

MEMO

TO: LEGAL AND FINANCE - CITY OF RAPID CITY

FROM: Jeffery D. Collins

DATE: April 21, 2014

RE: Andrew J. Severson, DDS (City of Rapid City)
File No. 140001-00001

The purpose of this memo is to put before the Legal and Finance Committee an issue involving Dr. Andrew Severson and the City of Rapid City regarding property located along Park Drive. This issue has been ongoing for some period of time. Although some progress has been made, there remain outstanding issues.

The issues with Dr. Severson and the City of Rapid City arise out of the construction of Park Drive in the early 1990s. Dr. Severson owned and still owns tracts of land along Park Drive. At the time of the proposed construction, Dr. Severson and Jane Cary objected to placement of Park Drive and/or any assessments which would be charged for the placement of Park Drive. Based upon this dispute, an agreement was reached between Jane Cary, Dr. Severson, and the City of Rapid City regarding assessments which would be charged to the landowners upon platting and addressing several other issues regarding the construction of Park Drive. The interpretation of that agreement is at the heart of the continued dispute.

To give the committee a better understanding of the issues, I am attaching several documents to this memo which describe the positions of the City, Dr. Severson, as well as provide supporting documentation for the discussion. Attached are the following:

1. June 20, 2013, letter from John Nooney to Carla Cushman of the City Attorney's Office stating Dr. Severson's position.
2. August 16, 2013, responsive letter from the City to John Nooney with attachments.
3. September 9, 2013, letter from the City Attorney's Office to John Nooney.
4. January 27, 2014, letter from Jeff Collins, Dr. Severson's new counsel, to the City with a proposed resolution and position statement.
5. 1993 Agreement between the City and Jane Cary and Dr. Andrew Severson.

LEGAL AND FINANCE - CITY OF RAPID CITY

April 23, 2014

Page 2

6. Affidavit of Janelle L. Finck of Fisk Land Surveying & Consulting Engineers, Inc.

Although there were a number of issues during the course of the discussions, the current remaining issues between the City and Dr. Severson boil down to the following:

1. Dr. Severson's position is that the 1993 Agreement, which was reached as a compromise to a dispute over assessments and the construction of Park Drive, limits the City's ability to assess Dr. Severson once he begins to develop his property to assessments only for frontage on Tract 2 of Pine View Terrace of his property. The 1993 Agreement clearly does not allow for assessments on Tract 4 of Pine View Terrace.
2. The next issue raised by Dr. Severson is that the 1993 Agreement calls for Dr. Severson's granting of utility easements as well as granting of all necessary right of ways. Based upon the plain language of the 1993 Agreement, it is unclear exactly how these provisions were to be applied. However, what is clearly an issue for the City is that it has taken possession of Dr. Severson's property known as Lot H1 of Tract 4 of Pine View Terrace and shown on the map attached to the Fisk Affidavit and placed utilities upon both Tract 2 and Tract 4 of Pine View Terrace of Dr. Severson's property. The problem for the City is that it has failed to obtain and file a deed transferring ownership of Lot H1 of Tract 4 of Pine View Terrace to the City and the City has failed to obtain and file a utility easement on Dr. Severson's property. Thus, it is Dr. Severson's position that the possession of Lot H1 of Tract 4 of Pine View Terrace by the City and the placement of the utilities upon his property are unlawful and amount to an unconstitutional taking without compensation.

Dr. Severson, in an attempt to compromise, has asked that the 1993 Agreement be enforced and interpreted correctly, based upon the plain language of the agreement, that only Tract 2 of Pine View Terrace of his property fronting Park Drive is available for assessment upon development, and that Tract 4 of Pine View Terrace is excluded from any assessment. If the City will agree to this, Dr. Severson has agreed fulfill the remaining requirements of the 1993 Agreement, where he will agree to execute any and all paperwork to legally place the utility easements upon Dr. Severson's property where the utilities currently reside. In addition, Dr. Severson is willing to give up any claims of compensation for Lot H1 of Tract 4 of Pine View Terrace, and deed the property to the City.

LEGAL AND FINANCE - CITY OF RAPID CITY

April 23, 2014

Page 3

If this reasonable compromise cannot be approved by the City, Dr. Severson will have no choice but to explore any and all options and remedies he may have in the Circuit Court, including claims that the City's possession of Lot H1 of Tract 4 of Pine View Terrace and placement of utilities upon Dr. Severson's property was illegal and an unconstitutional taking without compensation to Dr. Severson. It is our hope that this can be avoided and that the 1993 Agreement can be enforced under the plain language of that document.

