

October 19,2001

Rapid City Planning Department
300 6th Street
Rapid City, SD 57701-2724

Comments for the following:

NOTICE OF HEARING FOR PLANNED DEVELOPMENT #01PD052

NOTICE OF HEARING FOR REZONING REQUEST #01RZ057

NOTICE OF HEARING FOR A VARIANCE #01SV026

Our name is Donavon & Tina Tucker, we own a 10 acre tract of property at mailing address-4780 Enchanted Pines Drive (legal 1N-07E-SEC23 Rapid City: 1N-07E-Sec23 unplatted NE1/4NW1/4NE1/4).

The following are our comments:

1. We believe that the private street "Enchanted Pines Drive" is just that a PRIVATE STREET for the purpose of access to the lots that it serves and the privacy of a private street which gives nobody but the lot owners the right to use it! if the grantor of the easement wanted a public street he would have made it public. A great deal of the value to my property is because it is a private area not accessible to the general public so thus by allowing someone to dedicated a private street which all the lot owners have an interest in would amount to taking of ones rights. I do see legal problems with the taking of lot owners rights.
2. To go on a bit futher if you approve the dedicated street I would have to take exception again when you are asked to approve a paved 52' wide street, city standards or not we all have a 66' wide easement are you condeming the remaining 14' of our easement? will we be compensated or just drive over future lot owners lawns which is our easement.
3. We have concerns with 20 more septic systems in the City right above our property as we are on the downside of this purpose development if any systems fails or leaks out on to and contaminate our property then I believe the CITY has a big liability issue. Maybe making them put a lift station in and extending the sewer lines to nearby lines on Hwy 16 is not out of the question maybe a heck of a lot cheaper in the long run.
4. Having no access to turn around for the many more visitors to the purpose 20 lots brings concern to us that they will use or trespass onto our property, then with 20 more houses brings many more people that will eventually wonder onto our private forrest of literally a 1000 trees, what accidents are then waiting to happen.
5. We have more concerns with the paving requirements, such as when I wanted to divide my lot in half I was told to pave, curb & gutter and provide a cul-de-sac now it seems only a asphalt 20' road is ok now.

Further obligations prohibits us from making this important meeting but I hope the Planning Commission can understand our concerns and objections to this proposed subdivision of our private area.

Thank you,

Donavon L. Tucker Tina M. Tucker

Donavon & Tina Tucker
4780 Enchanted Poines Drive
Rapid City, SD 57701
605-348-6033

pc Kenneth Dewell (Viken, Viken, Pechota, Leach & Dewell, LLP)
City Attorney
Mayor Munson

01PD052

October 22, 2001

Rapid City Planning Department
300 6th Street
Rapid City, SD 57701-2724

**COMMENTS - NOTICE OF HEARING FOR PLANNED DEVELOPMENT
APPLICATION File # 01PD052**

My name is Diane (Sunny) Stephens, and I own a 10.15 tract of property at mailing address - 4770 Enchanted Pines Drive.

(Legal: 1N-07E SEC 23 Rapid City: 1N-07E SEC 23 Unplatted NW1/4
NE1/4NE1/4

When I purchased this Medicine Ridge tract in 1982, there were no less than a dozen available "lots" in the Enchanted Hills I development. Since I did NOT want to be back in the close neighborhood setting from which I was moving, I elected to buy one of the tracts of land, with the understanding that these 8 tracts of land were an option for those of us who wanted to keep the general agriculture zoning where we could keep horses and have a 'buffer' from adjacent dwellings.

When I purchased the tract, there was a small stock dam constructed at the bottom of the draw on the north middle side of my property. This dam is filled from a natural spring that runs down deep in the canyon parallel to the north boundary of the tracts, as well as from run-off due to rain and snow accumulations. In the mid-1980s, I had the water in the dam tested for safety in allowing my horses to access the water during the summer. The water tested OK for animal use, fish habitat, and recreation.

This brings up three issues of concern to me.

First, with the intended saturation of additional septic tank drain fields on the north side of the property in question, I fear eventual contamination of this stock dam. In the *attached* copy of a letter from Mike Madden, { present owner of planned development property} to the city planning office dated March 28, 1995, Mike indicated HIS concern when property adjacent to his was being considered for division into only two 5-acre lots! [Ref. Par. #1]

Second, having the concentrated influx of family dwellings so close to my property, I fear that the danger of insurance 'liability' becomes an issue when trying to restrict children from what is deemed an "attractive nuisance" i.e. this stock dam and my horses.

