

STAFF REPORT
December 9, 2004

No. 04VR010 - Vacation of Right-of-Way

ITEM 12

GENERAL INFORMATION:

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| PETITIONER | CETEC Engineering Services, Inc. |
| REQUEST | No. 04VR010 - Vacation of Right-of-Way |
| EXISTING LEGAL DESCRIPTION | A portion of Spring Canyon Trail right-of-way located south of Mountain Pine Lane right-of-way adjacent to Lot 3 Block 5 and Lot 5 Revised Block 4 of Clarkson Subdivision; Tract 1 of Glessnor Addition; the unplatted balance of the N1/2 SE1/4; and the unplatted part of the S1/2 NE1/4 lying south of Lot 5 Revised of Clarkson Subdivision, all located in Section 31, T1N, R7E, BHM, Pennington County, South Dakota |
| LOCATION | 8503 Clarkson Road |
| EXISTING ZONING | Suburban Residential District |
| SURROUNDING ZONING | |
| North: | Suburban Residential District |
| South: | Suburban Residential District |
| East: | Suburban Residential District |
| West: | Suburban Residential District |
| DATE OF APPLICATION | 10/29/2004 |
| REVIEWED BY | Todd Tucker / Curt Huus |

RECOMMENDATION: **Staff recommends that the Vacation of Right-of-Way be denied without prejudice at the applicant's request.**

GENERAL COMMENTS: **(This Staff Report was revised on December 3, 2004. All revised and/or added text is shown in bold text.) This item was continued at the November 24, 2004 Planning Commission meeting to allow the applicant time to comply with all stipulations of approval.**

The applicant has indicated that they do not plan to move forward with the proposed vacation of right-of-way at this time and request the application be withdrawn.

The subject property is located south of Sheridan Lake Road and west of Clarkson Road. The right-of-way was originally platted in 1965 as part of the Clarkson Subdivision. The adjacent properties are located within a residential development. There are currently two single family residences located adjacent to that portion of Spring Canyon Trail proposed to be vacated. The applicant is proposing to vacate approximately 1,200 lineal feet of right-of-way.

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

Utilities: The applicant originally requested the vacation of a much smaller portion of Spring Canyon Trail. On November 17, 2004 the applicant submitted a revised Exhibit "A" showing the vacation of Spring Canyon Trail between Mountain Pine Lane and Clarkson Road. As such, all affected public utility companies must give their approval to vacate that portion of Spring Canyon Trail shown on the revised exhibit. Prior to Planning Commission approval, responses from all affected public utility companies must be received indicating that they have no objection to the proposed vacation of right-of-way.

Staff has received responses from all affected public utility companies. Two utility companies Qwest and Montana Dakota Utilities Company indicated that they had facilities located within the revised area to be vacated. As such, the proposed right-of-way to be vacated must be retained as a public utility easement or a private easement must granted to the two affected utility companies. The applicant has indicated that they are in the process of creating the required documents to retain the right-of-way as a utility easement.

Traffic Operations: There are four properties located adjacent to the portion of Spring Canyon Trail proposed to be vacated. All properties will have legal access via public right-of-way if the request to vacate a portion of Spring Canyon Trail is approved. The petition to vacate a public right-of-way has been signed by all property owners affected by the vacation except one. Prior to the Planning Commission hearing, a petition to vacate a public right-of-way must be signed by all affected property owners as required by State statute.

On November 29, 2004 the applicant indicated that the last property owner's signature needed on the petition to vacate a public right-of-way has not yet been received. The applicant is aware that the right-of-way cannot be vacated until all affected property owners sign the required petition to vacate a public right-of-way.

On December 3, 2004 the applicant submitted a letter withdrawing the request for a vacation of right-of-way. As such staff recommends that the Vacation of Right-of-Way request be denied without prejudice at the applicant's request.