

STAFF REPORT
January 7, 2010

No. 09PL085 - Preliminary Plat

ITEM 22

GENERAL INFORMATION:

APPLICANT	Frontera Chicos, LLC
AGENT	Bob Brandt
PROPERTY OWNER	Frontera Chicos, LLC
REQUEST	No. 09PL085 - Preliminary Plat
EXISTING LEGAL DESCRIPTION	Lot 2 of Huffman Subdivision, located in the N1/2 of the SW1/4 of Section 32, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota
PROPOSED LEGAL DESCRIPTION	Lots 2A, 2B and 2C of Huffman Subdivision, located in the N1/2 of the SW1/4 of Section 32, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 4.72 acres
LOCATION	Southeast of the intersection of East North Street and North Cambell Street
EXISTING ZONING	General Commercial District (Planned Commercial Development)
SURROUNDING ZONING	
North:	General Commercial District
South:	General Commercial District - Light Industrial District
East:	General Commercial District
West:	General Commercial District - Light Industrial District
PUBLIC UTILITIES	City sewer and water
DATE OF APPLICATION	12/11/2009
REVIEWED BY	Vicki L. Fisher / Ted Johnson

RECOMMENDATION:

Staff recommends that the Preliminary Plat be continued to the January 21, 2010 Planning Commission meeting.

GENERAL COMMENTS:

The applicant has submitted a Preliminary Plat to subdivide one lot into three lots. The lots are sized 1.525 acres, 1.436 acres and 1.647 acres, respectively. The applicant has also submitted a Variance to the Subdivision Regulations (File #09SV026) to waive the

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requirement to install curb, gutter, sidewalk, street light conduit, sewer and water along the access easements, to reduce the easement width from 59 feet to 26 feet and 24 feet, respectively, along the access easements, to reduce the pavement width from 26 feet to 20 feet along a portion of the access easements, to waive the requirement to provide a sidewalk along one side of the service road, along both sides of E. North Street and along a portion of Century Road, to install sewer along Century Road and to reduce the right-of-way width along Century Road from 59 feet to 30 feet.

On July 24, 2008, the Planning Commission approved a Conditional Use Permit (File #07UR015) to allow an on-sale liquor establishment and denied without prejudice the future phase(s) of the development.

On August 21, 2008 the Planning Commission approved an Initial and Final Commercial Development Plan (File #08PD041) for Phase One to allow an on-sale liquor establishment in conjunction with a full service restaurant on the property replacing the previously approved Conditional Use Permit. The restaurant was identified as "On the Border", a Mexican food restaurant. A Major Amendment to the Planned Commercial Development must be obtained prior to a building permit being issued for Phase Two and/or Phase Three of the development.

On May 4, 2009, the City Council approved a Major Amendment to the Planned Commercial Development (File #09PL011) revising the sign package to allow a 41 foot high by 31.5 foot wide monument sign with a 64.22 square foot LED electronic reader board extending the width of the sign. The sign has subsequently been constructed in the northwest corner of the property.

On December 7, 2009, the City Council approved a Layout Plat (File #09PL069) to subdivide the property into three lots as shown on this Preliminary Plat.

The property is located approximately 500 feet east of the intersection of E. North Street and N. Cambell Street on the south side of E. North Street. Currently, the restaurant, "On the Border", is located on proposed Lot 2B. One contiguous parking lot has been constructed across all three lots to serve the existing restaurant and future use(s) on proposed Lots 2A and 2C.

STAFF REVIEW:

The current improvements on the property were designed exclusively as private driveways and private utilities to serve three restaurant facilities on one platted lot. Subdividing the property as proposed creates several design concerns. Staff has reviewed the Preliminary Plat and has noted the following considerations:

Water: A private 8 inch water line has been extended south from E. North Street within the eastern portion of the property. The existing water line was designed and constructed to City design standards but does not meet City requirements for location and accessibility as a result of the plat. In particular, the private water line will now extend across all three lots in lieu of being located on one lot. The City's design standards do not allow a private water line to cross over adjacent properties. As of this writing, the applicant has not obtained an Exception to allow the private water line to cross over adjacent properties. Since the plat

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document could significantly be altered if the Exception is not obtained, staff recommends that the Preliminary Plat be continued to allow the applicant to either obtain the Exception or to alter the plat as needed to comply with the City's design standards. The applicant should be aware that if an Exception is obtained, the applicant must submit a copy of a recorded covenant agreement securing perpetual maintenance of the private water system.

