 6-1-1 appears in SDCL 6-1-3. This statute allows a bank to be the official depository of funds notwithstanding that an officer, director, stockholder, or employee of a bank is an elected or appointed officer or treasurer of such county, municipality, township, or school district. (SDCL 6-1-3)

If competitive bidding procedures have been followed pursuant to chapter 5-18A, and the bid notice has been placed on the central bid exchange pursuant to SDCL 5-18A-13 for two weeks prior to the opening of bids, a bid from an officer of the governing body may be opened and accepted provided the consideration is reasonable and just as determined by the governing body or a disinterested governmental entity. (SDCL 6-1-2.1)

Finally, an elected official cannot hold concurrent offices if such positions are incompatible. The major lines of delineation in this area have been made by the Attorney General. For example, the Attorney General has determined that there are essentially four instances when offices are incompatible. They are: 1) when there are statutory prohibitions; 2) when one is subordinate to the other; 3) when one has supervision over the other; and 4) when the duties of the two offices are conflicting. (AGR 1949-50, p.37)

However, the Attorney General has also determined that, while the determination of whether a person may hold two or more positions is usually based upon incompatibility or inconsistency, the question of incompatibility or inconsistency never arises when there is a special statutory prohibition. The rule that governs will change from situation to situation. (AGR 1959-60, p.45)

Positions which **are compatible** include the following:

- 1) Mayor and state's attorney; (AGR 1907-08, p. 215)
- 2) Office of mayor and member of the board of county commissioners; (AGR 1949-50, p. 37)
- 3) Mayor and state senator; (AGR 1949-50, p. 358)
- 4) Treasurer of a school district and trustee of an incorporated municipality; (AGR 1949-50, p. 75)
- 5) Assessor and register of deeds; (AGR 1949-50, p.56)
- 6) Office of county commissioner and membership on the governing board of a municipality; (AGR 1929-30, p. 278)
- 7) Office of state's attorney and city attorney; (AGR 1949-50, p. 331)
- 8) Municipality marshal and sheriff or deputy sheriff; (AGR 1953-54, p. 84)
- 9) Police magistrate and candidate for the state legislature; (AGR 1953-54, p. 292)
- 10) Office of county clerk of courts and city councilman; (AGR 1955-56 p. 68-9)
- 11) Office of register of deeds and mayor; (AGR 1955-56, p. 217)
- 12) Office of county sheriff and peace officer of a municipality within the county; (AGR 1955-56, p.420)
- 13) Appointed municipality treasurer and treasurer of a school district. (AGR 1959-60, p. 45)
- 14) No mayor, alderman, commissioner, or trustee in a municipality is disqualified from holding office as a result of holding any liquor license. (SDCL 9-14-16)
- 15) City council and county commission. (AG Opinion 88-24)
- 16) Any mayor, alderman, commissioner, or trustee may serve in a volunteer, unsalaried municipal position or provide any service for the municipality if the compensation for such service does not exceed \$5,000 per calendar year. (SDCL 9-14-16.1)

Positions which are **incompatible** include the following:

- 1) No mayor, alderman, commissioner, or trustee shall hold any other office under the municipality while an incumbent of any such office. No auditor or clerk may hold the office of treasurer in the municipality while an incumbent of such office. (SDCL 9-14-16)

- 2) A mayor may not be an attorney for a defendant in a criminal case for a crime committed within the municipality of which he is mayor. (State ex rel. Jones v. Taylor, 46 SD 354)
- 3) A city councilman may not be the defense attorney or counselor for a defendant charged with the violation of a municipal ordinance or a state law where the facts would also be a violation of the laws of his municipality. (AGR 1953-54, pp. 184-186)
- 4) Member of municipality board and janitor of a municipal building; (AGR 1932-34, p. 492)
- 5) County judge and city attorney; (AGR 1949-50, p. 133)
- 6) Member of a city council and municipal building, electrical, and plumbing inspector; (AGR 1955-56, pp. 105-106)
- 7) Member of city council and county high school board; (AGR 1949-50 page 75 and 1953-54, p.73)
- 8) Office of director of assessments and member of municipal governing board; (AGR 1955-56, p. 304)
- 9) County justice of the peace and the municipal chief of police; (AGR 1957-58, p. 116)
- 10) Municipality auditor and county auditor. (AGR 1959-60, p. 84)
- 11) Legislator and school board member. (AG Opinion No. 84-24)
- 12) Mayor and school board member of encompassing school district. (AG Opinion No. 85-23; Raymond v. Richardson, 6th Judicial Circuit, Sept. 18, 1985)
- 13) County director of equalization and school board member. (AG Opinion 86-6)

Despite the guidance provided by the Attorney General and case law, conflict remains a confusing subject. If (and when) you experience a conflict issue please consult with your city attorney or contact the League at 800-658-3633.

Water Rehab Project

- I will generate a summary of remaining items to close out the Weston & DENR loan
 - Plan to assess liquidated damages to final pay app to zero it.
 - Recommend attorney draft letter to go with final pay app.
 - Recommend a release to any and all future claims against Hermosa from Weston be part of final.
 - Discussion of Engineering and attorney invoices related to Weston-submit to DENR ?
- **REQUEST for approval from BOT to allow Interstate to work directly with Town attorney. Please respond.**
- Booster Station discussion

N Second Street Box Replacement:

- Under Construction, box is in place.
- Contractor working on road.
- Looking at issues with Tom Gabel property to resolve those concerns.

Sewer Project

- PER has been re-submitted to Bill Lass with a recommendation of a lagoon expansion.
- **Application should have been post marked May 1.**
- **The soonest the Town could submit for funding is July 1 with awards happening in September. January is the first submittal for the first round of monies that would provide the most opportunity for potential grant.**

Hermosa Sidewalk Project

- Final Plans have been submitted to the SDDOT.

Water Project

- Project on State Water Plan
- Funding application has been delayed and further discussions to take place.
 - **To submit for consideration for the first round of monies is January 2022.**
 - **This is for award in March 2022.**
 - **Application will need to be submitted to Bill Lass December 2021.**
- **Interstate has paused work until further direction from Town.**

Will need direction from BOT following RFP submittal on May 18 in order to move forward on water applications.

Zachary J. Grapentine, E.I.

Project Engineer

Interstate Engineering

120 Industrial Drive, Suite 2

Spearfish, SD 57783

Phone: 605.642.4772

Cell: 605.210.2410

Fax: 605.642.4773

Zach.Grapentine@interstateeng.com

Professionals you need, people you trust.

7 FYI

From: Perkovich, Mike <Mike.Perkovich@state.sd.us>
Sent: Monday, April 26, 2021 8:48 AM
To: Gail Boddicker <gail@hermosasd.com>
Subject: RE: Hermosa

That sentence about being reimbursed is poorly written. The city was reimbursed for the cost of the pipe at some point during the project. One of the remedies for non-compliant AIS materials is to have the city repay the cost of the non-compliant material. due to the situation, we decided that we would not ask the city to repay anything. If additional costs have been incurred on the project, the city can submit additional pay requests and will be reimbursed.

Hope that helps.



DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

JOE FOSS BUILDING
523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

7
FYI

April 20, 2021

Ms. Vicki Henrichsen, Board President
Town of Hermosa
PO Box 298
Hermosa, SD 57744-0298

Re: American Iron and Steel Non-Compliance Finding
Well Rehabilitation
DWSRF C462278-02

Dear Ms. Henrichsen:

This letter is to address the American Iron and Steel (AIS) non-compliance finding for the town of Hermosa due to the installation of 3-inch stainless steel well casing pipe of unknown or non-domestic origin.

American Iron and Steel Requirements: The Safe Drinking Water Act, under the authority of section 1452(a)(4), includes the requirement for Drinking Water State Revolving Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States or otherwise obtain a waiver.

Project Background and Non-Compliance: The Town of Hermosa Well Rehabilitation project required the use of 3-inch stainless steel well casing pipe as a part of the efforts to rehabilitate the existing well.

- **Timing of the waiver request:** No waiver was requested by either the town or the contractor and the non-compliant materials have been permanently installed into the well since 2018.
- **Availability of 3-inch Stainless Steel Well Casing:** The contractor supplied a letter from its supplier after the non-compliant material issue was raised. This letter indicates that the material was not domestically available. No prior communication between the contractor and the town of Hermosa was provided regarding the use or availability of non-compliant materials. The contractor failed to inform the town of the non-compliant materials being supplied. The town did not become aware of the issue until July 2020, when AIS certification letters were requested by a new consulting engineer hired to help complete the project closeout. The contractor has been unwilling to provide additional information or a proposed remedy to correct the issue of non-compliance.

Finding: In light of the abovementioned factors, the department finds that the 3-inch Stainless Steel Well Casing that was installed by the town of Hermosa is non-compliant with AIS requirements. As a result of the unwillingness of the contractor to remedy or respond to the non-compliant material concerns the

department initiated a complaint with EPA's Office of Inspector General. At this time there has been no final resolution or action by EPA regarding the complaint against the contractor.

Because the town of Hermosa was not made aware of the installation of the non-compliant material in a timely manner, the department is using its discretion under United States Environmental Protection Agency Memorandum to Water Management Division Directors dated March 20, 2014, to allow the town of Hermosa to use the non-AIS compliant 3-inch stainless steel well casing pipe and be reimbursed for that cost. No funding for this project will be withheld.

A copy of this letter should be retained in the official project file. If there are questions concerning this finding, please contact Andy Bruels or myself at (605) 773-4216.

Sincerely,



Michael A. Perkovich, P.E.
Program Administrator
Environmental Funding Program

cc: Ron Bengs, Interstate Engineering, Spearfish

SOUTH DAKOTA ASSOCIATION OF CODE ENFORCEMENT

An Affiliate of the South Dakota Municipal League

INFORMATION and TRAINING CONFERENCE

May 12-13, 2021

Drifters Conference Center • Fort Pierre, SD

Wednesday, May 12

- 12:30 – 1:00 **Registration**
- 1:00 – 1:30 **Welcome and Business Meeting**
**AACE Conference Report from Joel Johnson , 2020 scholarship winner*
- 1:30 – 2:30 **Code Enforcement and Law Enforcement Partnerships**
Officer Brady Lieuwen, Community Resource Officer, Sioux Falls PD
- 2:30 – 2:45 **Break**
- 2:45 – 4:00 **A.L.I.C.E. Training (Active Shooter)**
Lieutenant Jon Stahl, South Dakota Highway Patrol
- 4:00 – 5:00 **ADA Requirements for Municipalities**
Terry Johnson, Engineering Projects Supervisor, City of Mitchell
- 5:00 – 7:00 **Social and Code Officer of the Year Banquet**

***Hospitality Room at AmericInn will open at 7:00 pm**

Thursday, May 13

- 9:00 – 10:00 **Code Enforcement for Small Communities**
Joel Johnson, Owner, Code Enforcement Specialists, LLC
Mike Olson, Code Enforcement Officer, Code Enforcement Specialists, LLC
- 10:00 – 12:00 **Discussion on Nuisance Problems and Solutions**
 - Authority to Access Property for Inspection and Photos
 - Entry onto Property for Abatement
 - Junk Car Removal Process
 - Bring your questions for discussion!*Ryan Sage, Assistant City Attorney, City of Sioux Falls*
David Pfeifle, Director, South Dakota Public Assurance Alliance

**HERMOSA PLANNING & ZONING BOARD
REGULAR MEETING
April 27, 2021 @ 6:00pm**



10A

ROLL CALL: Harris called the meeting to order at 6:00pm with the following members present; Harris, Clarke, Kespert, Waltman; Liaison Henrichsen; Trustee Holsworth; present also Dybvig and 4 citizens. Pledge of Allegiance led by Harris.

CALL FOR CHANGES: Motion by Waltman, second Clarke to accept the agenda as presented; vote; all aye; motion carried.

CONSENT CALENDAR:

March 23, 2021, P&Z minutes as presented; Motion by Kespert, second by Waltman to approve; vote; all aye; motion carried.

OLD BUSINESS:

2021-06- Southern Hills RV; Jerry Styles was present at the meeting. He is working on getting detailed plans of project to present at future P&Z meeting.

NEW BUSINESS:

Permit 2021-10 – 24549 Hwy 79 – Permanent Signs (2); Discussion included whether citizen contacted DOT to approve sign placement. Mr. Styles indicated that the sign is 229 feet from Highway 79. General guidelines for signs from SD DOT indicate that a sign cannot be placed in the right of way. Motion by Waltman, 2nd by Kespert to approve sign permit. Vote; all aye; motion carried.

