



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: Vicki L. Fisher, Planner III 

DATE: May 14, 2008

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 1 of the SE1/4 NE1/4 of Section 27, T1N, R7E, BHM, less Connector Subdivision and less Lot H1, located in the NE1/4 Section 27, T1N, R7E, BHM, Pennington County, South Dakota

A Variance to the Subdivision Regulations to waive the requirement to install curb, gutter and street light conduit along Catron Boulevard, to install curb, gutter, water and street light conduit along U.S. Highway 16 Service Road and to install sidewalk along both sides of Catron Boulevard and U.S. Highway 16 Service Road as they abut the subject property has been submitted in conjunction with a Preliminary Plat to create two lots. A stipulation of approval of the Variance to the Subdivision Regulations requires that the applicant sign a waiver of right to protest any future assessement for the improvements. The document also requires the signature of the Mayor and the Finance Officer.

Staff Recommendation: Authorize the Mayor and Finance Officer to sign the waiver of right protest any future assessment for the installation of curb, gutter and street light conduit along Catron Boulevard, to install curb, gutter, water and street light conduit along U.S. Highway 16 Service Road and to install sidewalk along both sides of Catron Boulevard and U.S. Highway 16 Service Road as they abut the property.

(File #08SV006)



EQUAL OPPORTUNITY EMPLOYER

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

5/6/08 mcs

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 7th day of May, 2008, by and for F & D SHULTZ LIMITED PARTNERSHIP, hereinafter called "Developer," and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter called the "City."

WHEREAS the Developer has submitted a proposed subdivision plat; and

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

WHEREAS the City of Rapid City's subdivision regulations require installation of curb, gutter, water, sidewalk, and street light conduit, which in this instance would require the Developer to install curb, gutter and street light conduit along Catron Boulevard, to install curb, gutter, water and street light conduit along U.S. Highway 16 Service Road, and to install sidewalk along both sides of Catron Boulevard and U.S. Highway 16 Service Road as they abut a tract of land located in the SE1/4 NE1/4 of Section 27, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, more particularly described as follows: Commencing at a point which is a 5/8" rebar with survey cap LS 1019 marking the NE1/16 Corner of Section 27, T1N, R7E, BHM, and the northwest corner of proposed TLC Subdivision, thence N89°56'17"E a distance of 162.12', more or less, to a point; thence southeasterly on a curve to the left with a radius of 1507.85' and an arc length of 537.69', with a chord bearing of S42°56'03"E and a chord distance of 534.84', more or less, to a point; thence S36°36'49"E a distance of 175.62', more or less, to a point; thence S60°10'15"E a distance of 46.65', more or less, to a point; thence S74°23'41"E a distance of 222.70', more or less, to a point; thence N20°50'23"E a distance of 22.97', more or less, to a point; thence southeasterly on a curve to the left with a radius of 1507.85' and an arc length of 291.20', with a chord bearing of S74°41'35"E and a chord distance of 290.75', more or less, to a point; thence S08°38'06"W a distance of 239.52', more or less, to a point; thence southeasterly on a curve to the left with a radius of 128.44' and an arc length of 221.34', with a chord bearing of S40°42'59"E and a chord distance of 194.95', more or less, to a point; thence S89°53'00"W a distance of 1266.06', more or less, to a point; thence N00°00'21"E

a distance of 1057.92', more or less, to the point of beginning; said area includes 17.810 acres, more or less; and

WHEREAS it is the intent and purpose of both the Developer and the City to enter into an agreement whereby the Developer will consent to a future assessed project for the installation of curb, gutter and street light conduit along Catron Boulevard, the installation of curb, gutter, water and street light conduit along U.S. Highway 16 Service Road, and the installation of sidewalk along both sides of Catron Boulevard and U.S. Highway 16 Service Road as they abut the subject property in exchange for the City not requiring immediate installation of the improvements 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 tract of land located in the SE1/4 NE1/4 of Section 27, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, more particularly described as follows: Commencing at a point which is a 5/8" rebar with survey cap LS 1019 marking the NE1/16 Corner of Section 27, T1N, R7E, BHM, and the northwest corner of proposed TLC Subdivision, thence N89°56'17"E a distance of 162.12', more or less, to a point; thence southeasterly on a curve to the left with a radius of 1507.85' and an arc length of 537.69', with a chord bearing of S42°56'03"E and a chord distance of 534.84', more or less, to a point; thence S36°36'49"E a distance of 175.62', more or less, to a point; thence S60°10'15"E a distance of 46.65', more or less, to a point; thence S74°23'41"E a distance of 222.70', more or less, to a point; thence N20°50'23"E a distance of 22.97', more or less, to a point; thence southeasterly on a curve to the left with a radius of 1507.85' and an arc length of 291.20', with a chord bearing of S74°41'35"E and a chord distance of 290.75', more or less, to a point; thence S08°38'06"W a distance of 239.52', more or less, to a point; thence southeasterly on a curve to the left with a radius of 128.44' and an arc length of 221.34', with a chord bearing of S40°42'59"E and a chord distance of 194.95', more or less, to a point; thence S89°53'00"W a distance of 1266.06', more or less, to a point; thence N00°00'21"E a distance of 1057.92', more or less, to the point of beginning; said area includes 17.810 acres, more or less.

2. This agreement specifically references the installation of curb, gutter and street light conduit along Catron Boulevard, the installation of curb, gutter, water and street light conduit along U.S. Highway 16 Service Road, and the installation of sidewalk along both sides of Catron Boulevard and U.S. Highway 16 Service Road as they abut the subject property.

3. The Developer acknowledges 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 Developer agrees that if at any time in the future the City determines it is necessary or desirous to install curb, gutter and street light conduit along Catron Boulevard, to install curb, gutter, water and street light conduit along U.S. Highway 16 Service Road, and to install sidewalk along both sides of Catron Boulevard and U.S. Highway 16 Service Road as they abut the subject property through an assessed project, Developer or its 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, sidewalk, water, and street light conduit. It is understood by the Developer 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 Developer to immediately install curb, gutter and street light conduit along Catron Boulevard, to install curb, gutter, water and street light conduit along U.S. Highway 16 Service Road, and to install sidewalk along both sides of Catron Boulevard and U.S. Highway 16 Service Road is the Developer's covenant and promise to waive any right to object to the assessed project and its consent to the assessed project.

4. Developer further covenants and agrees for itself, its heirs, assigns, and successors in interest, that should it or any of its heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, the immediate installation of curb, gutter and street light conduit along Catron Boulevard, the installation of curb, gutter, water and street light conduit along U.S. Highway 16 Service Road, and the installation of sidewalk along both sides of Catron Boulevard and U.S. Highway 16 Service Road as they abut the subject property, 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 installation 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 Developer.

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 Developer, 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

