

STAFF REPORT

July 24, 2003

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**No. 03SV025 - Variance to the Subdivision Regulations to waive the requirements to install curb, gutter, sidewalk, street light conduit, water, sewer and pavement along the section line highway as per Chapter 16.16 of the Rapid City Municipal Code**

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**ITEM 25**

GENERAL INFORMATION:

PETITIONER	Dream Design International, Inc.
REQUEST	<b>No. 03SV025 - Variance to the Subdivision Regulations to waive the requirements to install curb, gutter, sidewalk, street light conduit, water, sewer and pavement along the section line highway as per Chapter 16.16 of the Rapid City Municipal Code</b>
EXISTING LEGAL DESCRIPTION	The unplatted portion of the N1/2 NW1/4 SW1/4 less Red Rock Estates and less Countryside Subdivision; W1/2 NW1/4 less Red Rock Estates and less right-of-way, Section 29, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 2.708 acres
LOCATION	Along Prestwick Road in Red Rock Estates
EXISTING ZONING	Low Density Residential District
SURROUNDING ZONING	
North:	Low Density Residential District
South:	Low Density Residential District
East:	Low Density Residential District
West:	Suburban Residential District (County)
PUBLIC UTILITIES	City sewer and water
DATE OF APPLICATION	12:00:00 AM
REPORT BY	Vicki L. Fisher

RECOMMENDATION:

Staff recommends that the Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, sidewalk, street light conduit, water, sewer and pavement along the section line highway as per Chapter 16.16 of the Rapid City Municipal Code be approved with the following stipulation:

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Engineering Division Recommendation:

1. Prior to City Council approval, the applicant shall sign a Waiver of Right to Protest a future assessment for the improvements.

GENERAL COMMENTS:

The applicant has submitted a Variance to the Subdivision Regulations to waive the requirement to improve a section line highway located along the west lot line of the subject property. On May 9, 2003, the applicant submitted a Preliminary and Final Plat to subdivide a portion of the subject property into five residential lots. The applicant has indicated that the plat is being proposed as Phase 3C of the Red Rock Estates Subdivision. (The Preliminary and Final Plat will be heard at the July 24, 2003 Planning Commission meeting. See companion item #03PL053.)

The subject property is located at the northern terminus of Prestwick Road and is currently void of any structural development.

STAFF REVIEW:

During the review of the associated Preliminary and Final Plat, staff noted that a section line highway is located along the west lot line of the subject property. A stipulation of approval for the Preliminary and Final Plat requires that "Prior to Preliminary Plat approval by the City Council, the section line highway located along the west lot line shall be improved to City Street Design standards or a Variance to the Subdivision Regulations shall be obtained to waive the street improvements or the section line highway shall be vacated".

The west half of the section line highway is located on an adjacent property under different ownership from the subject property. The Subdivision Regulations states that "...where there exists a dedicated or platted half-street adjacent to the tract to be subdivided, the other half shall be platted. No new half-streets shall be permitted". As such, the adjacent property owner must participate in the platting of the west half of the section line right-of-way or a Variance to the Subdivision Regulations must be obtained to allow platting half a right-of-way. If the adjacent property owner dedicates the right-of-way as a part of the associated plat action, then the dedicated right-of-way must be annexed into the City limits of Rapid City since the property currently abuts the existing City limit boundary. The Pennington County Highway Department has indicated that the Pennington County Board of Commissioners must review and approve a request to open that portion of the section line highway located outside of the City limits prior to Preliminary Plat approval. In addition, the Pennington County Planning Department has indicated that a construction permit must be obtained from the County prior to the start of any construction of that portion of the road located outside of the City limits. The applicant has indicated that the adjacent property owner does not want to participate in dedicating the right-of-way nor does he want a road constructed within the section line highway at this time. The applicant has also indicated that the adjacent property owner will not sign the Petition to Vacate the Right-of-way

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application. Instead the adjacent property owner is requesting that the section line highway be preserved until such time as he determines the future development of his property and whether the section line highway will be needed to serve as access to any proposed development.

Generally, the staff has recommended that either the section line highway be constructed as part of the development or the section line highway be vacated. Despite extensive attempts by the applicant to resolve this issue, the adjoining property owner is unwilling to proceed with either the development of the road or the vacation of the section line highway. As the applicant has no other alternatives available to allow them to proceed with the development, staff is taking the unusual position of supporting this request. Staff is recommending that the Variance to the Subdivision Regulations as requested be approved with the stipulation that the applicant sign a waiver of right to protest a future assessment for the improvement. This will insure that the section line highway can be constructed in the future if needed with the participation of the future owner of the applicant's property.

Legal Notification Requirement: As of this writing, the receipts from the certified mailings have not been returned. Staff will notify the Planning Commission at the July 24, 2003 Planning Commission meeting if this requirement has not been met. Staff has not received any calls or inquiries regarding this proposal.