



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

OFFICE OF THE CITY ATTORNEY

300 Sixth Street

Carla R. Cushman, Assistant City Attorney
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Phone: 605-394-4140
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e-mail: carla.cushman@rcgov.org

MEMORANDUM

TO: Mayor Sam Kooiker, Public Works Committee members

FROM: Carla Cushman, Assistant City Attorney *CC*

DATE: June 9, 2015

RE: City responsibility for future City streets and utilities which cross private irrigation ditches

Staff are asking for Council direction as to whether the City should take on responsibility and costs when streets and utilities cross over irrigation ditches. Multiple irrigation ditches in the southeast portion of the City have preexisting property rights, and anticipated development in that area means that future streets and utilities will cross these irrigation ditches. Two sorts of costs are involved: (1) the cost to repair and maintain the irrigation ditch / buried pipe, and (2) the cost to remove and replace the street when repair or maintenance to the irrigation ditch occurs. Cyclone Ditch has represented to the City that it does not have the funds to be responsible for both types of costs with regard to a proposed crossing.

Cyclone Ditch has asked the City to draft a standard agreement to be used when a City street/utility crosses an irrigation ditch that will set forth the parties' obligations with regard to maintenance and repair of that portion of the utility located within the right-of-way or utility. Council direction is requested regarding whether staff should work with the ditch companies to draft a standard agreement, and regarding the City's willingness to pay for some or all of the costs to maintain the irrigation ditch located within the right-of-way.

Staff Concerns

What follows is my summary of staff concerns about these crossings and any agreements which may govern the same:

- An agreement is necessary. If these irrigation ditches are crossed by City streets and utilities, the City should enter into agreements to memorialize the terms of the crossing and clarify the responsibilities of the parties. Without these agreements, there is uncertainty about who is responsible when problems arise, increasing the chance for delays in fixing problems and the need for litigation to sort out the City's responsibility.
- Use of taxpayer money to maintain and replace a private utility (the ditch) within the City's right of way. The original agreement was written to shift to the City the responsibility to repair and maintain the irrigation pipe within the right-of-way. Generally, private utilities (e.g., cable, phone, power, natural gas) pay for the maintenance, repair, and replacement of their own utility within the right of way, although there may be City costs to relocate the utility within the right of way when utilities pre-date the right of way.
- Use of taxpayer money to remove and repair the street and/or City utilities when maintenance of the ditch disturbs the street/utilities. A standard agreement should include provisions delegating the costs and responsibilities to remove and replace the street and any utilities necessitated by maintenance of the irrigation ditch. Generally, utilities (private and public) within the right of way pay to remove and repair the street when maintenance to their utility occurs. Cyclone Ditch has stated that they do not have resources to pay the cost for tearing up and replacing the road when maintenance on the ditch is required.
- Accommodation of other utilities within the right-of-way. A standard agreement for irrigation ditch crossings should require that the entity maintaining the irrigation ditch locate and accommodate other utilities in the right of way when a disturbance must occur.
- Difficulty in applying standard agreement to diverse situations. The City has different interests for different types of anticipated crossings which may make it challenging to draft a "standard agreement" to cover all situations. For example, this Ping Drive crossing is a collector street in a residential neighborhood that is designed and built by the developer, and it is the developer's choice to locate the street here across the ditch. This situation differs from when the City itself wants to cross the ditch to construct or improve a street within its own Major Street Plan (i.e. Minnesota Street). Similarly, the City has different interests when its proposed trunk sewer line is anticipated to cross below an unimproved ditch (as opposed to a buried pipe ditch, such as with street crossings). It may be too much to ask of one agreement to cover these diverse situations and to protect the City's varying interests in each of them.
- Costs to the City to cross these ditches. When a developer seeks to cross the ditches, the developer will likely pay some amount or improve the ditch in exchange for the right to cross it. On a City project, the City will likely negotiate some consideration for the privilege to cross the ditch. If the City adopts a "standard agreement" that sets forth all of

the terms of future maintenance, the City's bargaining power will be less when it comes to negotiating the cost of the ditch crossing.

- Standard utility criteria. Any agreement should incorporate the requirements of the Infrastructure Design Criteria Manual regarding location of utilities within the right of way and distance between adjacent right of ways.
- Timing of the agreement. The City would evaluate the proposed crossings in the course of its review of the engineering plans, and at that time would have the chance to oppose the crossing as proposed by the developer (e.g., the street runs down the length of the ditch instead of intersecting it). If a standard agreement is drafted, it will have to contemplate when the agreement is entered into, in light of the overall development timeframe.

