



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

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## Office of the City Attorney

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May 20, 2010

Attorney General Marty J. Jackley  
1302 E. Highway 14, #1  
Pierre, SD 57501

Re: Request for Opinion

Dear General Jackley:

I have been directed by the City Council to request your opinion on a matter of importance to the City of Rapid City. I have advised the Council that I believe an action taken by the Council is unlawful. The action in question pertains to the City Council's direction to City staff to refund to four citizens the application fees paid by the citizens which were required by City ordinance.

By way of background, the City annexed certain property into the City limits. Under the City's zoning ordinance, upon annexation the City has 90 days to zone the property. The City did zone the property to Mobile Home Residential with a Planned Residential Development within 90 days of the annexation. As a result of the zoning action including the Planned Residential Development requirement, a number of property owners completed applications to have initial and final development plans approved on the property, as required by City ordinance. In order to submit a development plan, City ordinance requires the payment of a \$250.00 application fee. Each property owner in question submitted the fee and had the development plans approved in accordance with the ordinance. Subsequently, the Council decided to remove the requirement for a Planned Residential Development on these properties. During the discussion, the issue of the payment of the fees arose and ultimately the Council directed that the fees previously paid by four of the six applicants be refunded. Two of the six applicants have chosen not to have the Planned Residential Development designations removed.

Also relevant to your consideration are assertions that the process for implementing the planned development designation was not properly followed. Specifically, it has been alleged that the applications were not properly completed. I have opined that improper completion of the applications (or any other error in the process) is irrelevant, as the fee is charged for submitting the application, not the issuance of the planned development designation. Even if the applications were not properly complete, the applicants were able to complete the process and

Attorney General Marty Jacoby

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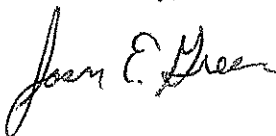
received approval of their initial and final development plans. Thus, this is not an issue of a fee paid for something that could not possibly happen. Nor was it a fee paid in error; rather, the fee is required by ordinance to be paid upon submittal of the application. Once paid to the City, the application fee becomes public money subject to the restrictions on the expenditures of public funds by an aldermanic municipality.

I have attached for your review a copy of my memorandum to the Finance Officer regarding this matter. I have also attached hard copies of the relevant portions of the Rapid City Municipal Code. If you need further access to the Rapid City Municipal Code, it is available on the City's website at [www.rcgov.org](http://www.rcgov.org).

The specific question the Council would like you to answer is whether or not the Council may lawfully expend public monies to reimburse four of the six citizens the application fees paid under these circumstances.

Please do not hesitate to contact me if you have questions or need additional information. I look forward to your response.

Sincerely,



Jason E. Green  
City Attorney

JEG/map  
Enclosures

cc: Mayor Alan Hanks (w/o enclosures)  
Rapid City Common Council (w/o enclosures)