

# ESTES CAMPBELL LAW FIRM

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**\*\*This firm is not covered by professional liability insurance\*\***

November 1, 2007

Ms Marcia Elkins  
Director Growth Management  
City of Rapid City  
300 6<sup>th</sup> Street  
Rapid City, SD 57701

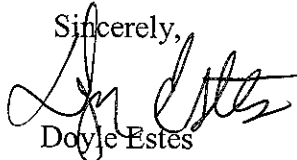
RE: Request for Creation of a Tax Increment District  
Dakota Canyon Marketplace

Dear Ms. Marcia Elkins:

Please find attached revisions to the previously submitted request for Creation of a Tax Increment District for Dakota Canyon Marketplace which are outlined in Exhibit A. We are requesting that the Planning Commission approve the above stated TIF Project Plan with the revised information.

Also please find attached a Brief in Support of Request for Creation of Tax Increment District for Dakota Canyon Marketplace.

If you have any questions please do not hesitate to call.

Sincerely,  
  
Doyle Estes

DDE: dw  
Enclosures

## Exhibit A

The changes to the TIF submittal:

1. The revised overall numbers per the TIF Committee is Revised Exhibit B-1 per TIF Committee.doc
2. The following changes are based on the new layout and the upgrades to the sanitary sewer line:
  - a. Revised Exhibit B-1 w upgrade to sanitary sewer and new development layout.doc is the revised overall cost and revised TIF amount.
  - b. Revised Exhibit B w upgrade to sanitary sewer and new development layout.doc is the TIF Cost break down per years of construction.
  - c. Revised Exhibit D w upgrade to sanitary sewer and new development layout.doc is the projected increase in valuation per lot.
  - d. Revised Exhibit D-1 w upgrade to sanitary sewer and new development layout.doc is the project build out of the lots used in the calculations of payout.
  - e. Dakota Canyon revised development plan, based on changes to Promise Road.

REQUEST FOR CREATION OF A  
TAX INCREMENT DISTRICT  
DAKOTA CANYON MARKETPLACE

SUBMITTED BY:

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Estes Campbell Law Firm  
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Rapid City, SD 57702  
(605) 343-3534, Ext. 210

**Revised  
Exhibit B-1  
TIF Committee Submittal**

<b>Item</b>	<b>TID Expenditures</b>	<b>Overall Project Cost</b>
Site Clearing & Grading	\$2,000,000	\$5,800,000
Drainage System	\$1,600,000	\$2,600,000
Drainage Area Mitigation	\$250,000	\$375,000
Erosion and Sediment Control	\$375,000	\$550,000
Storm Sewer & Retentions Ponds	\$750,000	\$1,000,000
Waterlines	\$950,000	\$1,150,000
Off-Site San. Sewer	\$2,300,000	\$2,300,000
On-Site Sewer Trunk Lines*	\$1,500,000	\$1,625,000
Traffic Controls & Intersection Work	\$1,450,000	\$2,050,000
Landscape Upgrades - Buffer and Revegetation	\$100,000	\$300,000
Park Improvements	\$750,000	\$750,000
Other Necessary and Convenient Costs	\$1,250,000	\$1,750,000
Professional Fees	\$550,000	\$775,000
Retaining Walls	\$0	\$750,000
Streets, C&G, and Sidewalks	\$0	\$2,475,000
Private Utilities	\$0	\$125,000
Contingency	\$2,775,000	\$3,975,000
	<u>\$16,600,000</u>	<u>\$28,350,000</u>

\* Includes costs for removal of lift stations

**Revised  
Exhibit B-1  
October 26, 2007**

Item	TID Expenditures	Overall Project Cost
Site Clearing & Grading	\$2,000,000	\$6,200,000
Drainage System	\$1,600,000	\$2,600,000
Drainage Area Mitigation	\$250,000	\$375,000
Erosion and Sediment Control	\$375,000	\$550,000
Storm Sewer & Retentions Ponds	\$465,000	\$850,000
Waterlines	\$600,000	\$800,000
Off-Site San. Sewer*	\$2,600,000	\$2,600,000
On-Site Sewer Trunk Lines**	\$1,400,000	\$1,625,000
Traffic Controls & Intersection Work	\$1,850,000	\$2,050,000
Landscape Upgrades - Buffer and Revegetation	\$100,000	\$300,000
Park Improvements	\$750,000	\$750,000
Other Necessary and Convenient Costs	\$550,000	\$775,000
Professional Fees	\$750,000	\$1,500,000
Retaining Walls	\$0	\$750,000
Streets, C&G, and Sidewalks	\$0	\$2,475,000
Private Utilities	\$0	\$175,000
Contingency	\$1,329,000	\$2,437,500
	\$14,619,000	\$26,812,500

\* Includes costs for an 18 in Trunk Line to handle future flows from the Sheridan Lake Rd area.