I look forward to speaking with you.

JDC/kat

Enc.

1

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 KURT E. SOLAY
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[Email: jnooney@nsvnlaw.com]

TELEPHONE 605.721.5846
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*ALSO LICENSED IN MINNESOTA

June 20, 2013

VIA EMAIL ONLY

Carla R. Cushman
 Assistant City Attorney
 300 Sixth Street
 Rapid City, SD 57701
carla.cushman@rcgov.org

Re: Severson - Park Drive Property
Our File No. 12N250

Dear Carla:

This letter is in response to yours of April 16, 2013 addressed to Dr. Severson. First, I do not take issue with you directly dealing with my client. As long as I am provided copies, you need not concern yourself with any other formalities of those contacts.

I next apologize for the delay in getting back to you. The doctor and I had a conversation back in early May and unfortunately I "dropped the ball". With that said, here are some follow-up thoughts as it concerns your letter of April 16.

First I understood that the land use was to go from LDR-1 to LDR-2. If you could please confirm that, I would appreciate it.

As it concerns Park Drive, he had always understood that Park Drive was to be a collector street with a width of 66 foot. Based upon a width of 66 foot, Dr. Severson is willing to deed the City one additional foot of right-of-way plus any reasonable and appropriate additional easements for utilities that are currently in place. The doctor would do so if the City agrees to reclassify Park Drive to a collector street and waive any additional right-of-way requirements. I generally understood from our meeting that that seemed to be the consensus among the group but we will need to have that formalized so that there are no questions on a going forward basis.

Next, and perhaps most importantly, concerns the Agreement dated August 9, 1993, between Andrew J. Severson and Jane Cary and the City of Rapid City. As we review that document, that document applies only to Tract Two (2), Pineview Terrace Addition, and does

Carla R. Cushman
June 20, 2013
Page 2 of 2

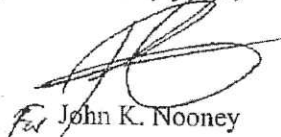
not have any application or consequences as it concerns Tract Four. I would like confirmation from the City that the City's review of that Agreement conforms to the terms of the Agreement. If in fact only Tract Two is affected, the consequences, if any, for my client are significantly mitigated, without waiving any claim that there are no consequences to my client due to a number of matters that preceded the execution of that Agreement.

As we discussed during our meeting on March 5, we have real reservations as it concerns any "H Lot" particularly the H Lot on the Northwest corner of Tract Four. As you have acknowledged, there is no deed which would establish the existence of that H Lot. If that deed does not in fact exist, I have significant questions as to whether or not the land was ever transferred and if that land was not transferred, Dr. Severson owns more than 50% of the frontage on Park Drive. I would suggest that we have some more thorough conversations as it concerns that H Lot which seems to have consequences to the balance of any claims that might be made by the City.

Finally, as it concerns access to the East from Tract Four, as we review the August 9, 1993 Agreement, Article IV, Subsection 6 seems to address that matter and we would like some confirmation from the City that they acknowledge their obligation to provide access.

Please review these thoughts and I would be more than glad to sit down and have a face-to-face meeting with you as it concerns these issues.

Sincerely yours,



For John K. Nooney

JKN:ll

cc: Andrew J. Severson, DDS

2



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

Office of the City Attorney

300 Sixth Street

Rapid City, South Dakota 57701-2724

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E-mail: attorney@rcgov.org

www.rcgov.org/attorney/attorneyhomepage.htm

August 16, 2013

VIA EMAIL AND U.S. MAIL

John K. Nooney
Nooney, Solay & Van Norman
PO Box 8030
Rapid City, SD 57709

Dear John:

I write in response to your letter dated June 20, 2013 concerning the property along Park Drive belonging to your client, Dr. Andrew J. Severson.

First, your letter represented that the Agreement dated August 9, 1993 applies only to Tract 2, and you asked for confirmation that the City agrees. We do not. It is clear from the face of the agreement that Dr. Severson's obligations extend to both Tract 2 and Tract 4, as is shown in Exhibit "A" to the Agreement. Furthermore, it defies common sense that the parties would execute an Agreement involving only a portion of Dr. Severson's financial obligations concerning Park Drive and fail to address in any way the assessment to be paid by Dr. Severson for the portion of Park Drive adjacent to Tract 4.