Walnut Grove Zoning- Discussion on zoning for lots D, E, F, G, H, J, K, L, M & N for Walnut Grove. Developer indicated that he had rezoned from R2 to R1 in the past. Recommendation by Harris to review all past Permits, Applications, P&Z agendas, and Minutes to verify if lots were re-zoned to R1. Research by Kespert and Dybvig indicated that no application for rezoning from R2 to R1 was ever submitted. Motion by Kespert, second by Waltman to remove from work items. Vote; all aye; motion carried.

REVIEW BOT MINUTES:

April 6, 2021, April 14, 2021, Special Meetings @ 12:30 & 1:00 – April 20, 2021

Harris requested information on fence between RV park and Hermosa Hills from Mr. Styles. He indicated that the original fence had blown down and Preston was rebuilding with new fence post.

ORDINANCE REVIEW & WORK ITEMS:

Pre-Inspection Form- Updated form presented by Dybvig. Board requested that pre inspections be completed for new construction on lots. Board agreed that a pre-inspection is needed. Discussion included requiring Radon Testing be done when recommended in the staff report. Ferguson commented that it would be easier and cheaper to install a Radon Mitigation System during the construction process instead of testing later. April 27th BOT meeting – Motion by Holsworth, second by Flug, to have a certified individual test a random home in Hermosa Hills. Details need to be addressed such as price and when test should be completed. Motion by Waltman, second by Clarke to approve updated Pre-Inspection Form to be presented at May 4th BOT meeting for approval.

Permit Processes, Flow sheet discussed; Pending

TRUSTEE INPUT: Harris stated to the board and citizens, that no one should ever feel intimidated to attend or speak at a board meeting. Harris welcomes and appreciates all input from the board and town citizens. Waltman commented on citizens not having numbers on their homes when they read the meters. 152.01- All previously existing and newly assigned house numbers shall be clearly visible from the road from which the address is taken.

CITIZEN INPUT: Henrichsen voiced that she was not aware that she was expected at the April 13th P&Z meeting and apologized. She stated she would have been there if she knew.

ADJOURN: Motion by Kespert, second by Clarke to adjourn the meeting at 6:50pm.

Joan Harris, Planning & Zoning Board President

Jill Dybvig, Administrative Assistant

Hours of Operation:
Monday – Friday 8:00—5:00

In accordance with Federal law and U.S. Department of Agriculture policy, this Institution is prohibited from discriminating on the basis of race, color, national origin, age, disability, religion, sex, and familial status. (Not all prohibited bases apply to all programs.) To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD).

10B

Town of Hermosa

PO Box 298 • 230 Main Street • Hermosa, SD 57744
Phone (605) 255-4291 • Fax (605) 255-4094
Email: town@hermosasd.com

PERMANENT SIGN PERMIT APPLICATION

Date 4-12-2021

Permit # 2021-10

Receipt # _____	Cash _____	Check # <u>1227</u>	Amount <u>100⁰⁰</u>
-----------------	------------	---------------------	--------------------------------

include a site plan drawing

Name: Jerald Styles PHONE: _____
 Contact Address: 24549 Hwy 79 South Hermosa, SD 57744
 Email: _____

Type of Sign(s): Banner () Paper () Wood () Other () _____
 Size of Sign(s): _____

LOCATION INFORMATION

Sign #1

Property Owner of Sign Location: Jerald Styles
 Address of Sign Location: same as above
 Type, Material, & Size of Sign: Wood
 Other Information (lighted, two-sided, etc): 2x8 1 sided

Sign #2

Property Owner of Sign Location: Jerald Styles
 Address of Sign Location: same as above
 Type, Material, & Size of Sign: Wood
 Other Information (Lighted, Two-Sided, Etc): 2x8 - 1 sided

Sign #3

Property Owner of Sign Location: _____
 Address of Sign Location: _____
 Type, Material, & Size of Sign: _____
 Other Information (Lighted, Two-Sided, Etc): _____

Documentation: Site Plan Blueprint or Scale Drawing Survey Report
 ROW Agreement Property Owner Agreement

Three (3) copies each

ALL SIGNS MUST BE MAINTAINED IN GOOD CONDITION AT ALL TIMES.

ALL APPLICATIONS MUST BE APPROVED BY THE HERMOSA PLANNING AND ZONING COMMISSION AND THE HERMOSA BOARD OF TRUSTEES PRIOR TO COMMENCEMENT

Parcel # 004135 FOR OFFICE USE ONLY

<p>PLANNING AND ZONING COMMISSION</p> <p><input type="checkbox"/> Approved <input type="checkbox"/> Denied</p> <p>Name: _____</p> <p>Title: _____</p> <p>Signature: _____</p> <p>Date: _____</p> <p>Application Fee: <u>\$50.00</u> Date Paid: <u>4-12-2021</u></p>	<p>HERMOSA BOARD OF TRUSTEES</p> <p><input type="checkbox"/> Approved <input type="checkbox"/> Denied</p> <p>Name: _____</p> <p>Title: _____</p> <p>Signature: _____</p> <p>Date: _____</p> <p>Date Permit Issued: _____</p>
---	--

100⁰⁰ 2 signs

TOWN OF HERMOSA
PERMANENT SIGN PERMIT APPLICATION

NAME Jerald E Styles PHONE: 605-390-1257

CONTACT ADDRESS: P.O. Box 300 Hermosa SD 57744

TYPE OF SIGN(S): BANNER () PAPER () WOOD (x) OTHER () _____

SIZE OF SIGN(S): 2' x 8'

LOCATION INFORMATION

SIGN #1

PROPERTY OWNER OF SIGN LOCATION: Jerald E Styles

ADDRESS OF SIGN LOCATION: 24549 Highway 79 South Hermosa, SD

TYPE, MATERIAL, & SIZE OF SIGN: Vinyl over treated wood on wood pla

OTHER INFORMATION (lighted, two-sided, etc): 2' x 8' sign long side vertical

SIGN #2

PROPERTY OWNER OF SIGN LOCATION: Jerald E Styles

ADDRESS OF SIGN LOCATION: 24549 Highway 79 South Hermosa SD

TYPE, MATERIAL, & SIZE OF SIGN: Vinyl over treated wood on wood pla

OTHER INFORMATION (lighted, two-sided, etc): 2' x 8' sign long side vertical

SIGN #3

PROPERTY OWNER OF SIGN LOCATION: _____

ADDRESS OF SIGN LOCATION: _____

TYPE, MATERIAL, & SIZE OF SIGN: _____

OTHER INFORMATION (lighted, two-sided, etc): _____

DOCUMENTATION: Site Plan Blueprint or Scale Drawing Survey Report N/A
Three (3) copies each ROW Agreement N/A Property Owner Agreement N/A

ALL SIGNS MUST BE MAINTAINED IN GOOD CONDITION AT ALL TIMES.
ALL APPLICATIONS MUST BE APPROVED BY THE HERMOSA PLANNING AND ZONING COMMISSION AND THE HERMOSA BOARD OF TRUSTEES PRIOR TO COMMENCEMENT.

PLANNING AND ZONING COMMISSION

Approved Denied

NAME: _____

TITLE: _____

SIGNATURE: _____

DATE: _____

HERMOSA BOARD OF TRUSTEES

Approved Denied

NAME: _____

TITLE: _____

SIGNATURE: _____

DATE: _____

PERMIT FEE: _____ DATE PAID _____

DATE PERMIT ISSUED: _____

03173 03177 03178 03179 03180 03181 03182 03183 03184 03185 03186 03187 03188 03189 03190 03191 03192 03193 03194 03195 03196 03197 03198 03199

03194

3310103

004183

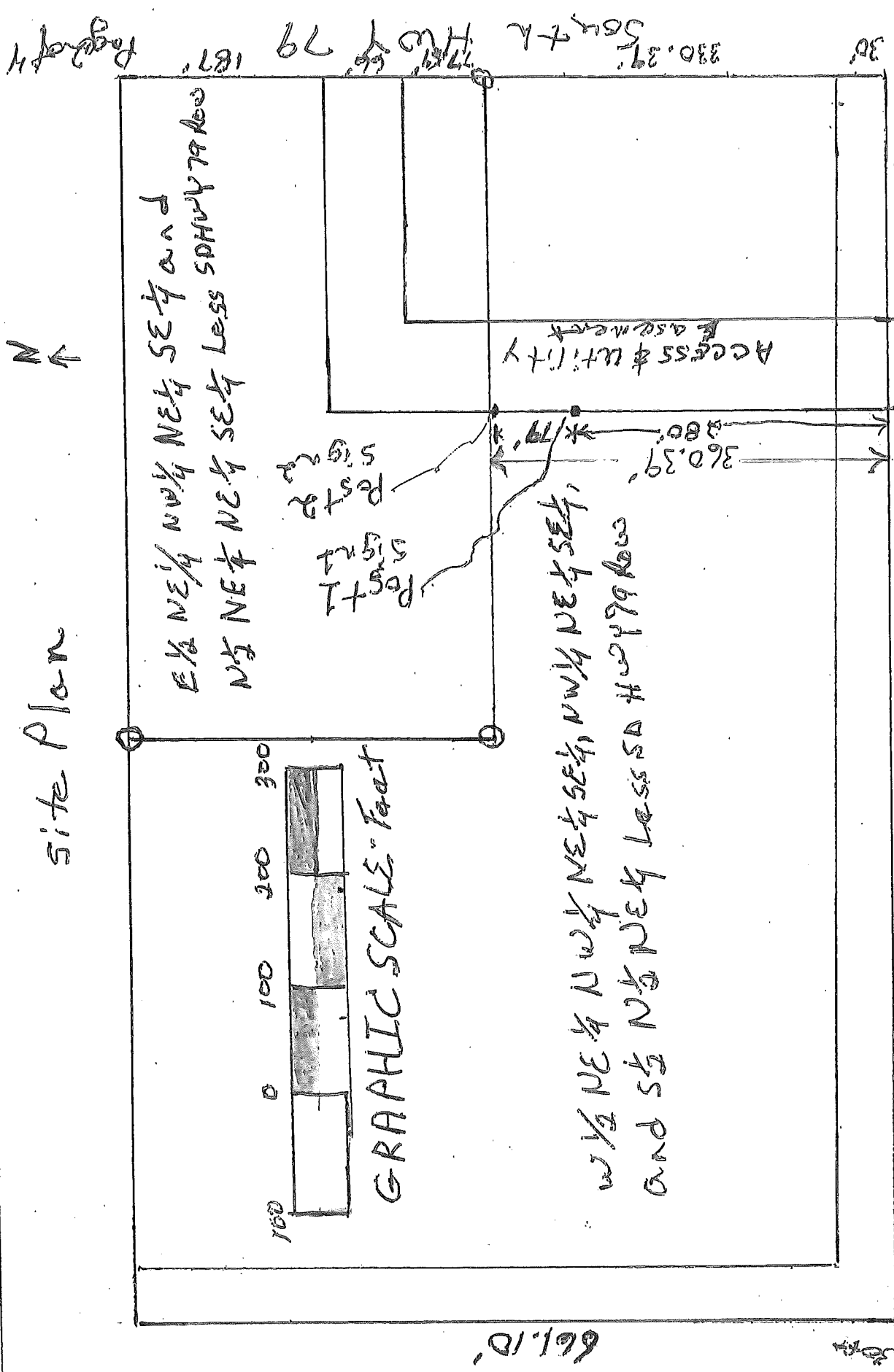
004183

01978

WALTER ST



site Plan



1/2 NE 1/4 NW 1/4 NE 1/4 SE 1/4 and
 NW 1/4 NE 1/4 SE 1/4 Less SPHP 79 Row

Post #1
 Signal
 Post #2
 Signal

Access & Utility

1/2 NE 1/4 NW 1/4 NE 1/4 SE 1/4,
 and 5 1/2 NW 1/4 NE 1/4 Less SA HP 79 Row



GRAPHIC SCALE - Feet

99'

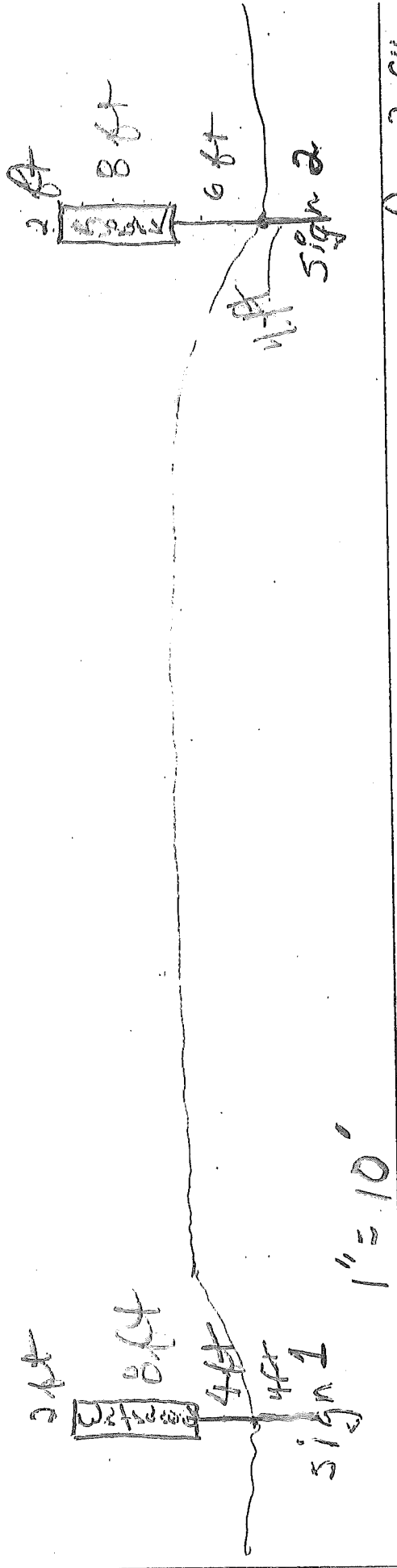
226'

661.10'

330.39'
 30'
 360.39'
 304.74'
 187'
 79' ROW



Sign 1 and Sign 2 will be placed on existing treated poles, the poles are 12" in diameter and placed 4 ft in the ground. Each sign will be 2' by 8' the signs will be placed on the poles with the long side vertical. Sign 1 will say ENTRANCE and sign 2 will say RV Park. The signs will be vinyl over 1-inch treated plywood. The lettering will be blue over a yellow background.