Third. My ten-acre tract is a Backyard Wildlife Habitat, Cert. # 20308 having been approved by the National Wildlife Federation in 1997. This property, the stock dam, and the adjacent properties are a refuge for wildlife. A concentrated development such as that proposed will certainly restrict the free-roaming nature of these animals and they will be considered unwelcome to those individuals who have moved 'to the country' and now want to turn it back into a city block neighborhood atmosphere.

COMMENTS - NOTICE OF HEARING FOR REZONING REQUEST

File # 01RZ057

Within the past five years, Mike Madden took issue with the intended change in requirements for general agriculture zoning. At one point, Mike negotiated with the county in order that all tract owners might **stay** limited agriculture under a 'grandfather clause' because even though at the time we purchased our tracts, the requirement was a minimum of 10 acres, it later was changed to 20 or more acres.

Another issue I raise is whether the re-zoning of the adjacent property from general agriculture to low density residential will ultimately have an effect on the tax evaluation of my property. Even though there are no intended improvements to my house or the possibility of subdivision {giving real estate sales opportunities} due to topography, I fear that my home as well as others already on the tracts will be unfairly assessed based on the value of the proposed subdivided properties.

**COMMENTS - NOTICE OF HEARING FOR A VARIANCE TO THE
SUBDIVISION REQUIREMENTS File # 01SV026**

In reference to the *attached* Common Council minutes dated July 6, 1987 [RC Journal July 24, 1987] Mike Madden indicated to the City Planning Office he felt that ANYONE who intended to subdivide any of the tracts be held responsible for bringing the utilities and road improvements up to city specifications at their own cost since these improvements were NOT being requested by the adjacent tract property owners.

To not comply with these requirements would put the Enchanted Pines Drive tract owners in a hazardous setting with a 'minimum' of 20 additional vehicles using a roadbed intended for 8 households and their vehicles.

As Secretary/Treasurer of the Enchanted Hills Water Association for over ten years now, I have been privy to the conditions of the City taking over the Enchanted Hills water system. Because the original intent was for 8 water taps in the Medicine Ridge Subdivision, and the three-inch water line was deemed sufficient by the City for that number of users, and in lieu of a cost prohibitive


assessment to the 8 tract owners, the city did **NOT** update the Medicine Ridge water lines to city specifications. This decision was unanimously favored by the tract owners in Medicine Ridge [Ref. Par. #3 Mike Madden letter]]

In addition, Enchanted Pines Drive is NOT platted clear to the end of the roadway to the east. The original easement to the power line fence was abandoned some years ago, and the easement to the Watson property was moved to the location of their present driveway. There is NO OUTLET for residential egress to the east. Should there be an incident of wildfire or other necessary evacuation, putting this many residences on one narrow road, WITHOUT regulation fire hydrants and an alternative exit, would be pure disregard for human life and property.

It has also recently been noted in the *attached* RC Journal (Sunday, October 14, 2001) that one property owner (Sally Broucek/Dale Stumer] adjacent to the eastern boundary of the Medicine Ridge tracts has indicated NO IMMEDIATE INTEREST in participating in the 5th Street development - **The Rapid City Infrastructure Development Partnership Fund** - which would eventually provide a connection to the Enchanted Pines Drive roadway. This should give rise to concern by the RC Fire Department as to the highly saturated residential division planned in an area with only one foreseeable egress.

As a RC school teacher, I cannot afford to take leave without pay to attend the planning hearing on October 25. But I hope that the Planning Commission can understand my concerns and objections to the proposed subdivision and housing saturation of our 'country living'.

Thank you,


Diane (Sunny) Stephens
4770 Enchanted Pines Drive [Tract #6]
Rapid City, SD 57701
605/343-0706

attachments (3)

pc Kenneth Dewell {Viken, Viken, Pechota, Leach & Dewell, LLP}
✓pc Mayor Jerry Munson
pc City Attorney Tamara Pier

Michael K. Madden Ph. D.
Business and Economic Research

4955 Enchanted Pines Drive
Rapid City, SD 57701-9252

Phone:
(605)348-2498

March 28, 1995

Members and Staff
Rapid City Planning Commission
City Hall
Rapid City, SD



Re: Tucker Property - Medicine Ridge

Dear Members and Staff:

It came to my attention yesterday that a request for a subdivision of some lots in Medicine Ridge has been submitted for your review. I wish to submit the following statements for you to consider and urge you to consider them seriously.

