



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

## OFFICE OF THE CITY ATTORNEY

300 Sixth Street

Allison O. Marsland, Assistant City Attorney  
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### MEMORANDUM

TO: City Council

FROM: Allison Marsland, Assistant City Attorney *AM*

DATE: February 7, 2012

RE: Sidewalk Request – Minnesota Ridge Subdivision, Phases 2, 3, and 4B

3T's Land Development, L.L.C., developed residential lots within the City. At the time the land was developed, the City's subdivision regulations required that the developer install sidewalks. The developer was required to post surety to secure the completion of the public improvements, including the sidewalks. After the subdivision was approved, the City amended the sidewalk ordinance and developers are no longer required to install a majority of the sidewalks. The responsibility for sidewalks on residential lots has been transferred to the homebuilders. In reality that is what normally took place and the ordinance amendment codified that reality. The City now confirms that sidewalks are installed prior to issuing a certificate of occupancy for the residential structure on the lot.

In this case, the developer has completed all of the public improvements, including most of the sidewalks required under 16.16.090 of the Rapid City Municipal Code. In 2010 the City and developer entered into an agreement whereby the City accepted the public improvements, but required the developer to continue posting surety to secure completion of the rest of the sidewalks.

The developer is requesting the Council terminate the existing agreement, and that the responsibility for the installation of the remaining sidewalks on buildable lots *only* be shifted to the homebuilders as is currently done for new subdivisions.

Attention Brandon Quiett Engineer  
Public Works Department  
City of Rapid City  
300 6<sup>th</sup> Street  
Rapid City, South Dakota

January 19, 2012

Re: Sidewalk Installation Minnesota Ridge Phase 1, 2&3

Brandon

I would request that the 3T's Land Development LLC agreement for Minnesota Ridge Phase 1-3 "To allow for the acceptance of public improvements before the completion of sidewalks" be place on the council agenda for reconsideration.

Based on the city's current policy which allows for the installation of public sidewalks at the time the building permit is pulled, we feel the requirement to renew a bond for sidewalks on this project is a duplication and therefore unwarranted. The city council has agreed that the installation of walks prior to home construction is unworkable. By installing public walks prior to the home being constructed, the walks are frequently damaged to the point of replacement. This forced replacement adds additional cost to both the builder and home buyer.

I would also agree that any remaining "Developer Required Walks" would be installed during the calendar year 2012. Other than those noted in your January 2012 review, all of the handicap ramps and corner walks have been installed per the new policy and approved.

On behalf of 3T's Land Development LLC, I would formally request that the City Council terminate the existing agreement and shift the responsibility for the installation of the remaining walks to the home builders, as is currently being done with the existing subdivision ordinance.

Thanks in advance for your consideration



Pat Tlustos Member  
3T's Land Development LLC

**AMENDED AGREEMENT BETWEEN THE CITY OF RAPID CITY AND 3T's LAND DEVELOPMENT LLC TO ALLOW FOR ACCEPTANCE OF PUBLIC IMPROVEMENTS BEFORE THE COMPLETION OF SIDEWALKS FOR MINNESOTA RIDGE SUBDIVISION, PHASE 4B**

This amended agreement is entered into on this 17 day of May, 2010, by and between the City of Rapid City, a municipal corporation located at 300 Sixth Street, Rapid City, SD 57702, herein after referred to as the "City" and 3T's Land Development LLC, P.O. Box 2624, Rapid City, SD 57709-2624, herein after referred to as the "Developer."