2'

E
N
T
R
A
N
C
E

8'

Sign 1

2'

R
V
P
A
R
K

8'

Sign 2

Town of Hermosa

10D

PO Box 298 * 230 Main St. Hermosa, SD

605-255-4291

Email: town@hermosasd.com

Pre-Inspection Form

To be retained in permanent file

Customer Name	Permit #	Date

Site Address	Parcel #

MUST MEET ALL PERMIT REQUIREMENTS

Inspection

1. Walked site _____
2. Lot measurement _____ X _____
3. Lot usage _____ (40%)
4. Suitability of lot for proposed construction _____
A. Fill needed _____ B. Excavation/Trenching needed _____
5. Utilities properly located on lot _____
6. Check for any easements _____
7. Check for Pins or Survey _____

Inspection Notes

--

Inspectors Signature

Pre-Inspection Form
Price \$???

10E

ORDINANCE #154.02
CHAPTER 154 SUBDIVISION REGULATIONS
ACCESSORY DWELLING UNITS

BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF HERMOSA, Custer County, South Dakota, that Ordinance #154.02 of the Town of Hermosa is hereby adopted to read as follows:

Accessory dwelling unit (ADU) is a smaller, independent residential dwelling unit located on the same lot as a stand-alone (i.e., detached) single-family home. ADUs go by many different names, including accessory apartments, secondary suites, granny flats, guest houses, mother-in-law apartments, in-law suites, casitas, etc. To be considered a legal suite, it must have its own entrance, kitchen, sleeping, and bathroom facilities. ADUs can be attached or detached. A suite attached to or contained within a principal dwelling unit. Applicable to all adopted UBC Codes, ordinances and zoning regulations as stated in 155.30, 155.31, 155.32, 155.37 and 155.39.

Tiny House On Wheels, it is generally thought of as a small house, typically sized under 500 square feet. This style of tiny house is often referred to as a THOW (tiny house on wheels). The Town of Hermosa would consider a tiny house on wheels, legally a recreational vehicle (RV), a portable or mobile living unit used for temporary human occupancy away from the place of residence of the occupants, and not constituting the principal place of residence of the occupants, and subject to all ordinances, and zoning regulations as stated in ordinance 155.33.

Tiny Homes Stationary (homes on a foundation) would be considered an ADU, and applicable to all adopted UBC Codes, ordinances and zoning regulations as stated in 155.30, 155.31, 155.32, 155.37 and 155.39.

SUPPLEMENTARY REGULATIONS

155.54 Accessory Dwelling Units

A. One, and only one, accessory dwelling unit shall be allowed on any lot containing a single-family dwelling. An accessory dwelling unit shall not be allowed under this Section 10.814 on a lot that contains more than one dwelling unit. Both the ADU and the primary residence shall comply with state Building Code and Fire Code regulations for construction, minimum living space, fire exits and smoke alarms.

B. Except as provided elsewhere in this Section 10.814, in order for a lot to be eligible for an accessory dwelling unit, the lot and all proposed structures and additions to existing structures shall conform to all zoning regulations as follows:

C. Any municipal regulation applicable to single family dwellings shall also apply to the combination of a principal dwelling unit and an accessory dwelling unit including, but not limited to, lot area, yards, open space, off-street parking, building coverage, and building height.

D. An attached accessory dwelling unit is permitted on existing nonconforming lots and within existing nonconforming buildings as long as there is no increase in building height or building footprint for any portion of the existing building and no increase to the nonconformity.

E. All accessory dwelling units shall comply with the following standards:

1. The principal dwelling unit and the accessory dwelling unit shall not be separated in ownership (including by condominium ownership).

2. Either the principal dwelling unit or the accessory dwelling unit shall be occupied by the owner of the dwelling as his or her principal place of residence. The owner shall provide documentation demonstrating to the satisfaction of the City that one of the units is his or her principal place of residence.
3. When the property is owned by one or more trusts, one of the dwelling units shall be the principal place of residence of the beneficiary (ies) of the trust(s).
4. Neither the principal dwelling unit nor the accessory dwelling unit shall be used for any business, except that the property owner may have a home occupation use in the unit that he or she occupies as allowed or permitted elsewhere in this Ordinance.

F. An attached accessory dwelling unit (AADU) shall comply with the following additional standards:

1. An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit.
2. The accessory dwelling unit shall not have more than two bedrooms and shall not be larger than 750 sq. ft. gross floor area. For the purpose of this provision, gross floor area shall not include existing storage space, shared entries, or other spaces not exclusive to the accessory dwelling unit.
3. Any exterior changes to the single-family dwelling shall maintain the appearance of a single-family dwelling. If there are two or more doors in the front of the dwelling, one door shall be designed as the principal entrance and the other doors shall be designed to appear to be secondary.

G. A detached accessory dwelling unit (ADU) shall comply with the following additional standards:

1. In a General Residence district, the combination of the principal dwelling and the ADU shall comply with the minimum lot area per dwelling unit specified for the district
2. The ADU shall not have more than two bedrooms and shall not be larger than 750 sq. ft. gross floor area; except that the maximum gross floor area shall be 1,000 sq. ft. if the lot area is 2 acres or more. Not covering more than 40% of available land.
3. The ADU shall be separated from the single-family dwelling by at least 20 feet.

H. Before granting a conditional use permit for an attached or detached ADU, the Planning Board shall make the following findings:

1. Exterior design of the ADU is consistent with the existing principal dwelling on the lot.
10.814.62 The site plan provides adequate and appropriate open space, landscaping and off-street parking for both the ADU and the primary dwelling.
2. The ADU will maintain a compatible relationship to adjacent properties in terms of location, design, and off-street parking layout, and will not significantly reduce the privacy of adjacent properties.
3. The ADU will not result in excessive noise, traffic, or parking congestion.

A certificate of use issued by the Planning Department is required to verify compliance with the standards of this Section, including the owner occupancy and principal residency requirements.

Said certificate shall be issued by the Planning Department upon issuance of a certificate of occupancy by the Inspection Department and shall be renewed annually.

BOARD OF TRUSTEES

President

ATTEST:

Finance Officer

First Reading: May 4, 2021
Second Reading: May 18, 2021
Publication: May 26, 2021
Effective Date: June 16, 2021

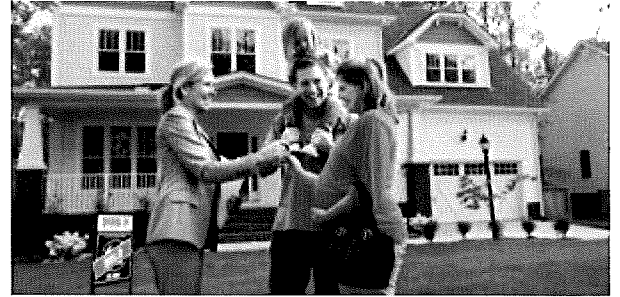
Radon Disclosure Laws

10F

About 30-40 states have radon disclosure laws. What this requires is simple. During a real estate transaction, the seller must disclose any and all known radon levels or testing results.

If they have never tested the property for the presence of radon, then that's all they have to say during a home sale. This leaves the testing and mitigation on the shoulders of the buyer.

A small list of states also requires sellers to include a warning about the presence of radon in the home. This is generally included in the sale contract or an amendment to the sale documents.



The states that require a warning include:

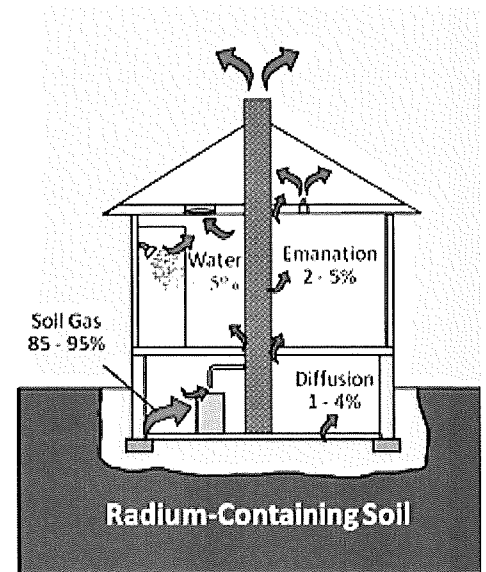
- AK
- AZ
- DE
- FL
- IL
- KS
- MD
- ME
- MI
- MN
- MT
- NC
- NH
- NY
- OH
- OR
- RI
- SC
- SD
- TN
- TX
- WA
- WI

[Click here to learn more about radon disclosures in real estate...](#)

Installing a Radon Mitigation System

Your home has been found to have radon. What do you do now? You will want to have a radon mitigation system installed as soon as possible. This is a system that uses a fan and pipes to pipe the radon out of your home and back into the atmosphere. As stated before, radon is harmless in the atmosphere. It only becomes deadly when enclosed in homes or buildings. Blackburn Basement Systems has trained professionals who know every aspect of installing radon reduction systems. They can have your system installed normally within a day and have your family on the way to healthy living again.

There are several different types of radon mitigation systems that can be installed. There is the soil suction which emits the radon from the soil to the outside air. Sealing is another form that can be used. The area is sealed so that radon can't enter. Other forms are natural ventilation, house or room pressurization and heat recovery ventilation.



Blackburn - will send you a test
7 stamps - send in for results

48 hrs. machine @ 14500 - will do an
estimate on installing system.

Jill Dybvig

From: Nate Proper <n.proper@blackburnbasementrepair.com>
Sent: Friday, April 30, 2021 1:52 PM
To: Jill Dybvig
Subject: Radon

Jill,

An average cost to install a radon system is around \$2,200.

Sincerely,

--

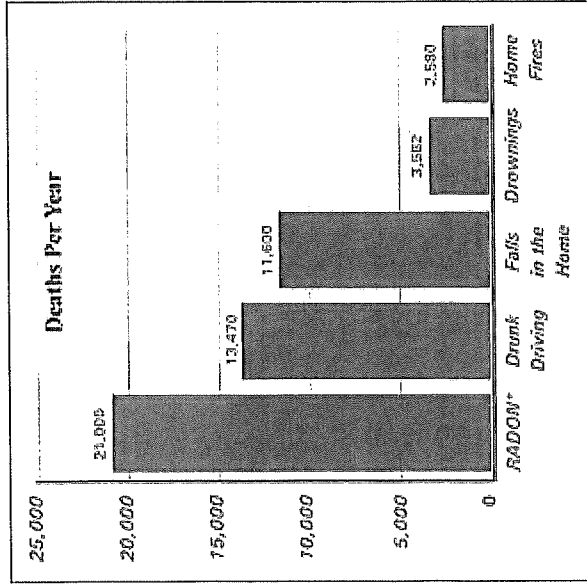
Nathan Proper
Director of Sales and Marketing
Blackburn Basement Systems
(507)-696-5297 cell
(800)-392-3389 office
www.blackburnbasementrepair.com



Over 15,000 Homes Repaired Since 1992!