The property is located in the North Rapid High Level Service Zone as per the City's Water Service Zone Master Plan. The existing restaurant located on the property connects to the Low Level Service Zone. Prior to Preliminary Plat approval by the Planning Commission, the applicant must demonstrate that the existing water supply system has adequate capacity to provide domestic and fire protection requirements for the existing and proposed development of the property or construction plans must be submitted for review and approval showing a connection to the High Level Service Zone as per the City's Water Service Zone Master Plan.

Sewer: A 6 inch sanitary sewer line has been extended south from E. North Street within the western portion of the property. The existing sewer line does not meet minimum size requirements for a public main nor does it meet City requirements for location and accessibility as a result of the plat. In particular, the private sanitary sewer line will extend across all three lots in lieu of being located on one lot. The City's design standards do not allow a sanitary sewer system to cross over adjacent properties. As of this writing, the applicant has not obtained an Exception to allow the private sewer line to cross over adjacent properties. Since the plat document could significantly be altered if the Exception is not obtained, staff recommends that the Preliminary Plat be continued to allow the applicant to either obtain the Exception or to alter the plat as needed to comply with the City's design standards. The applicant should be aware that if an Exception is obtained, the applicant must submit a copy of a recorded covenant agreement securing perpetual maintenance of the private sewer system.

The improvements were constructed as a part of the associated Planned Commercial Development to allow the restaurant to be constructed on the property. However, to date, no flow or capacity calculations have been provided for the sewer system. In addition, the sewer system has not been completed and accepted by the City. Prior to submittal of a Final Plat application, the sewer improvements must be completed or surety posted for the improvement.

Land Use: As previously indicated, the property is zoned General Commercial with a Planned Commercial Development. Currently, "On the Border", a Mexican food restaurant, is located on proposed Lot 2B. One contiguous parking lot has been constructed across all three lots to serve the existing restaurant and to serve two future additional restaurants to be located on proposed Lots 2A and 2C.

The applicant has submitted a site plan showing that the minimum parking and landscaping requirements are being provided on proposed Lot B for the existing restaurant currently located on the lot. However, the parking lot has been designed to allow for internal circulation between the three lots. As such, upon submittal of a Preliminary Plat application, the plat document must be revised to show the existing access aisles located within an access easement. In addition, construction plans for the access easement(s) must be

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submitted for review and approval. In particular, the access easements must be located within a minimum 59 foot wide easement and constructed with a minimum 26 foot wide paved surface, curb, gutter, sidewalk, street light conduit, water and sewer or a Variance to the Subdivision Regulations must be obtained.

The applicant has submitted a copy of a proposed Covenant Agreement to secure the existing parking lot as shared parking for all three lots. Prior to submittal of a Final Plat application, the Covenant Agreement must be signed and recorded at the Register of Deed's Office. In addition, a copy of a recorded Covenant Agreement must be submitted to the Growth Management Department.

Sign: As previously indicated, on May 4, 2009, the City Council approved a Major Amendment to the Planned Commercial Development (File #09PL011) revising the sign package to allow a 41 foot high by 31.5 foot wide monument sign with a 64.22 square foot LED electronic reader board extending the width of the sign. The sign has subsequently been constructed in the northwest corner of the property. Currently, the sign is classified as an on-premise sign advertising the existing restaurant, "On the Border" which is located on the existing lot. The sign also includes two blank panels for future advertisement of the two additional restaurants proposed to be located on the property. As a result of the plat, the existing sign will be located on proposed Lot 2A. Subsequently, any advertisement on the sign for uses existing or proposed on proposed Lot 2B or Lot 2C will result in off-premise signage.