Recent history of this issue

In April, City staff were notified by ZCO, Inc. of an agreement it was negotiating with the Cyclone Irrigation Ditch Company concerning future development at Elks Country Estates. Cyclone Ditch claims a prescriptive easement for its irrigation ditch that intersects ZCO's property which ZCO intends to subdivide for residential development. As part of this development, ZCO intends to enclose a portion of the Cyclone Ditch in a pipe and bury it.

The proposed agreement between ZCO and Cyclone Ditch included the following language:

Cyclone Ditch hereby grants to ZCO and its successors and assigns a permanent easement to construct and maintain a crossing of Ping Drive across Cyclone Ditch at the location shown on attached Exhibit B provided that ZCO and ZCO's successors in interest, including any public body which accepts said street as a public street shall be responsible at their own expense for the maintenance and repair or replacement, if necessary, of that portion of Cyclone Ditch consisting of underground pipe which said street crosses over, including the costs associated with removal and replacement of any portions of the street, if necessary, to permit said maintenance, repairs or replacement for so long as Cyclone Ditch or its successors in interest continue to use said underground pipe for irrigation purposes.

(emphasis added). Staff met with ZCO representatives on April 21, 2015 to discuss the irrigation ditch issues, and in an April 30 letter to ZCO's attorney, I communicated that staff were opposed to the language in the agreement, as it would shift responsibility to the City's taxpayers to maintain/repair/replace the ditch and for costs to remove and replace the street and adjacent utilities to the extent needed to maintain the ditch. *See attached.* In that letter, I suggested some alternatives to the language in the agreement which better protected the City's interest in the right-of-way and its utilities.

On May 1, staff met with representatives of Cyclone Ditch to discuss the proposed Ping Drive crossing of the ditch. During that meeting, future crossings of the Cyclone Ditch were generally discussed and there was a recognition that future City projects and future developer projects involving public right of way and utilities would require multiple crossings of the Cyclone Ditch and other ditch companies as the City develops to the east and south. As a result of that meeting, staff proposed a compromise, that Cyclone Ditch remains responsible for maintenance and replacement of its own ditch, but that the City take care of repairing the street when such maintenance occurred. On May 5, I emailed Cyclone Ditch's attorney regarding this compromise and proposed the following language for the ZCO / Cyclone Ditch contract:

8. Cyclone Ditch hereby grants to ZCO and its successors and assigns a permanent easement to construct and maintain a crossing of Ping Drive across Cyclone Ditch and accompanying utilities at the location shown on attached Exhibit B. Cyclone Ditch shall be responsible at its own expense for the maintenance, repair or replacement, if necessary, of that portion of Cyclone Ditch within the permanent easement of Ping Street. Upon such maintenance, repair or replacement, ZCO and ZCO's successors in interest, including any public body which accepts said street as a public street, shall be responsible for any repair or replacement of portions of the street that are removed by Cyclone Ditch so long as Cyclone Ditch or its successors in interest continue to use said underground pipe for irrigation purposes.

I shared this compromise proposal with ZCO's attorney on May 18, 2015. *See attached.*

On May 22, Cyclone Ditch's attorney communicated that the ditch does not have the financial capacity "to bear the expense of tearing up the road in order to replace the section of culvert that supports the road." *See attached.* He goes on to state:

What Cyclone is striving for, with the support of the Murphy Ditch, Hawthorne Ditch and the Southside Ditch, is to establish a "standard easement" that would set out the requirements for ditch crossings so that developers and the City would know what was necessary and development could proceed on a timely basis without the time and expense of addressing each new development from scratch. Cyclone is hoping that the City will see the public benefit and assist in reaching that goal.

Cyclone Ditch referenced an agreement with the State of South Dakota Department of Transportation where the State accepted responsibility for the maintenance of the pipe culvert containing Cyclone Ditch that crossed under the southeast connector road and the relocated and realigned ditch below the right of way. *See attached.* That agreement provides in part as follows:

The State of South Dakota shall be responsible to physically maintain the relocated and realigned ditch from the point where it leaves the prior existing ditch extending to the point where it reenters the prior existing ditch, including

specifically the pipe culvert crossing under the road in a sound, useable condition.
. . . Cyclone shall be responsible for cleaning debris from the open portion of the ditch. The State of South Dakota shall be responsible for keeping the pipe culvert under the road free of debris and unplugged.

