

STAFF REPORT
June 24, 2004

No. 04SR023 - 11-6-19 SDCL Review to allow a 16 foot wide utility easement for the construction of utilities on public property **ITEM 5**

GENERAL INFORMATION:

PETITIONER	Rick Himmelspach for Montana Dakota Utilities Company
REQUEST	No. 04SR023 - 11-6-19 SDCL Review to allow a 16 foot wide utility easement for the construction of utilities on public property
EXISTING LEGAL DESCRIPTION	The unplatted portion of S1/2 SE1/4 NE1/4 less right-of-way; NE1/4 SE1/4 less right-of-way, Section 28, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 42.0 acres
LOCATION	Along North Elk Vale Road
EXISTING ZONING	General Commercial District w/Planned Development Designation
SURROUNDING ZONING	
North:	General Commercial District
South:	General Commercial District
East:	Light Industrial District
West:	Light Industrial District
PUBLIC UTILITIES	City water and sewer
DATE OF APPLICATION	04/23/2004
REVIEWED BY	Todd Tucker / Sig Zvejnieks

RECOMMENDATION: Staff recommends that the 11-6-19 SDCL Review to allow a 16 foot wide utility easement for the construction of utilities on public property be **approved with the following stipulation:**

- 1. Prior to utility construction, the additional right-of-way shall be dedicated and the utility easement shall be recorded.**

GENERAL COMMENTS: (Update June 11, 2004) This item was continued at the June 10, 2004 to allow time for the applicant's request to be heard by City Council at the June 7, 2004 City Council meeting.

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(All revised and/or added text is shown on bold text.) This item was continued at the May 27, 2004 Planning Commission meeting to allow the applicant to submit a request to the City Council to grant a 16 foot wide utility easement for the proposed utility construction to be located on City owned property.

The subject property is located in the northwest corner of Mall Drive and Elk Vale Road. The proposed easement and joint trench will accommodate the extension of Black Hills FiberCom, Mid Continent Communications and Montana Dakota Utilities Company services along Elk Vale Road. The applicant is seeking an 11-6-19 Review approval to allow a 16 foot wide utility easement for the construction of utilities on public property.

South Dakota Codified Law 11-6-19 states that "...whenever any such municipal council has adopted a comprehensive plan, then no street, park, or other public way, ground, place, space, no public building or structure, no public utility, whether publicly or privately owned, if covered by the comprehensive plan or any adopted part thereof, shall be constructed or authorized in the municipality or within its subdivision jurisdiction until and unless the location and extent thereof shall have been submitted to and approved by the Planning Commission". This is easement and trench are for public utilities, and located on publicly owned land requiring that the Planning Commission review and approve the proposed request.

STAFF REVIEW: Staff has reviewed the proposed 11-6-19 SDCL Review as it relates to the applicable provisions of the Rapid City Municipal Code and has noted the following issues:

Additional Right-of-Way: The existing right-of-way adjacent to Elk Vale Road has sanitary sewer, a sanitary force main, and a jet fuel pipeline which does not leave adequate room to locate additional utilities within the existing right-of-way. Staff noted that additional right-of-way will need to be dedicated in the future to accommodate the reconstruction of Elk Vale Road. The dedication of additional right-of-way on the north portion of the proposed easement may affect the location of utilities. **With the future expansion of Elk Vale Road a portion of the requested easement that will be dedicated as right-of-way as part of the subdivision plat was not included in the easement granted on June 7, 2004. Additionally, an easement for the balance of the area was approved by the City Council on June 7, 2004.**

Easement Acquisition: Staff noted that an easement can not be granted through the 11-6-19 SDCL Review process. Staff recommends the applicant submit the request to the City Council to see if the City Council is willing to grant and/or sell the property as an easement. **As previously indicated, the City Council granted a utility easement for a portion of the subject property on June 7, 2004.**

Utility Construction: **On June 7, 2004 the City Council approved a Preliminary Plat for the subject property. On June 11, 2004 the applicant submitted a Final Plat application for the subject property. Prior to utility construction the additional right-of-way and utility easement shall be dedicated.**

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On May 27, 2004 the applicant submitted a request to the Public Works Committee for a 16-foot wide utility easement for the proposed utility construction to be located on City owned property. On June 1, 2004 the Public Works Committee heard the request and recommended the item be placed on the June 7, 2004 City Council agenda.

Staff recommends this item be **approved with the previously stated stipulation.**