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*From the offices of Jeffery D. Collins*

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*Sender's Direct Line -- 605-791-6491*

May 2, 2014

**VIA E-MAIL ONLY**

Mayor Sam Kooiker ([mayor@rcgov.org](mailto:mayor@rcgov.org))  
City Council Members ([Sharlene.Mitchell@rcgov.org](mailto:Sharlene.Mitchell@rcgov.org))  
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Brad Estes ([brad.estes@rcgov.org](mailto:brad.estes@rcgov.org))

Re: Andrew J. Severson, DDS  
Our File No. 140001-00001

**Request of Dr. Andrew Severson for Interpretation of 1993 Agreement with City  
May 5, 2014, City Council Meeting - Agenda Item 41, No. LF043014-08**

Ladies and Gentlemen:

This is intended as additional information and clarification with regard to Item 41 on the Agenda for the City Council meeting on Monday, May 5, 2014, regarding the property owned by Dr. Andrew J. Severson. Previous submissions have provided information to the City Council regarding discussions between Dr. Severson and the City Attorney; however, I wish to provide a short statement that clearly defines the legal position of Dr. Severson.

Attached to this letter is a copy of the original 1993 Agreement between Andrew J. Severson, Jane Cary, and the City of Rapid City, with attachments. Dr. Severson's position, as you may be aware, is that the Agreement regarding assessments is only binding upon Tract 2 of Dr.

Mayor Sam Kooiker  
City Council Members  
May 2, 2014  
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Severson's property. The basis for this is that, under the recitals in the Agreement, it identifies the property of Andrew Severson which is subject to the Agreement and indicates:

Andrew J. Severson owns the following described real estate:

A portion of Tract Two (2), Pineview Terrace Addition, Southwest Quarter of the Southeast Quarter (SW1/4SE1/4), Section Sixteen (16), Township One (1) North, Range Seven (7) East of the Black Hills Meridian, Rapid City, Pennington County, South Dakota.

As you can see, Tract 4 of Dr. Severson's property is not mentioned in the section defining what property is subject to the Agreement.

The City Attorney's Office has taken the position that the language of the Agreement is not controlling as to what property is affected, but it is controlled by Exhibit A attached to the Agreement, and that all of Dr. Severson's property in Tract 2 and Tract 4 is subject to the assessments of the Agreement.

However, from a legal perspective, I would state that it is our strong position that the language of the Agreement, not the map attached as an exhibit, controls what property is subject to the Agreement.

It is important to note that Exhibit A not only includes Tract 2 and Tract 4, but includes numerous other properties which are not part of the Agreement or affected by the Agreement. Most importantly, Exhibit A does not even include or outline the property of Jane Cary, whose property was clearly subject to the Agreement. Certainly, if the intent was for Exhibit A to control what property was affected by the Agreement, Jane Cary's property would have been shown and highlighted on Exhibit A.

This is the finite legal issue which must be determined and we ask be considered by the City Council.

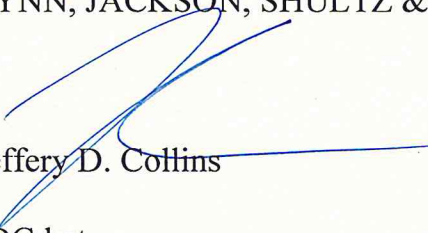
The previous documents have also set forth Dr. Severson's position with regard to the lack of a deed for the property defined as Lot H and lack of any easements allowing the utilities that were placed upon Dr. Severson's property, which we have argued constitute a taking without compensation should the City not abide by the plain reading of the 1993 Agreement and will not be addressed here.

Mayor Sam Kooiker  
City Council Members  
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Page 2

I look forward to having the opportunity to answer any questions at the City Council meeting on May 5, 2014.

Sincerely,

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.



Jeffery D. Collins

JDC:kat

Enc.

cc: Joel Landeen ([joel.landeen@rcgov.org](mailto:joel.landeen@rcgov.org))

53-1533

AGREEMENT

THIS AGREEMENT made this 7<sup>th</sup> day of August, 1993, by and between Andrew J. Severson and Jane Cary ("Owners") and the City of Rapid City ("City").