At this point, staff agreed that the Council should be consulted and direction provided to staff concerning this request for a "standard agreement" covering ditch crossings.

Please feel free to contact me if you have any further questions. If you have questions about this issue for the Public Works department, please contact Dale Tech or Ted Johnson, who have been a part of the conversations over the past two months.



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April 30, 2015

VIA EMAIL AND U.S. MAIL

Mike Hickey
Bangs, McCullen, Butler, Foye & Simmons
PO Box 2670
Rapid City, SD 57709

Dear Mike:

I write concerning the *Easement and Maintenance Agreement* you submitted to the City on behalf of ZCO, Inc. involving property which your client intends to develop in the near future. While this agreement is between your client and Cyclone Irrigation Ditch Company, it is relevant to the City's review of your client's proposed development. Before approval of the development, the City will require that ZCO, Inc. provide public improvements, including streets and utilities, on the property in a manner that is acceptable to the City. Accordingly, outlined below are the City's objections to the Agreement.

Section 8 of the *Easement and Maintenance Agreement* states as follows:

Cyclone Ditch hereby grants to ZCO and its successors and assigns a permanent easement to construct and maintain a crossing of Ping Drive across Cyclone Ditch . . . provided that ZCO and ZCO's successors in interest, *including any public body which accepts said street as a public street* shall be responsible at their own expenses for the maintenance and repair or replacement, if necessary, of that portion of Cyclone Ditch consisting of underground pipe which said street crosses over, including the costs associated with removal and replacement of any portions of the street, if necessary, to permit said maintenance, repairs or replacement for so long as Cyclone Ditch or its successors in interest continue to use said underground pipe for irrigation purposes.

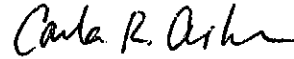
In other words, if the City accepts Ping Street, which crosses Cyclone Ditch, the City becomes responsible for the portion of the ditch below the street – for maintenance repair, or replacement of the ditch, and for any costs associated with such work (including removal of the street). As City staff clarified when we met, the City will not agree to take over maintenance of a private utility within an easement below a City street. There are miles of private utilities below City streets today, and I am unaware of a single time where the City is responsible for maintaining that utility to the extent it is located in the right of way. Furthermore, when maintenance or replacement of a private utility occurs within the right of way, it is the utility company – not the City – who must endure the costs to remove or replace portions of the street.

My second concern relates to utilities which cross Cyclone Ditch. Section 9 of the *Easement and Maintenance Agreement* concerns easements for sidewalks, driveways, and utilities across Cyclone Ditch's prescriptive easement onto several lots in the development. First, at the meeting we discussed locating the utility easement on the private lots outside of the prescriptive easement. Second, to the extent that Section 9 concerns public utilities within the right of way on Ping Street, the City cannot agree with the provision. I would propose two alternatives to address my concerns. Section 8 (amended in accordance with my comments above) could be also amended to discuss utility location within the Ping Street right of way. In the alternative, location of utilities in the right of way could be addressed in Section 9 so long as the final phrase is removed or amended which provides that Cyclone Ditch has no responsibility to repair or replace any utilities. As I hope I've made clear, the City cannot agree that one utility has no obligation to reasonably accommodate other utilities within the right of way, nor is the City willing to pay the costs when its utilities or street are damaged by Cyclone Ditch's activity.

The fact that the South Dakota Department of Transportation has agreed to similar provisions is not persuasive to the City. The City's interests in a residential street constructed pursuant to private development are very different from the State's interest in a state highway. Although the State obviously agreed to the terms it negotiated with Cyclone Ditch, the City is not willing to assume the responsibilities that you now propose. I appreciate the difficulty this puts on your client, but I am sure you can understand the City's refusal to use taxpayer dollars to maintain a private utility, particularly when that decision may lead others to believe they can request a similar arrangement.

I hope this clarifies the City's requirements for your client's development, as far as they relate to the *Easement and Maintenance Agreement* with Cyclone Ditch. Please give me a call if you need anything further from me or if there is any other way I can be of assistance. Best regards.

Sincerely,

A handwritten signature in black ink, appearing to read "Carla R. Cushman". The signature is fluid and cursive, with the first name "Carla" being the most prominent.