1. First, these two lots are already part of a subdivision - Medicine Ridge. The 80 acres of land comprising Medicine Ridge was split into eight 10 acre building lots in 1981. That is to say, the proposal before you at the present time already makes up part of a subdivision. Accordingly, the request that is now before you is actually a request for a subdivision of a subdivision.

Medicine Ridge was a part of a larger development which included Enchanted Hills a subdivision which included smaller lots. People that wanted smaller lots than were available in Medicine Ridge purchased them in Enchanted Hills subdivision, an option that was available to the petitioners.

2. The present petitioners for this new subdivision of a subdivision only recently purchased this property and accordingly knew that they were ten acre lots, but now apparently want five acre lots instead of the ten acre lots available in Medicine Ridge.
3. The capacity of the water system was designed and built according to the lot plans which were adopted initially. This means that pumping capacity, storage capacity, and pipe sizes were tailored to the lots which exist at the present time. There is no excess capacity for accommodating new subdivisions within the present service area of the Enchanted Hills Water Association.

For example, there is a three inch line serving the existing 8 lots in Medicine Ridge. Because there was never any contemplation of splitting these lots into numerous building sites, the pipe size is totally inadequate to supply water to

additional lots within Medicine Ridge. As president of Enchanted Hills Water Association I can tell you that similar capacity problems exist with respect to storage and well capacity. Therefore, I ask that you not make *any* reference, implied or otherwise about Enchanted Hills Water Association supplying water to this project as we are not interested in expanding our service area to new subdivisions.

This is further reinforced by the possibility that some other ten acre parcels in Medicine Ridge could hypothetically ask for the same financial assistance to accommodate their subdivision plans if any should arise in the future. Theoretically, dozens of lots could all be asking for water from the same three inch pipe.

4. I also have deep concerns about building additional sewer drain fields deep down in the draw that comprises this subdivision request. During your deliberations involving nearby Enchanted Hills II last year, you were justifiably insistent that drain fields not extend into the draws surrounding that project. There are springs as well as unstable ground conditions in that draw and its going to be hard enough to develop two drain fields on this project without adding to the situation by allowing a subdivision and its additional drainfields.
5. The road leading to this proposed subdivision is not adequate to handle the increased usage which would be caused by this subdivision of a subdivision. I was recently asked if I would be willing to financially assist these people with this problem. Since I would receive little or no benefit and also do not have the financial strength to help them pay for this road, please do not consider this alternative. The road would also be difficult for me to move some of my farm machinery and livestock as well.

These are some of the factors I hope that you will consider in your future deliberations concerning this project. If you would like me to appear at a future meeting and discuss these and other issues, I would be happy to do so.

Sincerely,

MICHAEL K. MADDEN

the City due to air quality Upon motion being taken thereon, the Planning Commission carried the AIRIAL SHELTER

The Humane Society and staff have reviewed the bids submitted for veterinarian services for the Animal Shelter and they recommended that a contract be entered into with Dr. Roman Kurylas at a cost of \$7.00 per animal. Kurylas indicated that his bid of \$7.00 per animal included his time, labor, drugs and training of Shelter personnel; and that injections would commence on July 10, 1987.

JoAnn Jewel, President of the Humane Society asked that the machine be dismantled or destroyed so that it cannot be sold to anyone to be used for the same purpose. A question was raised about any salvage value for parts of the decompression chamber. It was noted that the machine is in a bad state of disrepair.

Motion was made by Powers and seconded by Hillard to accept the recommendation of the Planning Commission and approve a Variance, to the Subdivision Regulations (paving requirement) on N 1/2 NE 1/4, Section 23, T1N, R7E, BHM, Pennington County, South Dakota.

Motion was made by Powers and seconded by Hillard to accept the recommendation of the Planning Commission and approve a Variance, to the Subdivision Regulations (paving requirement) on N 1/2 NE 1/4, Section 23, T1N, R7E, BHM, Pennington County, South Dakota.