FOR AND IN CONSIDERATION of the covenants contained herein and the benefits to accrue from the performance thereof the parties hereby agree as follows:

ARTICLE I.

RECITALS

Jane Cary owns the following described real estate:

The Southeast Quarter of the Southeast Quarter (SE1/4SE1/4) less Lot One (1), all in Section Sixteen (16), Township One (1) North, Range Seven (7) East of the Black Hills Meridian, Rapid City, Pennington County, South Dakota.

Andrew J. Severson owns the following described real estate:

~~A portion~~ of Tract Two (2), Pineview Terrace Addition, Southwest Quarter of the Southeast Quarter (SW1/4SE1/4), Section Sixteen (16), Township One (1) North, Range Seven (7) East of the Black Hills Meridian, Rapid City, Pennington County, South Dakota.

The City of Rapid City has adopted Resolutions of Necessity to construct both Park Drive-Phase A and Park Drive-Phase B.

That Park Drive-Phase A abuts the property of both Jane Cary and Andrew J. Severson.

That Park Drive-Phase B crosses the property of Andrew J. Severson but not the property of Jane Cary.

ARTICLE II.

PLATTING PROCESS

1. That each of the undersigned Owners may plat lots upon the strips or parcels shown on Exhibit "A" hereto one (1) segment at a time (individually) or in multiples of two (2) or more.

2. The property contained within each parcel on Exhibit "A" attached

RECORD AND WAS MICROFILMED IN THE REGULAR COURSE OF BUSINESS ACCORDING TO THE PROVISIONS OF SECTION 1-27-4 OF THE SOUTH DAKOTA LOGGED LAWS IT IS HEREBY CERTIFIED THAT THE PHOTOGRAPHIC PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN A MANNER AND BY A METHOD WHICH MEETS THE RECOMMENDED REQUIREMENTS OF ADMINISTRATIVE RULES OF SOUTH DAKOTA 1004-01 AND THAT THE MICROFILMS WILL BE REPRODUCIBLE.  
25 / 273 12-30-93 Shirley Beagle

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hereto may and will be platted into lots on a random basis. That parties understand the segments may not be platted in sequential order.

3. Following approval of a single preliminary plat covering a portion of either Owner's property, and the payment of the platting fee of Two Hundred Fifty Dollars (\$250.00), plus Twenty Dollars (\$20.00) per lot, individual lots or groups of lots may be platted consistent with the preliminary plat without payment of additional platting fees.

ARTICLE III.

OBLIGATION OF OWNERS

1. Owners hereby agree to provide all necessary right-of-way by executing suitable plats thereof and further agree to provide all necessary utility easements and temporary construction easements to allow the construction of the project as shown on the plans and specifications on file in the office of the Director of Public Works of the City of Rapid City.

2. As to any lot or lots platted within three hundred feet (300') of Park Drive on any segment or parcel shown on Exhibit "A" which accesses directly on to Park Drive or accesses on to Park Drive by a feeder street, the undersigned Owner of the land contained within said three hundred feet (300') segment shall, before any building permit is issued or plat is approved for any plat contained in whole or in part, in one of these segments or parcels as shown on Exhibit "A", arrange to obligate himself or herself to pay to the City the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) for each segment affected by the platting in semi-annual installments over a period of ten (10) years together with interest on any unpaid balance at the rate of nine percent (9%) per annum or such lower rate being utilized by the City of Rapid City on assessments at the time commencing from the date the plat affecting a particular segment or parcel on Exhibit A is approved by the City which will be secured by a first lien on platted lots or other appropriate security.

THIS PROPERTY AND THE METROGRAPHIC MAPS RELYING ON THIS SURVEY ARE SUBJECT TO THE PROVISIONS OF SECTION 10-2-1 OF THE SOUTH DAKOTA CONSTITUTION AND THE PROVISIONS OF SECTION 10-2-1 OF THE SOUTH DAKOTA CONSTITUTION. THIS DEED IS SUBJECT TO THE PROVISIONS OF THE ABOVE RECORDED DEEDS AND TO ANY AND ALL MORTGAGES AND LIENS WHICH MAY BE HELD BY THE CITY OF RAPID CITY, SOUTH DAKOTA, OR ANY OTHER PARTY. 12-30-93 273 *Shirley Bayle*

53 <sup>PAGE</sup> 1535  
3. The foregoing assessment, based on the appropriate front footage charge for the area platted within the said three hundred foot (300') deep zone, shall be placed on each lot as it is platted until paid. The payoff in full of the assessment on the lots within each segment on Exhibit "A" shall automatically remove the assessment on the lots contained within that segment.