Carla R. Cushman
Assistant City Attorney

Cushman Carla

From: Cushman Carla
Sent: Tuesday, May 05, 2015 11:20 AM
To: 'Ed Carpenter'
Cc: Fisher Vicki; Johnson Ted
Subject: Cyclone Ditch / ZCO agreement
Attachments: KMBT35020150430145352.pdf

Ed:

Per our meeting earlier this week with you and your clients Cyclone Ditch Company, staff met to discuss the City's willingness to incur some costs to repair the street, even if those costs are the result of maintenance or replacement of your client's private utility. We would propose the following amendment to section 8 of your agreement with ZCO.

8. Cyclone Ditch hereby grants to ZCO and its successors and assigns a permanent easement to construct and maintain a crossing of Ping Drive across Cyclone Ditch and accompanying utilities at the location shown on attached Exhibit B. Cyclone Ditch shall be responsible at its own expense for the maintenance, repair or replacement, if necessary, of that portion of Cyclone Ditch within the permanent easement of Ping Street. Upon such maintenance, repair or replacement, ZCO and ZCO's successors in interest, including any public body which accepts said street as a public street, shall be responsible for any repair or replacement of portions of the street that are removed by Cyclone Ditch so long as Cyclone Ditch or its successors in interest continue to use said underground pipe for irrigation purposes.

This amendment is intended to reflect your proposal to have Cyclone Ditch responsible for costs associated with the ditch – even below the street – but not to also have responsibility to repair the street if it is damaged as a result of Cyclone Ditch. Instead, the developers and (eventually) the City will be responsible for those costs. I have also amended the paragraph to discuss City utilities within the Ping Street right of way.

Please review with your clients and respond with your thoughts. I have not spoken with Mike Hickey about this proposal; my last correspondence with him is attached, which obviously reflects the City's earlier position prior to our meeting with Cyclone Ditch.

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May 18, 2015

VIA EMAIL AND U.S. MAIL

Mike Hickey
Bangs, McCullen, Butler, Foye & Simmons
PO Box 2670
Rapid City, SD 57709

Dear Mike:

I write to follow up on my earlier letter regarding the *Easement and Maintenance Agreement* between ZCO, Inc. and Cyclone Irrigation Ditch Company.

City staff met with Cyclone Ditch representatives and Ed Carpenter to hear their perspectives on the language in the agreement which would place upon the City all costs within the right of way for Ping Street – including the repair, maintenance, and replacement of that portion of Cyclone Ditch. Thereafter, staff met to discuss the City's willingness to incur some costs to repair the street only when maintenance/repair is done on the ditch. The City proposed the following language to Cyclone Ditch:

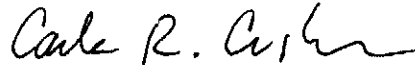
8. Cyclone Ditch hereby grants to ZCO and its successors and assigns a permanent easement to construct and maintain a crossing of Ping Drive across Cyclone Ditch and accompanying utilities at the location shown on attached Exhibit B. Cyclone Ditch shall be responsible at its own expense for the maintenance, repair or replacement, if necessary, of that portion of Cyclone Ditch within the permanent easement of Ping Street. Upon such maintenance, repair or replacement, ZCO and ZCO's successors in interest, including any public body which accepts said street as a public street, shall be responsible for any repair or replacement of portions of the street that are removed by Cyclone Ditch so long as Cyclone Ditch or its successors in interest continue to use said underground pipe for irrigation purposes.

This compromise language is intended to hold Cyclone Ditch responsible for the maintenance and repair of its irrigation ditch, while the City would pay for repair or replacement of the street that is necessitated by this activity by Cyclone Ditch, once the right of way is dedicated and the street is built and accepted by the City.

I communicated this proposal to Ed Carpenter on May 5 and have not heard any reply to it; I am unsure whether or not it had been shared with ZCO. Because my letter from April 30 expressed a position which the City has now modified, and because I do not know if you are aware of the City's current stance on this issue, I write today to notify you and your client of the City's position.

If you have any questions, please feel free to give me a call at any time. Best regards.