At the meeting we had on this matter last March, you stated that perhaps this Agreement was unworkable for both parties and should be reconsidered. While I don't believe that it is in the City's best interest to abandon the Agreement, I believe it is in the interest of reaching an agreeable resolution in this matter to consider how much of the costs of the Park Drive project could be assessed and/or attributed to Dr. Severson if the Agreement would be set aside. For Phase A, the share of Tract 2 for the total costs of the project is approximately \$160,000. As for the share of Phase B costs to be attributed to Dr. Severson's property, I am currently working with Public Works and the Finance Office to obtain this number and will forward it as soon as I have it. Based on items in the TIF file, I believe the number contemplated at that time was \$150,000 (see attached) but I am working to hopefully clarify that number. Again, I will follow up shortly with you as I get a better handle on the dollar amount for Phase B of the project.

EQUAL OPPORTUNITY EMPLOYER



On the remaining issues in your letter, I'll address them in turn. You first ask whether the land use went from LDR-1 to LDR-2. As of today, Dr. Severson has not submitted a rezone application, so no change has been made. Per a courtesy review of this matter in March of this year, Vicki Fisher suggested such a rezone to LDR-2 since townhomes are a permitted use in that district. Please be aware that as this property is developed, staff will review the proposed access points for the townhomes onto Park Drive to determine if they are appropriate and allowable under City ordinance and policy. But at this time it appears that townhomes along that property would be an appropriate use and that a rezone to LDR-2 would be appropriate.

On the question about reclassifying Park Drive as a collector street, the process for this to occur requires an amendment to the major street plan. This amendment is initiated by an application submitted by a property owner, and it is reviewed by Planning Commission and approved or denied by the Common Council. While staff cannot approve such a change to the major street plan, at this time it is likely that staff would recommend approval of reclassifying Park Drive as a collector street. I am glad to hear that Dr. Severson is willing to dedicate necessary easements concerning existing utilities on his property and to dedicate additional right of way. If the major street plan amendment comes before Planning Commission and the Common Council, these dedications could be proposed stipulations of approval of the amendment that would encourage its passage.

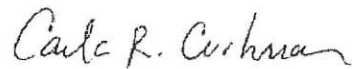
You also inquired if the City would "acknowledge their obligation to provide access" to the east from Tract 4, pointing to Article IV, Subsection 6 of the Agreement. The portion of that provision that concerns access to the east merely states: "It is understood by the City that Andrew J. Severson and Jane Cary need access to the north and east from" the quarter section located directly east of Tract 4. Another statement in Subsection 6 concerning access to the north states: "To the extent it is within the City's control, the City will endeavor to require access to the north when the following described property to the north is platted." Neither of these statements places upon the City an "obligation to provide access" from any direction. Nonetheless, please be assured that the City will enforce its subdivision requirements concerning access to adjoining parcels of land and will require developers of these properties to follow these requirements. This is all that is "within the City's control" with regard to access to your client's property.

Finally, as to Dr. Severson's concerns about his rights in 1993 to object to the construction of Park Drive (including your comments about the H Lot), it is our position that these are 20 year old arguments that should have been raised to the City or in Court at that time. In fact, Dr. Severson *did* raise objections in January of 1993 (see attached), but a few months later he signed the Agreement with the City consenting to pay for some of the Park Drive construction. We do not see any benefit in arguing about whether or not the road should have been constructed two decades ago, when the fact remains that Dr. Severson is obligated to pay his share of the cost of Park Drive. I hope you and your client can agree to address what must be done moving forward and leave in the past the objections to the road being constructed at all.

I think at that point it would be beneficial to have a meeting with you and your client (via teleconference if necessary) to discuss how to move forward. Once you have had a chance to review this correspondence with your client, please contact our office to schedule a meeting.

Best regards.