WHEREAS, the Developer owns certain residential lots within Minnesota Ridge Subdivision, Phase 4B in Rapid City; and

WHEREAS, prior to approval of the final plat for Minnesota Ridge Subdivision, Phase 4B the Developer was required to post surety to guarantee the completion of various public improvements within the subdivision; and

WHEREAS, this surety included the cost for completing sidewalks within the subdivision; and

WHEREAS, the Developer has completed all of the improvements required under the City's Subdivision Regulations with the exception of various sidewalk segments fronting non-contiguous residential lots; and

WHEREAS, the Developer has requested that it be allowed to construct the remaining sidewalks in conjunction with the construction of the homes on the individual lots; and

WHEREAS, this manner of constructing sidewalks in residential areas is consistent with current development practices and is also consistent with policies and ordinances that have been recently adopted by the City; and

WHEREAS, this subdivision was approved prior to the adoption of the new policy; and

WHEREAS, the Developer has requested that the City accept the completed improvements and start the running of the warranty period once the improvements have been officially accepted; and

WHEREAS, the parties previously entered into an agreement whereby the sidewalks were to be completed within two years of the approval of the agreement; and

WHEREAS, with the exception of some of the sidewalks, the improvements have been completed and accepted by the City, and have been placed into the warranty period; and

WHEREAS, the Developer is requesting an extension of the time period in which the Developer is to complete all the sidewalks; and

WHEREAS, the City is willing to accommodate the Developer's request if it can ensure that the sidewalks are completed.

NOW THEREFORE, the parties agree as follows:

1. The Developer will provide an updated estimate of the cost to construct all required sidewalks that remain to be built within the subdivision. The Developer will then provide the City with a new surety in an amount sufficient to cover the cost of installing the sidewalks as shown in the updated estimate. The surety shall be in a form acceptable to and approved by the City Attorney's Office.
2. In exchange for the Developer providing the updated estimate and a surety sufficient to cover the cost of completing the sidewalks within the subdivision, the City will refrain from drawing on the cash surety currently in place. Upon the completion of a sidewalk in conjunction with the construction of a home, the City shall inspect the sidewalk. Upon the sidewalk passing final inspection the City will issue a letter to Developer officially accepting the sidewalk. Upon issuance of the letter of acceptance by the City the two year warranty period will begin to run.
3. The Developer agrees that all sidewalks will be installed within two years of the approval of this agreement. If any sidewalks in Minnesota Ridge Subdivision, Phase 4B are not completed by this time the City has the right to draw on the surety and construct the sidewalk. If the amount of the surety is insufficient to fully cover the cost of constructing the sidewalk, the Developer agrees to pay to the City the difference between the amount of the surety and the actual cost of constructing the sidewalk.
4. The following lots are covered by this agreement:
  - Lots 1A, 3A, 24 and 25 all in Minnesota Ridge Subdivision, Phase 4B
5. The Developer acknowledges that the City's agreement to accept the public improvements for the subdivision and start the running of the warranty period prior to the completion of all the sidewalk segments required under the City's Subdivision Regulations is sufficient consideration for the promises made herein.
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

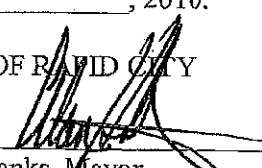
subdivision regulations in connection with this agreement, the undersigned, heirs, assigns or successors in interest agree the City may recover from the Developer its reasonable expenses, including attorney's fees incurred with respect to such action.

7. This document represents the entire agreement of the parties. No other writing is a part of this agreement. All other prior representations, writings, oral statements or negotiations have been merged into this document and are either included herein or intentionally excluded.


8. The parties' rights and obligations under this agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

DATED this 17 day of May, 2010.

CITY OF RAPID CITY

  
\_\_\_\_\_  
Alan Hanks, Mayor

ATTEST:

  
\_\_\_\_\_  
Finance Officer

(SEAL)

3T's Land Development, LLC

By: 

Its: 

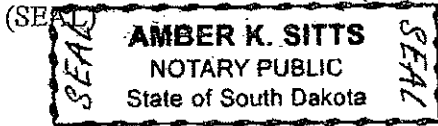
State of South Dakota     )  
  ss.  
County of Pennington     )

On this 17 day of May, 2010, 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 and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

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

Amber K. Sitts  
Notary Public, South Dakota

My Commission Expires: 9-13-15



State of South Dakota )

ss.

