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May 23, 2000

RECEIVED

MAY 24 2000

Rapid City
Planning Department

Mr. Blaise Emerson
Planner
Rapid City Planning Department
300 Sixth Street
Rapid City, South Dakota 57701

Re: Replat of Lots O & U, Schlotman Addition

Dear Blaise:

Following our telephone conversation yesterday regarding the captioned matter, I reviewed the City's Municipal Code that we briefly discussed, paying particular attention to § 16.12.010(C), which provides as follows:

All thoroughfares in the major street plan shown as crossing or bordering a proposed subdivision are required to be provided in the location and at the right-of-way width designated thereon. [Emphasis added.]

Thus, for that §16.12.010(C) to apply to a replat, the replat must be for a "proposed subdivision." I believe it is clear that the replat is not for a "proposed" subdivision, as the subdivision already exists. Further, the term "Subdivision" is defined at Rapid City Municipal Code § 16.04.300 as:

"Subdivision" means the division of any tract or parcel of land into two or more lots, sites or other division for the purpose, whether immediate or future, of sale or building development, and includes resubdivision. This definition shall not apply to the conveyance of a portion of any previously platted tract, parcel, lot or site; provided, however, that such conveyance does not cause the tract, parcel, lot or site from which the portion is severed to be in violation of any existing zoning ordinance or subdivision regulation apply (sic) to such tract, parcel, lot or site. [Emphasis added.]

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Thus, the replat at issue will not be a "subdivision" as that term is used in § 16.12.010(C) and defined by § 16.04.300.

Consequently, it is our opinion that the City's demand is unlawful and it may not unilaterally and unconstitutionally "take" the additional 10 feet of right-of-way it has demanded along St. Patrick Street. My conclusion is based primarily upon the fact that the provisions of Chapter 16.12, as discussed above, clearly apply only to "proposed subdivisions." My client's property is not a proposed subdivision; rather, it has been platted for several years and the replat of Lots O & U (solely for purposes of moving a boundary that does not border St. Patrick Street) will not create a new subdivision.

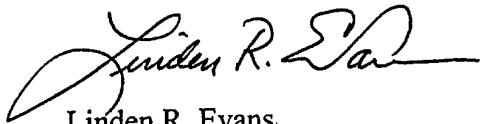
We believe that the City should reconsider and withdraw what we believe is an unlawful demand. My clients have always been willing to work with the City to promote a planned development (as indicated by its willingness to concede to two of the City's demands), and wish to continue in that spirit. However, they are not willing to forego their private property rights without a lawful basis for such.

Finally, Blaise, if there are any statutes, ordinances or case decisions that I should review that are opposite to my conclusion, please let me know, and I would be glad to review them. It would not be the first time that I've reached an inaccurate conclusion.

Thank you for your continued consideration of this matter.

Sincerely,

TRUHE, BEARDSLEY, JENSEN,
HELMERS & VON WALD, Prof. L.L.C.



Linden R. Evans

LRE/rr

Cc: Curtis Fisher