

STAFF REPORT

May 5, 2011

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**No. 10SV007 - Variance to the Subdivision Regulations to waive the requirement to install pavement, curb, gutter, sidewalk, street light conduit, water and sewer along the Section Line Highway and Aviation Road and to waive the requirement to install curb, gutter, sidewalk, street light conduit, water, sewer along Airport Road as per Chapter 16.16 of the Rapid City Municipal Code**

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**ITEM 14**

INFORMATION:

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|-------------------------------|---|
| APPLICANT/AGENT               | Dream Design International, Inc.  |
| PROPERTY OWNER                | Yasmeen Dream, LLC  |
| REQUEST                       | <b>No. 10SV007 - Variance to the Subdivision Regulations to waive the requirement to install pavement, curb, gutter, sidewalk, street light conduit, water and sewer along the Section Line Highway and Aviation Road and to waive the requirement to install curb, gutter, sidewalk, street light conduit, water, sewer along Airport Road as per Chapter 16.16 of the Rapid City Municipal Code</b> |
| EXISTING<br>LEGAL DESCRIPTION | A portion of the NE1/4 of the SE1/4, Section 19, T1N, R9E, BHM, Pennington County, South Dakota   |
| PROPOSED<br>LEGAL DESCRIPTION | Lots A and B of White Eagle Ranch, located in the NE1/4 of the SE1/4, Section 19, T1N, R9E, BHM, Pennington County, South Dakota  |
| PARCEL ACREAGE                | Approximately 12.107 acres  |
| LOCATION                      | 14870 East Highway 44   |
| EXISTING ZONING               | General Agriculture District (Pennington County)  |
| SURROUNDING ZONING            |   |
| North:                        | General Agriculture District (Pennington County)  |
| South:                        | General Agriculture District (Pennington County)  |
| East:                         | Airport District (Pennington County)  |
| West:                         | General Agriculture District (Pennington County)  |
| PUBLIC UTILITIES              | City sewer and water  |
| DATE OF APPLICATION           | 4/30/2010   |
| REVIEWED BY                   | Vicki L. Fisher / Mary Bosworth   |

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RECOMMENDATION:

Staff recommends that the Variance to the Subdivision Regulations to waive the requirement to install pavement, curb, gutter, sidewalk, street light conduit, water and sewer along the Section Line Highway and to waive the requirement to install curb, gutter, sidewalk, street light conduit, water, sewer along Airport Road **and Aviation Road be approved with the following stipulations:**

- 1. Prior to approval by the City Council, the applicant shall sign a waiver of right to protest any future assessments for the street improvements;**
- 2. Upon submittal of a Final Plat application, surety shall be posted for the design and construction of the on-site water and wastewater systems; and,**

**That the Variance to the Subdivision Regulations to waive the requirement to install pavement along Aviation Road be denied.**

GENERAL COMMENTS:

**(Update: April 26, 2011. All revised and/or added text is shown in bold print.) This item was continued at the April 21, 2011 Planning Commission meeting to allow the applicant to submit additional information. The applicant subsequently revised the associated Variance to the Subdivision Regulations application to include waiving the requirement to install pavement, curb, gutter, sidewalk, street light conduit, water and sewer along Aviation Road. In addition, new letters have been mailed to all property owners within 250 feet of the property notifying them of the change in the request.**

(Update: April 11, 2011. All revised and/or added text is shown in bold print.) This item was continued at the March 10, 2011 Planning Commission meeting to allow the applicant to submit additional information. The applicant has subsequently revised the Variance to the Subdivision Regulations application to include waiving the requirement to install pavement, curb, gutter, sidewalk, street light conduit, water and sewer along Aviation Road. As a result of this change, new letters must be mailed to all property owners within 250 feet of the property notifying them of the change in the request.

Staff recommends that this item be continued to the May 5, 2011 Planning Commission meeting to allow the applicant to meet the notification requirement reflecting the change in the application.

(Update: March 1, 2011. All revised and/or added text is shown in bold print.) This item was continued at the February 10, 2011 Planning Commission meeting to allow the applicant to submit additional information and to be heard in conjunction with the associated Preliminary Plat. It was also noted that staff would recommend that the Variance to the Subdivision Regulations and the Preliminary Plat be denied at the March 10, 2011 Planning Commission meeting if the information was not submitted by February 21, 2011 since these items have been on the Planning Commission's agenda since May of 2010. Staff met with the applicant

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on February 28, 2011 to discuss the outstanding issues that must be addressed prior to this item going forward. As of this writing, the information has not been submitted for review and approval. Since the information was not submitted by February 21, 2011, staff recommends that the Variance to the Subdivision Regulations be denied. The applicant may submit a new application once the outstanding issues are addressed and all of the required information is submitted for review and approval.