County of Pennington )

On this the 27<sup>th</sup> day of April, 2010, before me, the undersigned officer personally appeared Patrick Hunter, who acknowledged himself to be the manager of 3T's Land Development, LLC., and that he, as such manager being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of 3T's Land Development, LLC.

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

Margaret Paul  
Notary Public, South Dakota

My Commission Expires:

(SEAL) 10/25/2015

02PL109

**AMENDED AGREEMENT BETWEEN THE CITY OF RAPID CITY AND 3T'S LAND  
DEVELOPMENT LLC TO ALLOW FOR ACCEPTANCE OF PUBLIC  
IMPROVEMENTS BEFORE THE COMPLETION OF SIDEWALKS FOR  
MINNESOTA RIDGE SUBDIVISION, PHASE 2**

This amended agreement is entered into on this 17 day of MAY, 2010, by and between the City of Rapid City, a municipal corporation located at 300 Sixth Street, Rapid City, SD 57702, herein after referred to as the "City" and 3T's Land Development LLC, P.O. Box 2624, Rapid City, SD 57709-2624, herein after referred to as the "Developer."

WHEREAS, the Developer owns certain residential lots within Minnesota Ridge Subdivision, Phase 2 in Rapid City; and

WHEREAS, prior to approval of the final plat for Minnesota Ridge Subdivision, Phase 2 the Developer was required to post surety to guarantee the completion of various public improvements within the subdivision; and

WHEREAS, this surety included the cost for completing sidewalks within the subdivision; and

WHEREAS, the Developer has completed all of the improvements required under the City's Subdivision Regulations with the exception of various sidewalk segments fronting non-contiguous residential lots; and

WHEREAS, the Developer has requested that it be allowed to construct the remaining sidewalks in conjunction with the construction of the homes on the individual lots; and

WHEREAS, this manner of constructing sidewalks in residential areas is consistent with current development practices and is also consistent with policies and ordinances that have been recently adopted by the City; and

WHEREAS, this subdivision was approved prior to the adoption of the new policy; and

WHEREAS, the Developer has requested that the City accept the completed improvements and start the running of the warranty period once the improvements have been officially accepted; and

WHEREAS, the parties previously entered into an agreement whereby the sidewalks were to be completed within two years of the approval of the agreement; and

WHEREAS, with the exception of some of the sidewalks, the improvements have been completed and accepted by the City, and have been placed into the warranty period; and

WHEREAS, the Developer is requesting an extension of the time period in which the Developer is to complete all the sidewalks; and

WHEREAS, the City is willing to accommodate the Developer's request if it can ensure that the sidewalks are completed.

NOW THEREFORE, the parties agree as follows:

1. The Developer will provide an updated estimate of the cost to construct all required sidewalks that remain to be built within the subdivision. The Developer will then provide the City with a new surety in an amount sufficient to cover the cost of installing the sidewalks as shown in the updated estimate. The surety shall be in a form acceptable to and approved by the City Attorney's Office.

2. In exchange for the Developer providing the updated estimate and a surety sufficient to cover the cost of completing the sidewalks within the subdivision, the City will refrain from drawing on the cash surety currently in place. Upon the completion of a sidewalk in conjunction with the construction of a home, the City shall inspect the sidewalk. Upon the sidewalk passing final inspection the City will issue a letter to Developer officially accepting the sidewalk. Upon issuance of the letter of acceptance by the City the two year warranty period will begin to run.

3. The Developer agrees that all sidewalks will be installed within two years of the approval of this agreement. If any sidewalks in Minnesota Ridge Subdivision, Phase 2 are not completed by this time the City has the right to draw on the surety and construct the sidewalk. If the amount of the surety is insufficient to fully cover the cost of constructing the sidewalk, the Developer agrees to pay to the City the difference between the amount of the surety and the actual cost of constructing the sidewalk.

4. The following lots are covered by this agreement:

- Lots 44 and 48 all in Minnesota Ridge Subdivision, Phase 2

5. The Developer acknowledges that the City's agreement to accept the public improvements for the subdivision and start the running of the warranty period prior to the completion of all the sidewalk segments required under the City's Subdivision Regulations is sufficient consideration for the promises made herein.

