



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

OFFICE OF THE CITY ATTORNEY

300 Sixth Street

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MEMORANDUM

TO: Common Council, Mayor Kooiker

FROM: Carla Cushman, Assistant City Attorney *CC*

DATE: March 5, 2013

RE: Release and Discharge of 1975 agreement re: 8652 Sheridan Lake Road

The Attorney's Office was contacted last month by John Rowe of Buell Consulting. Buell represents Verizon Wireless in its plans to develop facilities on land it leases at 8652 Sheridan Lake Road. Specifically, Verizon is seeking a building permit to locate Verizon antennas on an existing AT&T tower and to construct a 12' x 30' equipment shelter on the property.

Verizon's title search of the property revealed the attached Agreement signed in 1975 by the City and the owner of the property at the time, Dean Hamm. That Agreement required that Mr. Hamm or his successors in interest would "not apply for a building permit, or attempt to build or develop in any way the property covered by this Agreement until such time as the seller, or his successor in interest has secured a replat of the property covered by this Agreement from the City of Rapid City or until such time as the City of Rapid City is furnished a bond for the cost of all improvements in an amount and terms satisfactory" to the City. The improvements expected on the property included "streets, sidewalks, curb and gutter, water, sewer and drainage."

Notably, Mr. Hamm no longer owns the property, and it is believed that least one building permit was obtained from the County (despite the Agreement) for the existing communications structure.

On behalf of Verizon, John Rowe has asked the City to execute a Release and Discharge of the 1975 Agreement so that it can secure a building permit from the County to make these improvements. I have consulted with Planning staff and with City Engineer Dale Tech, who are all in agreement that if somebody wishes to develop this property and/or subdivide it, the City's existing ordinances would require the improvements contemplated in this Agreement. In other words, the 1975 Agreement provides the City no additional rights to require subdivision improvements beyond what is already found in its existing ordinances. Consequently, I have drafted a Release and Discharge to be filed with the Register of Deeds in which the City releases the property from the 1975 Agreement. If you have any questions on this matter, please feel free to give me a call.

1764

AGREEMENT

An Agreement entered into this date between the City of Rapid City, a municipal corporation under the laws of the State of South Dakota, and the owner of the below described property.

The Agreement covers the property legally described as: Parcel A of the ... See 24, TIN, R7E, B.M.M. Pennington County, S. Dak. a plat of which has been approved by the Rapid City Common Council for purposes of transfer of title only.

The considerations for this Agreement are the mutual covenants and agreements contained herein, and the approval of said plat by the City of Rapid City without the furnishing of bond.

It is specifically agreed that the seller, his heirs, or assigns shall be bound to this Agreement with the City of Rapid City and the seller agrees that he or any successor in interest will not apply for a building permit, or attempt to build or develop in any way the property covered by this Agreement until such time as the seller, or his successor in interest has secured a replat of the property covered by this Agreement from the City of Rapid City or until such time as the City of Rapid City is furnished a bond for the cost of all improvements in an amount and terms satisfactory to the City of Rapid City as determined by the Planning Commission and Common Council.

It is agreed that if the seller or any successor in interest breaches the terms of this Agreement, any person who has any interest in said land shall be immediately liable to the City of Rapid City for the costs of all improvements required by the subdivision regulations of the City, that the Common Council of Rapid City deems necessary, and further that the seller or his successors in interest, as the case may be, shall be liable for all costs in enforcing this Agreement, including reasonable attorney's fees. It is agreed that the liability for improvements or costs of enforcement are a charge against said land and may be enforced in any manner provided by law, either against any person holding an interest in the land or against the land.

It is further agreed that a copy of this Agreement shall be filed with the Register of Deeds Office, and the City agrees to the release of this Agreement, and to record said release with the same formality as this Agreement at any time the actual improvements are completed, or satisfactory bond has been furnished to the City for said completion.

The improvements above shall include but not be limited to streets, sidewalks, curb and gutter, water, sewer and drainage, and nothing in this Agreement shall be a bar to the City assessing the property under the assessment laws of the State of South Dakota for any of said improvement.

It is further agreed that this Agreement shall run with the land.

DATED at Rapid City, South Dakota this 27th day of March, 1975

CITY OF RAPID CITY BY [Signature]

WITNESSES [Signature]

1 1765

[Signature]
Notary Public
Under protest

Witness
State of South Dakota
County of Pennington

On this the 17th day of March, 1972, before me John B. Beck, the undersigned officer, personally appeared Dean R. Hart, known to me and satisfactorily proven to be the person or persons whose name(s) is (are) subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

[Signature]

My commission expires on 12/10, 1974.

(SEAL)

Receipt of a copy of this Agreement is hereby acknowledged.

Purchaser

Witness
State of South Dakota
County of Pennington

On this the 12 day of March, 1972, before me, the undersigned officer, personally appeared [Signature] and W. U. Richmond, Mayor and City Finance Officer, respectively, of the [Municipal Corporation], and that they, as such Mayor and Officer respectively, being authorized so to do, executed this instrument for the purposes therein contained, by and on behalf of the municipal corporation by themselves as Mayor and Officer.

In witness whereof I hereunto set my hand and official seal.

[Signature]

(SEAL)

STATE OF SOUTH DAKOTA
COUNTY OF PENNINGTON
Filed for record this 17th day of March, A. D. 1972, at 11 o'clock AM, and recorded in Book 10 Page 1765
Recorded [Signature]
Register of Deeds

By [Signature] Deputy

PREPARED BY: City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

STATE OF SOUTH DAKOTA)
) SS. RELEASE AND DISCHARGE
COUNTY OF PENNINGTON)

THE CITY OF RAPID CITY, a municipal corporation, of 300 Sixth Street, Rapid City, South Dakota, does hereby release and discharge Tract A of Finch Subdivision in the Southwest Quarter of the Southwest Quarter (SW1/4SW1/4) in Section Twenty-nine (29), Township One (1) North of Range Seven (7) East of the Black Hills Meridian, Pennington County, South Dakota, as shown by plat filed in Plat Book 13, Page 272, from operation of the Agreement made and entered into on the 7th day of April, 1975, by and between the City of Rapid City and Dean R. Hamm, recorded with the Pennington County Register of Deeds on April 10, 1975, in Book 1, Page 1704.

[The remainder of this page is intentionally left blank.]

Dated this ____ day of _____, 2013.

CITY OF RAPID CITY

Sam Kooiker, Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 SS.
County of Pennington)

On this the ____ day of _____, 2013, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, 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 the name of the City of Rapid City by themselves as Mayor and Finance Officer.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)