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November 5, 2001

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**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.

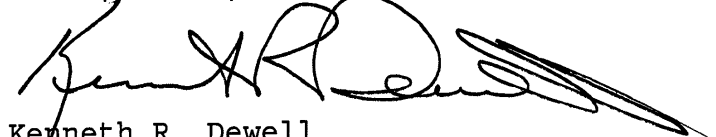
5. Because of the terrain to the east of Medicine Ridge subdivision, there is the lack of the adequate "second escape route" in the event of a serious fire along the eastern side of this proposed subdivision. There is a significantly greater risk of substantial property damage or lose of life when comparing 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