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Motion was made by Powers, seconded by Coffing and carried to continue the hearing on the Resolution Declaring Moratorium on the Subdivision of Land Within the Jurisdiction of the City of Rapid City. The hearing was held on August 17, 1987.

RESOLUTION LEVYING ASSESSMENT FOR STREET IMPROVEMENT PROJECT ON THE CREEK DRIVE BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF RAPID CITY, SOUTH DAKOTA AS FOLLOWS:

1. The Common Council has made all investigations which it deems necessary and has found and determined that the amount which each lot or tract shall be assessed by the construction of the street improvements is the amount stated in the proposed assessment roll.

2. The assessment roll for Street Improvement Project 5586 1/2 is hereby approved and assessments thereon levied against each and every lot, piece or parcel of land thereby described.

3. Such assessments, unless paid within thirty (30) days after the filing of the assessment roll in the office of the Finance Officer shall be collected by the City Finance Office in accordance with the procedure in Section 9-43.3 to 9-43.5 of the South Dakota Compiled Code of 1985 as amended and shall be payable in ten equal installments bearing interest at the rate set to exceed twelve percent.

4. The following Resolution was introduced, read and Powers moved its adoption, as amended: RESOLUTION LEVYING ASSESSMENT FOR CANYON LAKE HEIGHTS UTILITY EXTENSION PROJECT S5586-3

BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF RAPID CITY, SOUTH DAKOTA, AS FOLLOWS:

1. The Common Council has made all investigations which it deems necessary and has found and determined that the amount which each lot or tract shall be assessed by the construction of utility improvements is the amount stated in the proposed assessment roll.

2. The assessment roll for Canyon Lake Heights Utility Extension Project S5586-3 is hereby approved and assessments thereon levied against each and every lot, piece or parcel of land thereby described.

THE COMMON COUNCIL s/Kelth Carlyle Mayor ATTEST: s/Kent Bruggen Finance Officer (SEAL)

Motion was made by Powers, seconded by Coffing and carried to continue the hearing on the Resolution Declaring Moratorium on the Subdivision of Land Within the Jurisdiction of the City of Rapid City.

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P.R.D. located in the W 1/2 of the NE 1/4 of the SW 1/4 of Section 15, T1N, R7E, BHM, in Rapid City, Pennington County, South Dakota, be, and the same is hereby approved and the City Finance Officer of Rapid City is hereby authorized to endorse on such plat this resolution and certify its correctness.

Dated at Rapid City, South Dakota this 6th day of July, 1987. THE COMMON COUNCIL s/Kelth Carlyle Mayor ATTEST: s/Kent Bruggen Finance Officer (SEAL)

The motion for the adoption of the foregoing Resolution was seconded by Coffing. Miller explained that this plat was previously continued until the required improvements were complete. Those improvements have been complete, therefore, the plat can be approved.

WHEREAS it appears that the system of streets set forth therein conforms with the system of streets of the existing plats of the City, that all provisions of subdivision regulations have been complied with, that all taxes and special assessments upon the property have been fully paid, and that such plat and the survey thereof have been executed according to law.

RESOLUTION APPROVING PLAT WHEREAS a Plat of a portion of Fairway Hills P.R.D., including: Lots 1 through 3 of Block 3 of Fairway Hills P.R.D. located in the W 1/2 of the NE 1/4 of the SW 1/4 of Section 15, T1N, R7E, BHM, in Rapid City, Pennington County, South Dakota was duly filed with the City Finance Officer for the purpose of examination and approval by the Governing body,

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of title. There are septic tanks on Lots 1 and 2 which serve existing facilities. Lot 3 is vacant and will probably be platted into a larger parcel north of the interstate in the future. A note has been placed on the plat indicating that a septic study be completed for Lot 3 prior to the issuance of a building permit.

Upon vote being taken thereon, the following voted AYE: Kellar, Albrecht, Weiland, Holbrook, Edwards, Hillard, Coffing and Powers; NO: None, whereupon said Resolution was declared duly passed and adopted.

