



CITY OF RAPID CITY

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MEMORANDUM

TO: Mayor, City Council

FROM: Joel P. Landeen, Assistant City Attorney

DATE: 7-15-08

RE: Proposed Amendments to the Developer's Agreements with Plum Creek and Zandstra for the construction of Minnesota Street

The Zandstra's and an ownership group purchasing the Plum Creek Development have come forward with a request through Hani Shafai to amend the Developer's Agreements related to the construction of Minnesota Street. Initially, a home builder had indicated a desire to construct a residential development on land owned by the Zandstra's. This project along with the need for a secondary access to the current Plum Creek and Elk Country Estates developments was driving the construction of Minnesota Street. Since the original Developer's Agreement was approved, the home builder has declined their option to purchase the Zandstra's property. In light of this, the Developers have requested the City consider amending the agreements. I have drafted the requested amendments for the Council's consideration. The changes are as follows:

1. Section 2. In the original agreements the construction of Minnesota Street was divided into 2 phases. The first phase was construction of the secondary access and was to be completed by August 1, 2009. This phase has not been changed. The second phase was construction of Minnesota Street from the secondary access to the eastern boundary of the Zandstra's property. This was to be completed by June 1, 2011. The proposed amendments to the agreements divide Phase II into Phases II and III. Phase II will be from the secondary access to the eastern boundary of Plum Creek's property. Phase III runs from the eastern boundary of the Plum Creek property to the eastern boundary of the Zandstra property. There will be no completion date associated with these phases. They will be constructed as development dictates. As the phases are built more land within this area will become open to development. I have attached a color coded exhibit which shows which land becomes eligible for platting as each phase is constructed.

2. Section 7. The repayment of the proceeds from the TID has been altered slightly. In the original agreement Plum Creek was entitled to 57.5% of the increment generated and Zandstra was entitled to the rest. The amendment entitles Plum Creek to 100% of the increment generated until such time as Zandstra enters a contract for construction of any of the public improvements in their Developer's Agreement. At that time the percentage of repayment reverts to the amounts reflected in the original agreements.

3. Section 8. (Plum Creek Only) An ownership group including Steve Zandstra, Scott Zandstra, Darcy Torres and Hani Shafai (SSST, LLC.) has signed a purchase agreement with Plum Creek which is conditioned upon approval of these agreements. The amendment to the original agreement allows Plum Creek to assign the Developer's Agreement and the amendment to this group, and only this group, without additional Council approval. They are agreeing to be bound by all of the terms of these agreements and undertake all of Plum Creek's obligations. The Developer's are structuring the purchase this way for tax and liability purposes.