\*\* Includes a portion of the 18 in. Trunk Line that is located on the subject property and removal of lift stations.

**Tax Increment District  
Project Plan**

**Revised  
Exhibit B**

<b>TID Project Costs</b>	<b>Total</b>	<b>1<sup>st</sup> Year (60%)</b>	<b>2<sup>nd</sup> Year (40%)</b>
Site Clearing & Grading	\$2,000,000	\$1,200,000	\$800,000
Drainage System	\$1,600,000	\$960,000	\$640,000
Drainage Area Mitigation	\$250,000	\$150,000	\$100,000
Erosion and Sediment Control	\$375,000	\$225,000	\$150,000
Storm Sewer & Retentions Ponds	\$465,000	\$279,000	\$186,000
Waterlines	\$600,000	\$360,000	\$240,000
Off-Site San. Sewer*	\$2,600,000	\$660,000	\$440,000
On-Site Sewer Trunk Lines**	\$1,400,000	\$1,440,000	\$960,000
Traffic Controls & Intersection Work	\$1,850,000	\$1,110,000	\$740,000
Landscape Upgrades - Buffer and Revegetation	\$100,000	\$60,000	\$40,000
Park Improvements	\$750,000	\$450,000	\$300,000
Other Necessary and Convenient Costs	\$550,000	\$750,000	\$220,000
Professional Fees	\$750,000	\$330,000	\$500,000
Contingency	\$1,329,000	\$797,400	\$531,600
<b>Total TID Project Costs</b>	<b>\$14,619,000</b>	<b>\$8,771,400</b>	<b>\$5,847,600</b>

**Tax Increment District  
Project Plan**

**Revised  
Exhibit D**

<b>Map #</b>	<b>Block</b>	<b>Lot</b>	<b>Acres</b>	<b>Increased Valuation</b>	<b>Built Price</b>
1	1	Tract 2	23.02	\$15,041,268	\$30,000,000
2	1	Tract 1	2.34	\$1,528,956	\$4,586,868
3	1	Tract 3	5.4	\$3,528,360	\$10,585,080
4	1	Tract 4	5.4	\$3,528,360	\$10,585,080
5	2	1	5.61	\$3,665,574	\$10,996,722
6	2	2	3.63	\$2,371,842	\$7,115,526
7	2	3	6.17	\$4,031,478	\$12,094,434
8	3	1	2.26	\$1,476,684	\$4,430,052
9	3	2	5.17	\$3,378,078	\$10,134,234
10		Lot 1 of Tr. AR2	2.85	\$1,862,190	\$5,586,570
11		Lot 2 of Tr. AR2	3.75	\$2,450,250	\$7,350,750
12		Lot 3 of Tr. AR2	4.08	\$2,665,872	\$7,997,616
13		Tract B Revised	8.47	\$5,534,298	\$16,602,894
14		Lot A of Tucker	5.04	\$3,293,136	\$9,879,408
15		Lot 1 of Shipman	1.42	\$927,828	\$2,783,484