Sincerely,



Carla R. Cushman
Assistant City Attorney

cc: Ed Carpenter

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

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May 22, 2015

VIA EMAIL

Carla Cushman
Office of the City Attorney
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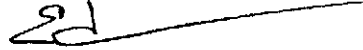
Re: Cyclone Ditch/ZCO, Inc.
Our File No. 62364

Dear Carla,

Cyclone Irrigation Ditch Company has now had an opportunity to meet with its members and discuss the easement provision proposed in your May 5th email. Cyclone believes that its position is still not being fully understood and that an additional meeting is necessary. Specifically, Cyclone Ditch believes that the fact that Cyclone's existing right-of-way is being crossed as opposed to Cyclone crossing what will become a public right-of-way on acceptance, as would be the typical case for a utility. From Cyclone's viewpoint, the portion of the pipe under the proposed street is a part of the crossing being constructed just as a bridge or a culvert would be. While Cyclone appreciates the proposal, Cyclone does not have the financial ability to bear the expense of tearing up the road in order to replace the section of culvert that supports the road should the need arise. This is especially true since, as the City develops to the east, more and more similar requests to cross will no doubt be presented. Cyclone supports and does not wish to hinder the growth or public interest in developing Rapid City in the best way possible for the benefit of the public, including public safety, which would be enhanced in the case of the Zandstra development by placing a portion of the ditch underground. What Cyclone is striving for, with the support of the Murphy Ditch, Hawthorne Ditch and the Southside Ditch, is to establish a "standard easement" that would set out the requirements for ditch crossings so that developers and the City would know what was necessary and development could proceed on a timely basis without the time and expense of addressing each new development from scratch. Cyclone is hoping that the City will see the public benefit and assist in reaching that goal. What Cyclone is proposing is not something new as evidenced by the attached copy of Irrigation Ditch Easement and Right-of-Way Agreement entered into between the State of South Dakota and Cyclone Ditch regarding a crossing by the State of South Dakota of a portion of Cyclone Ditch in the construction of the southeast connector.

Please advise as to Cyclone's request for a further meeting. Thank you.

Sincerely,



Edward C. Carpenter

ECC:jb

Enclosure

cc w/enclosure:

Vicki Fisher (via email)
Ted Johnson (via email)
Mike Hickey (via email)
David Lamb (via email)
Andrea Andersen (via email)
Lowell Pflieger (via email)
Dale Schuelke (via email)
Bill Kinghorn (via fax)

Prepared by:
Edward C. Carpenter
P.O. Box 290
Rapid City SD 57709
(605) 343-2410

IRRIGATION DITCH EASEMENT AND RIGHT-OF-WAY AGREEMENT

This Irrigation Ditch Easement and Right-of-Way Agreement is made and entered into by and between Cyclone Irrigation Ditch Company of 5768 Sparrow Hawk Trail, Rapid City, SD 57703, a South Dakota corporation, (hereinafter called "Cyclone Ditch") and the State of South Dakota.

Recitals

A. Cyclone Ditch was started in May, 1881 prior to South Dakota becoming a state and has operated continuously since that date. Cyclone Ditch was incorporated in 1890. Since its inception, Cyclone Ditch has held a prescriptive easement across the following described property for the operation of an irrigation ditch to convey water across the described property for irrigation purposes:

NW1/4 Sec. 16 Twp 1N R8E of BHM
Pennington County, SD

B. On or about 2002 to 2004, the State of South Dakota, acting through the South Dakota Department of Transportation constructed Highway Project NH 0235(1)0, Pennington County, PEMS3151 (southeast connector) a portion of which highway crossed Cyclone's existing ditch and prescriptive easement.

C. The SDDOT project as constructed, relocated a portion of Cyclone's existing irrigation ditch, routed it under the highway through a concrete pipe culvert and relocated the ditch from the pipe culvert to a point at which the ditch meets and reenters the original ditch.

D. The purpose of this Agreement is to set forth the terms under which the State of South Dakota will (1) provide Cyclone with a permanent recordable easement and right-of-way for the relocated ditch and pipe culvert; (2) accept responsibility for the maintenance of the pipe culvert crossing under the road and the relocated and realigned ditch from the point where it leaves the prior existing ditch extending to a point where it reenters the prior existing ditch; (3) be responsible for compliance with highway safety requirements, including required protective structures, if any, such as guardrails, coverings for the structure crossing the road and any required warning signs, if any, to protect against personal injury and/or property damage arising from the relocation of the ditch and its

proximity to and crossing the southeast connector including, but not limited to, personal injury and/or property damage arising from vehicles leaving the roadway and encountering the ditch or flooding which may result from the new ditch configuration, including the under road crossing.

