



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

Growth Management Department

300 Sixth Street

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MEMORANDUM

TO: Rapid City Council

FROM: Renee Catron-Blair, Urban Planner II

DATE: November 3, 2004

RE: Authorization for Mayor and Finance Officer to sign a waiver of right to protest a future assessment for street improvements.

Legal Description: A portion of Tract T of Trailwood Village, and Lot B of Trailwood Village located in the SE1/4 of the SW1/4, Section 10, T1N, R8E, BHM, Pennington County, South Dakota.

A Variance to the Subdivision Regulations to waive the requirement to install curb, gutter and sidewalk along S. D. Highway 44 as it abuts the subject property. The Variance to the Subdivision Regulations was approved by the City Council on November 1, 2004. A stipulation of approval of the Variance to the Subdivision Regulations requires that the applicant sign a waiver of right to protest a future assessment. The document requires the signature of the Mayor and the Finance Officer.

Staff Recommendation: Authorize the Mayor and Finance Officer to sign the waiver of right to protest a future assessment for the installation of curb, gutter and sidewalk along S. D. Highway 44 as it abuts the subject property.

(File #04SV058)



EQUAL OPPORTUNITY EMPLOYER

PREPARED BY: City's Attorney Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

JE
11.3.04

AGREEMENT WAIVING RIGHT TO PROTEST
(SDCL 9-45-26; 9-47-13; 9-48-18; 9-48-42)

THIS AGREEMENT IS MADE and entered into this _____ day of _____, 2004, by and for Ed Eisenbraun and Linda Eisenbraun, husband and wife, hereinafter called "Developers," and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter called the "City."

WHEREAS the Developers have proposed a plat to be located and developed according to the attached final subdivision plat and it is the intent of the Developers to meet the conditions of the subdivision regulations required for the proposed final plat of this property and approved by the Rapid City Council on _____, 2004; and

WHEREAS it is the intended purpose of the Developers to obtain final approval for this subdivision plat; and

WHEREAS the City of Rapid City's subdivision regulations require installation of curb, gutter, and sidewalk which in this instance would require the Developers to install curb, gutter, and sidewalk along South Dakota Highway 44 as it abuts a portion of Tract T of Trailwood Village, and Lot B of Trailwood Village located in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$, Section 10, T1N, R8E, BHM, Pennington County, South Dakota; and

WHEREAS it is the intent and purpose of both the Developers and the City to enter into an agreement whereby the Developers will consent to a future assessed project for the installation of curb, gutter, and sidewalk along South Dakota Highway 44 as it abuts a portion of Tract T of Trailwood Village, and Lot B of Trailwood Village located in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$, Section 10, T1N, R8E, BHM, Pennington County, South Dakota, as required by Rapid City Subdivision Regulations;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is hereby agreed as follows:

1. This agreement pertains to, and includes those properties which are designated and identified as follows:

A portion of Tract T of Trailwood Village, and Lot B of Trailwood Village located in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$, Section 10, T1N, R8E, BHM, Pennington County, South Dakota.

2. This agreement specifically references the installation of curb, gutter, and sidewalk along South Dakota Highway 44 as it abuts a portion of Tract T of Trailwood Village, and Lot B of Trailwood Village located in the SE¼ of the SW¼, Section 10, T1N, R8E, BHM, Pennington County, South Dakota.

3. The Developers acknowledge the City has the power to make assessments for local improvements on property adjoining or benefited thereby, to collect same in the manner provided by law, and to fix, determine and collect penalties for nonpayment of any special assessments. The Developers agree that if at any time in the future the City determines it is necessary or desirous to install curb, gutter, and sidewalk along South Dakota Highway 44 as it abuts a portion of Tract T of Trailwood Village, and Lot B of Trailwood Village located in the SE¼ of the SW¼, Section 10, T1N, R8E, BHM, Pennington County, South Dakota, through an assessed project, Developers or their heirs, assigns, or successors in interest, waive any right to object to such an assessed project as allowed under state law in consideration for the final approval of the subdivision plat without the immediate installation of curb, gutter, and sidewalk along South Dakota Highway 44 as it abuts a portion of Tract T of Trailwood Village, and Lot B of Trailwood Village located in the SE¼ of the SW¼, Section 10, T1N, R8E, BHM, Pennington County, South Dakota. It is understood by the Developers that the City of Rapid City's primary consideration for the granting of the approval for a subdivision plat on the herein described property and forbearance from requiring Developers to install curb, gutter, and sidewalk along South Dakota Highway 44 as it abuts a portion of Tract T of Trailwood Village, and Lot B of Trailwood Village located in the SE¼ of the SW¼, Section 10, T1N, R8E, BHM, Pennington County, South Dakota, is the Developers' covenant and promise to waive any right to object to the assessed project and their consent to the assessed project.

4. Developers further covenant and agree for themselves, their heirs, assigns, and successors in interest, that should they or any of their heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, the immediate installation of curb, gutter, and sidewalk along South Dakota Highway 44 as it abuts a portion of Tract T of Trailwood Village, and Lot B of Trailwood Village located in the SE¼ of the SW¼, Section 10, T1N, R8E, BHM, Pennington County, South Dakota, which is required in the City subdivision regulations will be required within 90 days of the objection in order to comply with the City of Rapid City's subdivision regulations. Should the weather prevent immediate construction of these subdivision improvements, the City Council may accept a surety bond in an amount equal to the estimated cost of installation of the improvements, whereby the improvements will be made and utilities installed without cost to the City in the event of default of the Developers.

5. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of the Developers, and be considered as a covenant running with the above-described property. Furthermore, it is agreed that, in accepting title to the above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of this agreement recorded with the Pennington County Register of Deeds' Office pursuant to the provisions of South Dakota statutes.

6. The City may undertake any legal or equitable action available to enforce the provisions of this agreement in addition to any remedy provided herein. In the event the City is required to undertake any action to enforce the terms of this agreement or its subdivision regulations in connection with this agreement, the undersigned, heirs, assigns or successors in interest agree the City may recover from the owner of said property its reasonable expenses, including attorney's fees incurred with respect to such action.

7. If any section(s), or provision of this application is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this application if they can be given effect without the invalid section(s) or provisions.

8. This agreement shall be construed according to the laws of the State of South Dakota. No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

9. If the Developer is a corporation, it has the power to enter into this agreement and its officers signing for it have full power and authority to do so.

DATED this _____ day of _____, 2004.

CITY OF RAPID CITY

Jim Shaw, Mayor

ATTEST:

Finance Officer

(SEAL)

Ed Eisenbraun

Linda Eisenbraun

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2004, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation and

that they, as such Mayor and Finance Officer, being authorized so to do, executed the for going Agreement Consenting to Assessed Project for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

My Commission Expires:

Notary Public, South Dakota

(SEAL)

State of South Dakota)

ss.

County of Pennington)

On this the _____ day of _____, 2004, before me, the undersigned officer personally appeared Ed Eisenbraun and Linda Eisenbraun, husband and wife, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, South Dakota

My Commission Expires:

(SEAL)