**Tax Increment District  
Project Plan**

**Revised  
Exhibit D-1**

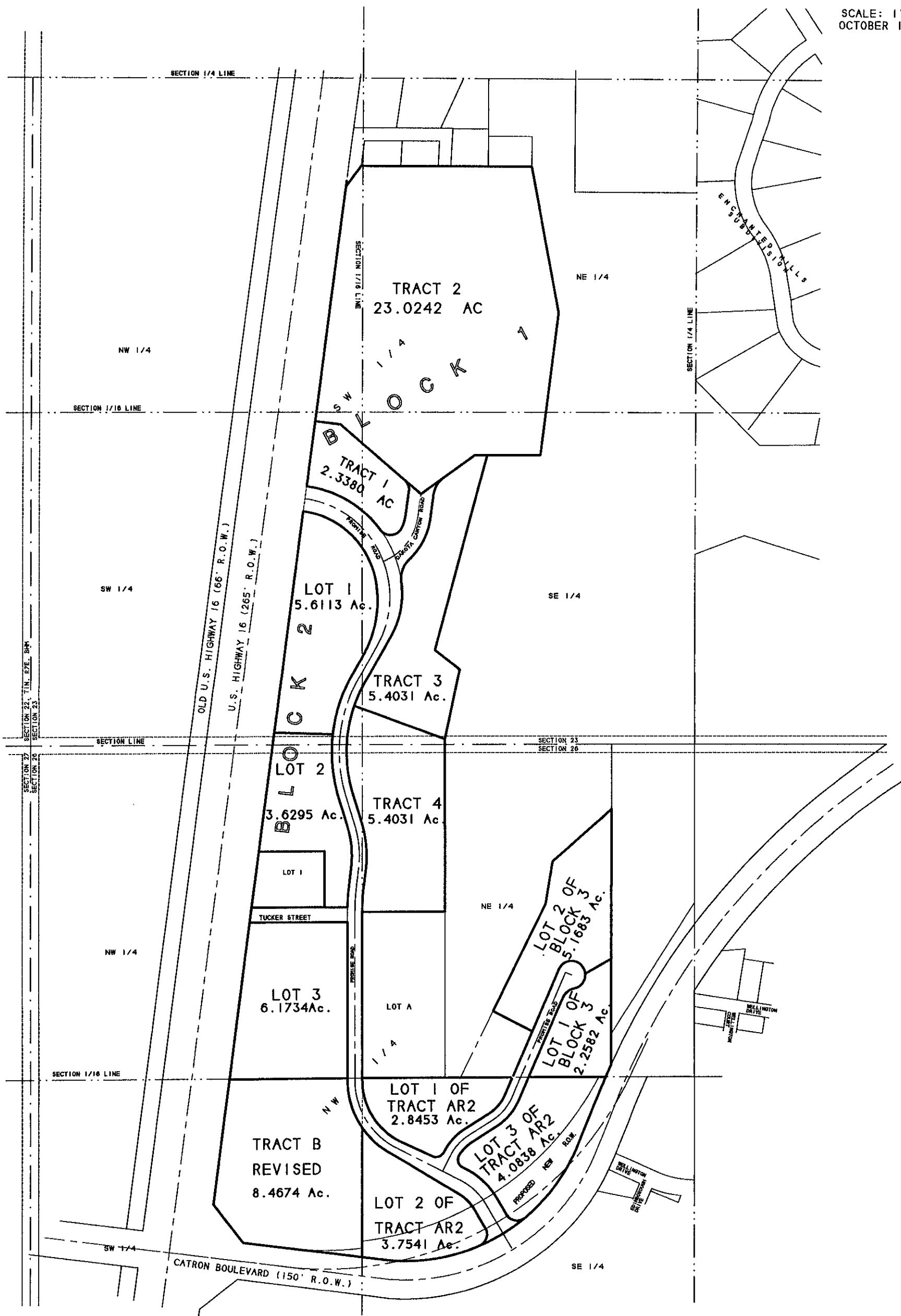
Assessment Date	Year Taxes Paid	Projected Increment	Cumulative Increment	Tax Increment	
10/31/2008	2010	\$0	\$0	\$0	
10/31/2009	2011	\$30,000,000	\$30,000,000	\$0	
10/31/2010	2012	\$15,171,948	\$45,171,948	\$0	
10/31/2011	2013	\$18,112,248	\$63,284,196	\$681,168	
10/31/2012	2014	\$15,348,366	\$78,632,562	\$1,025,656	
				<b>5 Year Total</b>	<b>\$1,706,824</b>
10/31/2013	2015	\$17,681,004	\$96,313,566	\$1,436,906	
10/31/2014	2016	\$19,386,378	\$115,699,944	\$1,785,399	
10/31/2015	2017	\$15,015,132	\$130,715,076	\$2,186,857	
10/31/2016	2018	\$20,013,642	\$150,728,718	\$2,627,037	
10/31/2017	2019	\$0	\$150,728,718	\$2,967,964	
				<b>10 Year Total</b>	<b>\$12,710,988</b>
10/31/2018	2020	\$0	\$150,728,718	\$3,422,386	
10/31/2019	2021	\$0	\$150,728,718	\$3,422,386	
10/31/2020	2022	\$0	\$150,728,718	\$3,422,386	
10/31/2021	2023	\$0	\$150,728,718	\$3,422,386	
10/31/2022	2024	\$0	\$150,728,718	\$3,422,386	
				<b>15 Year Total</b>	<b>\$29,822,917</b>
10/31/2023	2025	\$0	\$150,728,718	\$3,422,386	
10/31/2024	2026	\$0	\$150,728,718	\$3,422,386	
10/31/2025	2027	\$0	\$150,728,718	\$3,422,386	
10/31/2026	2028	\$0	\$150,728,718	\$3,422,386	
10/31/2027	2029	\$0	\$150,728,718	\$3,422,386	
				<b>20 Year Total</b>	<b>\$46,934,847</b>

- Project Increment was calculated on only those properties identified in Exhibit C.