4. Owners hereby waive their right to protest the Resolution of Necessity described in Article I hereof.

ARTICLE IV  
OBLIGATIONS OF CITY

1. City agrees that any assessment or charge against Owner or either of them in connection with the construction of Park Drive shall only arise if Owners, or either of them, shall elect to plat land within three hundred feet (300') of Park Drive and said platted lot or lots access directly on to Park Drive or said platted lot or lots access on to Park Drive by a feeder street. In the event the platted lot accesses directly on to Park Drive from said lot or accesses Park Drive by a feeder street, then the platting of a lot or lots on any segment or parcel shown on Exhibit "A" within three hundred feet (300') of Park Drive shall activate a charge of Seventy-Five Dollars (\$75.00) per front foot of each segment that is involved in the newly platted area. This charge per front foot shall be fixed regardless of the cost of construction, and shall be payable as provided in Article III hereof. Further, said amount shall not bear interest except as provided in Article III hereof. In the event Owners, or either of them, plat land within three hundred feet (300') of Park Drive which does not access on Park Drive either directly or by a feeder street, then the Owner doing the platting shall not be liable for any assessment or charge from Park Drive whatever as to those lots.

2. City agrees to waive City water and sewer tap fees on all taps requested by Owners on sewer and water lines constructed on the east side of

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Shulay Beagle  
DAKOTA COUNTY LAWS: THIS INSTRUMENT HAS BEEN FILED IN THE PHOTOGRAPHIC RECORD FOR MICROFILMING OF THE ALGOE RECORDS WAS  
A VARIATION FROM THE ORIGINAL WHICH MEETS THE REQUIREMENTS OF ADMINISTRATIVE RULES OF SOUTH DAKOTA 10.04.01  
AND IS A TRUE AND CORRECT REPRODUCTION

53-1536

Park Drive as said area is developed by Owners or successors in interest.

3. The City agrees that it will not deny Owners permanent access on to Park Drive for each of the segments or parcels shown on Exhibit "A" attached hereto adequate to permit the development of the property immediately adjacent to Park Drive at the time Owner or Owners elect to develop said real estate.

4. The City agrees that it will not preclude or prohibit either of the undersigned Owners from developing the real estate on the east side of Park Drive Phase A and Phase B consistent with subdivision and zoning regulations.

5. City agrees, at its expense, as part of the construction of Park Drive, to construct a minimum of two (2) curb cuts and approaches on Andrew J. Severson's property on the east side of Park Drive at locations to be designated by Andrew J. Severson. Further, City agrees, at its expense, as part of the construction of Park Drive to construct one (1) curb cut and approach on Jane Cary's property on the east side of Park Drive, at locations to be designated by Jane Cary. It is understood these curb cuts and approaches are for the purpose of enabling the undersigned Owners to continue the present use of their property. Further, City agrees Owners, or successors in interest, shall at the time the property on the east side of the road is platted by Owners, or either of them, be entitled to have one (1) curb cut and approach for each lot platted along Park Drive which accesses directly on to Park Drive, provided the topography is suitable for said direct access from each individual lot.

6. To the extent it is within the City's control, the City will endeavor to require access to the north from the Andrew J. Severson and Jane Cary properties when the following described property to the north is platted:

East Half of the Northeast Quarter (E1/2NE1/4) of Section Sixteen (16), Township One (1) North, Range Seven (7) East of the Black Hills Meridian, Rapid City, Pennington County, South Dakota.

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It is understood by the City that Andrew J. Severson and Jane Cary need access to the north and east from the following described real estate:

The Northeast Quarter of the Southeast Quarter (NE1/4SE1/4) in Section Sixteen (16), Township One (1) North, Range Seven (7) East of the Black Hills Meridian, Rapid City, Pennington County, South Dakota.