It's never too late to reduce the risk of lung cancer

- Get your house tested for radon
- Elevated levels put you and your family at danger
- The cost to fix is usually no more than other common home repairs



* Radon is estimated to cause about 21,000 lung cancer deaths per year, according to EPA's 2003 Assessment of Risks from Radon in Homes. The numbers of deaths from other causes are taken from the Centers for Disease Control and Prevention's 2005-2006 National Center for Injury Prevention and Control Report and 2006 National Safety Council Reports. Table Source: epa.gov/radon

Radon Resources

- EPA: www.epa.gov/radon
- EPA Citizen's Guide to Radon: www.epa.gov/radon/pubs/citguide.html
- SD Dept. of Environment and Natural Resources: www.denr.sd.gov/des/aq/aarad.aspx
- American Lung Assoc.: www.lung.org/healthy-air/home/resources/radon.html

1-800 Numbers

- South Dakota Radon Information Line 1-800-GET-DENR
- National Radon Hotline: *Purchase radon test kits by phone 1-800-SOS-RADON*
- National Radon Helpline: *Get live help for your radon questions. 1-800-55RADON*
- National Radon Fix-It Line: *For general information on fixing or reducing the radon level in your home. 1-800-644-6999*

To order a radon testing kit from the State Health Lab, send a written request along with a \$17.00 check to 615 E. 4th Street, Pierre, SD, 57501. To contact the State Health Lab call (605) 773-3368.

RADON

A simple test could save your life

What is it?

How does it affect my health?

How do I test for it?

How can I fix it?

PENNINGTON COUNTY



"PRIDE IN THE PAST; FAITH IN THE FUTURE"

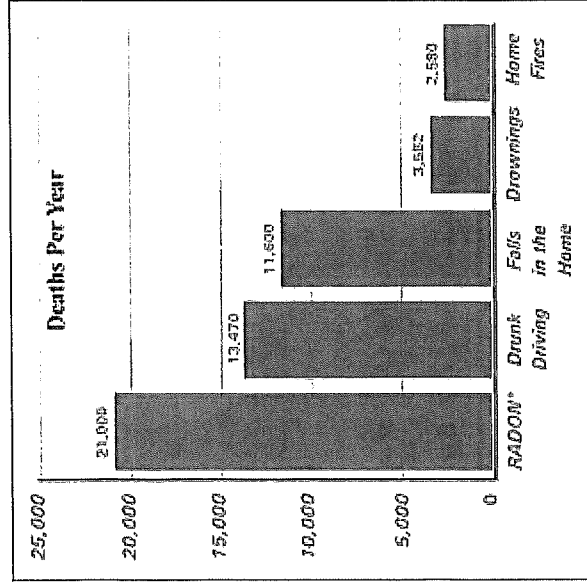
PENNINGTON COUNTY
RAPID CITY, SOUTH DAKOTA 57701

Pennington County
Planning Department
130 Kansas City st (605) 394-2186

www.co.pennington.sd.us

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- EPA: www.epa.gov/radon
- EPA Citizen's Guide to Radon: www.epa.gov/radon/pubs/citguide.html
- SD Dept. of Environment and Natural Resources: www.dennr.sd.gov/des/aq/aarad.aspx
- American Lung Assoc.: www.lung.org/healthy-air/home/resources/radon.html

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RADON

A simple test could save your life

What is it?

How does it affect my health?

How do I test for it?

How can I fix it?

PENNINGTON COUNTY



"PRIDE IN THE PAST; FAITH IN THE FUTURE"

PENNINGTON COUNTY

RAPID CITY, SOUTH DAKOTA 57701

Pennington County

Planning Department

130 Kansas City st (605) 394-2186

www.co.pennington.sd.us

6. What Should I Do if the Radon Level is High?

a. High Radon Levels Can Be Reduced

EPA recommends that you take action to reduce your home's indoor radon levels if your radon test result is 4 pCi/L or higher. It is better to correct a radon problem before placing your home on the market because then you have more time to address a radon problem.

If elevated levels are found during the real estate transaction, the buyer and seller should discuss the timing and costs of radon reduction. The cost of making repairs to reduce radon levels depends on how your home was built and other factors. Most homes can be fixed for about the same cost as other common home repairs. Check with and get an estimate from one or more qualified mitigators.

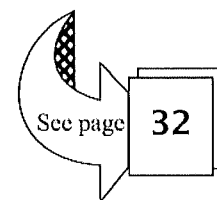
b. How to Lower the Radon Level in Your Home

A variety of methods can be used to reduce radon in homes. Sealing cracks and other openings in the foundation is a basic part of most approaches to radon reduction. EPA does not recommend the use of sealing alone to limit radon entry. Sealing alone has not been shown to lower radon levels significantly or consistently.

In most cases, a system with a vent pipe(s) and fan(s) is used to reduce radon. These "sub-slab depressurization" systems do not require major changes to your home. Similar systems can also be installed in homes with crawl spaces. These systems prevent radon gas from entering the home from below the concrete floor and from outside the foundation. Radon mitigation contractors may use other methods that may also work in your home. The right system depends on the design of your home and other factors.

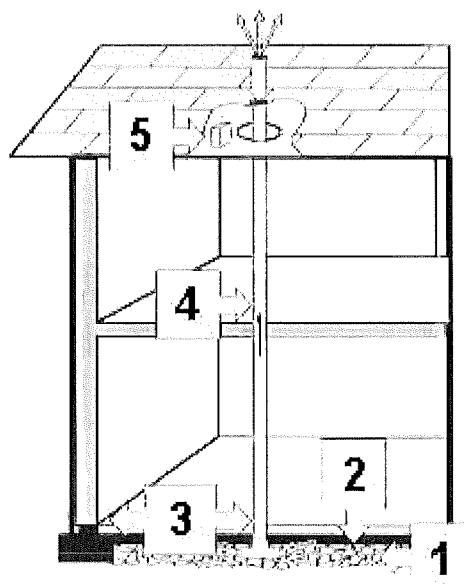
b. What Are Radon-Resistant Features?

Radon-resistant techniques (features) may vary for different foundations and site requirements. If you're having a house built, ask your builder if they're using a recognized approach (International Residential Code, Appendix F, ASTM E 1465-08, and ANSI/AARST RRNC 2.0 as examples). If your new house was built (or will be built) to be radon-resistant, it will include these basic elements:

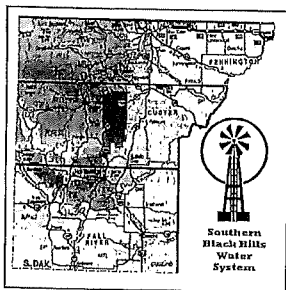


- 1. Gas-Permeable Layer:** This layer is placed beneath the slab or flooring system to allow the soil gas to move freely underneath the house. In many cases, the material used is a 4-inch layer of clean gravel. This gas-permeable layer is used only in homes with basement and slab-on-grade foundations; it is not used in homes with crawlspace foundations.
- 2. Plastic Sheeting:** Plastic sheeting is placed on top of the gas-permeable layer and under the slab to help prevent the soil gas from entering the home. In crawl spaces, the sheeting (with seams sealed) is placed directly over the crawlspace floor.
- 3. Sealing and Caulking:** All below-grade openings in the foundation and walls are sealed to reduce soil gas entry into the home.
- 4. Vent Pipe:** A 3- or 4-inch PVC pipe (or other gas-tight pipe) runs from the gas-permeable layer through the house to the roof, to safely vent radon and other soil gases to the outside.

- 5. Junction Boxes:** An electrical junction box is included in the attic to make the wiring and installation of a vent fan easier. For example, you decide to activate the passive system because your test result showed an elevated radon level (4 pCi/L or more). A separate junction box is placed in the living space to power the vent fan alarm. An alarm is installed along with the vent fan to indicate when the vent fan is not operating properly.



118



SOUTHERN BLACK HILLS WATER SYSTEM

**26858 Highway 385
Hot Springs, South Dakota 57747
Phone 605-745-4669**

Directory

- ♣ **Ted Wick**
Chairman
Hot Springs, SD
605-718-4164

- ♣ **Jay Smith**
Vice-Chairman
Hermosa, SD
605-341-5610

- ♣ **Bob Baird**
Treasurer
Hot Springs, SD
605-745-7470

- ♣ **Danny DeFries**
Secretary
Custer, SD
605-999-7903

- ♣ **John Zolnowsky**
Member
Hot Springs, SD
605-745-6933

- ♣ **Don Kraus**
Director
Custer, SD
605-673-2027

- ♣ **Bob Peplinski**
Director
Pringle, SD
605-745-7674

- ♣ **Rich Krump**
Director
Hot Springs, SD
218-849-0467

- ♣ **Kale McNoboe**
Engineer
Longbranch Eng
605-721-4040

- ♣ **Don Peterson**
Manager
605-745-4669

April 30, 2021

Hermosa City Finance Officer
Gail Boddicker
PO Box 298
230 Main St.
Hermosa, SD 57744

Dear Ms. Boddicker:

Southern Black Hills Water System, Inc. (Southern Black Hills) appreciates the time that the Board of Trustees for the Town of Hermosa (Town) has given to discussing opportunities for the Town and Southern Black Hills to work together to ensure the advancements of both of their water systems. Southern Black Hills believes in cooperative efforts and the promotion and advancement of the water systems through projects that allow rural water systems and smaller municipalities to coordinate services in such a way to keep cost down overall for all users and for the involved entities.

As the Town knows, Southern Black Hills is looking at installing a water line from Paramount Point north to another subdivision, Spring Creek Acres, where it provides water. The Town has provided Southern Black Hills with its preliminary engineering report dated January 11, 2021 prepared by Interstate Engineering (Interstate Report). In that report, the possibility of the Town securing water from Southern Black Hills is discussed. Connecting with Southern Black Hills is seen as Alternative One in this report. The Engineer estimates the costs of that interconnect at \$590,947.50. Offsetting this construction cost, the Engineer also estimates that the interconnect will reduce the Town's current overhead and maintenance (O&M).

Table 3 of the engineer's report shows current O&M for the Town at \$105,733.46. According to Table 1, the Engineer estimates that there would be an annual reduction in O&M if the Town went with Southern Black Hills, dropping the Town's O&M to \$78,133.50 a year. This results in a reduction of \$27,599.96 annually.

Based on the existing 224 accounts for Alternative One, the resulting cost per account would be \$50.44.¹ The other Alternatives have the in-use customer monthly rate starting at \$82.96 up to as much as \$132.24 a month. Additionally, under the competing alternatives O&M is not reduced or would go up.

Because the Interstate Report assumes different build out options for each Alternative, a straight comparison can be somewhat difficult. It is Southern Black Hills understanding that the Town is primarily, at this point, looking at the WRT System as an Alternative to working with Southern Black Hills even though the Southern Black Hills Alternative appears to be the lowest cost to the Town by far and the lowest cost for the existing users in the Town by more than \$30 a month, as reported in the Interstate Report at page 13. Although it is the least expensive route, the Southern Black Hills Alternative is reportedly viewed by the Town as “unfavorable to the Town of Hermosa because the Town sees an opportunity to provide the surrounding area of the three (3) mile radius as it begins to develop. By going with SBHW, this would be a failed opportunity.” See Interstate Report at page 13.

As the Town knows, Southern Black Hills had a conversation with the Town almost five (5) years ago about providing water to the Town to help the Town deal with its failing wells. The Town said it would proceed in a different direction at that time. To date, the Town has not been able to resolve the issue.

In looking at the viability for both the project for the Town, the project for Southern Black Hills and the concerns expressed by the Town regarding its concern on a loss of opportunity, Southern Black Hills has developed a proposal that it believes benefits both the Town, Southern Black Hills, and the homeowners in the region. The Proposal is as follows.

TERMS OF PROPOSAL

A. Connection to the Town’s Existing System.

Southern Black Hills will construct a waterline to Highway 79 and along Highway 79 running south to a meet point with the Town as shown on Exhibit A. Southern Black Hills would undertake, as part of this to construct the facilities reflected on attached Exhibit A. Note this construction does not include all facilities that the Interstate Report says would be required for interconnection with Southern Black Hills. The Town would be responsible for the remaining construction and connections.

Southern Black Hills would provide the Town up to a million gallons of water a month at this connection point for a base charge of \$4,000 a month and an initial connection fee of \$250,000. Any excess water use over the one million gallons would be charged at \$4.00 per thousand. These rates would remain unchanged for five (5) years from the initial construction. At the end of the fifth (5th) year, the rate would be adjusted by the change in Consumer Price Index (CPI)

¹ It is noted for the other Alternatives, a different user count is used - 248. It is our understanding that the higher user count is based on the assumption that Paramount Point and other existing users would be added to the system. Further, the rate in the Interstate Report assumed an older lower rate for water than Southern Black Hills currently proposes.

plus two percent (2%). The base CPI rate would be the CPI rate the month Southern Black Hills completes construction of the facilities on Exhibit A. After the initial adjustment at the end of the fifth year, annual increases will occur based on the CPI rate plus one quarter (1/4) of a percent. Increases will be on the base rate and the excess rate.

Southern Black Hills will reserve a million gallons monthly for the Town. Excess amounts will be subject to availability. The length of the contract would be a minimum of twenty (20) years but as much as forty (40) years depending on the Town's preference.

