



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-5035

Growth Management Department

300 Sixth Street

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MEMORANDUM

TO: Rapid City Council

FROM: Marcia Elkins, *me* Director

DATE: July 27, 2009

RE: Authorization for Mayor and Finance Officer to Sign a Waiver of Right to Protest a Future Assessment for Sidewalk Improvements

Staff is requesting authorization for the Mayor and Finance Officer to Sign a Waiver of Right to Protest a Future Assessment for Sidewalk Improvements for the property legally described as Lot 3 of Lot 4 of Lot B, Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota

An Exception (09EX068) to waive the requirement to install sidewalk along East Highway 44 has been submitted in conjunction with a building permit application. A stipulation of the approval of the Exception as recommended by the Public Works Committee requires that the property owner sign a waiver of right to protest any future assessment for the improvement. The document also requires the signature of the Mayor and 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 Sidewalk along East Highway 44 as it abuts Lot 3 of Lot 4 of Lot B, Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota.

(File #09EX068)



EQUAL OPPORTUNITY EMPLOYER

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

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 _____, 2009, by and for HORST DEVELOPMENTS, LLC, 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 building permit application; and

WHEREAS it is the intended purpose of the Developer to obtain an exception to waive the requirement to install sidewalks along East Highway 44; and

WHEREAS the City of Rapid City's regulations require installation of sidewalk, which in this instance would require the Developer to install sidewalk along East Highway 44 as it abuts Lot 3 of Lot 4 of Lot B, Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota; 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 sidewalk along East Highway 44 as it abuts the subject property in exchange for the City not requiring immediate installation of the improvements as required by Rapid City Municipal Code;

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:

Lot 3 of Lot 4 of Lot B, Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota.

2. This agreement specifically references the installation of sidewalk along East Highway 44 as it abuts 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 sidewalk along East Highway 44 as it abuts 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 sidewalk. It is understood by the Developer that the City of Rapid City's primary consideration for the granting of the exception on the herein described property and forbearance from requiring Developer to immediately install sidewalk along East Highway 44 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 sidewalk along East Highway 44 as it abuts the subject property, which is required in the Rapid City Municipal Code, will be required within 90 days of the objection in order to comply with the Rapid City Municipal Code. 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 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 _____, 2009.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

HORST DEVELOPMENTS, LLC

By: _____

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2009, before me, the undersigned officer, personally appeared Alan Hanks 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 foregoing 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.

Notary Public, South Dakota

My Commission Expires:

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2009, before me, the undersigned officer personally appeared _____, who acknowledged himself to be the _____ of HORST DEVELOPMENTS, LLC, and that he, as such _____, being authorized so to do, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained by signing the name of HORST DEVELOPMENTS, LLC by himself as _____.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)

Reclamation Facility Improvements Project for the August 3, 2009, City Council Meeting.
Motion carried unanimously. *On Consent Calendar*

DEPARTMENT OF GROWTH MANAGEMENT

No. 07VE002 - Section 23, T1N, R7E (Continued from June 30, 2009) – Hadcock moved, second by Waugh to continue to July 28, 2009, a request by Sperlich Consulting, Inc. for Schriener Investments, LLC to consider an application for a **Vacation of Access and Utility Easement** on a portion of the 66 foot wide access and utility easement located in the NE1/4 of the NE1/4 of the NE1/4 and the SE1/4 of the NE1/4 of the NE1/4 all located in Section 23, T1N, R7E, Rapid City, Pennington County, South Dakota, more generally described as being located north of Enchantment Road and west of the eastern terminus of Stumer Road. Motion carried unanimously. *(Continued to the July 28, 2009, Public Works Committee Meeting)*

No. 09FV003 - South Boulevard Addition (Continued from June 30, 2009) – Hadcock moved, second by Waugh to continue to July 28, 2009, a request by Steven Dunn for Black Hills Power to consider an application for a **Fence Height Exception to allow an eight foot high fence with barbed wired in the Low Density Residential District** on Lots 23 and 24, Lots 25 and 26 with a ten foot wide portion of the adjacent alley of the South Boulevard Addition, located in the NW1/4 of Section 12, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, more generally described as being located east side of Fifth Street between Cleveland and Oakland Street. Elkins stated that on Friday afternoon, July 10, 2009, Black Hills Power submitted new elevations that will be linked for the next meeting. George Brown explained to the Committee that the substation was built in the early 1950's and was upgraded in 1999, and then again in 2002. Brown said that the substation is adequate the way it exists now. Weifenbach asked about stipulating what the new fence would have to look like. Elkins said that the fence height variance could be approved with stipulations. Elkins also added that the plans are only proposing that this fence be in place for the new portion and would leave the old fence the way it is. Weifenbach made a substitute motion to deny the request, but the motion died for a lack of a second. The original motion to continue until July 28, 2009, is still on the floor. Motion carried unanimously. *(Continued to the July 28, 2009, Public Works Committee Meeting)*

09EX068 – Waugh moved, second by Kroeger to approve the Appeal of denial for an Exception to Waive Requirement to Install Sidewalk per City Ordinance 12.16.080 on property located at 1770 Centre Street, Horst Offices. Dean Horst said that this would be the only sidewalk in the area. Elkins explained that staff felt it was important to have sidewalks on the 44th Street side because of the proximity to Western Dakota Vo-Tech. There was discussion on sidewalks in the area. A substitute motion was made by Hadcock, second by Weifenbach to approve with a “waiver of right to protest”. Motion carried by a vote of 4-1, with Waugh opposed.

No. 09FV009 - CHMH Subdivision – Hadcock moved, second by Waugh to approve a request by Machele M. Knoll to consider an application for a **Fence Height Exception to allow a six foot fence in lieu of a four foot fence in the Low Density Residential Zoning District** on Lot B of Lot 1 of Block 8 of CHMH Subdivision, Section 24, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota, more generally described as being located at 807 Sagewood Street. Machele Knoll explained the need for a six foot fence on this side of the property. Motion failed by a vote of 2-3; with Costello, Weifenbach, and Waugh opposed.