ARTICLE IV.

BINDING EFFECT

This Agreement shall be binding upon the respective parties, and each of them, jointly and severally, and upon their heirs, executors, administrators, successors, and assigns. It is further agreed that a copy of this Agreement shall be filed with Register of Deeds of Pennington County and shall constitute a covenant running with the land. This Agreement shall be binding on the City and its subsequent administrations, staffs, personnel, City Councils, and other governing authorities.

Andrew J. Severson  
Andrew J. Severson

Jane Cary  
Jane Cary

CITY OF RAPID CITY

Ed M. Loughlin  
Mayor

ATTEST:

[Signature]  
Finance Officer

(SEAL)

RECORDED AND WAS MICROFILMED IN THE REGULAR COURSE OF BUSINESS ACCORDING TO THE PROVISIONS OF SECTION 1-27-4 OF THE SOUTH DAKOTA CODIFIED LAWS. IT IS FURTHER CERTIFIED THAT THE PHOTOGRAPHIC PROCESS USED FOR MICROFILMING OF THE ABOVE RECORDS WAS IN A MANNER AND ON MICROFILM WHICH MEET THE RECOMMENDED REQUIREMENTS OF ADMINISTRATIVE RULES OF SOUTH DAKOTA 10-04-01 AND 10-04-12 FOR MICROGRAPHIC REPRODUCTIONS.

12-30-93

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MICROFILM CERTIFICATE OF AUTHENTICITY

STATE OF SOUTH DAKOTA

NOTICE: THIS FORM IS APPLIED TO APPEAR IN THE PUBLIC RECORDS OF THE STATE OF SOUTH DAKOTA. RECORDS ARE MADE OF THIS COURSE. A FEE WILL BE CHARGED FOR THE RECORDING OF THIS INSTRUMENT. THE FEE IS \$1.50 PER PAGE. THE FEE IS IN ADDITION TO THE FEE CHARGED BY THE COUNTY CLERK. THE FEE IS IN ADDITION TO THE FEE CHARGED BY THE COUNTY CLERK. THE FEE IS IN ADDITION TO THE FEE CHARGED BY THE COUNTY CLERK.

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Marilyn [unclear]

STATE OF South Dakota )  
COUNTY OF Minnehaha ) SS

On this the 9th day of August, 1993, before me the undersigned officer, personally appeared Andrew J. Severson, known to me or satisfactorily proven to be the person whose name is 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.

\_\_\_\_\_  
Notary Public

(SEAL)  
My Commission Expires 2-2-94

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS

On this the \_\_\_\_\_ day of August, 1993, before me, the undersigned officer, personally appeared Jane Cary, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

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

\_\_\_\_\_  
Notary Public

(SEAL)  
My Commission Expires \_\_\_\_\_

STATE OF SOUTH DAKOTA )  
COUNTY OF PENNINGTON ) SS

On this the 9th day of August, 1993, before me, the undersigned officer, personally appeared Ed McLaughlin and Richard Wahlstrom, 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

(SEAL)  
My Commission Expires 1-2-94

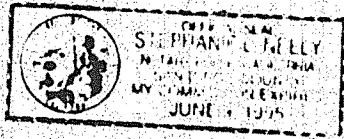
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ACKNOWLEDGEMENT

San Diego Bank (224)

STATE OF CALIFORNIA )  
COUNTY OF San Diego ) SS

On 11/11/93 Stephanie Kelly )  
Notary Public )  
personally appeared Bank City )



personally known to me or on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity and that he/she/they are a legal agent of the instrument, the person(s) on the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.  
Signature: [Signature]

ATTENTION NOTARY: The following information is not mandatory however it does provide a guide as to how to fill out this certificate to another document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT.