Sincerely,



Carla R. Cushman
Assistant City Attorney

cc: Dr. Andrew J. Severson (via email and U.S. Mail)

3

9 Sept 2013

4



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

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September 9, 2013

VIA EMAIL AND U.S. MAIL

John K. Nooney
 Nooney, Solay & Van Norman
 PO Box 8030
 Rapid City, SD 57709

Dear John:

Per my letter from last month, I have worked with Public Works staff to determine the amount of costs the City paid for the Park Drive project (both phases A and B) that can be attributed to Dr. Severson's property along Park Drive. You may recall that I offered to provide these amounts to consider how much of the costs of the Park Drive project could be assessed and/or attributed to Dr. Severson in the event that both parties would agree to set aside the Agreement they signed at the time of the Park Drive construction.

The amounts below are based on total project costs as provided by the Finance Department, and on total street frontage amounts which were found in construction drawings available at the Public Works department. The first chart discusses dollar amounts attributable to tracts 2 and 4; the second chart is simply a calculation of the total amount of street frontage that was used in calculating the corresponding dollar amounts.

Incurred Costs Adjacent to Tracts 2 and 4

Phase A

Total Project Cost	\$562,994.79	(Cost provided by Finance Dept.)
School District Paid	\$298,387.24	(Cost provided by Finance Dept.)
Outstanding Cost	\$264,607.55	
Total Street Frontage on Park Drive, feet	1563.51	
Total Cost to the east side of the road, based on outstanding cost, \$/foot	169.24	

EQUAL OPPORTUNITY EMPLOYER



Total Cost Phase A - Tract 2	\$168,987.27
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Phase B

Total Project Cost	\$1,200,685.49	(Cost provided by Finance Dept.)
TIF Paid	\$625,000.00	(Cost provided by Finance Dept.)
Outstanding Cost	\$575,685.49	
Total Street Frontage on Park Drive for two sides of the street, feet	7819.58	
Total Cost to both sides of the road, based on outstanding cost, \$/foot	\$73.62	
Total Cost Phase B - Tracts 2 and 4	\$109,321.33	

	Frontage along Park Drive, Feet
Phase A	1563.51
Other Lots south of Tract 2 - Phase A	564.94
Phase B	3909.79
Tract 2 - Phase A	998.51
Tract 2 - Phase B	55
Tract 2 - Total	1053.51
Tract 4	1429.92

You have likely done the computations with regard to what Dr. Severson would owe under the 1993 agreement. Our calculations demonstrate that, under the Agreement, Dr. Severson must pay \$366,257.25 when he elects to develop his property. Please be aware that this amount only includes the \$7500/segment and \$75/square foot of frontage on Park Drive and does not include the platting fees discussed in Article II Paragraph 3.

We look forward to meeting with you and your client next Monday to discuss this matter further; please be aware that this meeting will be in the Jimmy Hilton conference room at the City building to permit us to include Dr. Severson via telephone.

If you need anything additional from me prior to that meeting, please feel free to give me a call at any time. Best regards.

Sincerely,

Carla R. Cushman

Carla R. Cushman
Assistant City Attorney

cc: Dr. Andrew J. Severson (via email and U.S. Mail)

4

LAW OFFICES

Lynn, Jackson, Shultz & Lebrun, P.C.

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FAX 605-332-4249

From the offices of Jeffery D. Collins

e-mail address: jcollins@lynnjackson.com

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

January 27, 2014

VIA E-MAIL (joel.landeen@rcgov.org)

Mr. Joel P. Landeen
City Attorney
Office of the City Attorney
300 6th Street
Rapid City, SD 57701

VIA E-MAIL (carla.cushman@rcgov.org)

Ms. Carla Rae Cushman
Assistant City Attorney
Office of the City Attorney
300 Sixth Street
Rapid City, SD 57701

Re: Andrew J. Severson, DDS (City of Rapid City)
Our File No. 140001-00001

Dear Joel and Carla:

This letter is written on behalf of my client, Dr. Andrew Severson. I have been hired to take over the representation of Dr. Severson from John Nooney with regard to Dr. Severson's property which fronts Park Drive in Rapid City. This letter is in response to correspondence received by Mr. Nooney from the City Attorney's Office on August 16, 2013, and September 9, 2013, regarding the issues which have been raised by my client. This letter is also intended as a good-faith offer from Dr. Severson to resolve this matter without having to take legal action to protect his property interest.

In our view, the City has been put in a tough spot due to the past failures in properly addressing the issues with Dr. Severson's property. However, to try to deny these past mistakes and to perpetuate them further will only makes things worse for the City.

