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VIA EMAIL
September 6, 2011

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**SUBMITTAL OF LAZY P6 LAND COMPANY, INC. REGARDING REQUEST FOR
REIMBURSEMENT FOR DRAINAGE IMPROVEMENTS AGENDA ITEM NO. 14
PUBLIC WORKS COMMITTEE CONSENT ITEM NO. PW080911-01**

BACKGROUND:

In 1989, the City of Rapid City adopted the Rapid City Drainage Criteria Manual. Section 1.4 of the manual provides as follows:

In general, developers shall be required to pay for the storm water management facilities serving their subdivisions or the downstream improvements, or portions thereof, necessary due to impact from their development. Where improvements have been identified as the responsibility of the public, funding mechanisms will be developed in compliance with applicable federal, state and local requirements.

The above policy recognized that developers should not be required to pay for storm water management facilities and improvements which were not necessary due to impact from their development, but rather due to the drainage system for the entire drainage basin involved.

Section 1.4 specifies that funding mechanisms will be developed in compliance with applicable federal, state and local requirements. In an apparent effort to implement Section 1.4, the Rapid City Engineering Division issued an interim policy on drainage basin improvement fees which was approved by the Planning Commission February 13, 1990 and the City Council. (See attached Exhibit A). The February 13, 1990 policy required a payment of a fee in all drainage basins. The amount of the fee was to be determined by dividing the cost of all improvements identified in the basin design plan by the total number of acres in the basin multiplied times the number of acres in the parcel being developed. The practice has been for the fees to be collected at the time building permits are issued.

Based on the improvement costs set forth in the City's Drainage Basin Plan, Lazy P6 has completed \$656,250 of drainage basin improvements. By submittal to the Rapid City Finance Officer dated July 5, 2011, Lazy P6 submitted a billing in that amount to recover its costs incurred in the construction of improvements made for the public benefit. (Exhibit B). The matter was brought the Public Works Committee on August 9, 2011 and continued to obtain additional information. On August 30, 2011, the Application was denied, essentially on the basis that the City of Rapid City, although Section 1.4 of the Rapid City Drainage Criteria Manual specifies that funding mechanisms will be developed in compliance with applicable federal, state and local requirements and although the interim policy adopted in 1990 specified "that the creation of a formal fee collection processes in these basins is necessary and a method is being pursued" no plan has been adopted in compliance with South Dakota Compiled Laws § 46A-10B-18 enacted by our legislature governing drainage basin utility districts. Nevertheless, the City of Rapid City has continued to collect fees under the 1990 interim policy for the purpose of funding drainage improvements. Lazy P6 made a request through the Mayor and Alderman Wright for specific information regarding the amount of drainage basin fees collected since 1990, the total used by the City for projects and the amount of credits to developers in lieu of fees which had been issued. Although both Mayor Kooiker and Alderman Wright indicated in an email to Lazy P6 that that information would be provided in connection with the continued Public Works Committee hearing held on August 30, no such information was presented. The only information provided was a statement by acting Public Works Director, Tech, that there is presently \$621,000 in an unidentified account apparently established for the deposit of drainage basin fees.

SDCL § 46A-10B deals specifically with the establishment of storm water basin development and utility fees. SDCL § 46A-10B-23 specify as follows:

The governing body shall place all fees collected pursuant to § 46A-10B-20, 46A-10B-21, and 46A-10B-22 into a storm drainage fund or other fund established pursuant to § 46A-10B-28 to be used only for the purposes provided in this chapter, and reserve for the identified drainage basin for which fees are collected. (emphasis supplied).

SDCL § 46A-10B-20 specifies that "the amount of the fees assessed against individual properties and the method of calculating and collecting the fees shall be established by ordinance." This requirement was pointed out by Assistant City Attorney Landeen at the Public Works Committee hearing as a basis for denying Lazy P6's request. Dale Tech indicated as a basis for denial that it was unknown whether public bidding laws were complied with. However, the improvements were required to be constructed to City specifications, under City approved plans and under City inspection.