NOW THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties agree as follows:

1. The State of South Dakota will plat and record a permanent easement and right-of-way in favor of Cyclone Irrigation Ditch Company for the relocated and realigned portion of the ditch from the point where it leaves the prior existing ditch to and under the existing road and extending to the point where the ditch reenters the prior existing ditch. The permanent easement specifically includes the right of ingress and egress for access to the ditch to permit inspection, operation and maintenance of the ditch by Cyclone, provided it is expressly understood that the State shall be solely responsible for the maintenance of the pipe culvert.

2. The State of South Dakota shall be responsible for required protective structures, if any, such as guardrails, coverings for the pipe culvert crossing the road and any required warning signs, if any. Cyclone is relying on the expertise of the State of South Dakota acting through the SDDOT to comply with any applicable highway safety requirements and proper engineering to avoid flooding.

3. The State of South Dakota shall be responsible to physically maintain the relocated and realigned ditch from the point where it leaves the prior existing ditch extending to the point where it reenters the prior existing ditch, including specifically the pipe culvert crossing under the road in a sound, useable condition. The rip rap at the discharge end of the pipe culvert shall be maintained so as to avoid erosion. In addition, the State of South Dakota shall replace rip rap at the point where the relocated ditch reenters the prior existing ditch in a manner consistent with the onsite discussions on July 11, 2008, between Bill Kinghorn, President of Cyclone and Gary Engel of SDDOT. Cyclone shall be responsible for cleaning debris from the open portion of the ditch. The State of South Dakota shall be responsible for keeping the pipe culvert under the road free of debris and unplugged.

4. The State of South Dakota shall reimburse Cyclone for its attorneys fees incurred in dealing with the relocation of the ditch and the review and preparation of this Agreement and any related plats or documents.

Dated this 7th day of April, 2009.

STATE OF SOUTH DAKOTA
DEPARTMENT OF
TRANSPORTATION

BY: _____

Its: Secretary

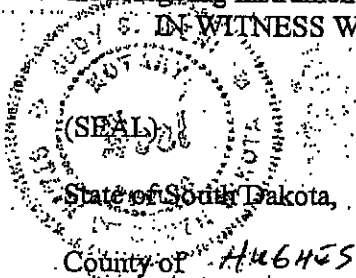
CYCLONE IRRIGATION DITCH COMPANY

BY: William Kinghorn
 Its: President

State of South Dakota,)
) ss.
 County of Pennington.)

ON THIS DAY, March 25, 2009, before me, the undersigned officer, personally appeared William Kinghorn who acknowledged him/herself to be Pres of CYCLONE IRRIGATION DITCH COMPANY, a South Dakota corporation, and that he/she, as such Pres., being authorized to do so, executed the foregoing instrument for the purposes therein contained.

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

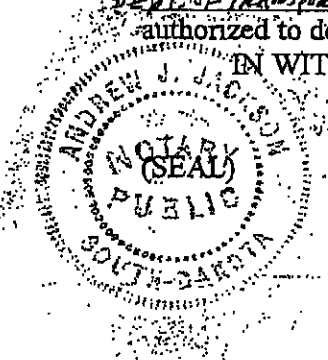


Judy G. Fiein
 Notary Public
 My Comm. Expires: 10-14-2014

State of South Dakota,)
) ss.
 County of HUGHES)

ON THIS DAY, APRIL 7, 2009, before me, the undersigned officer, personally appeared Darin P. Bergquist, who acknowledged himself to be Secretary of the State of South Dakota, and that he, as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