Mr. Joel P. Landeen
Ms. Carla Rae Cushman
January 27, 2014
Page 2

To begin with, the interpretation by the City of the 1993 Agreement to conclude that it applies to Tract 4 of Dr. Severson's property is contrary to the rules of contract interpretation and unsupported. The Agreement certainly speaks for itself and the attached exhibits to the document do not control the plain language of the Agreement. The language in the Agreement is clear and unambiguous. The only tract burdened by the Agreement owned by Dr. Severson is Tract 2. Dr. Severson would be more than comfortable putting this question before a court to determine this question, as we believe the City's position here is meritless. Our firm position is that any development on Tract 4 is not subject to assessments.

It also must be noted that there have simply been no recorded documents located or produced which show that the City has any recorded utility easements upon Tract 4 or Tract 2, which are owned by Dr. Severson. In addition, there is no evidence that the City has a recorded deed showing ownership of Lot H, which was allegedly taken by the City from Dr. Severson. Finally, there is no evidence of, and Dr. Severson has no recollection of, ever being compensated for these "takings and encumbrances" by the City. With these discoveries, it is our position that Dr. Severson is the rightful owner of Lot H, as well as the fact that the City's sewer and water lines, which have had great benefit and income to the City, are illegally placed upon his property and constitute a trespass or taking without just compensation.

Despite these clear errors by the City affecting Dr. Severson, he is willing to offer the following before seeking his legal remedies:

- 1) City will acknowledge in writing that Tract 4 is not subject to the 1993 Agreement nor is it subject to a development assessment.
- 2) City will take action to reclassify Park Drive as a "collector street" upon its own action without involvement of Dr. Severson.
- 3) City will not unreasonably interfere with Dr. Severson's development of his property.

In exchange, Dr. Severson will execute any and all documents necessary to properly deed ownership of Lot H to the City. In addition, Dr. Severson will execute any and all documents to provide the City with a proper utility easement upon his property. These documents will be executed and recorded contemporaneously with all documents that the City will execute to as described above.

If the City is not interested in this reasonable resolution to this matter, this letter will also provide notice that the water and sewer lines are illegally placed upon Dr. Severson's property, Tracts 4 and 2, and request that these lines be removed from Dr. Severson's property. It is the

Mr. Joel P. Landeen
Ms. Carla Rae Cushman
January 27, 2014
Page 3

further intent of this letter to provide notice of trespass to stop any claims of a prescriptive easement or any adverse taking of Dr. Severson's property of Lot H.

Finally, can you confirm that the current zoning on the property has been changed to LDR2?

If you would like to schedule a meeting to sit down and discuss a resolution of these matters, we would be happy to do so.

Sincerely,

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



Jeffery D. Collins

JDC:kat

cc: Andrew Severson, DDS
Janelle Finck

5

53-1533

AGREEMENT

THIS AGREEMENT made this 9th 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:

~~Approximately~~ 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

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273
Haley, Bergin

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15

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.

53-1535
 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

12-30-93

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.

REPRODUCED FROM THE ORIGINAL RECORDS OF THE PUBLIC RECORDS DEPARTMENT OF THE STATE OF SOUTH DAKOTA. THIS COPY IS A MICROFILM REPRODUCTION OF THE ORIGINAL RECORDS. THE ORIGINAL RECORDS ARE AVAILABLE FOR VIEWING AT THE PUBLIC RECORDS DEPARTMENT, 400 WEST GARDEN AVENUE, RAPID CITY, SOUTH DAKOTA 57701. FOR MORE INFORMATION, CONTACT THE PUBLIC RECORDS DEPARTMENT AT (605) 328-2773.

12-30-93 S. Halley Keagle

273

53-1537

18

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. Laughlin
Mayor



ATTEST:

[Signature]
Finance Officer

(SEAL)

STATE OF South Dakota)
COUNTY OF Harrison) 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.

Francis Kellern
Notary Public

(SEAL)

My Commission Expires: 12-10-99

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.