(Update: January 31, 2011. All revised and/or added text is shown in bold print.) This item was continued at the January 27, 2011 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat. To date, the outstanding issues related to the Preliminary Plat have not been addressed. As such, staff recommends that the Variance to the Subdivision Regulations be continued to the March 10, 2011 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat. The applicant should be aware that if the required information is not submitted by February 21, 2011, staff will recommend that the Preliminary Plat and the Variance to the Subdivision Regulations be denied at the March 10, 2011 Planning Commission meeting.

(Update: January 14, 2011. All revised and/or added text is shown in bold print.) This item was continued at the December 6, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat. To date, the outstanding issues related to the Preliminary Plat have not been addressed. As such, staff recommends that the Variance to the Subdivision Regulations be continued to the February 10, 2011 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat.

(Update: December 20, 2010. All revised and/or added text is shown in bold print.) This item was continued at the December 6, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat. To date, the outstanding issues related to the Preliminary Plat have not been addressed. As such, staff recommends that the Variance to the Subdivision Regulations be continued to the January 27, 2011 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat.

(Update: November 24, 2010. All revised and/or added text is shown in bold print.) This item was continued at the November 4, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat. To date, the outstanding issues related to the Preliminary Plat have not been addressed. As such, staff recommends that the Variance to the Subdivision Regulations be continued to the January 6, 2011 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat.

(Update: October 22, 2010. All revised and/or added text is shown in bold print.) This item was continued at the October 21, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat. To date, the outstanding issues related to the Preliminary Plat have not been addressed. As such, staff recommends that the

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Variance to the Subdivision Regulations be continued to the December 9, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat.

(Update: October 11, 2010. All revised and/or added text is shown in bold print.) This item was continued at the October 7, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat. To date, the outstanding issues related to the Preliminary Plat have not been addressed. As such, staff recommends that the Variance to the Subdivision Regulations be continued to the November 4, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat.

(Update: September 24, 2010. All revised and/or added text is shown in bold print.) This item was continued at the September 23, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat. To date, the outstanding issues related to the Preliminary Plat have not been addressed. As such, staff recommends that the Variance to the Subdivision Regulations be continued to the October 21, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat.

(Update: September 13, 2010. All revised and/or added text is shown in bold print.) This item was continued at the September 9, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat. To date, the outstanding issues related to the Preliminary Plat have not been addressed. As such, staff recommends that the Variance to the Subdivision Regulations be continued to the October 7, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat.

(Update: August 27, 2010. All revised and/or added text is shown in bold print.) This item was continued at the August 26, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat. To date, the outstanding issues related to the Preliminary Plat have not been addressed. As such, staff recommends that the Variance to the Subdivision Regulations be continued to the September 23, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat.

(Update: August 13, 2010. All revised and/or added text is shown in bold print.) This item was continued at the August 5, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat. To date, the outstanding issues related to the Preliminary Plat have not been addressed. As such, staff recommends that the Variance to the Subdivision Regulations be continued to the September 9, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat.

(Update: July 23, 2010. All revised and/or added text is shown in bold print.) This item was continued at the July 23, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat. To date, the outstanding issues related to the Preliminary Plat have not been addressed. As such, staff recommends that the Variance to

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the Subdivision Regulations be continued to the August 26, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat.

(Update: July 12, 2010. All revised and/or added text is shown in bold print.) This item was continued at the July 8, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat. To date, the outstanding issues related to the Preliminary Plat have not been addressed. As such, staff recommends that the Variance to the Subdivision Regulations be continued to the August 5, 2010 Planning Commission meeting to be heard in conjunction with the associated Preliminary Plat.

(Update: June 30, 2010. All revised and/or added text is shown in bold print.) This item was continued at the June 10, 2010 Planning Commission meeting at the applicant's request.

(Update: May 29, 2010. All revised and/or added text is shown in bold print.) This item was continued at the May 27, 2010 Planning Commission meeting at the applicant's request. The applicant has subsequently requested that the Variance to the Subdivision Regulations be continued to the June 24, 2010 Planning Commission meeting. As such, staff recommends that the Variance to the Subdivision Regulations be continued to the June 24, 2010 Planning Commission meeting as requested by the applicant.

The applicant has submitted a Variance to the Subdivision Regulations to waive the requirement to install pavement, curb, gutter, sidewalk, street light conduit, water and sewer along the Section Line Highway and to waive the requirement to install curb, gutter, sidewalk, street light conduit, water and sewer along Airport Road as they abut the property. In addition, the applicant has submitted a Preliminary Plat to subdivide the property into two lots leaving an unplatted 259.5 acre unplatted balance.

