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June 8, 2012

Wade E. Nyberg
Assistant City Attorney
300 6th Street
Rapid City, SD 57701

Public Works Committee
City of Rapid City
300 6th Street
Rapid City, SD 57701

Re: Flood Plain—Jennifer Giroux Home at 3213 Dover Drive

Dear Mr. Nyberg:

Please find enclosed with this correspondence a list of documents. I would ask that at least some of these documents be provided to the Public Works Committee prior to our meeting on the afternoon of June 12, 2012, particularly the Application for Development Review; memo prepared by Jennifer Giroux on May 13, 2011; the Power Point presentation prepared by Dr. Giroux on May 28, 2012; and the Flood Plain Development Permit which was received on May 14, 2010, which Application was denied. I think it may be overkill to distribute all of the building permits that have been issued on the property prior to this attempted building permit, but since Jennifer has prepared them I will send them along and leave it to your discretion as to whether or not they should be distributed to the Public Works Committee.

I have discussed damages for taking by the City with Dr. Giroux, and have also discussed the possibility of a mandamus action because of the actions by the City. This may or may not be economically feasible, but I mention it in this correspondence so that it may help you being able to facilitate this matter in executive session.

Mr. Nyberg, the staff may be hesitant to grant any exceptions, especially considering that many feel that too much discretion was exercised by staff in the past. But the City Council, the elected officials, clearly has the authority to grant this special exception under Chapter 15-32 or under general powers.

If the City Council decides not to exercise its discretion, we would request that the property be purchased. When there was taking in the flood plain in the past, the City has offered a buy-out. If an exception is not granted, Dr. Giroux would offer a buy-out on terms favorable to the City.

Yours truly,

Michael B. DeMersseman
DEMERSSEMAN JENSEN TELLINGHUISEN & HUFFMAN, LLP

MBD:ca
Enclosures
cc: Jennifer Giroux