Francis Kellern
Notary Public

(SEAL)

My Commission Expires: 12-10-99

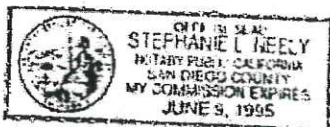
-6-

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
COUNTY OF San Diego) SS

San Diego ^{Bank & Savings} Bank ⁽⁷²²⁾

On Aug 10 1993 before me, Stephanie L Neely
Notary Public (Officer Name & Title)
personally appeared Jane Cary



personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or 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 must appear on all instrument attachments of this certificate to another document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT

Title or Type of Document: Agreement between Andrew J. Severson and Jane Cary of Rapid City
Total Number of Pages: 2 Date of Document: Aug 9, 1993
Signer(s) Other Than Named Above: Andrew J. Severson, Ed McLaughlin, Richard Wahlstrom

RECORD AND WAS REPRODUCED BY THE PUBLIC. SOURCE OF REPRODUCTION UNKNOWN. SOUTH DAKOTA COPIED (NAME) IT IS FURTHER CERTIFIED THAT THE PHOTOGRAPHIC COPY IS A TRUE AND CORRECT COPY OF THE ORIGINAL AND TO BE USED FOR RECORDING PURPOSES ONLY. SOUTH DAKOTA TO BE RECORDED AND TO BE USED FOR RECORDING PURPOSES ONLY. 12-30-93 373 251

Exhibit A

53-1539

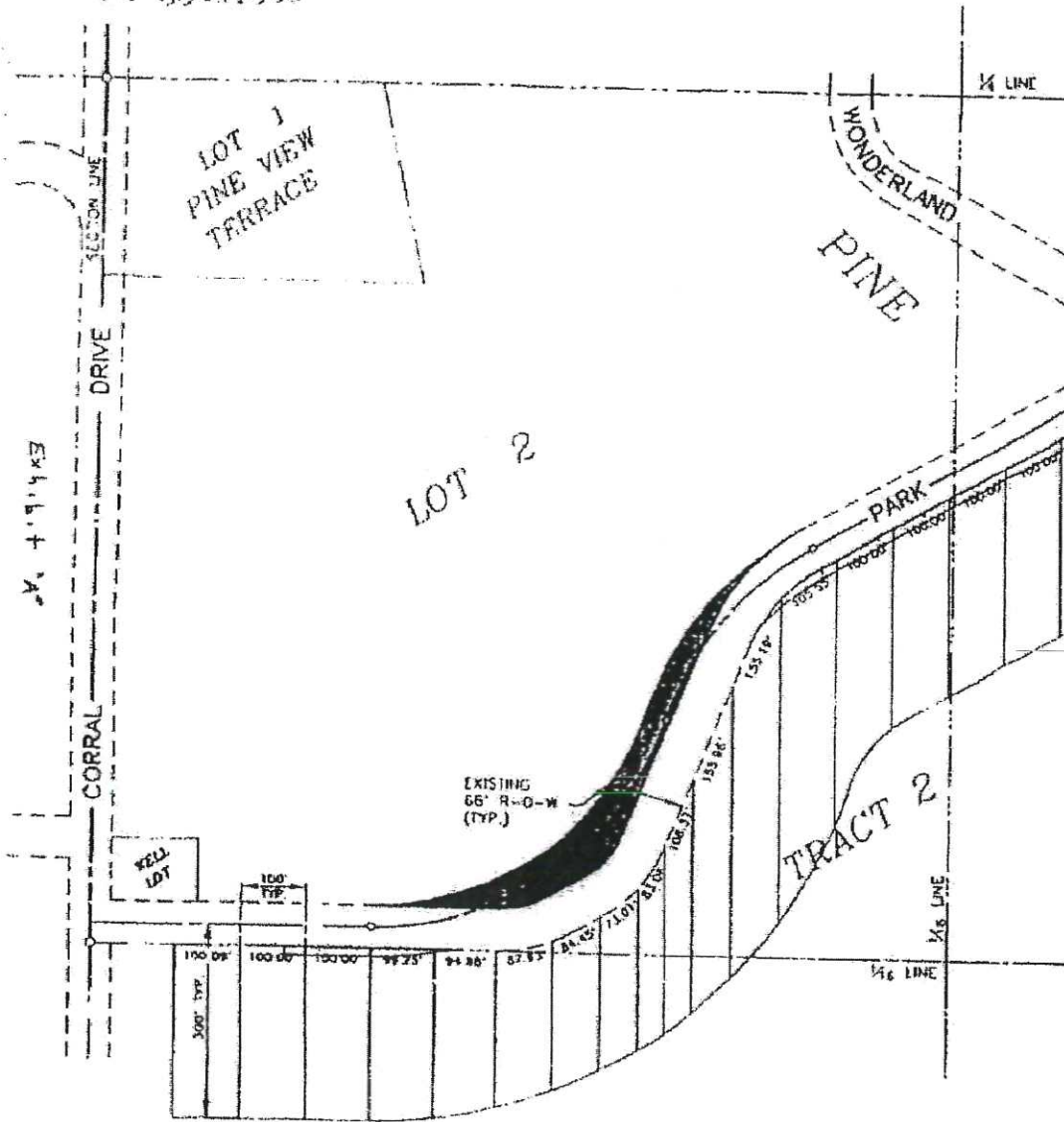


Exhibit A

1/4 LINE

1/8 LINE

Exhibit "B"