On December 3, 2007, the City Council approved Ordinance No. 5348 to allow for the conversion of an on-premise sign to an off-premise sign as the result of the subdivision of an existing platted parcel of land, contingent upon compliance with Chapter 15.28.050.Q of the Rapid City Municipal Code. In particular, the following criteria must be satisfied:

1) The sign that is being converted must be a legal, pre-existing, on-premises sign; 2) The conversion of the sign from an on-premises sign to an off-premises must be the result of the subdivision of an existing platted parcel of land; 3) The Rapid City Common Council determines, based on the totality of the circumstances taking into consideration the size, location, height and design of the current sign, and the location and topography of the parcel being served by the sign, that allowing the existing sign to remain will not be contrary to the public interest and will be in the best interests of justice; 4) The process for getting approval to convert a legal on-premises sign to an off-premises sign under this exception is as follows:

- a. Application to convert the sign from an on-premises sign to an off-premises sign must be submitted to the Sign Code Board of Appeals who shall review the application for compliance with the mandatory criteria and after having reviewed the application shall forward a recommendation for approval or denial to the Rapid City Common Council;
- b. The Rapid City Common Council shall review the application, along with the recommendation of the Sign Code Board of Appeals, and must determine that all the mandatory criteria are met prior to granting its approval for the conversion of the sign from on-premises to off-premises;

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- c. The decision to allow the conversion of an on-premises sign to an off-premises sign is within the sole discretion of the Common Council and its decision on the issue is final.
- 5) Additional regulations that apply to converted signs:
- a. At the time the application for conversion of the existing sign is submitted, the applicant must designate a specific parcel which the sign will serve. The converted sign will be treated as an on-premises sign for the business located on the designated parcel;
 - b. The converted off-premises sign may not be expanded or structurally altered in any way except that advertising copy may be altered;
 - c. The converted off-premises sign shall not ever be eligible for off-premises sign credits; and
 - d. At such time as the use of the property being served by the converted off-premises sign changes, the converted off-premises sign must be removed.

Pursuant to the above listed criteria, the existing sign for "On the Border" could be allowed as an off-premise sign if an Exception is obtained as per Chapter 15. 28.050.Q of the Rapid City Municipal Code. Since the existing sign is located on proposed Lot 2A, advertisement for future uses on proposed Lot 2A would be classified as on-premise signage and could be located on the sign without obtaining an Exception. However, the sign could not be used to advertise any future uses on proposed Lot 2C since the advertisement is not pre-existing at the time of platting the property. The applicant has subsequently requested an Ordinance Amendment (No. 5569) to Chapter 15. 28.050.Q to allow off-premise advertisement on an existing sign, which is a direct result of the platting of the property, for up to two specific parcels. On December 21, 2009, the City Council approved the first reading of the proposed Ordinance Amendment.

Staff recommends that prior to submittal of a Final Plat application, an Exception be obtained to allow the existing sign advertising "On the Border" as an off-premise sign as per Section 15.28.050.Q or the plat document must be revised to show the sign on the same lot as the use or the sign must be removed. In addition, an Exception must be obtained to allow future advertisement on the sign for any future use(s) to be located on proposed Lot 2C prior to submittal of a Final Plat application if the applicant proposes to use the existing sign to advertise use(s) to be located on Lot 2C.

Century Road: Century Road is located along the north lot line and is classified as a commercial street requiring that it be located in a minimum 59 foot wide right-of-way and constructed with a minimum 26 foot wide paved surface, curb, gutter, sidewalk, street light conduit, water and sewer. The Preliminary Plat identifies the dedication of a 30 foot wide right-of-way for the southern half of Century Road as it abuts the property. The applicant has indicated that the northern 30 feet of right-of-way will be dedicated as a part of the Final Plat for Lot 1, Vista Ridge Subdivision (File #09PL076). However, to date, a Final Plat for the northern half of the right-of-way has not been approved. As such, prior to submittal of a Final Plat application for this property, the plat document must be revised to include all of Century Road right-of-way or a Final Plat must be approved for that portion of the right-of-

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way to be dedicated as a part of the proposed plat for Lot 1, Vista Ridge Subdivision or the right-of-way must be secured as an H Lot or a Variance to the Subdivision Regulations must be obtained.

The construction plans show the street being constructed in compliance with City Street Design Standards with the exception of a sidewalk along both sides of the street from the service road to E. North Street and sewer along the entire street. As such, staff recommends that prior to Preliminary Plat approval by the City Council, construction plans for Century Road be submitted for review and approval showing sewer and a sidewalk along both sides of the street or a Variance to the Subdivision Regulations must be obtained.