SCALE: 1" = 400'  
OCTOBER 18, 2007



**R.O.W. AREAS**

R.O.W. AREA FROM "THE MAZE":	0.8432 Ac.
R.O.W. AREA FROM TRACT B:	0.1864 Ac.
R.O.W. AREA FROM TRACT AR2:	1.4588 Ac.
R.O.W. AREA FROM CUL-DE-SAC OF TRACT AR2:	0.6336 Ac.
R.O.W. AREA FROM UNPLATTED:	4.0092 Ac.
<b>TOTAL R.O.W. PROMISE ROAD</b>	<b>7.1312 Ac.</b>
<b>TOTAL R.O.W. DAKOTA CANYON DRIVE</b>	<b>0.7275 Ac.</b>

PREPARED BY: STEVEN O. THINGELSTAD  
BRITTON ENGINEERING & LAND SURVEYING, INC.  
8035 BLACK HAWK ROAD, SUITE #5, BLACK HAWK,  
SOUTH DAKOTA 57718 TELEPHONE: (605) 716-7988

BRIEF IN SUPPORT OF  
REQUEST FOR CREATION  
OF TAX INCREMENT DISTRICT  
FOR DAKOTA CANYON MARKETPLACE

SUBMITTED BY:  
Doyle Estes  
Estes Campbell Law Firm  
3220 West Main Street  
Rapid City, SD 57702  
(605)343-3534 Ext. 210

RE: Request for Creation of a Tax Increment District  
Dakota Canyon Marketplace

## PRELIMINARY STATEMENT AND OVERVIEW

Pending before the Rapid City Planning Commission is a Request for Creation of a Tax Increment District for Dakota Canyon Marketplace. The Tax Increment Finance Committee has recommended approval of the District, and Planning Commission Staff has also recommended approval. This Brief is respectfully submitted to the Planning Commission in Support of the Request.

The purpose of this Brief is to demonstrate that the proposed Tax Increment District is entirely appropriate under South Dakota law, and well in keeping with the policies and practices of the Planning Commission to encourage sound growth and development in Rapid City.

As the Commission knows, the proposed project is indeed visionary in terms of development. It provides the City of Rapid City with an opportunity to support commercial growth that is not only orderly, but also growth that recognizes and blends with the natural beauty of the area. Care has been taken in the planning of the project, and care will be taken in the construction of the project, to address visual, cultural, and ascetic concerns and needs. Care has been taken and will be taken to accommodate and blend with traffic patterns. The developer has established a working relationship with the Corps of Engineers with respect to drainage and wetlands issues in the project area. The project is fully consonant with Department of Transportation planning as to Highway 16.

Two aspects of this project are significant for purposes of TIF analysis: First, the project turns a substantial area which in its current state substantially impairs the sound growth of Rapid City into an area which will represent a thoughtfully planned and mature appearing community.

Second, the project will result in very substantial infrastructure additions to Rapid City which are extremely important to existing and future growth, not the least of which will be the extension of sewer line to the Northwest corner of Highway 16 and Catron Boulevard. As noted in the September 7, 2007 Staff Report, the extension of the sewer line which under this project will allow abandonment of the lift station adjacent to Wellington Drive. It is estimated that this aspect of the project will not only relieve the pressure on the City to provide efficient service to Red Rocks, and open up additional land for further development, but will save the City an estimated \$10 million in capital expenditures for infrastructure.

Commercial development in this area has widespread, in fact overwhelming, support, as demonstrated by the fact that in June of 2006, 70% of Rapid City voters approved and endorsed a zoning change for location of a Wal-Mart Superstore in the area. The Dakota Canyon Marketplace Project will implement that mandate in a manner which is carefully planned and implemented to blend development into the area rather than permit development to proceed in a piecemeal fashion without benefiting the entire area and without providing infrastructure for future growth.