The property is located outside the City limits of Rapid City, adjacent to the Rapid City Municipal Airport. Currently, the proposed lots are void of any structural development.

**STAFF REVIEW:**

Staff recommends that the Variance to the Subdivision Regulations be continued to be heard in conjunction with the associated Preliminary Plat. The Preliminary Plat identifies Airport Road serving as access to the two proposed lots. Airport Road is a private drive located on property owned by the City of Rapid City. Airport Road is not located within a dedicated public right-of-way. As such, the applicant submitted a request to the Airport Board requesting access from Airport Road. However, on May 25, 2010, the Airport Board denied the request.

Until the access issue is resolved, it is unclear if the Variance to the Subdivision Regulations can be supported to waive the requirement to improve the section line highway. Please note that since Airport Road is not located within a public right-of-way, the Variance to the

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Subdivision Regulations to waive the requirement to improve the street is not needed and will be denied when this item comes forward for consideration.

(Update: April 26, 2011.) On September 7, 2010, the City Council approved an H Lot securing a minimum 100 foot wide right-of-way for Airport Road. In addition, the applicant has submitted a revised plat document showing the extension of Aviation Road through the property. As such, staff has reviewed the Variance to the Subdivision Regulations request and noted the following considerations:

**Section Line Highway:** A section line highway is located along the east lot line and is classified as a commercial street requiring that it be located within a minimum 59 foot wide dedicated right-of-way and constructed with a minimum 26 foot wide paved surface, curb, gutter, sidewalk, street light conduit, water and sewer. To date, the section line highway is unimproved. With the dedication of the H Lot securing Airport Road as legal access to the property, improvements to the section line highway are not needed to provide access to the property. In addition, requiring that the section line highway abutting the applicant's property be improved would create a discontinuous street section and would create a parallel street with Airport Road. As such, staff recommends that the Variance to the Subdivision Regulations be approved with the stipulation that prior to City Council approval, the applicant sign a waiver of right to protest any future assessment for the improvement.

**Airport Road:** Airport Road is classified as a minor arterial street on the City's Major Street Plan 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. As noted above, on September 7, 2010, the City Council approved an H Lot securing a minimum 100 foot wide right-of-way for Airport Road. Currently, Airport Road is constructed with an approximate 40 foot wide paved surface but without curb, gutter, sidewalk, street light conduit, water and sewer. In the past, the developer has not generally been required to improve the existing road when it is an existing constructed and improved (paved) road; rather they have been required to sign a waiver of right to protest an assessment project. The waiver of right to protest an assessment project insures that the property owners will participate in future improvements. As such, staff recommends that the Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, sidewalk, street light conduit, water and sewer be approved with the stipulation that prior to City Council approval, the applicant sign a waiver of right to protest any future assessment for the improvements.

**Aviation Road:** The Preliminary Plat identifies Aviation Road extending east-west through the property along the common lot line located between Lot A and Lot B. Aviation Road is classified as a collector street on the City's Major Street Plan

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requiring that it be located within a minimum 60 foot wide right-of-way and constructed with a minimum 24 foot wide paved surface, curb, gutter, sidewalk, street light conduit, water and sewer. The applicant has requested a Variance to the Subdivision Regulations to waive the requirement to improve the street as noted and is proposing to construct the street with a gravel surface.

Currently, a community water and or sewer system is not available within this area to serve the property. As such, the applicant is proposing to construct an on-site wastewater and water system. In addition, the applicant has requested that surety be posted for both the design and the construction of the future on-site wastewater and water systems. Since soils within the area support existing on-site wastewater systems, staff supports the request. The applicant should be aware that the surety posted for the sewer system must include dry sewer. In addition, the on-site water system must provide adequate fire and domestic flows or the surety will be retained until such time as this requirement is met.

Since curb, gutter, sidewalk and street light conduit do not currently exist along Airport Road, requiring the improvements along Aviation Road would create a discontinuous street design. However, Airport Road is a paved street and requiring that Aviation Road be paved would provide a contiguous street design.

Staff recommends that the Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, sidewalk, street light conduit, water and sewer along Aviation Road be approved with the stipulation that that prior to City Council approval, the applicant sign a waiver of right to protest any future assessment for the improvements and that upon submittal of a Final Plat application, surety be posted for the design and construction of the on-site water and wastewater systems. In addition, staff recommends that the Variance to the Subdivision Regulations to waive the requirement to pave Aviation Road be denied.

**Legal Notification Requirement:** As of this writing, the white slips and green cards from the certified mailings have not been returned. Staff will notify the Planning Commission at the May 5, 2011 Planning Commission meeting if this requirement is not met. Staff has received two calls of inquiry regarding this application.