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April 29, 2014

HAND DELIVERED

Yasmeen Dream, LLC
ATTN: Hani Shafai
528 Kansas City Street
Rapid City, SD 57701

Re: PW040114-29-Request for Oversize

Dear Hani:

This letter is written in response to your request that we review the City's policy and Ordinances, as well as the records and minutes related to the Orchard Lane oversize request and provide an opinion regarding the eligibility of Yasmeen Dream, LLC for oversize reimbursement. It is our opinion that the project does qualify for the reasons set forth below:

(1) 16.16.100 Oversize Facilities subsection B clearly states that "The developer shall not be required to pay full cost of any highway or arterial street, but shall participate in the cost of these improvements in the amount that a collector street (including all utility and drainage improvements) would cost if situated where the highway or arterial street is located. SDCL § 31-1-1 defines a "highway" as "Every way or place of whatever nature open to the public, as a matter of right, for purpose of vehicular travel is a highway." The clear intent of R.C. Ord. 16.16.100 B is that where the construction of a street to comply with City requirements involves the construction of lanes in excess of collector street requirements, "the developer shall not be required to pay the full cost." This is a stand alone section.

(2) With reference to the dispute regarding whether the multiple uses explored at length at the prior PW and Council meetings serves to authorize oversize reimbursement, we offer the observation that the fact that a single developer owns most of the area served does not appear to be a valid legal basis for denying oversize under RC Ord. 16.16.100 A. Denial on such basis appears to be arbitrary aside from the fact that the road clearly serves multiple uses,

including land designated for future City Park as expressly stipulated by the City when the land was conveyed to the developer.

(3) The City Staff's additional resistance on the basis that the request for oversize is untimely under RC Ord. 16.16.100 C. is not properly before PW or the Council and has been waived. The Oversize Request was submitted in writing to the Public Works Director by letter dated January 8, 2014. The request was denied by letter of Dale Tech dated March 19, 2014, stating the reasons for the denial which did not include timeliness (attached Exh. A). Developer timely appealed this decision by letter to Mr. Tech dated March 20, 2014. The issue City Staff now attempts to raise for the first time after significant time and expense has been incurred by Developer, PW and the Council is not part of the proceedings and is untimely.

I trust the above answers your questions. If you require anything further, please advise. Thank you.

COSTELLO, PORTER, HILL,
HEISTERKAMP, BUSHNELL &
CARPENTER, LLP

BY: 
Edward C. Carpenter

ECC:jb
Enclosures



CITY OF RAPID CITY

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March 19, 2014

Kyle Treloar
Dream Design International, Inc
528 Kansas City Street
Rapid City, SD 57701

RE: Oversize Request, Orchard Meadows, Elderberry Blvd.

Dear Mr. Treloar,

Thank you for meeting with City Staff on Friday March 14, 2014 to discuss the request for oversize payment for Elderberry Boulevard. Based on the information that you previously submitted and the discussion that occurred on March 14, City Staff is denying the request for oversize reimbursement for the following reasons:

1. Elderberry Boulevard is classified as a commercial street and provides internal access to the Orchard Meadows development.
2. The preliminary and final Traffic Impact Analysis submitted by your traffic engineer for Orchard Meadows recommends that "site access (aka Elderberry Boulevard) consist of two lanes in each direction between Walnut Circle and SD 44". The additional lanes (including turn lanes) are for traffic generated by the development and are not necessary for a regional purpose.

Sincerely,
CITY OF RAPID CITY

Dale Tech, PE/LS
City Engineer
cc. Terry Wolterstorff, Ted Johnson



EQUAL OPPORTUNITY EMPLOYER

EXHIBIT

A