## THE PROPOSED DISTRICT IS CONSISTENT WITH SOUTH DAKOTA STATE LAW REGARDING TIF'S

As Planning Commission Staff and the Tax Increment Finance Committee recognized, the Dakota Canyon Marketplace Project will provide needed infrastructure and address blight within the meaning of South Dakota law.

It is important to recognize that the South Dakota legislature has broadly defined the term "blight" to encourage growth of this nature. An understandable, but narrow, first impression of the term "blight" conjures up images of slums or deteriorating infrastructure, but such images are only part of the legislature's plan. The recent politicization of tax increment financing is based on this narrow, and incorrect, understanding of the legislation.

### South Dakota TIF Statutes Identify Three Distinct Types of Blight.

The statutes which empower municipalities to use tax increment financing to work for sound growth and development actually include three types of "blight."

The first type of "blight" is defined in Section of 11-9-9 of the South Dakota Codified Laws, which addresses slum areas which are conducive to ill health and/or crime. The second can be found in Section 11-9-10 of the South Dakota Codified Laws, which deals with previously developed areas which have deteriorated, or were poorly planned from the outset.

The third type of "blight" discusses the type of need that Dakota Canyon Marketplace is created and designed to specifically address. This third type is found in Section 11-9-11 of the statutes. It provides as follows:

11-9-11. Open areas impairing growth defined as blighted. Any area which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of a municipality, is a blighted area.

In its current state, the developer's property is predominantly open, but because of terrain has fewer than 50 buildable acres. The project will approximately triple the buildable area.

South Dakota Statutes Specifically Authorizes the  
Use of Tax Increment Financing for the Purposes Which  
are Designated in the Dakota Canyon  
Marketplace Project Plan.

South Dakota law specifically authorizes the use of Tax Increment District financing for just that purpose-----the development of buildable ground. This authority is found in SDCL §11-9-15, which provides in relevant part as follows:

Specific items included in project costs. Project costs include, but are not limited to:

(1) Capital costs, including the actual costs of the construction of public works or improvements, buildings, structures, and permanent fixtures; the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and permanent fixtures; the acquisition of equipment; the **clearing and grading of land**; and the amount of interest payable on tax incremental bonds or notes issued pursuant to this chapter until such time as positive tax increments to be received from the district, as estimated by the project plan, are sufficient to pay the principal of and interest on the tax incremental bonds or notes when due;

\* \* \*

(4) **Professional service costs**, including those costs incurred for architectural, planning, engineering, and legal advice and services;

\* \* \*

(8) Payments made, at the discretion of the governing body, which are found to be necessary or convenient to the creation of tax incremental districts or the implementation of project plans. (Emphasis added).

The Dakota Canyon Marketplace Tax Increment District request is for the purposes highlighted above, and for infrastructure development. The request is entirely supported by the legislature's intent for uses of tax increment financing.

THE PROPOSED DISTRICT IS CONSISTENT  
WITH THE PLANNING COMMISSION'S  
ACTIONS IN CREATING OTHER TAX INCREMENT DISTRICTS.

A review of previously created tax increment financing districts shows that the Commission uniformly recognizes the development of infrastructure in open areas which are not capable of sound and meaningful development without site improvement work as an appropriate and achievable purpose of Tax Increment Financing. Examples of this type of development include the Heartland Retail Center (TIF#38), Disk Drive (TIF#36); Mall Drive (TIF#44) ; Rainbow Ridge (TIF#54) and Rushmore Crossing (TIF#56).

Of course, the Commission has also approved tax increment financing in areas which involve one or both of the other two types of statutory blight, such as the former Federal Beef site. This fact, when compared with the statutory blight found in open areas which need development to accommodate infrastructure for development, demonstrates the breadth and diversity of the different applications of tax increment financing to encourage and allow sound and thoughtful development such as the Dakota Canyon Marketplace.

It is beyond dispute that this project cannot proceed as envisioned without tax increment financing. Denial of tax increment financing for this project will result in incremental development which will likely lack the cohesive approach of this project, and would not provide for full recognition and preservation of the area's natural scenic beauty and cultural values.

### CONCLUSION

The Tax Increment Finance Committee, as well as Planning Commission Staff, has recommended this project for approval. The citizens of Rapid City have overwhelmingly endorsed commercial development in this area. The Dakota Canyon Marketplace project will implement that endorsement in a manner which exemplifies sound planning and growth.

It is respectfully urged that the Commission approve this application.

Dated this 1<sup>st</sup> day of November, 2007

  
Doyle Estes  
Estes Campbell Law Firm