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



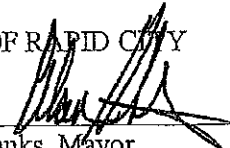
subdivision regulations in connection with this agreement, the undersigned, heirs, assigns or successors in interest agree the City may recover from the Developer its reasonable expenses, including attorney's fees incurred with respect to such action.

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DATED this 17 day of May, 2010.

CITY OF RAPID CITY


  
\_\_\_\_\_  
Alan Hanks, Mayor

ATTEST:

  
\_\_\_\_\_  
Finance Officer

(SEAL)

3T's Land Development, LLC

By:   
Its: Member

State of South Dakota        )  
  ss.  
County of Pennington        )

On this 17 day of May, 2010, 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 and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.



**AMENDED AGREEMENT BETWEEN THE CITY OF RAPID CITY AND 3T'S LAND DEVELOPMENT LLC TO ALLOW FOR ACCEPTANCE OF PUBLIC IMPROVEMENTS BEFORE THE COMPLETION OF SIDEWALKS FOR MINNESOTA RIDGE SUBDIVISION, PHASE 3**

This amended agreement is entered into on this 17 day of May, 2010, by and between the City of Rapid City, a municipal corporation located at 300 Sixth Street, Rapid City, SD 57702, herein after referred to as the "City" and 3T's Land Development LLC, P.O. Box 2624, Rapid City, SD 57709-2624, herein after referred to as the "Developer."

WHEREAS, the Developer owns certain residential lots within Minnesota Ridge Subdivision, Phase 3 in Rapid City; and

WHEREAS, prior to approval of the final plat for Minnesota Ridge Subdivision, Phase 3 the Developer was required to post surety to guarantee the completion of various public improvements within the subdivision; and

WHEREAS, this surety included the cost for completing sidewalks within the subdivision; and

WHEREAS, the Developer has completed all of the improvements required under the City's Subdivision Regulations with the exception of various sidewalk segments fronting non-contiguous residential lots; and

WHEREAS, the Developer has requested that it be allowed to construct the remaining sidewalks in conjunction with the construction of the homes on the individual lots; and

WHEREAS, this manner of constructing sidewalks in residential areas is consistent with current development practices and is also consistent with policies and ordinances that have been recently adopted by the City; and

WHEREAS, this subdivision was approved prior to the adoption of the new policy; and

WHEREAS, the Developer has requested that the City accept the completed improvements and start the running of the warranty period once the improvements have been officially accepted; and

WHEREAS, the parties previously entered into an agreement whereby the sidewalks were to be completed within two years of the approval of the agreement; and

WHEREAS, with the exception of some of the sidewalks, the improvements have been completed and accepted by the City, and have been placed into the warranty period; and

WHEREAS, the Developer is requesting an extension of the time period in which the Developer is to complete all the sidewalks; and

WHEREAS, the City is willing to accommodate the Developer's request if it can ensure that the sidewalks are completed.

NOW THEREFORE, the parties agree as follows:

1. The Developer will provide an updated estimate of the cost to construct all required sidewalks that remain to be built within the subdivision. The Developer will then provide the City with a new surety in an amount sufficient to cover the cost of installing the sidewalks as shown in the updated estimate. The surety shall be in a form acceptable to and approved by the City Attorney's Office.
2. In exchange for the Developer providing the updated estimate and a surety sufficient to cover the cost of completing the sidewalks within the subdivision, the City will refrain from drawing on the cash surety currently in place. Upon the completion of a sidewalk in conjunction with the construction of a home, the City shall inspect the sidewalk. Upon the sidewalk passing final inspection the City will issue a letter to Developer officially accepting the sidewalk. Upon issuance of the letter of acceptance by the City the two year warranty period will begin to run.
3. The Developer agrees that all sidewalks will be installed within two years of the approval of this agreement. If any sidewalks in Minnesota Ridge Subdivision, Phase 3 are not completed by this time the City has the right to draw on the surety and construct the sidewalk. If the amount of the surety is insufficient to fully cover the cost of constructing the sidewalk, the Developer agrees to pay to the City the difference between the amount of the surety and the actual cost of constructing the sidewalk.
4. The following lots are covered by this agreement:
  - Lots 38 and 39 all in Minnesota Ridge Subdivision, Phase 3
5. The Developer acknowledges that the City's agreement to accept the public improvements for the subdivision and start the running of the warranty period prior to the completion of all the sidewalk segments required under the City's Subdivision Regulations is sufficient consideration for the promises made herein.
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 Developer its reasonable expenses, including attorney's fees incurred with respect to such action.