26 foot wide Shared Access and Drainage Easement: The Preliminary Plat identifies the existing parking aisles extending through the three lots located within a 26 foot wide shared access and drainage easement. The easement is classified as a commercial street requiring that it be located within a minimum 59 foot wide right-of-way or easement and constructed with a minimum 26 foot wide paved surface, curb, gutter, sidewalk, street light conduit, water and sewer. Currently the proposed access easements are constructed with a 26 foot wide paved surface. Prior to Preliminary Plat approval by the City Council, construction plans must be submitted for review and approval showing the access easements located within a 59 foot wide easement and constructed with curb, gutter, sidewalk, street light conduit, water and sewer or a Variance to the Subdivision Regulations must be obtained.

24 to 32 foot wide Shared Access and Drainage Easement: The Preliminary Plat identifies a 24 to 32 foot wide shared access and drainage easement located along the common lot line between proposed Lots 2B and 2C. The easement is classified as a commercial street requiring that it be located within a minimum 59 foot wide easement and constructed with a minimum 26 foot wide paved surface, curb, gutter, sidewalk, street light conduit, water and sewer. The access easement is currently constructed with a 20 foot wide paved surface. Prior to Preliminary Plat approval by the City Council, construction plans must be submitted for review and approval showing the access easement located within a 59 foot wide easement and constructed with curb, gutter, sidewalk, street light conduit, water and sewer or a Variance to the Subdivision Regulations must be obtained.

Service Road: A service road is currently located along the north lot line of the property within the E. North Street right-of-way. The service road is classified as a commercial street requiring that it be constructed with a minimum 26 foot wide paved surface, curb, gutter, sidewalk, street light conduit, water and sewer. The applicant has submitted construction plans showing the street being constructed to City Street Design Standards with the exception of a sidewalk along the north side of the street. As such, prior to Preliminary Plat approval by the City Council, the construction plans for the service road must be revised to include a sidewalk on the north side of the street or a Variance to the Subdivision Regulations must be obtained.

E. North Street: East North Street is classified as a principal arterial street requiring that it be located within a minimum 100 foot wide right-of-way and constructed with a minimum 36 foot wide paved surface, curb, gutter, sidewalk, street light conduit, water and sewer. East North Street is located within a 260 foot wide right-of-way and is currently constructed to City

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Street Design Standards with the exception of a sidewalk along both sides of the street. As such, staff recommends prior to Preliminary Plat approval by the City Council, construction plans for E. North Street be submitted for review and approval showing a sidewalk along both sides of the street or a Variance to the Subdivision Regulations must be obtained.

Drainage: It appears that the detention pond located in the southwest corner of the property extends outside of the proposed Major Drainage Easement and into the existing sanitary sewer easement. Prior to Preliminary Plat approval by the City Council, the plat document must be revised to show all of the detention pond located within a Major Drainage Easement or construction plans must be submitted for review and approval demonstrating that the detention pond does not encroach into the existing sanitary sewer easement.

Non-Access Easement: The plat document must be revised to show a non-access easement along E. North Street and along Century Road, except for the approved approach location. Staff recommends that prior to Preliminary Plat approval by the City Council, the plat document be revised as identified.

Inspection Fees and Surety: Chapter 16.20.080 of the Rapid City Municipal Code states that before any Final Plat is approved, an additional fee must be paid to the City to cover the costs of inspection of the subdivision improvements required by the Ordinance. In addition, surety for any required subdivision improvements that have not been completed must be posted. As such, staff is recommending that upon submittal of a Final Plat application, surety be posted and subdivision inspection fees be paid as required.

Warranty Surety: On June 19, 2006, the City Council adopted a resolution establishing a formal warranty process for subdivision improvements. In particular, the resolution requires that the developer provide an acceptable Warranty Surety for the required public improvements. In particular, the Warranty Surety must be in force for a period of two years after the required final inspection and the City has accepted the improvements. As such, staff is recommending that prior to the City's acceptance of any public improvements, a Warranty Surety be submitted for review and approval if subdivision improvements are required.

Staff recommends that the Preliminary Plat be continued to the January 21, 2010 Planning Commission meeting to allow the applicant to obtain an Exception to allow the private sewer and water lines to cross over adjacent properties or to alter the plat as needed to comply with the City's design standards and to address the other issues as identified above. The applicant should be aware that if an Exception is obtained, the applicant must submit a copy of a recorded Covenant Agreement securing perpetual maintenance of the private sewer system.