If the Town desires to continue to use its wells as a supplemental source, Southern Black Hills has no objection to that use but the Town's Water System would have to be designed so the Town's water could not back feed into the Southern Black Hills' mains.

B. Connections North of the Current Boundaries of the Town.

Southern Black Hills will also take a main line north along Highway 79. The Town will be able to connect to that main line for providing servicing to the future development commonly referred to as the Preston Subdivision. A master meter would be placed at this location. Southern Black Hills will construct the infrastructure as set forth in the attached Exhibit B at its cost. All other infrastructure would be the responsibility of the Town or the Developer including any additional build out from the main for serving the future development.

The sale of water at this location will not be part of the million gallon base. For every home hooked up in the Preston Subdivisions, Southern Black Hills would be paid a \$4,000 residential connection charge. Additionally, Southern Black Hills would receive a monthly base rate of \$65 per each home plus \$3 for every thousand gallons of water sold into the subdivision. This rate would be valid for five (5) years. The water usage would not be part of the South end base fee. After five (5) years, the rates would be reset by increasing both charges by CPI growth plus 2%. Adjustments thereafter will be annual at CPI plus one quarter (1/4) of a percent.

Southern Black Hills proposes that the customers within the Preston Subdivision become customers and clients of the Town. The Town could set the connection fee higher than what Southern Black Hills needs and adjust rates over and above Southern Black Hills rates. Southern Black Hills sees these higher rates for this area as being in lieu of a surcharge on all the Town's currently existing customers. In essence, the new homeowners will pay for the expansion of the system North and future service by the Town via water supplied by Southern Black Hills.

An alternative to a \$4,000 residential connection charge being assessed would be a separate one time North end connection fee. Rather than collecting a hook up fee when each house is connected in this development, Southern Black Hills could be paid a one-time hookup fee by the Town in the amount of \$400,000. If pursuing this option, the total connection fee would be \$650,000. The Town could then require a connection fee from new homeowners when they connect to the system to repay the connection fee paid by the Town. Southern Black Hills would continue to receive the monthly base and water usage rates. An additional benefit of the upfront connection payment by the Town is that the connection payment maybe financeable by the State of South Dakota Department of Agriculture and Environmental Resources.

C. Service Territory.

To address the Town's concern that connecting to Southern Black Hills could result in a lost opportunity because the Town could not connect and control the customers in future developments, as part of the contract Southern Black Hills would agree that it would not add any new customers South of Murphy Road and North of Main Street unless the new customer is within the existing Paramount Point Subdivision or the Town has determined it will not serve the customer. This area will be bounded one-half mile on either side of Highway 79. Outside of this area, Southern Black Hills will provide the Town notice of any requested connections within three miles of the Town so the Town, pursuant to SDCL 9-47-22, may elect to serve the customer.

When looking at this proposal, Southern Black Hills believes the Town will find it more beneficial to the Town and the current residents of Hermosa than other alternatives. If the Town proceeds with the WRT system, the Town's O&M will increase. If the Town goes with Southern Black Hills, the O&M is projected to decrease by \$27,599.96. Even though the WRT Alternative notes that the O&M with the WRT would be similar to the current O&M, there will be an additional water fee for the WRT Service Agreement that will cost \$19,440 a year. Adding these numbers together for the WRT system the Town would have a total additional yearly cost of \$47,043.96 more than if working with Southern Black Hills. Just the difference by lowering the O&M and avoiding this water fee for the WRT enables Hermosa to be able to pay almost the entirety of the monthly base fee. Said another way, Hermosa residents will be paying \$47,043.96 more annually for the WRT System than if the Town partners with Southern Black Hills. Also, the construction costs of the WRT are estimated at \$645,000 in the Town's Engineering Report an amount more than the cost of connecting to Southern Black Hills and paying the \$250,000 connection fee.

In addition to these clear savings based on the findings in the Town's Engineer's Report, there are other savings. Southern Black Hills uses a system somewhat similar to WRT for a much smaller development, Spring Creek Acres. The Spring Creek Acres development has only 67 accounts and has a cost of \$340 per month for salt and \$220 per month for electricity, totally \$560 per month for treatment. For the Town, which is approximately 3 to 4 times the size of Spring Creek Acres, the increased costs for chemicals related to treatment of the water will be higher. Furthermore, there will be a time in the future where the filtration system will have to be replaced.

It is the Board of Directors belief that this proposal provides the Town a viable alternative to provide quality water to your existing residents and future customers while also keeping cost down below other Alternatives. Southern Black Hills believes that this will provide a worthwhile relationship base for the Town and Southern Black Hills to work together for the betterment of both entities and for promotion of safe, healthy drinking water for the people of the area.

Sincerely,

A handwritten signature in black ink that reads "Ted Wick". The signature is written in a cursive style with a large initial "T" and "W".

Ted Wick
Chairman
Southern Black Hills Water System



11E

Quotation

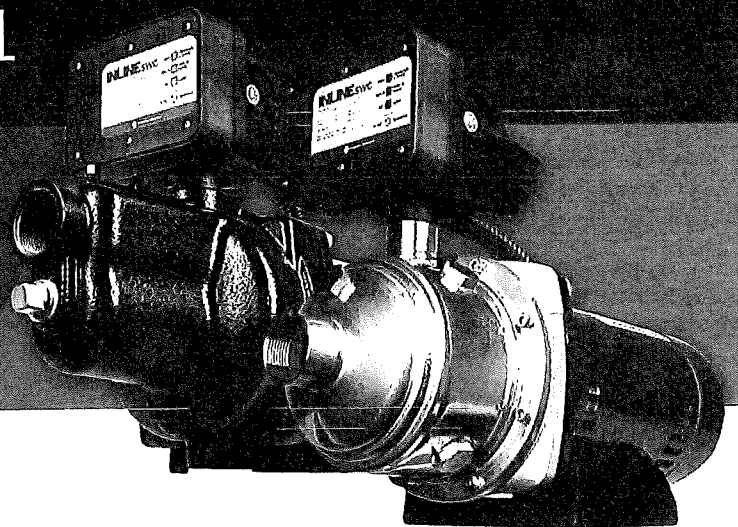
EXPIRATION DATE	QUOTE NUMBER	PAGE NO.
04/26/2021	S100911290	2 of 2

ORDER QTY	DESCRIPTION	UNIT PRICE	EXT PRICE
1ea	GRMQ335C GRUND 96860172 PUMP 3/4HP 115V BOOSTER Pn: 23826	738.711/ea	738.71
1ea	GRMQ345C GRUND 96860195 PUMP 1HP 115V BOOSTER MQ345C Pn: 23833 Franklin Electric "Inline control w/booster pump" 10-15 DAY LEAD TIME	768.610/ea	768.61
1ea	FRANKLIN FVJ05CI-SWC .5 HP VERSAJET PKG * Item not returnable without RGA * Pn: 282685	751.371/ea	751.37
1ea	FRANKLIN FVJ07CI-SWC .75 HP VERSAJET PKG 115V * Item not returnable without RGA * Pn: 282692	836.714/ea	836.71
		Subtotal	5644.95
		S&H Charges	0.00
		Amount Due	5644.95

INLINE CONTROL PACKAGES

MH & VERSAJET WITH SWC CONTROL

Franklin Electric's Inline Control Packages feature the 1/2 hp and 3/4 hp VersaJet Shallow Well Jet Pump or the 1/2 hp MH Series Multi-Stage Booster Pump paired with the SWC model Inline Control. These packages provide simple, low-cost pressure boosting solutions that do not require a large bladder tank and pressure switch. Without these additional parts, each system has a smaller overall footprint, making them ideal for installation in tight spaces and for replacement applications.



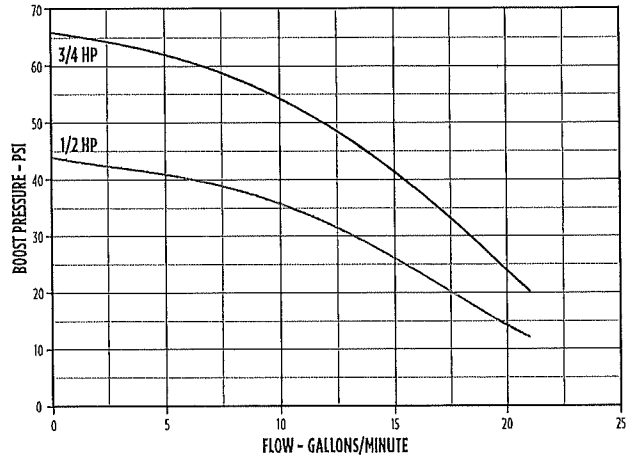
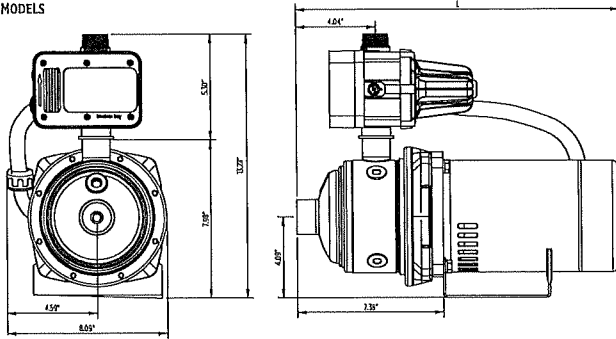
INLINE CONTROL PACKAGES

MH PUMP AND SWC CONTROL PACKAGES

ORDERING INFORMATION

Package Model	HP	Voltage	Order No.	Pump	Dimensions		Performance GPM @ Boost Pressure (PSI)										Shut-off (PSI)	
					Length "L"	Wt. (lbs)	10	15	20	25	30	35	40	45	50	55		60
15FMH05S2-SWC	0.5	115V	96061505	MH 15 gpm 1/2 hp	16.75"	24	22	20	17.5	16	13	10.5	6	-	-	-	-	44
15FMH07S3-SWC	0.75		96061506	MH 15 gpm 3/4 hp	17.5"	27	-	-	21	19.5	18.5	17	15.5	14	12	10	7	66

15MH MODELS

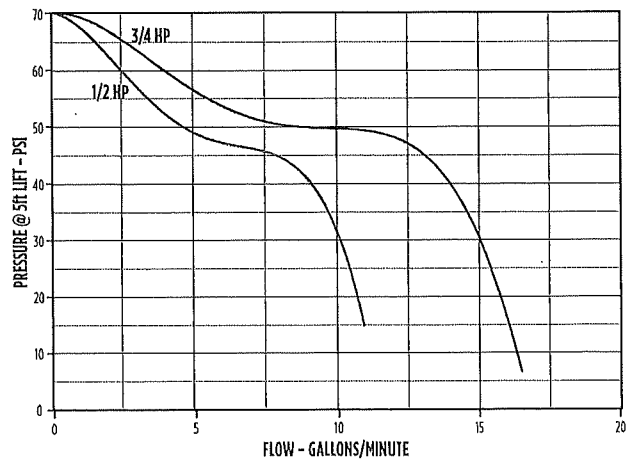
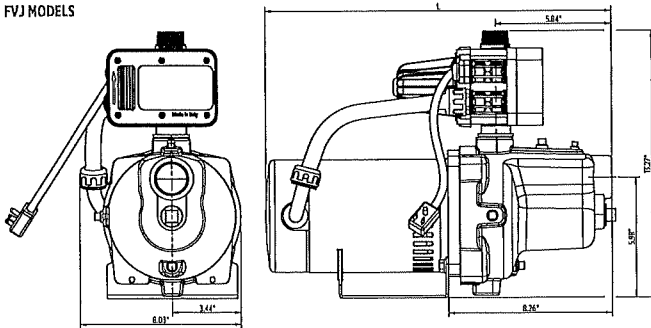


VERSAJET PUMP AND SWC CONTROL PACKAGES

ORDERING INFORMATION

Package Model	HP	Voltage	Order No.	Pump	Dimensions		Performance GPM @ Boost Pressure (PSI) @ 5ft lift						Shut-off (PSI)
					Length "L"	Wt. (lbs)	10	20	30	40	50	60	
FVJ05CI-SWC	0.5	115V	91180105	VersaJet 1/2 hp	17.25"	31	11	10.5	9.5	8.5	4	2.5	70
FVJ07CI-SWC	0.75		91180107	VersaJet 3/4 hp	18.00"	34	16	15.5	14.5	13.5	7.5	3.5	70

FVJ MODELS



ResiBoost Complete Packaged Variable Frequency System

FEATURES & BENEFITS

DELIVERING MAXIMUM COMFORT:

- Customers are able to enjoy improved water pressure consistently regardless of the number of fixtures in use or the location of the fixture in the home.
- Designed to operate quieter than a conventional pump system.