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DATED this 17 day of May, 2010.

CITY OF RAPID CITY

  
\_\_\_\_\_  
Alan Hanks, Mayor

ATTEST:

  
\_\_\_\_\_  
Finance Officer

(SEAL)

3T's Land Development, LLC

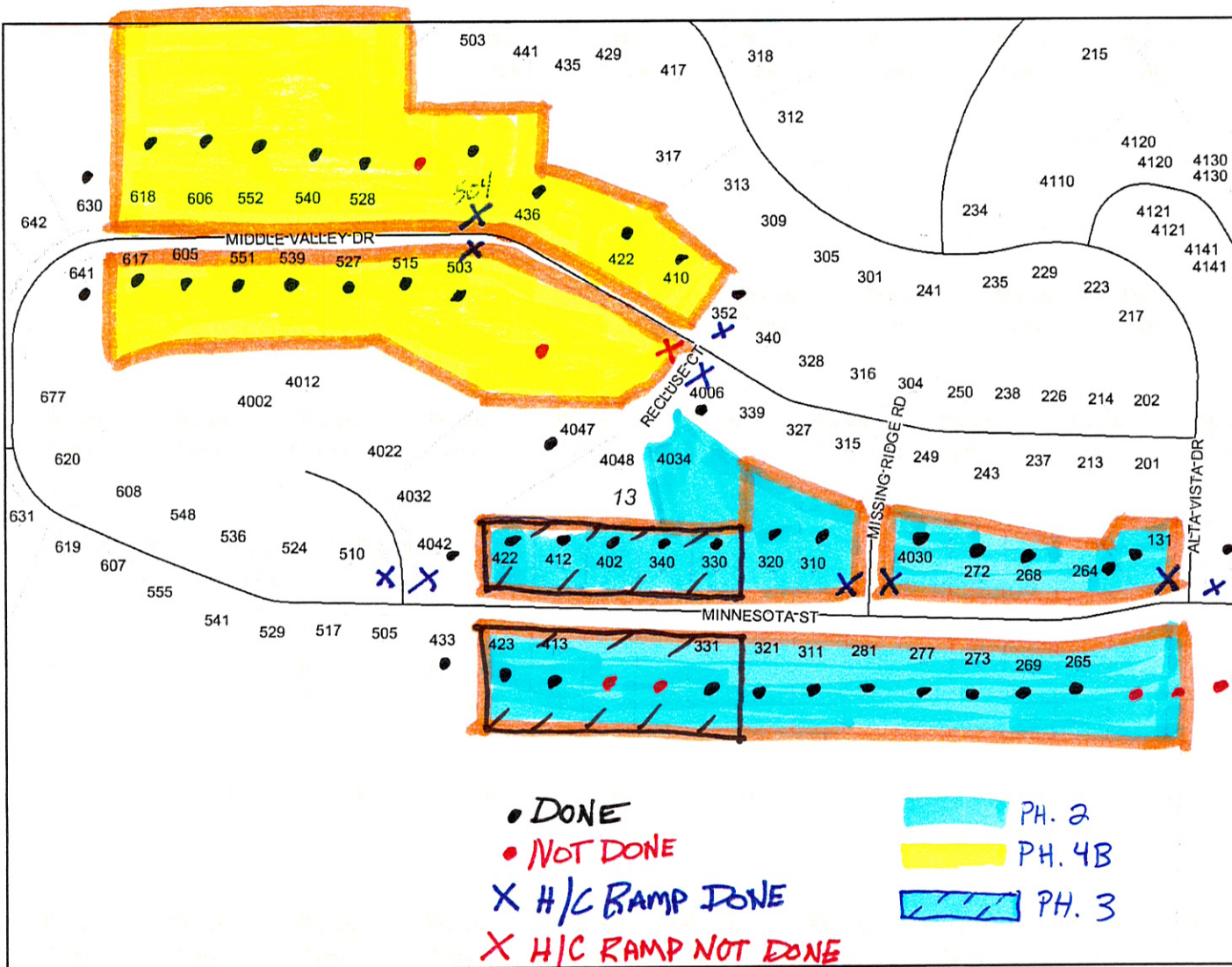
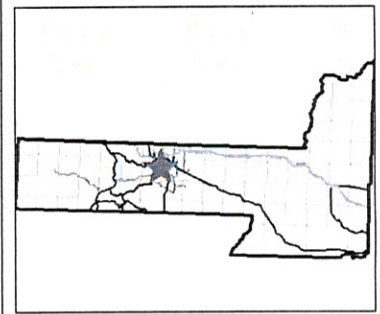
By:   
\_\_\_\_\_  
Its:   
\_\_\_\_\_