Title or Type of Document: Greenleaf - between Severson and Cary  
Total Number of Pages: 2  
Date of Document: Aug 9, 1993  
Signers (Other Than Notary Above): Hildner, Severson, Ed McLaughlin, Richard Wahlstrom

STATE OF SOUTH CAROLINA

MICROFILM CERTIFICATE OF AUTHENTICITY

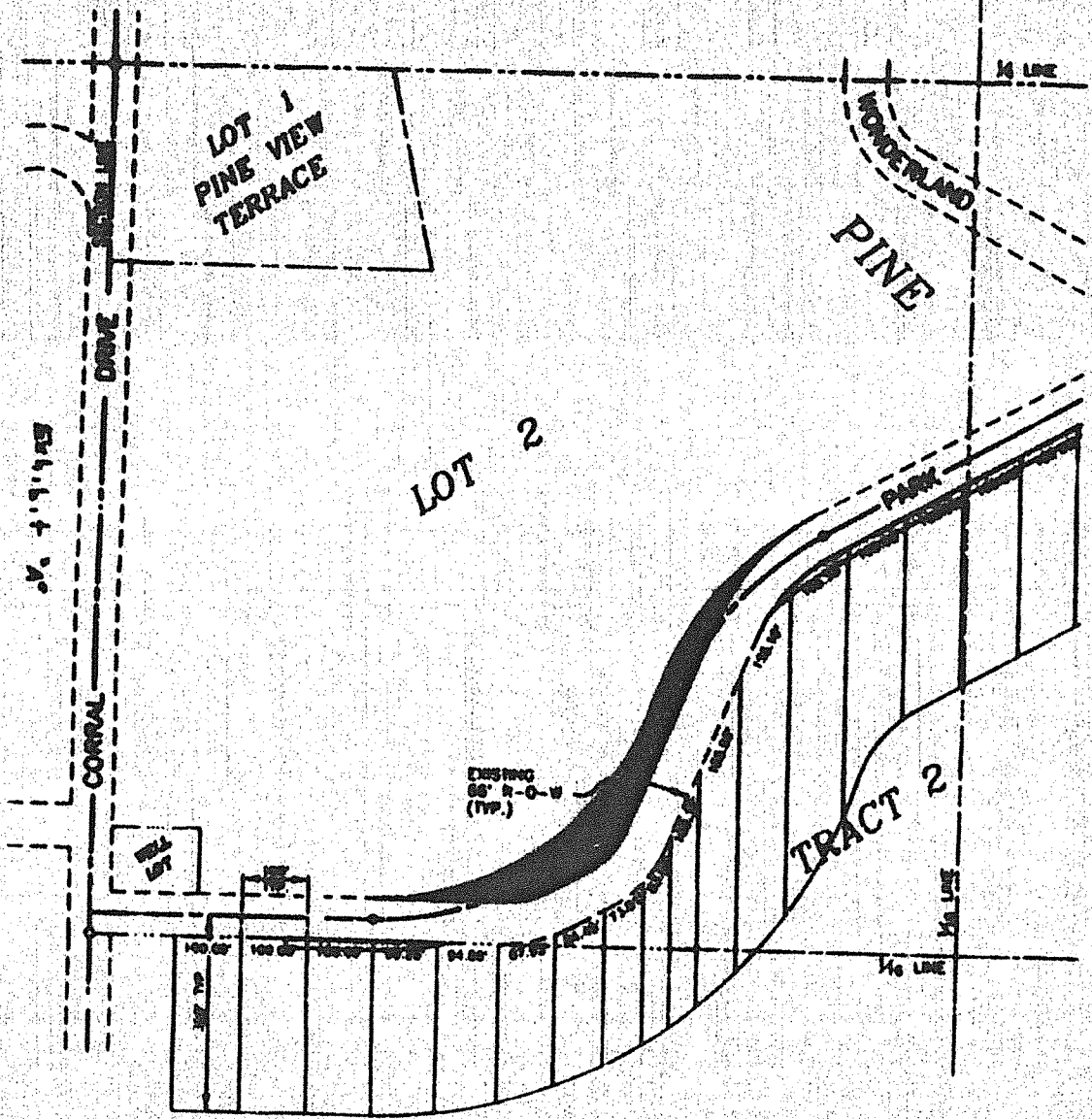
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*Shirley Long*  
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UNPLANNED REGISTER OF DEEDS

MICROFILM CERTIFICATE OF AUTHENTICITY

STATE OF SOUTH DAKOTA

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12-30-93 *Shirley Rangle*

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REGISTRATION

REGISTRATION

BT