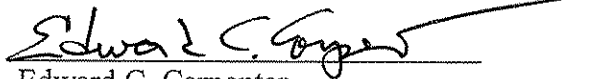
At this point, at a minimum, it appears that the City of Rapid City has been collecting fees intended to reimburse developers and property owners for costs incurred in construction of improvements over and above those costs attributable to the runoff caused by their own specific development. By state statute, those funds can be utilized only for that purpose and should be so utilized. This entire matter needs to be studied in some detail and, if the collections are being made contrary to state law, it needs to be brought into compliance with state statute. Lazy P6 respectfully requests that staff and the City Attorney's Office be directed to provide a report and accounting to the Council to permit the Council to intelligently address the complex issues presented. At a minimum, the information required includes the following:

1. Was the interim policy ever enacted by ordinance?;
2. What department and pursuant to what criteria is the amount of the drainage basin fee calculated?;
3. How much money has been collected since the enactment of the interim policy?;
4. What expenditures have been made from monies collected and for what purposes?;
5. What dollar amount of credits and on what basis have the credits been issued to developers in lieu of the assessment of the fee?

Respectfully submitted,

COSTELLO, PORTER, HILL
HESITERKAMP, BUSHNELL &
CARPENTER, LLP

by:


Edward C. Carpenter
Attorneys for Lazy P6 Land Company, Inc.

ECC:jb

Enclosure

cc: Acting Public Works Director, Dale Tech (via email dale.tech@rcgov.org)
Asst. City Attorney, Joel Landeen (via email joel.landeen@rcgov.org)

POLICY MEMORANDUM

ENGINEERING DIVISION

SUBJECT: INTERIM POLICY ON DRAINAGE BASIN IMPROVEMENT FEES

+++++
SUMMARY:

Several Drainage Basin Design Plans are in place. These plans identify specific improvements, such as metering dams, channels, culverts, etc. that are necessary to control storm runoff.

Some of the plans, The Un-named Tributary Plan for example, have been used in the past to collect fees from the owners of developing properties. Most of the plans, however, have not been used in this manner.

It is the intent of this interim policy to describe fee payment methods for basins which have Master Design Plans in place.

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POLICY:

It is the intent of the City of Rapid City to control storm water runoff in basins under its jurisdiction. It has been determined that uncontrolled runoff poses a potential threat to life and property, and that extreme flooding has occurred and will occur again. The City has adopted a Drainage Criteria Manual and is in the process of developing numerous Drainage Basin Design Plans to deal with this problem.

It is recognized that the creation of formal fee collection processes in these basins is necessary and a method is being pursued.

It is also recognized that development continues in these basins that will add to existing runoff problems.

It therefore will be an interim policy of the City to require payment of a fee in all basins for which a Design Plan has been prepared. These payments will be due at the time of lot splitting, building permit application or platting, and then only when the proposed use results in the construction or installation of surfaces that will increase the runoff from that parcel of land.

If no formal fee collection process has been created for a basin, the fee will be determined by dividing the cost of all improvements identified in the Design Plan, by the total number of acres in the basin. This amount will be multiplied times the number of acres in the parcel being developed. If the developed land is a smaller part of a larger, undeveloped parcel or tract, the fee will apply to that portion that would normally be required for the use proposed.

In lieu of this fee, the owner may be directed to perform off site improvements equal to the fee and in accordance with the recommendations of the Design Plan.

Any work done to control stormwater runoff shall be in accordance with the City of Rapid City's Drainage Criteria Manual; Standard Specifications for Public Works Construction; or Utility Construction Code, as applicable.

Payment of interim fees does not relieve owners from fees established by a formal collection process, however, any fees determined by this interim policy may be applied to future fee requirements.

This fee does not relieve the owner of providing on site improvements, such as storm sewers and inlets, that would be required to collect street runoff or provide site drainage.

Property owners have the right to petition the Planning Commission and City Council if; the owner can show that the fees have been inaccurately determined, or that the Design Plan is flawed in its analysis or recommendations, or if the owner can show that his proposed development will not add any additional runoff to the basin.