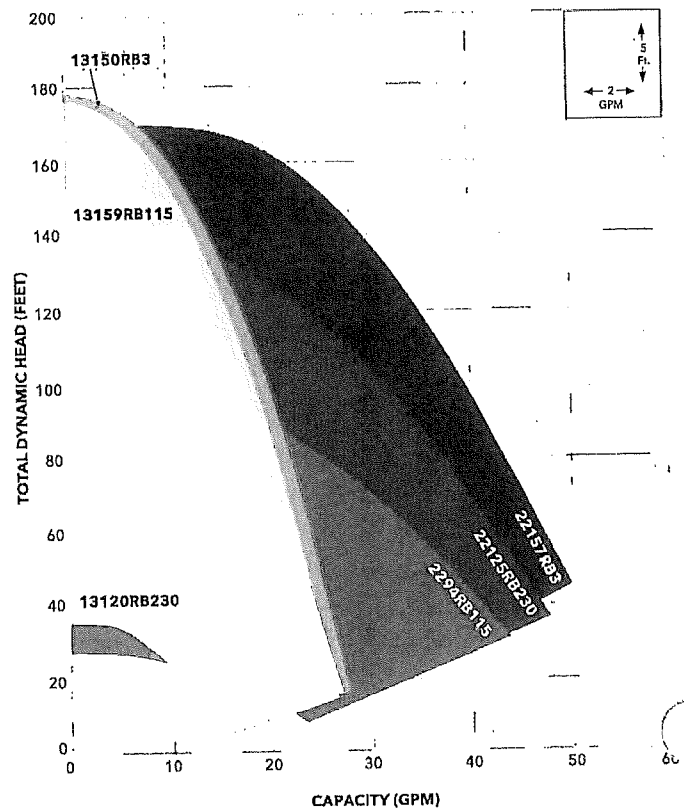
PROVIDING LASTING PERFORMANCE:

- The ResiBoost is proven to last in the most demanding of boosting conditions, customers can rest easy rather than worry about downtime or service needs.

SIMPLIFYING INSTALLATIONS:

- The plug and play system comes with the pump, motor and controller already assembled and fully programmed (tank included but not installed).
- An integral transducer instantly reduces the number of parts required for installation.
- The small-but-powerful design of the ResiBoost system allows for a variety of installation locations, including a small utility closet.
- Uniquely designed union with check valve eliminates separate assembly

PERFORMANCE CURVE



SPECIFICATIONS

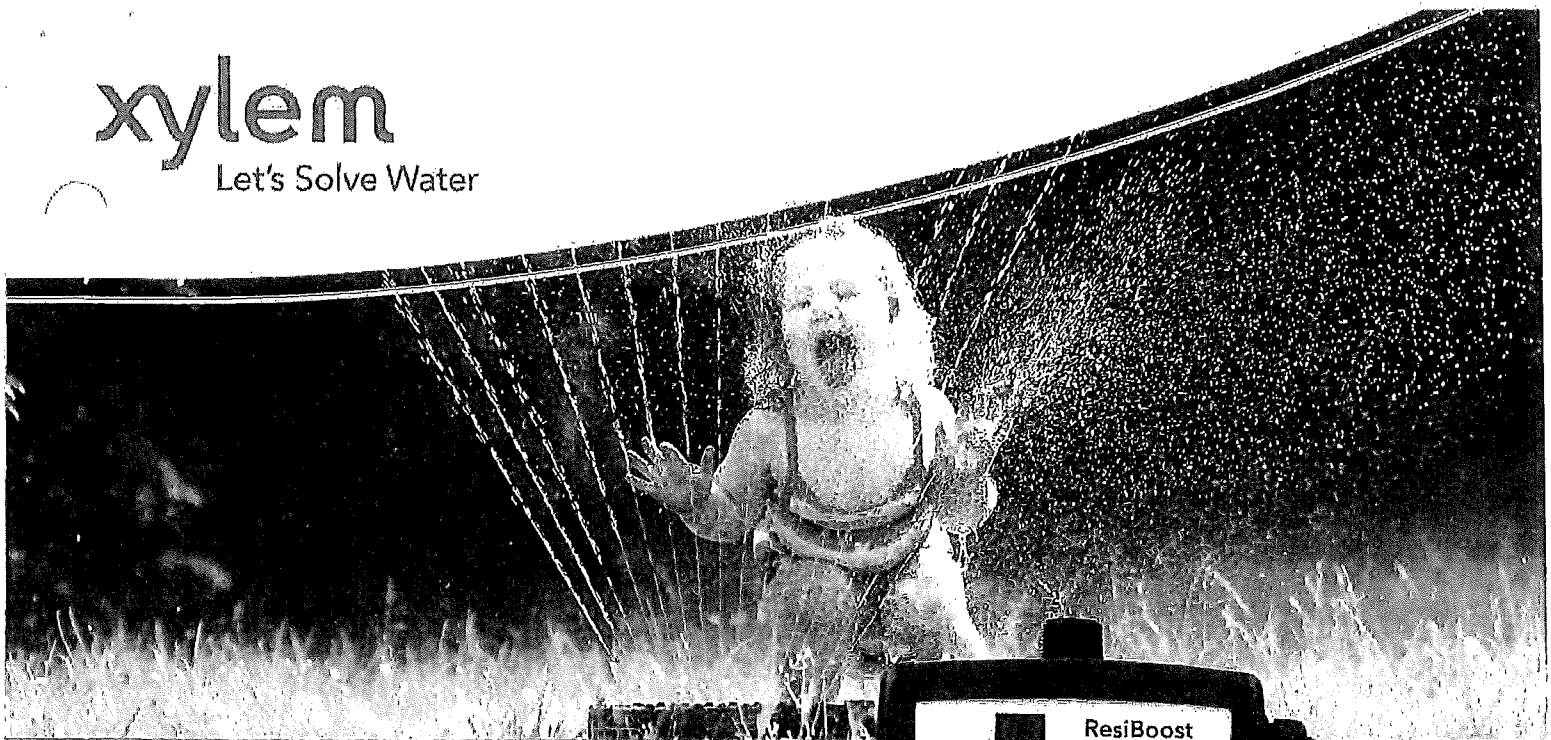
Model	Maximum PSI	Maximum Flow	Stages	Output Phase	Output Voltage	HP	Weight
13159RB115	68 PSI	22	5		115	1	30
2294RB115	40 PSI	40	3	1		1	
13120RB230	51 PSI	22	4		230	¾	
22125RB230	54 PSI	40	4			1½	
13150RB3	65 PSI	22	5	3		1	
22157RB3	67 PSI	40	5			2	



Xylem Inc.
 Phone: (866) 325-4210 • Fax: (888) 322-5877
www.xylem.com/goulds

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xylem
Let's Solve Water



ResiBoost


COMPLETE PACKAGED
VARIABLE FREQUENCY SYSTEM

TAKE WATER PRESSURE TO THE NEXT LEVEL



When surveyed more than 50% of people living in homes connected to a municipal water supply are unaware there is a solution for their low or inconsistent water pressure.

The ResiBoost isn't just any constant water pressure system, it's a product of Goulds Water Technology's next-generation engineering and design, making it more reliable, more durable and more efficient at ensuring strong, consistent water pressure and maximum comfort for homes on municipal water supply. In addition, the ResiBoost constant pressure system can also be used for applications requiring repressurizing water from a storage tank. It combines a small variable frequency drive, a stainless steel multi-stage pump and a small bladder tank in a self-contained, easy-to-install package. Backed by top level service and support, rely on the ResiBoost to deliver constant pressure in the one place it's welcome. Home.

 **GOULDS**
WATER TECHNOLOGY
a xylem brand

SCALA2

PERFECT WATER PRESSURE

FULLY INTEGRATED - COMPACT DESIGN - EASY TO INSTALL

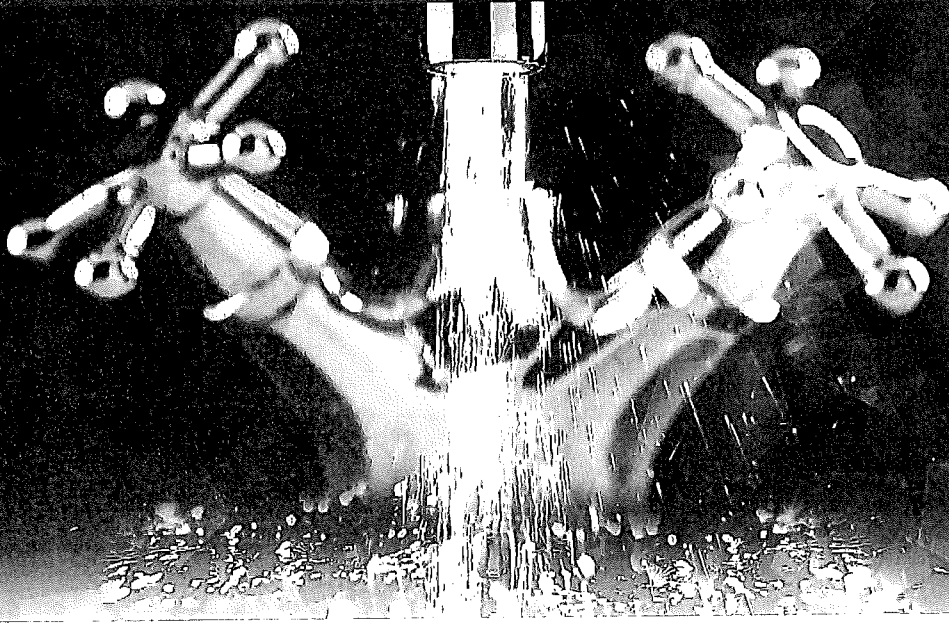


GRUNDFOS SCALA2 is a fully integrated water booster pump delivering perfect water pressure to all taps. It features pump, motor, tank, sensor, drive and non-return valve in one compact unit that installs quickly and easily.

With its intelligent pump control, SCALA2 adjusts performance to any demand – and with its water-cooled motor, it offers one of the lowest noise levels in its class. The result is maximum comfort with minimum effort.

Key features

- Intelligent pump control
- Water-cooled, permanent magnet motor
- Dry running protection
- Self-priming
- User friendly control panel
- Outdoor-ready
- Easy sizing and selection



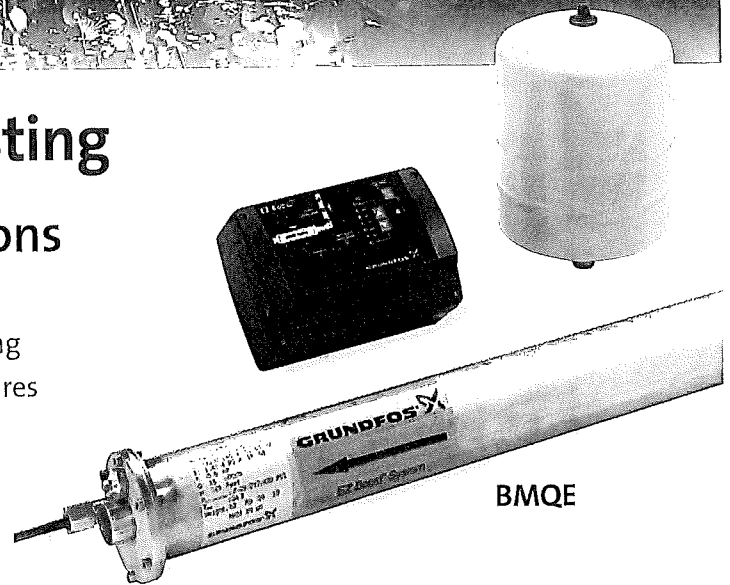
GRUNDFOS Pressure Boosting – Domestic water supply solutions

Grundfos' **BMQE** is a complete constant pressure boosting system. Its rugged design and easy-to-use interface ensures low-maintenance and trouble free operation.

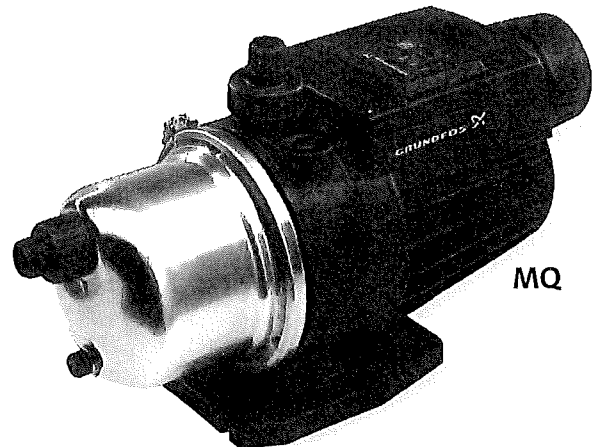
- Dry-run protection
- Over voltage and under voltage protection
- Standard home outlet voltages (single phase)
- Many installation options

The **Grundfos MQ** is a compact, all-in-one pressure boosting system, designed for domestic water supply applications. The MQ, with it's smart operation is both easy to install and reliable.