Page 53 Page 154

CENTER OF SECTION: 16

LOT 3

LOT 1

DRIVE

VIEW

TRACT 4

TERRACE

VILLAGE

EXISTING 60' WATER LINE CASEMENT



RECORDED
INDEXED

DOC NO. 25408
BOOK 53 PAGE 1533
FEE 29.00 TAX

93 DEC 17 AM 9:44

UNPLANNED
REGISTER OF DEEDS

STATE OF SOUTH DAKOTA
REGISTER OF DEEDS
ELECTRONIC RECORDING

1/2 LINE

6

AFFIDAVIT OF JANELLE L. FINCK

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF PENNINGTON)

I, Janelle L. Finck, being first duly sworn on oath, depose and state as follows:

1. I am president of Fisk Land Surveying & Consulting Engineers, Inc., in Rapid City, South Dakota.
2. I have certain familiarity with matters regarding the property owned by Dr. Andrew Severson, and legally described as Tracts 2 and 4 of Pine View Terrace, located in Section Sixteen (16) of Township One North (T1N), Range Seven East (R7E) of the Black Hills Meridian (BHM), Rapid City, Pennington County, South Dakota, said property being located adjacent to Park Drive.
3. I have attached to this Affidavit exhibits from Rapid Map depicting said Tracts 2 and 4 of Pine View Terrace, as well as Lot H1 of Tract 4 of Pine View Terrace, which is purported to have been transferred to the City by Dr. Severson.
4. I have conducted a record search in conjunction with our work for Dr. Severson and have not located any deeds filed with the Pennington County Register of Deeds, which show that Dr. Severson deeded title to said Lot H1 of Tract 4 to the City of Rapid City.
5. I have examined the recorded plat document of said Lot H1 of Tract 4 of Pine View Terrace and note that the plat does not contain the signature of Dr. Severson.

6. I have also conducted a record research for documents which may have shown a granting of easements by Dr. Severson to the City for municipal water and sewer mains located along Park Drive and through the westerly portions of Tracts 2 and 4 of Pine View Terrace.
7. I did not locate any recorded utility easements in favor of the City of Rapid City across said westerly portions of Tracts 2 or 4 of Pine View Terrace.
8. I did not locate any agreements between the City of Rapid City and Dr. Severson indicating that Dr. Severson received any compensation for the transfer of Lot H1 of Tract 4 of Pine View Terrace, and/or the placing of utility easements upon the westerly portions of Tracts 2 or 4 of Pine View Terrace.
9. Further affiant sayeth not.

Dated this 22ND day of April, 2014.



Janelle L. Finck

Subscribed and sworn to before me this 22nd day of ~~March~~ ^{April}, 2014.



Notary Public, South Dakota

My Commission Expires: 11-24-2019

(SEAL)

Rapid City-Pennington County GIS



DISCLAIMER: This map is provided as is, without warranty of any representation to accuracy, timeliness, or completeness. The burden for determining accuracy, completeness, timeliness, or 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 and the data used to create the map. The map is dynamic and is in the 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 GIS data. Users of Rapid City GIS data are responsible for obtaining any necessary permissions, such as those from the City of Rapid City copyright notice must be kept on the print. The user agrees to recognize and honor its proprietary the copyright 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