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



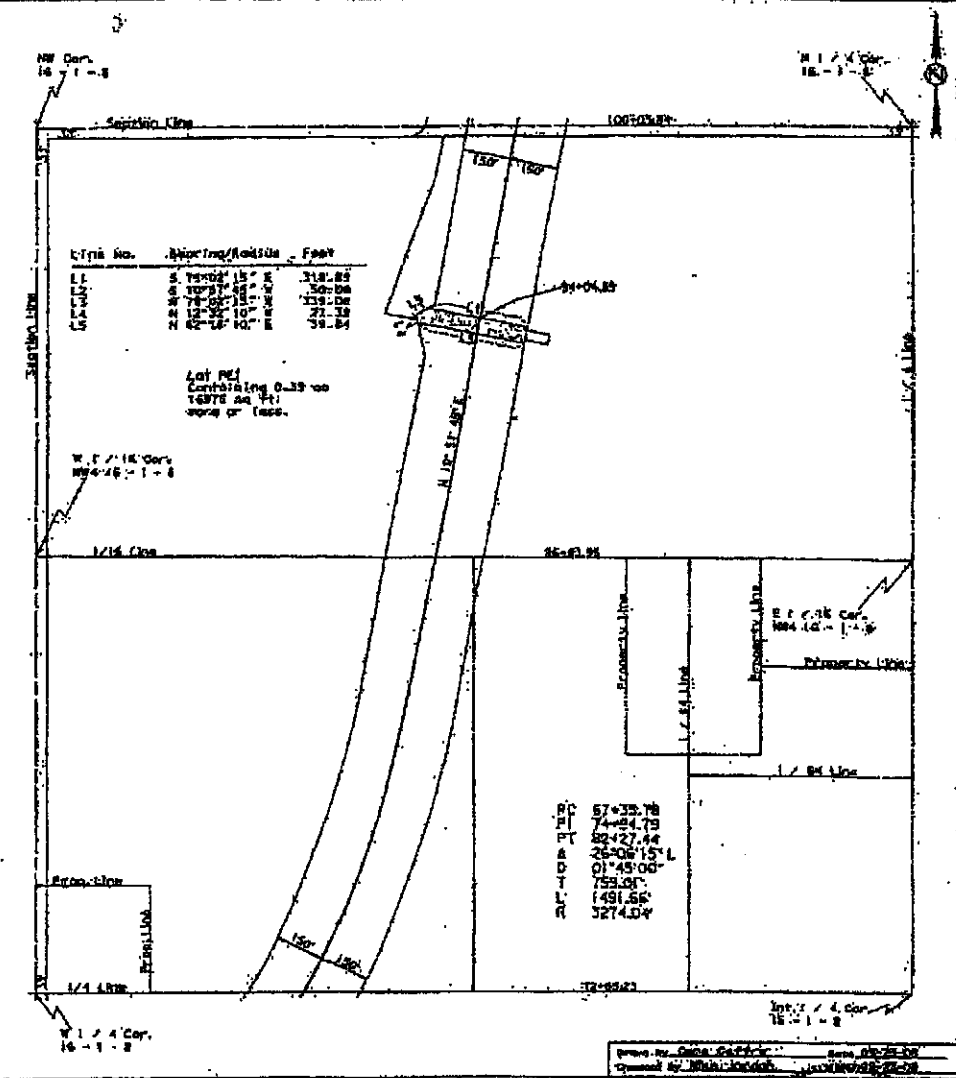
Andrew Jackson
 Notary Public
 My Comm. Expires: 1/15/2015



Book: 188
Page: 1940
R09-5589.0 Page: 004 of 004
04/08/2008 12:45p 15.00
Pennington County, South Dakota
Donna M. Mayer Misc Real Est

PLAT OF LOT PEI

Location of permanent monument to be erected for reference shall be (See 11' of 11' 6 1/2' of Section 16 - Township 1 North - Range 1 West of the 5th R.R.
for description of tract as in 0235 2011-0
PENNINGTON COUNTY, SOUTH DAKOTA
Section 16 of T. 1 N. R. 1 W.



Line No.	Bearing/Distance	Feet
L1	S 17°04'15" E	318.85
L2	S 10°31'06" E	350.00
L3	S 70°52'41" W	333.00
L4	S 13°54'10" W	27.39
L5	N 4°18'10" E	39.04

Lot PEI
Containing 0.33 ac
16276 sq. ft.
more or less.

BC 57+35.78
PI 74+24.79
PT 82+27.44
A 25°06'15" L
D 01°45'00"
T 752.01'
L 1481.56'
R 3274.57'

SURVEYOR'S CERTIFICATE

I, Michael A. Hros, Registered Professional Surveyor, do hereby certify that the above described plat of land is a true and correct plat of the same as shown on the original plat filed for record and that the same has been surveyed and the same has been found to be correct according to the laws of this State. The location and description of the same are as follows:
In witness whereof, I have set my hand and seal at the City of Pierre, South Dakota, this 18th day of November, 2008.

OFFICE OF REGISTER OF DEEDS

State of South Dakota = 18412 \$ 10.00
County of Pennington
Filed for record this 19th day of Nov 2008 in the Office of the Register of Deeds, Pierre, SD. Fee \$ 10.00
Donna M. Mayer
Register of Deeds

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