RESOLUTION APPROVING PLAT WHEREAS a Plat of Clocktower Gardens, P.U.D. a Subdivision, including: Lot A and Lot B, formerly Tract A of Clocktower Gardens and a portion of the east 20 feet of Lot L of the Harter Tract, previously reserved for road, all located in Lot 2 of Section 3, T1N, R7E, BHM, in Rapid City, Pennington County, South Dakota was duly filed with the City Finance Officer for the purpose of examination and approval by the Governing body, and

WHEREAS it appears that the system of streets set forth therein conforms with the system of streets of the existing plats of the City, that all provisions of subdivision regulations have been complied with, that all taxes and special assessments upon the property have been fully paid, and that such plat and the survey thereof have been executed according to law.

RESOLVED THAT THE PLAT OF SUBDIVISION, INCLUDING: LOT A AND LOT B, FORMERLY TRACT A OF CLOCKTOWER GARDENS AND A PORTION OF THE EAST 20 FEET OF LOT L OF THE HARTER TRACT, PREVIOUSLY RESERVED FOR ROAD, ALL LOCATED IN LOT 2 OF SECTION 3, T1N, R7E, BHM, IN RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA, BE AND THE SAME IS HEREBY APPROVED AND THE CITY FINANCE OFFICER OF RAPID CITY IS HEREBY AUTHORIZED TO ENDORSE ON SUCH PLAT A COPY OF THIS RESOLUTION AND CERTIFY TO ITS CORRECTNESS.

Dated at Rapid City, South Dakota this 6th day of July, 1987. THE COMMON COUNCIL s/Kelth Carlyle Mayor ATTEST: s/Kent Bruggen Finance Officer (SEAL)

The motion for the adoption of the foregoing Resolution was seconded by Coffing. Miller explained that the plat for the Planned Commercial Development was recently approved. This lot split establishes Lot B for the offices, Easements for access, parking, garages, pedestrian ways, drainage, and utilities have been indicated on this plat. Upon vote being taken thereon, the following voted AYE: Kellar, Albrecht, Weiland, Holbrook, Edwards, Hillard, Coffing and Powers; NO: None, whereupon said Resolution was declared duly passed and adopted.

RESOLUTION APPROVING PLAT WHEREAS a Plat of Lot 1-Revised of Block 7 of Plat No. 2 of Carriage Hills and Lot 5-Revised of Block 8 of Plat No. 1 of Carriage Hills, formerly Lot 1 of Block 7 of Plat No. 2 of Carriage Hills and Lot 5 of Block 8 of Plat No. 1 of Carriage Hills, all located in the NE 1/4 of the SE 1/4 and in the SE 1/4 of the SE 1/4 of Section 17, T1N, R7E, BHM, in Rapid City, Pennington County, South Dakota was duly filed with the City Finance Officer for the purpose of examination and approval by the Governing body, and

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2619, having on July 15, 1987, Powers, seconded by Hillard, Weiland, Holbrook and Powers; the Mayor passed and Ordinance 2619.

Motion was seconded and Ordinance 2619 Amending Chapter 1 of the Ordinances of the City, by the Director of Development Article VIII D Works. Carlyle requested that the table be because currently being needs this ordinance. Upon vote being taken thereon, the following voted AYE: Kellar, Albrecht, Weiland, Holbrook, Edwards, Hillard, Coffing and Powers; NO: None, whereupon said Resolution was declared duly passed and adopted.

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Tax-increment district considered

By Diane Rietman
Journal Staff Writer

Because Fifth Street landowners have not agreed to

Rapid City participate in Rapid City's Infrastructure Development Partnership Fund, some city staff and Rapid City Council members say money for a proposed Fifth Street extension should be used for other road projects.

The development partnership provides a lower-cost option for developers to build roads and utilities for their developments than the current program of deferred assessments.

The program also requires 100 percent support from landowners, instead of 51 percent required under the deferred-assessment program.

In question is the money that was set aside to extend Fifth Street south to Catron Boulevard. After more than a year, the three private landowners along the proposed extension — Sally Broucek, Roy Davis and Walgar Development — have not signed an agreement to participate in the project.

Although extending the road is a city priority, other projects, such as the extension of East Anamosa Street or Mall Drive east from La Crosse Street to Elk Vale Road, also are being considered for the funding.

The Fifth Street project would cost \$5.5 million and extending nearby Elm Avenue would cost \$1.07 million. Both projects would extend the roads south to Catron Boulevard. Extending the sewer system from Highway 79 to Elm Avenue would cost an additional \$244,140.

The projects would be paid through Vision 2012 funds, the city's Capital Improvements, wastewater and water funds.