Authority for this policy is Art. IV, Section 8 and Art. V Section 6 of Appendix **EXHIBIT** Subdivision Ordinances of the City of Rapid City.

Planning Commission Approval - Feb. 13, 1990

A

Lazy P6 Land Co. Inc
505 Catron Boulevard
Rapid City, SD 57701
605-391-2027
July 5, 2011

PW080911-01

Rapid City Finance Officer
300 6th St.
Rapid City, SD 57701

RE: Lazy P-6 Land Co. Inc: Drainage Basin Fee Reimbursement for Completed Elements.

Between 1988 and 1990, Rapid city created a Drainage (Design) Criteria Manual (DCM) and "An Interim Policy on Drainage Basin Improvement Fees" (Policy), which is apparently the policy used today.

During this period and for several years after, Rapid City hired certain private consultants to prepare Drainage Basin Plans, each named for some major identifying feature within the studied area. These areas were selected based on topographical continuity, where a specific downstream outlet(s) identified the terminus of the study area. Usually there was only one major outlet study point, although several intermediate ones were common.

The plans contained various elements, primarily improved or natural channels connecting to and interacting with Detention Ponds. Major engineering structures – large pipes or box culverts – were also identified. All of these were categorized as conveyance elements and identified by letters, numbers or symbols for ease of interpretation.

While beyond the scope of this request, in general, two interactive computer models are used to compute the quantity and balance the overland routing of a 10 & 100 year recurrence interval rainfall event from a fully developed basin. The assumption is that the 100 year event occurs simultaneously over the basin boundary. The process starts with the amount of rainfall runoff from development in existence at the time the study begins. The recommendations, however, are based on all the land area developed. These are used together for comparison.

A completed plan includes, among other things, a routing schematic that identifies the major elements, a narrative description of each and a cost estimate of each.

The goal is to minimize the impact of rainfall runoff from undeveloped property when it incrementally evolves into vast tracts of rooftops, asphalt and concrete surfaces.

The South Truck Route Drainage Basin Design Plan (STP) is the one that drives the costs incurred by Lazy P6.

Numerous references make it clear that land owners (developers) are responsible for the costs of the improvements identified in any basin plan, to be reimbursed by the city through a system of drainage basin fees. The Policy makes it clear that Rapid City shall collect fees from all newly (post 1990) developed areas. To date, the city has not presented an audited summary of basin fees collected since the Policy was implemented.

Lazy P6 is billing the city to reimburse Lazy P6 \$656,250 for improvements it has constructed in accordance with the STP elements, using the estimates provided in Table F, attached.

Presumably fuel and material prices have made these estimates a little low.

A detailed accounting, based on the approved STP improvements estimate table is attached.

Please call with questions and provide a reimbursement timetable within the next 30 days.


Orvil Davis, President
Lazy P-6 Land Co. Inc.

Cc: Centerline; Ed Carpenter

EXHIBIT

B

Drainage Basin Fee Reimbursement
Lazy P6 Land Co., Inc June 14, 2011

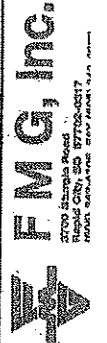
**South Truck Route Drainage Basin Plan (DBP) Improvement Costs
to Lazy P6 Land Co., Inc to June 2011**
(* Reference Table F, Page F7 DBDP)

P6 DBP Elements	Desc	DBP Estimate	P6 Built	25% * Eng/Admin	<u>P6</u> <u>TOTAL</u>	Comments
7	Elm St	155,000	50,000	12500	62,500	P6 Contribution: Detention to help Element 7
8	Channel	140,000	140,000	35000	175,000	
9	Channel	75,000	75,000	18750	93,750	
13	48" RCP	200,000	50,000	12500	62,500	Pro-rated share from 5th St Assessed
16	Channel	110,000	110,000	27500	137,500	
203	MP 203	140,000	100,000	25000	125,000	P6 Portion. City to complete.
305	MP305	85,000	0	0	0	
14	Stm Swr	220,000	0	0	0	
15	Channel	40,000	0	0	0	
306	MP 306	150,000	0	0	0	
17	Channel	175,000	0	0	0	
19	Channel	15,000	0	0	0	
18	* Channel	125,000	0	0	0	
302	MP 302	75,000	0	0	0	
20	Channel	160,000	0	0	0	
No Eng/Admin markup		0		0	0	
Improvements ONLY		\$ 1,865,000	525,000	131,250	\$ 656,250	Lazy P6 built to date

* Partial on P6 property

TABLE F3 - SUMMARY OF DESIGN PLAN OPTIONAL ROUTING
RECOMMENDED IMPROVEMENTS AND ESTIMATED COSTS

NUMBER	RECOMMENDED IMPROVEMENT	ESTIMATED COST
1	Construct new channel.	\$50,000.00
2	Extend both ends of box culvert, side taper inlet.	\$160,000.00
3	Construct new channel.	\$10,000.00
4	Construct new channel with drop structures	\$225,000.00
5	Construct new channel with partial geotextile lining.	\$15,000.00
6	Construct new channel with drop structures	\$75,000.00
7	Construct new channel with drop structures & construct box culvert at Elm Avenue crossing	\$155,000.00
8	Construct new channel with drop structures.	\$140,000.00
9	Construct new channel with drop structures.	\$75,000.00
10	Construct new channel with drop structures & construct Elm Avenue/Rearage Road crossing	\$265,000.00
11	No improvements	NA
12	Construct new channel with drop structures.	\$60,000.00
13	Construct storm sewer	\$200,000.00
14	Replace channel with storm sewer.	\$220,000.00
15	Regrade channel and line with geotextile..	\$40,000.00
16	Construct new channel with drop structures.	\$110,000.00
17	Construct new channel with drop structures.	\$175,000.00
18	Construct new channel with drop structures.	\$225,000.00
19	Construct new channel.	\$15,000.00
20	Line upper segment of channel with gabions.	\$160,000.00
31	Construct new channel with drop structures	\$45,000.00
200	Modify existing metering pond. (Costs Under Element 2)	NA
201	Modify existing metering pond.	\$2,000.00
202	Modify existing metering pond.	\$3,000.00
203	Modify existing metering pond	\$140,000.00
204	Modify existing metering pond.	\$5,000.00
205	Modify existing metering pond..	\$15,000.00
300	New metering pond.	\$65,000.00
301	New metering pond.	\$110,000.00
302	New metering pond.	\$75,000.00
304	Install riser to create new metering pond.	\$5,000.00
305	New metering pond	\$85,000.00
306	New metering pond	\$150,000.00
IMPROVEMENTS SUBTOTAL TOTAL		\$3,075,000.00
5% CONTINGENCY		\$155,000.00
25% ENGINEERING/ADMINISTRATION		\$770,000.00
TOTAL COST OF DESIGN PLAN IMPROVEMENTS		\$4,000,000.00

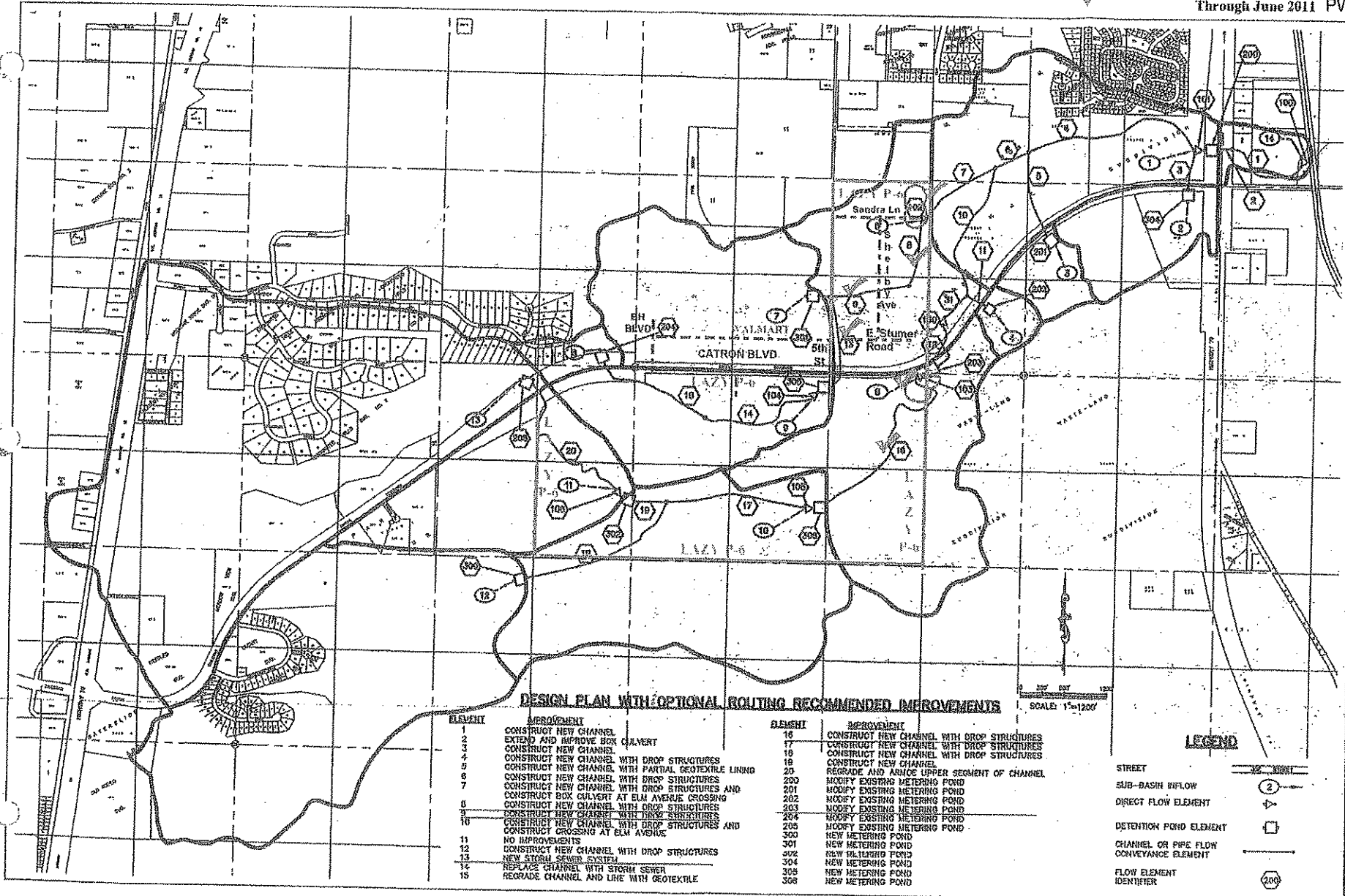


5700 Starbuck Road
 Rapid City, SD 57702-0017
 PHONE: 605.342.4444 FAX: 605.342.4444

SOUTH TRUCK ROUTE
 DRAINAGE BASIN DESIGN PLAN
 RAPID CITY, SOUTH DAKOTA

Revisions / Date
 Sheet Name:
DESIGN PLAN WITH OPTIMAL ROUTING SCHEMATIC

Figure Number:
F1

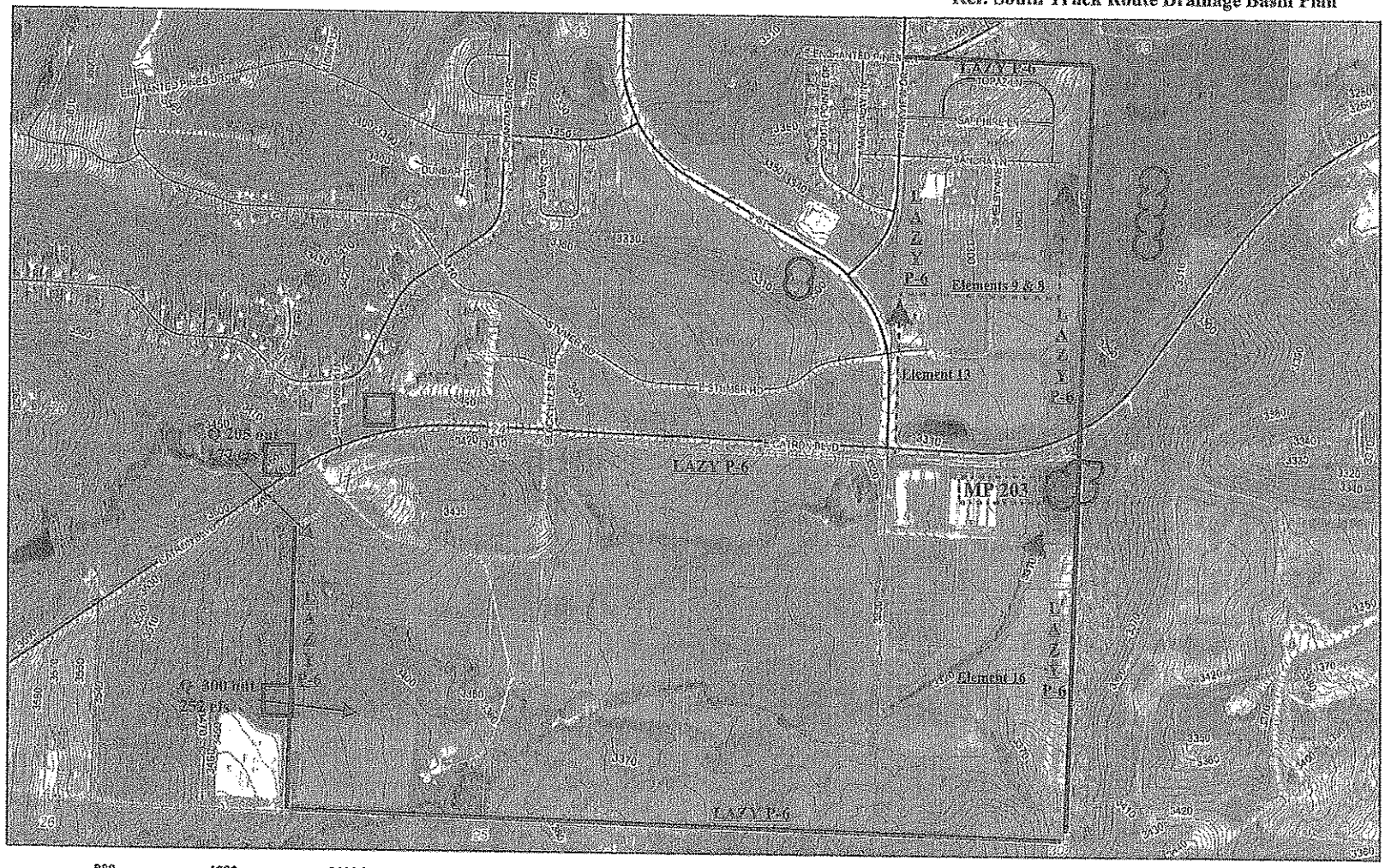


DESIGN PLAN WITH OPTIMAL ROUTING RECOMMENDED IMPROVEMENTS

ELEMENT	IMPROVEMENT	ELEMENT	IMPROVEMENT
1	CONSTRUCT NEW CHANNEL	16	CONSTRUCT NEW CHANNEL WITH DROP STRUCTURES
2	EXTEND AND IMPROVE BOX CULVERT	17	CONSTRUCT NEW CHANNEL WITH DROP STRUCTURES
3	CONSTRUCT NEW CHANNEL	18	CONSTRUCT NEW CHANNEL WITH DROP STRUCTURES
4	CONSTRUCT NEW CHANNEL WITH DROP STRUCTURES	19	CONSTRUCT NEW CHANNEL
5	CONSTRUCT NEW CHANNEL WITH PARTIAL GEOTEXTILE LINING	20	REGRADE AND ARMCO UPPER SEGMENT OF CHANNEL
6	CONSTRUCT NEW CHANNEL WITH DROP STRUCTURES	200	MODIFY EXISTING METERING POND
7	CONSTRUCT NEW CHANNEL WITH DROP STRUCTURES AND	201	MODIFY EXISTING METERING POND
8	CONSTRUCT BOX CULVERT AT ELM AVENUE CROSSING	202	MODIFY EXISTING METERING POND
9	CONSTRUCT NEW CHANNEL WITH DROP STRUCTURES	203	MODIFY EXISTING METERING POND
10	CONSTRUCT NEW CHANNEL WITH DROP STRUCTURES	204	MODIFY EXISTING METERING POND
11	NO IMPROVEMENTS	205	MODIFY EXISTING METERING POND
12	CONSTRUCT NEW CHANNEL WITH DROP STRUCTURES	300	NEW METERING POND
13	NEW STORM SEWER SYSTEM	301	NEW METERING POND
14	REPLACE CHANNEL WITH STORM SEWER	302	NEW METERING POND
15	REGRADE CHANNEL AND LINE WITH GEOTEXTILE	304	NEW METERING POND
		305	NEW METERING POND
		308	NEW METERING POND

LEGEND

STREET	—
SUB-BASIN INFLOW	②
DIRECT FLOW ELEMENT	▽
DETENTION POND ELEMENT	□
CHANNEL OR PIPE FLOW CONVEYANCE ELEMENT	—
FLOW ELEMENT IDENTIFIER	②00



Legend

- Roads**
- Not classified
- Interstate
- US Highway
- SD Highway
- County Highway
- Main Road
- Minor Arterial
- Collector
- Ramp
- Paved Road
- Unpaved Road
- Unimproved Road
- Traffic
- Other
- Not yet coded
- City Contour Lines
- INDEX**
- INTERMEDIATE
- Township/Section lines
- SECTION
- TOWNSHIP
- Parcel Boundary
- Lot Lines
- COUNTY
- LOT LINE
- PARCEL, LOT
- ROAD ROW
- RR ROW
- SECTION
- TOWNSHIP
- WATER LINE
- PLSS Sections
- County Line
- City Boundaries
- Rapid City
- Box Eloor
- Rock Underwood
- Walls
- Quartz
- Iron City
- Keystone
- 2010 1 meter County Aerial

DISCLAIMER: This map is provided "as is" without warranty of any representation of accuracy, reliability, or completeness. The location for determining accuracy, completeness, timeliness, and fitness for use is the responsibility of the user. Rapid City and Pennington County make no warranty, guarantee, or liability, in whole or in part, for any errors or omissions. This map is provided for informational purposes only and should not be used for any other purpose. The user assumes all liability for any use of this map. The City of Rapid City and Pennington County make no warranty, guarantee, or liability, in whole or in part, for any errors or omissions. This map is provided for informational purposes only and should not be used for any other purpose. The user assumes all liability for any use of this map.

Map center: 44° 1' 52.7" N, 103° 13' 0.3" W



Scale: 1:8,357

POLICY MEMORANDUM
ENGINEERING DIVISION

SUBJECT: INTERIM POLICY ON DRAINAGE BASIN IMPROVEMENT FEES

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Property owners have the right to petition the Planning Commission and City Council if; the owner can show that the fees have been inaccurately determined, or that the Design Plan is flawed in its analysis or recommendations, or if the owner can show that his proposed development will not add any additional runoff to the basin.

Authority for this policy is Art. IV, Section 8 and Art. V Section 6 of Appendix B - Subdivision Ordinances of the City of Rapid City.

Planning Commission Approval - Feb. 13, 1990