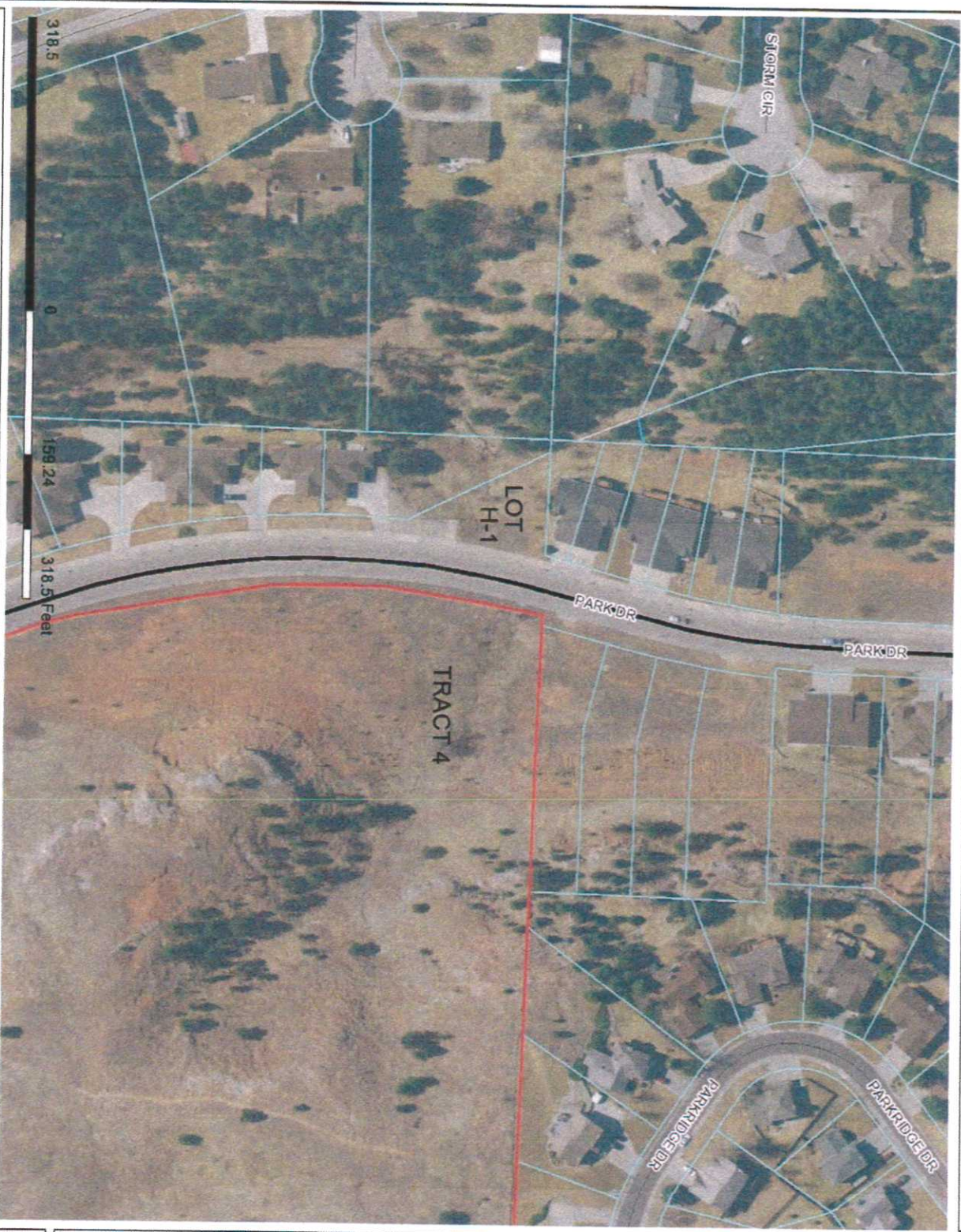
- Roads**
- Interstate
- US Highway
- SD Highway
- County Highway
- Main road
- Minor arterial
- Collector
- Ramp
- Private road
- Unimproved road
- Unimproved road
- Trail
- F33 Highway
- Asphalt Turnway
- Hot bit coded
- Lot Lines
- <tab>
- Lot Line
- Fixed Line
- Township/Section Lines
- 0
- 7
- County Line



Scale: 1 : 6,124

Map Notes:

Rapid City-Pennington County GIS



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Legend

- Interstate
- US Highway
- SD Highway
- County Highway
- Major road
- Minor arterial
- Collector
- Ramp
- Paved road
- Unpaved road
- Trail
- F3 Highway
- Airport Runway
- Hot jet canal
- Lot Lines
- <Map>
- Parcel Line
- Township/Section Lines
- 0
- 7
- County Line



Scale: 1 : 1,911

Map Notes: