

STAFF REPORT

January 22, 2004

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**No. 03VR013 - Vacation of Right-of-Way**

**ITEM 34**

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GENERAL INFORMATION:

PETITIONER	Alliance of Architects and Engineers for Pennington County Housing & Redevelopment Commission
REQUEST	<b>No. 03VR013 - Vacation of Right-of-Way</b>
EXISTING LEGAL DESCRIPTION	That portion of the alley of Block 13, Wise's Addition adjacent to Lots 4 thru 10 and Lots 11 thru 17 of said Block 13, located in the S1/2 of the NW1/4 of Section 31, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately .12 acres
LOCATION	305, 307, 311 and 313 East Adams Street
EXISTING ZONING	Medium Density Residential District
SURROUNDING ZONING	
North:	Medium Density Residential District
South:	Medium Density Residential District
East:	Medium Density Residential District
West:	Medium Density Residential District
PUBLIC UTILITIES	City water and sewer
DATE OF APPLICATION	11/18/2003
REPORT BY	Todd Tucker

RECOMMENDATION:

Staff recommends that the Vacation of Right-of-Way be approved with the following stipulation:

Engineering Division Recommendations:

1. Prior to Planning Commission approval, the applicant shall enter into a covenant with the City of Rapid City identifying that surface restoration due to any operations, maintenance or reconstruction of public utilities shall be the responsibility of the property owner;

GENERAL COMMENTS:

**(Updates to the staff report are shown in bold.) This item was continued from the January 8, 2003 Planning Commission meeting to allow the applicant time to submit the required information.**

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The applicant is proposing to vacate approximately 308 linear feet of alley right-of-way. The original right-of-way was platted in 1974 and is located between East Adams Street to the north and East Monroe Street to the south, and Milwaukee Street to the west and Waterloo Street to the east.

Currently located on the adjacent properties are the Adams Street Apartments. A portion of the proposed right-of-way to be vacated runs through the parking lot for the Adams Street Apartments. The applicant is proposing to vacate the alley right-of-way to allow for resurfacing of the existing parking lot at the Adams Street Apartments.

### STAFF REVIEW:

Staff has reviewed the proposed Vacation of Right-of-Way request and noted the following issues:

### Utilities:

The Engineering Division staff noted that a sanitary sewer main exists in the alley right-of-way. The right-of-way provides the only legal access to the dead end manhole for maintenance. The area proposed for vacation would need to be retained as a utility easement. The Engineering Division staff has indicated that the applicant must enter into a covenant with the City of Rapid City identifying that surface restoration due to any operations, maintenance or reconstruction of public utilities be the responsibility of the property owner. **On January 5, 2004 the applicant submitted a letter acknowledging that any future surface restoration due to any operations, maintenance or reconstruction of public utilities within the vacated alley right-of-way shall be the responsibility of the property owner; however, this letter is not a legally binding covenant. The applicant has made arrangements with the City Attorney's Office to prepare the document. As of this writing the applicant has not entered into a covenant with the City, but it is anticipated that this matter will be completed prior to the January 22, 2004 Planning Commission meeting.**

The Engineering Division staff also noted that other utilities that currently utilize the right-of-way need to be identified. The vacation of a right-of-way requires the permission of all affected utility companies. Of the six utility companies, none have responded. Staff is recommending that prior to City Council approval, documentation must be submitted from all utility companies indicating no objection to the vacation.

On December 24, 2003 a revised site plan was submitted indicating all utilities located in the area proposed to be vacated. Documentation has been received by all six utility companies indicating no objection to the vacation as long as the area proposed for vacation is retained as a utility easement.

### Register of Deeds:

The Pennington County Register of Deeds noted that "Drawer #123, Plat #2" needs to be removed from Note 1 of Exhibit A.

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As of this writing the required revision to Exhibit A removing “Drawer #123, Plat #2” has not been submitted. **On January 5, 2004 a revised Exhibit A was submitted with “Drawer #123, Plat #2” removed from Note 1.**

11-6-19 Review:

The adjacent properties are owned by the Pennington County Housing and Redevelopment Commission, which is a publicly funded organization.

South Dakota Codified Law 11-6-19 states that “...whenever any such municipal council has adopted a comprehensive plan, then no street, park or other public way, ground, place, space, no public building or structure, no public utility, whether publicly or privately owned, if covered by the comprehensive plan or any adopted part thereof, shall be constructed or authorized in the municipality or within its subdivision jurisdiction until and unless the location and extent thereof shall have been submitted to and approved by the Planning Commission”. Any construction on the property will require an 11-6-19 Review approval prior to issuance of a Building Permit.

An 11-6-19 Review application has been submitted for the parking lot construction, and will be considered by the Planning Commission on January 22, 2004.

Staff recommends the Vacation of Right-of-Way request be approved with the above stated stipulation.