Two city committees have

at a Public Works Committee meeting, the committee suggested that a Tax Increment Fund (TIF) district be created for the Fifth Street project.

Under a Tax Increment Fund, the base tax on undeveloped property in the TIF district is frozen. That base amount is used for the city, school or county general funds. As the property is improved and its tax valuation rises, additional taxes collected from property in the district are set aside in a separate fund to repay the project loan. The one exception is school taxes, which are not waived.

Establishing a TIF will be discussed at Monday's city council meeting. If approved, the city-planning staff would put together the TIF proposal.

Alderman Tom Johnson said the Fifth Street extension would benefit the medical industry, Rapid City's largest area of job growth. In addition, it would provide a thoroughfare through the city from Catron Boulevard north to Interstate 90.

"To cut and run from something that's so important is wrong," Johnson told the Public Works Committee. "I don't think we've investigated everything to get Fifth Street done. We should continue to look at Fifth Street."

Alderman Tom Murphy said extending Mall Drive would bring outside jobs that could benefit the local economy. Areas along the street could be developed for industrial or commercial uses.

"We've lost patience with the Fifth Street when other projects could do better for Rapid City," Murphy said.

Alderman Alan Hanks pointed out that funding from the partnership fund is on a first-come, first-served basis. Unless all the landowners agree to participate in the project and sign a contract with the city, there is no project, he said.

City as

By Bill Cissell
Journal Staff Writer

The Sturgis Area Arts Council will ask the Sturgis City Council Monday for \$20,000 to help pay for a statue of the man for whom the town was named, Col. Samuel D. Sturgis.

The \$150,000 bronze depicts the uniformed cavalry officer, mounted on a horse, saluting two youngsters standing along a parade route. The life-size sculpture by Sturgis native Edward Hlavka will be displayed on the city's eastern limits, across from Lions Park on Lazelle Street.

Arts-council officials want to dedicate the piece, which reflects the historic tie between Fort Meade and Sturgis, during the June 2002 Cavalry Days celebration.

Col. Sturgis was the commander of the military post at Fort Meade in 1878 when the town site was laid out.

"We have always been a little shy about asking the city for tax dollars because we realize the difficulty in putting together the annual budget, but we were encouraged to do this by a council member," arts-council representative Didi LaRue told the city council's Legal and Finance committee last week.

The arts group has paid half the

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November 5, 2001

RECEIVED

NOV - 5 2001

**Rapid City
Planning Department**

HAND DELIVERED

Rapid City Planning & Zoning Commission
300 South 6th Street
Rapid City, SD 57701

Re: Medicine Ridge Subdivision

- No. 01PL103 - Enchanted Hills Subdivision**
- No. 01PD052 - Enchanted Hills Subdivision**
- No. 01RZ057 - Enchanted Hills Subdivision**
- No. 01SV026 - Enchanted Hills Subdivision**

Greetings:

This letter is in follow-up of my appearance before the Rapid City Planning and Zoning Commission on Thursday, October 25th, and in anticipation of my appearance with my clients before the Commission on Thursday, November 7th. I have enclosed adequate copies of this letter so that individual members of the Commission may have their own copy to review prior to the November 7th hearing time.

For the record, I represent Don & Tina Tucker, Sunny Stephens, Kevin Miller and Larry Stevens, all of whom are land owners of property in the Medicine Ridge Subdivision and all of whom are opposed to the proposed development of Michael Madden's property. My clients' opposition to the proposed development are based upon the following:

1. Each of my clients have a private easement sixty-six feet (66') in width over, across and through Mr. Madden's property. Each of the tracts of land described in those private easements has a personal, separate and distinct right of access across the "Madden property" separate and apart from any other private easement granted to anyone else. This same private easement of

sixty-six feet (66') likewise extends to the property access for the Tucker's property to the east-northeast and Kevin Miller's property to the north of the proposed development.

Since these private easements are for the benefit of my clients' separately described tracts of land, each of them, as the owner of their tract, is in control of the right of use of the easement. Neither Maddens, the City, the County, any purchaser of the Madden property, nor the other owners of tracts of land in the subdivision may unilaterally or as a group change the legal right to my clients, individually, to use their separate private easement in the matter contemplated by each such private easement. Simply because the proposed development anticipates a fifty-two feet (52') wide "public road" across this same easement description does not, and cannot, diminish or reduce each of my clients' rights to use their private easement of sixty-six feet (66') in width.

