

STAFF REPORT
July 26, 2007

No. 07SR035 - SDCL 11-6-19 Review to allow a structure in the Right-of-way **ITEM 18**

GENERAL INFORMATION:

PETITIONER	CSU Properties, Inc.
REQUEST	No. 07SR035 - SDCL 11-6-19 Review to allow a structure in the Right-of-way
EXISTING LEGAL DESCRIPTION	Lot 1 of Professional Plaza Subdivision, Section 36, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 1.02 acres
LOCATION	550 North Fifth Street
EXISTING ZONING	Office Commercial District (Planned Commercial Development)
SURROUNDING ZONING	
North:	Medium Density Residential District
South:	Low Density Residential District
East:	Medium Density Residential District
West:	Public District - Medium Density Residential District
PUBLIC UTILITIES	City sewer and water
DATE OF APPLICATION	5/18/2007
REVIEWED BY	Karen Bulman / Mary Bosworth

RECOMMENDATION: Staff recommends that the SDCL 11-6-19 Review to allow a structure in the right-of-way be **denied**.

GENERAL COMMENTS: **This staff report has been revised as of July 12, 2007. All revised and/or added text is shown in bold print. This application was continued at the June 21, 2007 Planning Commission meeting at the applicant's request.** The subject property is located at the southeast corner of North Fifth Street and North Street. The applicant is requesting approval of a SDCL 11-6-19 Review to allow a parking lot light pole in the public right-of-way. The light pole is currently located approximately six feet into the right-of-way, north of the northern property line and west of the entrance to the parking lot.

South Dakota Codified Law 11-6-19 states that "...whenever any such municipal council has

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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". The parking lot light is located within a public right-of-way and the property is identified as being located within the area covered by the Rapid City Comprehensive Plan requiring that the structure be reviewed and approved by the Rapid City Planning Commission.

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

Structure in the Right-of-way: The site plan submitted by the applicant for a Major Amendment to a Planned Commercial Development (07PD028) to remove two landscaping islands indicated that a parking lot light would be located on the north boundary of the property adjacent to the entrance to the parking lot. It appears that this parking lot light is approximately 32 inches in diameter and is located approximately six feet outside the property boundary and into the public right-of-way. The Rapid City Municipal Code 12.20.030 states that no person shall erect or maintain any building, fence, sign or structure upon any public right-of-way or upon any public property. The current light pole is not located within a sight triangle.

To meet the requirements of the approved Final Planned Commercial Development, the parking lot light must be re-located or the applicant must obtain approval from the City Council to locate a structure in the public right-of-way and receive approval of an 11-6-19 Review to allow a structure in the right-of-way. At the June 18, 2007 City Council meeting, the Council continued the request to allow a structure in the right-of-way to the July 2, 2007 City Council meeting. The application for the 11-6-19 Review will proceed only after the Council has taken action on the request to allow a structure in the right-of-way.

The applicant has requested that this application be continued to the July 26, 2007 Planning Commission meeting to allow the issue of the structure in the right-of-way to be heard by the City Council and to allow this application to be heard in conjunction with a Major Amendment to a Planned Commercial Development. **On July 2, 2007, the City Council denied the applicant's request to allow a structure in the right-of-way. As such, Staff recommends that this application be denied. (Revised 7-12-07)**