

PROCEEDINGS OF THE CITY COUNCIL
Rapid City, South Dakota

October 15, 2007

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Rapid City was held at the City/School Administration Center in Rapid City, South Dakota on Monday, October 15, 2007 at 7:00 P.M.

The following members were present: Mayor Alan Hanks and the following Alderpersons: Lloyd LaCroix, Tom Johnson, Deb Hadcock, Bob Hurlbut, Bill Okrepkie, Malcom Chapman, Ron Weifenbach, Karen Olson, Ron Kroeger, and Sam Kooiker; and the following Alderpersons arrived during the course of the meeting: None; and the following were absent: None.

Staff members present included Finance Officer Jim Preston, City Attorney Jason Green, Growth Management Director Marcia Elkins, Public Works Director Dirk Jablonski, Fire Chief Gary Shepherd, Police Chief Steven Allender, and Administrative Coordinator Jackie Gerry.

Okrepkie moved, second by Weifenbach and carried to open the public hearing on Items 63 – 103. Steve Storm, Rapid City addressed item #100 (07FV007), explaining that he removed an old fence and erected a new cedar fence in the same location. He reported receiving a letter from the City indicating that his new fence was located in the site triangle and the right-of-way, and was too tall. Storm indicated that he would address the issue of the site triangle. He pointed out that his fence is in line with all other fences on adjacent properties. Storm indicated that he was notified that no permit is required to build a fence six foot or less. Storm asked for Council consideration on the location and height of his fence.

NON-CONSENT PUBLIC HEARING ITEMS – Items 97 – 103

The Mayor presented No. 07FV007, a request by Steve Storm to consider an application for a **Fence Height Exception** to allow a six foot high fence in a front yard setback on Lots 21 thru 23 of Block 2 of Millard Subdivision, Section 36, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, more generally described as being located at 50 College Avenue. LaCroix moved, second by Okrepkie to approve with stipulations, directing the applicant to work with City staff to address that portion of the fence located in the site triangle. City Attorney Green advised that the provision of South Dakota law require that publicly dedicated right-of-way be held in trust for the public benefit. That is not consistent in allowing a private party to erect a structure in the public right-of-way. He advised the Council that it his opinion that they do not have the authority to grant that portion of the request. In addition, he indicated that he had significant concerns about the potential for the City to incur liability, if there is

ever an accident and someone runs into the fence or anyone is injured because of the fence. With regard to the comment that there are a number of other fences located in the right-of-way, if they are in the right-of-way, the City should take some action to correct the situation. He indicated that if the Council wants to allow the fence to remain in its present location, he suggested the Council ask the applicant to go through the process to vacate a portion of the right-of-way.

With the consent of the Council, Alderman LaCroix withdrew the motion.

LaCroix moved, second by Johnson to continue No. 07FV007, a request by Steve Storm to consider an application for a Fence Height Exception to allow a six foot high fence in a front yard setback on Lots 21 thru 23 of Block 2 of Millard Subdivision, Section 36, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, more generally described as being located at 50 College Avenue to the January 7, 2008 Council meeting and directed staff to stay enforcement of the fence violation. Motion carried.