Thus, the plat of the Madden property must be redone to reflect the actual width of my clients' private easement and further acknowledge that there may be no obstructions placed in that area which would otherwise interfere with my clients' use of their separate and distinct private easements. To do so or allow otherwise, would be an attempt to diminish the size of each of my clients' private easements and therefore would constitute an attempt to take their property rights interests without just compensation.

2. The Declaration of Restrictions and Covenants To Run With The Land, dated the 16th day of June, 1978, which cover my clients' property as well as the Madden property, specifically requires:

8. All utilities, including but not limited to telephone, electricity, gas, sewer, cable television, shall be buried underground and no poles or other devices for utility purposes, except for yard lights, shall be permitted above ground on any tract.

This provision would strictly prohibit the installation of overhead street lights which are mandated by the City's code for a development such as that currently proposed.

3. It was the intent of the restrictive covenants to maintain a "rural acreage" atmosphere for all of the property described in the restrictive covenants. The proposed development would now seek to create lots of between one and two acres, certainly less than the "rural acreage" contemplated by the restrictive covenants.

While Mr. Madden now may want to sell his property for development so that the developer can plat Maddens' 20 acres into city lots, that has not always been Mr. Madden's attitude. In 1995 by his letter to the Pennington County Planning Commission, it is clear that Mr. Madden was advocating that the subdivision intended to maintain itself as a rural acreage subdivision and that he, in fact, actively and publically opposed any further subdivision of another tract within the subdivision.

By the minutes of the Pennington County Commission meeting of the 6th day of July, 1987, it was clear that the County Commission likewise believed that the Medicine Ridge Subdivision was to be maintained as a rural acreage. From that meeting, Mr. Madden declared:

If anyone in this area submitted a proposal to subdivide any of these properties, they should have to abide by all the usual city requirements... (subdividing is) very unlikely... because the property owners wanted to keep these large "ranchette" lots.

4. The city lots contemplated by this development would require private septic drain fields because the property is below access to the city sewage system. Adding an additional 20-25 septic system drain fields to this area would substantially increase the risk of contamination. On March 28, 1995, Mr. Madden wrote to Pennington County:

I also have deep concerns about building additional sewer drain fields deep down in the draw... During your deliberations involving Enchanted Hills II last year, you were justifiably insistent that drain fields not extend into the draws surrounding that project. There are springs as well as unstable ground conditions in that draw and

it's going to be hard enough to develop two drain fields on this project without adding to the situation by allowing a subdivision and its additional drain fields.

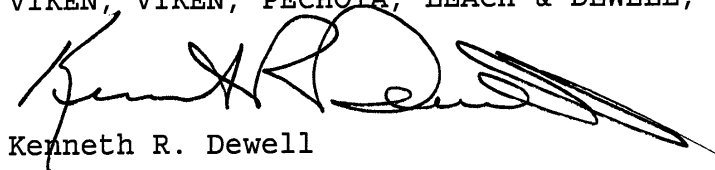
5. Because of the terrain to the east of Medicine Ridge subdivision, there is the lack of the adequate "second escape route" in the event of a serious fire along the eastern side of this proposed subdivision. There is a significantly greater risk of substantial property damage or lose of life when comparing the evacuation of 30 families versus six or seven. The Fire Department has already mandated a "turn around" at the east end of this proposed subdivision development but that does not address the need for a "second escape route."

6. The proposed development does not appear to have addressed the need for storm sewer water removal and/or collection. My clients, as the down gradient properties to the east, are not willing to allow this excess run-off to simply flow onto their properties. If the Engineering Department is contemplating having this water run-off diverted to the south, then and in that event, my clients are certainly entitled to view those plans prior to engineering or the developer asking the Commission and/or City to approve that new plan.

I trust that each of you find this letter to be self-explanatory, but should there be any further questions or should you discover other documents relevant to these issues, please feel free to contact my office.

Respectfully submitted,

VIKEN, VIKEN, PECHOTA, LEACH & DEWELL, LLP



Kenneth R. Dewell

KRD:dcc
cc: Tina & Don Tucker
Sunny Stephens
Kevin Miller
Larry Stevens