State of South Dakota        )  
  ss.  
County of Pennington        )

On this 17 day of May, 2010, 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 and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.



# Rapid City-Pennington County GIS



● DONE  
 ● NOT DONE  
 X H/C RAMP DONE  
 X H/C RAMP NOT DONE

PH. 2  
 PH. 4B  
 PH. 3

## Legend

- Roads**
- Not classified
- Interstate
- US Highway
- SD Highway
- County Highway
- Main Road
- Minor Arterial
- Collector
- Ramp
- Paved Road
- Unpaved Road
- FS Unpaved Road
- Driveway
- Paved Alley
- Unpaved Alley
- Unimproved Road
- Trail
- other
- Not yet coded
- Address Points**
- Township/Section lines**
- SECTION
- TOWNSHIP
- Parcel Boundary
- Lot Lines
- COUNTY BOUNDARY
- LOT LINE
- PARCEL LINE
- ROAD ROW
- RR ROW
- SECTION LINE
- TOWNSHIP LINE
- WATER LINE
- STATE BOUNDARY

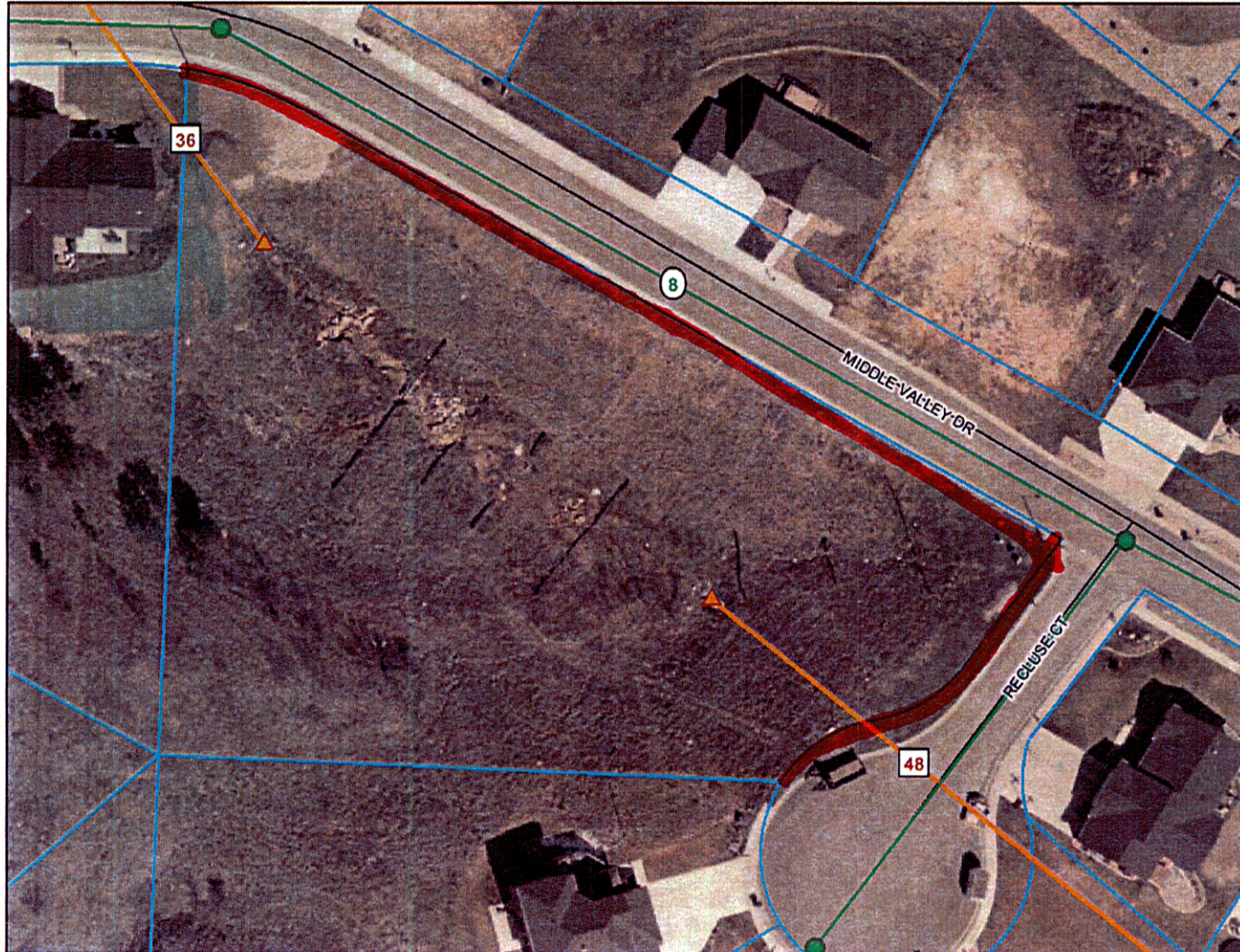
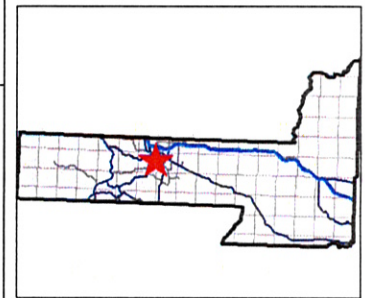


Map center: 44° 2' 36.1" N, 103° 13' 33.1" W



Scale: 1:3,786

DISCLAIMER: This map is provided 'as is' without warranty of any representation of accuracy, timeliness, or completeness. The burden for determining accuracy, completeness, timeliness, merchantability, and fitness for or the appropriateness for use rests solely on the user. Rapid City and Pennington County make no warranties, express or implied, as to the use of the map. There are no implied warranties of merchantability or fitness for a particular purpose. The user acknowledges and accepts the limitations of the map, including the fact that the data used to create the map is dynamic and is in a constant state of maintenance, correction, and update. This document does not represent a legal survey of the land. There are no restrictions on the distribution of printed Rapid City/Pennington County maps, other than the City of Rapid City copyright/credit notice must be legible on the print. The user agrees to recognize and honor in perpetuity the copyrights and other proprietary claims for the map(s) established or produced by the City of Rapid City or the vendors furnishing said items to the City of Rapid City.