- Complete system
- Low noise
- Built-in protective functions
- Automatic reset



BMQE



MQ

AN ORDINANCE AMENDING THE FOLLOWING SUBSECTIONS OF CHAPTER 50, WATER PROVISIONS, OF THE TOWN OF HERMOSA ORDINANCES.

BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE TOWN OF HERMOSA THAT SUBSECTION 50.01, GENERAL RULES OF CHAPTER 50 IS AMENDED TO PROVIDE FOR: INCREASING WATER CONNECTION RATES ORDINANCE.

§ 50.01 APPLICATION FOR WATER CONNECTION PERMIT.

(B) The cost of such tap shall be based on the size of the meter:

	<i>Residential</i>	<i>Commercial</i>
1"	\$1000.00	\$2000.00
1 1/2"	\$1000.00	\$2000.00
2"	\$1250.00	\$2500.00

(C) If larger taps are required than depicted in the above table, the rates will increase \$250.00 per increment for residential and will increase \$500.00 per increment for commercial.

(Ord. 10, passed 6-20-2006; Ord. 10R-2015, passed 2-2-2015; Ord. passed 1-8-2019)

BOARD OF TRUSTEES

President

ATTEST:

Finance Officer

First Reading: May 4, 2021
Second Reading: May 18, 2021
Publication: May 26, 2021
Effective Date: June 16, 2021

TOWN OF HERMOSA
RESOLUTION NO. 04-2021
RATES AND CHARGES FOR MUNICIPAL SEWER TAP FEES

A RESOLUTION AMENDING THE SEWER TAP FEES FOR THE MUNICIPALITY OF HERMOSA, CUSTER COUNTY, SOUTH DAKOTA.

BE IT RESOLVED by the Municipality of Hermosa, Custer County, South Dakota the following rates are set for sewer tap fees:

SEWER TAP FEES:

Residential	\$1000.00
Commercial	\$2000.00

BE IT FURTHER RESOLVED these rates are hereby approved and adopted this 4th day of May, 2021 at the Town of Hermosa, South Dakota.

APPROVED:

Vicki Henrichsen, President

Attest: _____

Gail Boddicker, Finance Officer

Gail Boddicker

From: Teresa Cornelison <tcornelison@custercountysd.com>
Sent: Friday, April 30, 2021 8:52 AM
To: Gail Boddicker; Heather Besco-Clyde; Joan Harris
Subject: Custer County Ordinance No. 20
Attachments: Ordinance No. 20 -- Regulate Open Burning and Fireworks 4.12.2021.docx

The Custer County Commission has had two readings on the attached Ordinance No. 20 and it will be effective May 25, 2021. The commissioners have asked me to pass this along to all towns in Custer County for your boards to review and possibly adopt for your jurisdiction. If you have any questions on the Ordinance please contact our Emergency Management Director Steve Esser at 605-673-8152 or sesser@custercountysd.com

Thank you

*Terri J. Cornelison
Custer County Auditor
(605)673-8173
tcornelison@custercountysd.com*

CUSTER COUNTY ORDINANCE NO. 20

AN ORDINANCE REGULATING OPEN BURNING IN CUSTER COUNTY

PURPOSE: This ordinance addresses the area of Custer County that lies east of South Dakota Highway 79 outside of the Black Hills Forest Fire Protection District (BHFFPD). Within the BHFFPD, open burning is not allowed without a permit, pursuant to SDCL 34-35-15. The South Dakota Wildland Fire Division is the administrator of all permitting pursuant to SDCL 34-35-16 in the BHFFPD and all applicable laws within that district.

WHEREAS, the Commissioners of Custer County (the "Commission") are charged with protecting the health, safety and general welfare of the citizens of Custer County, including all property situated therein; and

WHEREAS, SDCL 7-8-20(18) authorizes the Commission to prohibit or restrict open burning, after consultation with local fire officials and law enforcement officials, in order to protect the public health and safety; and

WHEREAS, the Commission previously enacted Custer County Ordinance No. 14 in 2007 to provide penalties for violation of burn bans and permits; and

WHEREAS, the Commission desires to repeal Custer County Ordinance No. 14 and replace the provisions of Ordinance No. 14 with this Ordinance No. 20; and

WHEREAS, the Emergency Management Services Director of Custer County has consulted with local fire officials and law enforcement officials concerning the need to regulate open burning under certain conditions that pose a threat of wildfire; and

WHEREAS, the Commission hereby deems it necessary to adopt the restrictions set forth in this Ordinance No. 20 in order to reduce the threat posed to the citizens and property of Custer County by wildfires.

NOW, THEREFORE, BE IT ORDAINED BY THE CUSTER COUNTY BOARD OF COMMISSIONERS AS FOLLOWS:

SECTION I. DEFINITIONS:

- A. **Open Fire:** Means any outdoor fire, including campfires and burn barrels, which is not contained within a fully enclosed fire box or structure from which the products of combustion are emitted directly to the open atmosphere without passing through a stack, duct or chimney. Open Fire shall NOT include Charcoal Grills, Liquid Fuel Grills, as defined herein.
- B. **Charcoal Grill:** Means a metal or stone device not resting on the ground with a metal grate designed to cook food using charcoal briquettes, char wood, hard wood, or similar fuel.
- C. **Liquid Fuel Grill:** Means a metal or stone device designed to cook food using liquefied or gaseous combustible fuel.
- D. **Burn Barrel:** Means a metal container used to hold combustible or flammable waste materials so they can be ignited outdoors for the purpose of disposal. Burn Barrels must be covered with a metal grate at any time when being used. Burn Barrels must be located in a safety zone devoid of all combustible materials 15 feet in radius from the center of the burn barrel while in use.
- E. **Outdoor Fireplace:** Means a manufactured appliance constructed of non-combustible materials, with a maximum fuel area of three (3) feet, fueled by cut or split wood, located not closer than 15 feet to any combustible surface and continually attended.
- F. **Campground:** Means any permitted commercial campground operated by private individuals or corporations, the State of South Dakota, or the United States Forest Service.

SECTION II. REGULATIONS:

A. **Open Fire:**

1. No person shall set any open fire when the National Weather Service has declared the Grassland Fire Danger Index to be in the Very High or Extreme category, or a High Wind Watch or Warning, Fire Weather Watch, or Red Flag Warning issued for Custer County from time to time. The prohibition against

Open Fire as provided herein shall automatically be suspended during any time period the Grassland Fire Danger Index falls below the Very High category, and no High Wind Watch, or Warning, Fire Weather Watch, or Red Flag Warning is in place.

B. Burn Barrels:

1. Special regulation: No person may ignite a fire in a burn barrel when the National Weather Service has declared the Grassland Fire Danger Index to be in the Very High or Extreme category, or a High Wind Watch or Warning, Fire Weather Watch, or Red Flag Warning issued for Custer County from time to time. Use of burn barrels as defined herein is allowed anytime during which the Grassland Fire Danger Index falls below the Very High category and no High Wind Watch, or Warning, Fire Weather Watch, or Red Flag Warning is in place.

C. Campgrounds:

1. The ban on open burning does not apply to those designated areas falling within the boundaries of any permitted commercial, state or federal campgrounds unless otherwise specifically banned by resolution of Custer County Board of Commissioners.

SECTION III. PENALTY FOR VIOLATIONS:

- A. Anyone who fails to perform any act required or who does any prohibited act pursuant to this ordinance, and upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars (\$500) or by imprisonment for a period not to exceed thirty (30) days, or by both fine and imprisonment for each offense, pursuant to SDCL 7-18A-2.
- B. Additionally, pursuant to SDCL 34-35-9, and 34-35-10 and 10.1, and 34-35-12, as amended from time to time, any violator of this ordinance may also be subject to additional penalties and costs associated with causing or setting a fire and the suppression costs of extinguishing any fire resulting therefrom.
- C. Nothing herein shall be construed to prohibit or supersede any civil remedy otherwise available to any person or entity.

- D. The permissibility of the ignition of any fire as specified herein shall not operate to relieve the ignitor of any duty of care otherwise imposed by law; nor shall this ordinance operate to absolve any person of any liability for damages to persons or property which may occur as a result of any fire.
- E. This ordinance does not supersede applicable state or federal law, and people shall comply with and remain subject to applicable state and federal law and any penalties associated with applicable state and federal law.

SECTION IV. REPEAL OF CUSTER COUNTY ORDINANCE NO. 14:

The Commission hereby repeals Custer County Ordinance No. 14 – To Establish Penalties for Violation of Burn Bans and Permits (Dated July 25, 2007).

Adopted this 14th day of April, 2021 by the Custer County Commission. This Ordinance No. 20 shall become effective on the twentieth (20th) day after publication.

CUSTER COUNTY COMMISSION:

Jim Lintz, Chairman

ATTEST:

Teresa Cornelison, Auditor

First Reading: April 14, 2021

Second Reading: April 28, 2021

Adopted: April 14, 2021

Published:

Effective Date:

South Dakota Grassland Fire Danger Map

Rapid City, SD
Weather Forecast Office

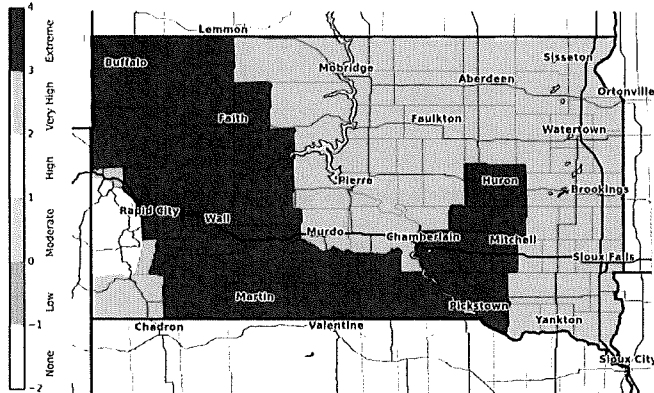
South Dakota Grassland Fire Danger Map Product:

- Abilene
- Sioux Falls
- Rapid City

Please use the South Dakota Grassland Fire Danger Map in conjunction with the text products above to assess the Grassland Fire Danger for South Dakota. Please note that text products will be issued daily by 5:00 AM during the fire-weather season or when high, very high, or extreme grassland fire danger is forecast. What is the Grassland Fire Danger today?

SD Grassland Fire Danger Thursday Evening

Valid: 04/01/2021 01:00 PM - 04/01/2021 07:00 PM CDT



National Weather Service
Aberdeen/Rapid City/Sioux Falls, SD
weather.gov

Updated:
04/01/2021 10:41 AM CDT

http://www.weather.gov/rapid/assessgrasslandf1.png



NATIONAL WEATHER SERVICE



HOME FORECAST PAST WEATHER SAFETY INFORMATION EDUCATION NEWS SEARCH ABOUT

Local forecast for
Rapid City, SD (57701) code

News Headlines
• March 29, 2021 High Wind Event

NY FORECAST

Rapid City, SD



Fair
43°F
0°C

Today
Sunny
High: 73°F

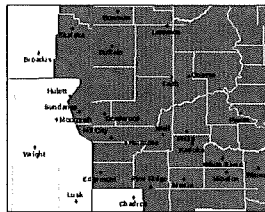
Tonight
Clear
Low: 42°F

NWS Forecast Office Rapid City, SD

Rapid City, SD
Weather Forecast Office

Current Hazards Current Conditions Radar Forecasts Rivers and Lakes Climate and Past Weather Local Programs

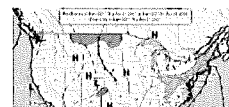
Click a location below for detailed forecast.



03:25:59 - G331 Workshop - Top x Rapid City, SD x +
weather.gov/rapid

03:25:59 - G331 Workshop - Top x Rapid City, SD x +
weather.gov/rapid

03:25:59 - G331 Workshop - Top x Rapid City, SD x +
weather.gov/rapid





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April 14, 2021

Richard M. Williams
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Via E-Mail

Yvonne Taylor
Executive Director
South Dakota Municipal League

Bob Wilcox
Executive Director
South Dakota Association of County Commissioners

David A. Pfeifle
Executive Director
South Dakota Public Assurance Alliance

Re: Legislation & policy issues related to marijuana legalization
GPNA File No. 01593.0397

Dear Yvonne, Bob and David:

Initiated Measure 26 (“IM 26”), which has now been codified in SDCL Chapter 34-20G, allows local governments to regulate medical marijuana – to various degrees – through zoning and by the enactment of marijuana-related regulations. Local governments can regulate to the extent that such regulations do not conflict with state law.