**Legend**

- Sewer Manholes
- Sewer Lift Stations
- Sewer Forced Mains
- Sewer Gravity Mains
- Storm Drain Manholes
- ◆ Storm Drain Junction Boxes
- Storm Drain Inlets
- Storm Drain Flap Gates
- ▲ Storm Drain FES
- Storm Drain Edge Drains
- Storm Drain Channels
- Storm Drain Pipes
- Roads**
- Not classified
- Interstate
- US Highway
- SD Highway
- County Highway
- Main Road
- Minor Arterial
- Collector
- Ramp
- Paved Road
- Unpaved Road
- FS Unpaved Road
- Driveway
- Paved Alley
- Unpaved Alley
- Unimproved Road
- Trail
- other
- Not yet coded
- Township/Section lines

0 80 160 240 ft.

Map center: 44° 2' 39.9" N, 103° 13' 34.13" W

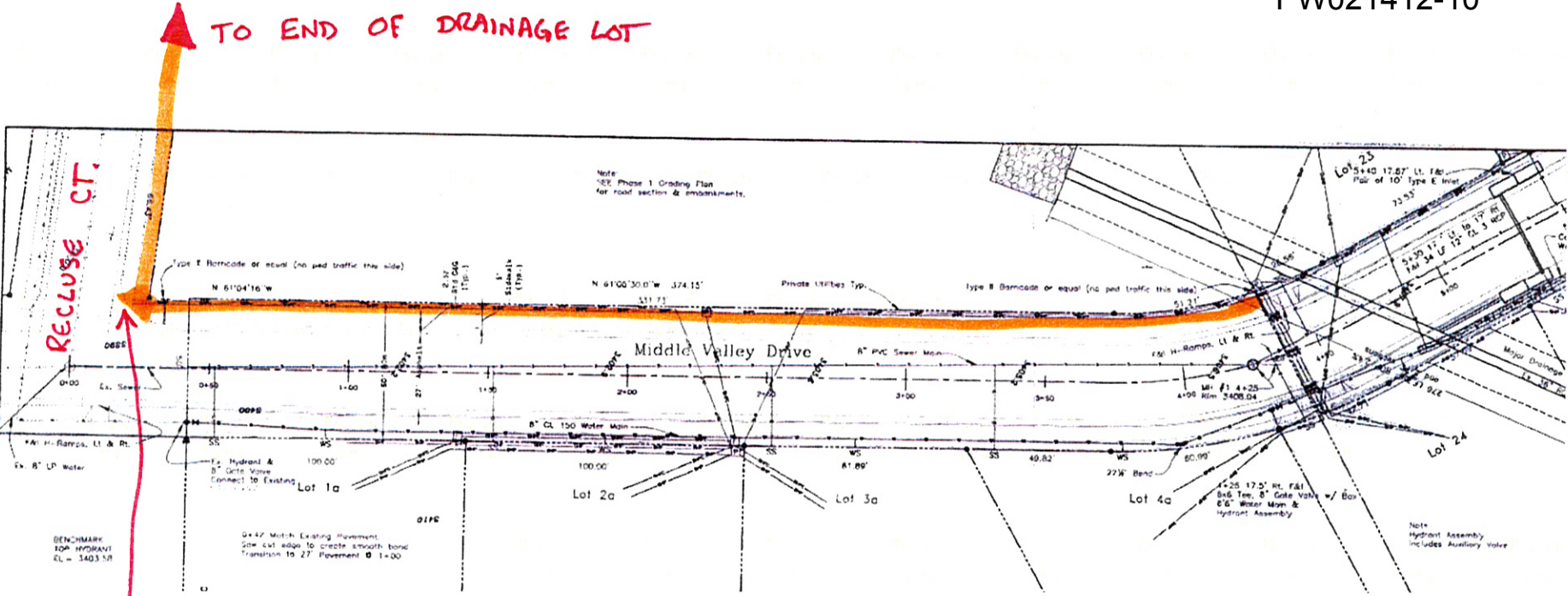


Scale: 1:827

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Recuse Ct.

ADA RAMP - NOT INSTALLED

DEVELOPER REQUIRED SIDEWALK (UNDEVELOPABLE LOT - DRAINAGE LOT)

N