INTRODUCTION

IM 26 creates a new statutory procedure for the provision of marijuana to individuals with certain medical conditions. The South Dakota Department of Health (“DOH”) must promulgate certain rules by October 29, 2021. Eventually, medical marijuana cardholders will be able to possess and use marijuana and, if authorized, grow their own marijuana. Under IM 26, a “local government” will be able to regulate “medical cannabis establishments” through zoning and licensing. Although the term “local government” is not specifically defined, given the application of other sections of IM 26, a “local government” likely includes counties and municipalities and may include townships.

Offices in Rapid City and Pierre, South Dakota

Attorneys licensed to practice in South Dakota, North Dakota, Nebraska, Wyoming, and Montana

I. Authority of local governments in general.

Municipalities, counties and townships are creatures of statute and may only exercise powers expressly conferred by statute or reasonably implied from those granted. *Jackley v. City of Coleman*, 790 N.W.2d 491, 493 (S.D. 2010)(municipalities have only the powers expressly granted by the legislature); *Rantapaa v. Black Hills Chair Lift Co.*, 633 N.W.2d 196, 203 (S.D. 2001)(counties are creatures of statute and only have such powers conferred or reasonably implied); *Welsh v. Centerville Township*, 595 N.W.2d 622, 625 (S.D. 1999)(township powers and duties are derived from legislative enactments). Given that municipalities, counties and townships derive their power from the legislature, they may not pass ordinances contrary to state law. An ordinance that conflicts with state law is preempted or abrogated to the extent of the conflict. *Rantapaa* at 203. Municipalities and counties governed by a home rule charter are likewise prohibited from contradicting state law or state constitutional provisions. *Law v. City of Sioux Falls*, 2011 S.D. 63, ¶ 9, 804 N.W.2d 428, 431–32 (citing S.D. Const. art. IX, § 2); *Tibbs v. Moody Cty. Bd. of Comm'rs*, 2014 S.D. 44, ¶ 25, 851 N.W.2d 208, 217 (discussing county authority under S.D. Const. art. IX, § 2). Specific to medical marijuana, SDCL 34-20G-58 provides:

A local government may enact an ordinance not in conflict with this chapter, governing the time, place, manner, and number of medical cannabis establishments in the locality. A local government may establish civil penalties for violation of an ordinance governing the time, place, and manner of a medical cannabis establishment that may operate in the locality.

Municipal resolutions are subject to a similar analysis. An official action of a municipality must be expressed through resolution or ordinance. *Jackpine Gypsies Motorcycle Club, Inc., v. South Dakota Department of Revenue*, 395 N.W.2d 593, 595 (S.D. 1986). For municipalities, ordinance and resolution are defined in SDCL § 9-19-1 which provides:

The word “ordinance” as used in this title shall mean a permanent legislative act of the govern body of a municipality within the limits of its powers.

The word “resolution” as used in this title shall mean any determination, decision, or direction of the governing body of a municipality of a special or temporary character for the purpose of initiating, effecting, or carrying out its administrative duties under the laws and ordinances governing the municipality.

Regarding counties, those terms are defined as follows:

“Ordinance,” a permanent legislative act of a board of county commissioners passed within the limits of its powers;

“Resolution,” any determination, decision, or direction of a board of county commissioners of a special or temporary character, made for the purpose of initiating, effecting, or carrying out its administrative duties and functions.

SDCL 7-18A-1.

For a municipality to act through a resolution it must act, “...under the laws and ordinances governing the municipality.” Moreover, as described in SDCL §9-19-1, resolutions do not provide a municipality additional authority, rather, they are a mechanism for putting into action special or temporary determinations, decisions or directions *authorized by law*. To the extent a municipal resolution conflicts with State law it is not authorized by law and, as a consequence, has no effect.

II. Ability of local government to regulate medical marijuana.

IM 26 allows local governments to regulate medical cannabis establishments under certain conditions. A "medical cannabis establishment" is defined as “a cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a dispensary.” *See* SDCL 34-20G-1(15). SDCL 34-20G-60 permits a local government to require a medical cannabis establishment to obtain a local license, permit, or registration to operate and to charge a reasonable fee for the same. A local government may also regulate the time, place, and manner, and number of medical cannabis establishments. SDCL 34-20G-58.

By means of this regulation, SDCL 34-20G-56 assumes that local governments may place numerical limitations on “medical cannabis establishments.” SDCL 24-20G-56 provides:

If a local government has enacted a numerical limit on the number of medical cannabis establishments in the locality and a greater number of applicants seek registration [with the DOH], the department shall solicit and consider input from the local government as to its preference for registration.

This statute appears to contemplate the ability of local government to numerically limit “medical cannabis establishments” which may include banning medical cannabis establishments entirely by setting a numerical limit at zero. The ability to ban dispensaries – which are included in the definition of medical cannabis establishments – is not so clear.¹ This is because IM 26 includes another statute specifically addressing dispensaries. With regard to dispensaries, SDCL 34-20G-59 provides:

¹ SDCL 34-20G-1(15) describes a “medical cannabis dispensary” or a “dispensary” as “an entity registered with the department pursuant to this chapter that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials to cardholders[.]”

No local government may prohibit a dispensary, either expressly or through the enactment of an ordinance that makes the operation of the dispensary impracticable² in the jurisdiction.

Given this provision, a local government could not expressly prohibit dispensaries from operating within the local government's jurisdiction. Nor, given the application of SDCL 34-20G-59, could a local government set the numerical limitation on dispensaries at zero because such a limitation would also prohibit a dispensary contrary to statute. But the statute remains unclear as to whether a local government may set a numerical limitation on dispensaries which is greater than zero.

This ambiguity is caused by the statute's language. Under one reading, a local government must allow "a" dispensary to operate. Accordingly, a local government acts in accordance with the statute if it allows at least one dispensary to operate within its jurisdiction. On the other hand, each applicant is seeking to operate "a" dispensary. Arguably, if the local government could not prohibit "a" dispensary, that local government could not deny any applicant the ability to operate "a" dispensary within the local government's jurisdiction. Drawn to its logical conclusion, this argument would prevent a local government from imposing any numerical limitations on the establishment of dispensaries. This would leave the market to control the number of dispensaries within any jurisdiction. The statute could have clarified this issue by stating, "a local government must allow at least one dispensary within its jurisdiction." Instead, because the current language provides that "no local government may prohibit a dispensary", it is unclear as to whether the statute prevents the local government from prohibiting the establishment of any dispensary – thus prohibiting numerical limitations as to dispensaries – or simply that the statute requires a local government to allow **at least one** dispensary within its jurisdiction.

If a local government does decide to regulate within the confines of IM 26, compliance with a local government's regulations is a prerequisite to obtaining a license from the DOH. Pursuant to SDCL 34-20G-55:

Not later than ninety days after receiving an application for a medical cannabis establishment, the department shall register the prospective medical cannabis establishment and issue a registration certificate and a random ten-digit alphanumeric identification number if all of the following conditions are satisfied...

- (1) The prospective medical cannabis establishment has submitted all of the following...

² The Merriam Webster Dictionary defines "impracticable" as not practicable: incapable of being performed or accomplished by the means employed or at command.

(d) **If the city or county** where the proposed medical cannabis establishment would be located **has enacted zoning restrictions**, a sworn statement certifying that the proposed medical cannabis establishment does not violate the restrictions;

(e) **If the city or county** where the proposed medical cannabis establishment requires a **local registration, license, or permit**, a copy of the registration, license, or permit;

Prior to receiving a registration certificate from the DOH, a medical cannabis establishment must provide proof to the DOH that the medical cannabis establishment complies with local zoning and any must provide a copy of the registration, license, or permit issued by a city or county, **if** the city or county has such regulations in place. Provided that a local government has implemented such regulations, an entity applying with DOH must first receive a local registration, license, or permit before it may receive a registration certificate from the DOH. If the city or county has not enacted zoning, registration, license, or permit requirements, the DOH can issue a medical cannabis establishment a certificate to operate within an area of local government.

In instances where local government has enacted zoning requirements and other appropriate regulations, those regulations must be followed in order for the applicant to receive authority from the DOH to operate. Without local governmental regulations, however, SDCL 34-20G-55 may not give DOH the ability to limit the number of medical cannabis establishments licensed to operate with the State or within any local jurisdiction. SDCL 34-20G-55 provides, in part, that the DOH “**shall** register the prospective medical cannabis establishment and issue a registration certificate [provided that the subsections of SDCL 34-20G-55 are met]...” Because the use of the word “**shall**” indicates a mandatory directive, DOH will not likely have any discretion to deny the issuance of any registration certificate to persons and entities that meet the provisions of SDCL 34-20G-55. Without the ability of DOH to regulate location and number of medical cannabis establishments, it falls to local governments to regulate in this area. If a city or county wishes to regulate medical marijuana within its jurisdiction it must pass ordinances in order to do so. And those ordinances must operate within the parameters of IM 26. Because not all local governments regulate in this manner, it may be an option to amend SDCL 34-20G-55 to provide DOH with the ability to place certain limitations on the licenses it issues.

III. Ability of a local government to operate a dispensary.

As provided above, entities wishing to operate a medical cannabis establishment must file an application with the DOH in order to do so. Dispensaries are included within the definition of a medical cannabis establishment. SDCL 34-20G-55 lists the conditions, which must be met in order for a certificate to be issued. SDCL 34-20G-55 does not specifically include a local government as an entity that would be allowed to operate a dispensary. Additionally, in subsections 2 and 3 the statute refers to “principal officers and board members” and in section 3 it requires them to be twenty-one years of age or older. Section 4 requires at least one “principal officer” to be a resident of the state. These conditions do not appear to contemplate the filing of

an application by a local government. Nonetheless, the statute does not specifically prohibit local governments from applying. The requirements for an applicant could be clarified by DOH rules. *See* SDCL 34-20G-72. Alternatively, local governments may want to seek legislative clarification on this issue. For example, municipalities have been provided specific statutory authorization to operate liquor stores. SDCL 35-3-7 provides:

Any municipality may, by vote of its electors, as provided in §§ 35-3-8 to 35-3-23, inclusive, determine whether or not alcoholic beverages, except malt beverages, may be sold within the municipality by on-sale dealers. The municipality may also in the same manner determine whether the municipality shall procure a license or licenses for the sale of alcoholic beverages, except malt beverages, at retail, or, if the municipality is engaged in such a business, whether the license or licenses shall be renewed.

A similar statute could be enacted with regard to the sale of medical marijuana. Additionally, a local government may be allowed to operate the only dispensary – engage in a monopoly – provided “that the action be clearly articulated and affirmatively expressed as state policy.” *Byre v. City of Chamberlain*, 362 N.W.2d 69, 74 (S.D. 1985). Also, at this time, IM 26 does not address whether dispensaries could be located within bars or other state-licensed establishments. This is another area that could be addressed by administrative rule or by statute.

IV. Law enforcement.

With the passage of IM 26, under state law, “an activity related to medical cannabis is lawful as long as it is conducted in accordance with this chapter.” SDCL 34-20G-15. With this change, a host of law enforcement-related issues will present themselves which this letter cannot adequately address. Given the complexities of Fourth Amendment jurisprudence involving search and seizure, and the factual nature of each encounter with law enforcement, definitive answers on these issues cannot be provided here. Each local government should discuss these matters with their State’s Attorney as opinions on enforcement may vary. Many of these issues may ultimately have to be decided by a court.

The flip side of SDCL 34-20G-15 is that currently illegal marijuana-related activities not authorized by Chapter 34-20G remain illegal.³ Additionally, Chapter 34-20G specifically states which activities are not allowed:

This chapter does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalty for engaging in, the following conduct:

- (1) Undertaking any task under the influence of cannabis, when doing so would constitute negligence or professional malpractice;

³ IM 26 did not repeal or amend any of the previously-enacted criminal statutes related to marijuana. Rather, it established exceptions from the enforcement of those statutes for certain medical-use activities.

- (2) Possessing cannabis or otherwise engaging in the medical use of cannabis in any correctional facility;
- (3) Smoking cannabis:
 - (a) On any form of public transportation; or
 - (b) In any public place or any place that is open to the public;
- (4) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, train, or motorboat while under the influence of cannabis, except that a registered qualifying patient or nonresident cardholder is not considered to be under the influence of cannabis solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment.

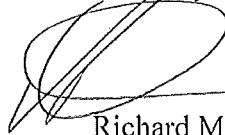
SDCL 34-20G-18.

CONCLUSION

This letter was intended to address, at a high level, various issues that may be encountered by a local government when attempting to implement IM 26. Various, and more specific, issues will be faced by local government during this process. I would be happy to address each of those factual scenarios as they arise to help provide additional guidance.

SDPAA Members with additional questions may contact the Government Practices Hotline at 888-313-0839 for additional assistance.

Sincerely,



Richard M. Williams

RMW:rmw