

STAFF REPORT
March 5, 2009

**No. 08SR084 SDCL 11-6-19 Review to allow temporary structures
on public property**

ITEM 9

GENERAL INFORMATION:

APPLICANT	Bethesda Broadcasting
AGENT	Kathy Cook
PROPERTY OWNER	City of Rapid City
REQUEST	No. 08SR084 - SDCL 11-6-19 Review to allow temporary structures on public property
EXISTING LEGAL DESCRIPTION	Tract 20 less Lot H1, Rapid City Greenway Tract, Section 36, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 39.96 Acres
LOCATION	North of Omaha Street between North Mount Rushmore Road and Fifth Street
EXISTING ZONING	Flood Hazard District
SURROUNDING ZONING	
North:	Civic Center District
South:	General Commercial District
East:	Flood Hazard District
West:	Flood Hazard District
PUBLIC UTILITIES	City Water and Sewer
DATE OF APPLICATION	9/26/2008
REVIEWED BY	Jared Ball / Karley Halsted

RECOMMENDATION:

Staff will recommend that the SDCL 11-6-19 Review to allow temporary structures in a public park be approved, if the City Council approves the Special Exception to the Flood Area Construction Regulations of the Rapid City Municipal Code.

GENERAL COMMENTS: (Updated February 20, 2009. All revised and/or added text is shown in bold print.) This item was continued at the February 19, 2009 planning Commission meeting because the applicant has not obtained a Special Exception to the Flood Area Construction Regulations of the Rapid City Municipal Code. On February 19, 2009 the Rapid City Planning Commission recommended that a Special Exception to the Flood Area Construction Regulations of the Rapid City Municipal Code be approved. The Special Exception will be considered by the City Council on

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March 2, 2009. If the City Council approves the Special Exception to the Flood Area Construction Regulations, staff will recommend approval of the SDCL 11-6-19 application.

(Updated January 23, 2009. All revised and/or added text is shown in bold print.) This item was continued at the January 22, 2009 planning Commission meeting because the applicant had not obtained a Special Exception as provided in Section 15.32.240, the Flood Area Construction Regulations of the Rapid City Municipal Code. The application for the Special Exception was submitted on January 29, 2009 and will be considered at the February 19, 2009 Planning Commission meeting and the March 2, 2009 City Council meeting. Staff recommends that this application be continued to the March 5, 2009 Planning Commission meeting to allow consideration of the Special Exception to the Flood Area construction regulations.

(Updated January 13, 2009. All revised and/or added text is shown in bold print.) This item was continued at the December 18, 2008 planning Commission meeting because the required Special Events Permit and Flood Plain Development permit had not been obtained.

(Updated November 24, 2008. All revised and/or added text is shown in bold print.) This item was continued at the November 20, 2008 Planning Commission meeting because the required Special Events Permit and Flood Plain Development permit had not been obtained.

(Update, November 7, 2008. All revised and/or added text is shown in bold print.) This item was to be heard at the November 6, 2008 Planning Commission Meeting. However, due to inclement weather, the Planning Commission was unable to meet. This item was continued at the October 23, 2008 Planning Commission meeting to allow the applicant to submit additional required information.

(Update: October 29, 2008. All revised and/or added text is shown in bold.) This item was continued at the October 23, 2008 Planning Commission meeting to allow the applicant to submit additional required information.

Staff met with the applicant on October 27, 2008 to discuss the proposed use and the additional information that must be submitted prior to Planning Commission approval. On October 28, 2008 the applicant submitted a revised site plan. As of this writing, the required Flood Plain Development Permit has not been obtained, the required Special Events Permit has not been obtained, and the required safety plan for pedestrians crossing Fifth Street has not been submitted. As such, staff recommends that the SDCL 11-6-19 Review to allow temporary structures on public property be continued to the November 6, 2008 Planning Commission meeting.

The property is located at 301 North Fifth Street north of Omaha, south of the Civic Center, east of Mount Rushmore Road and east of Fifth Street. The property is commonly known as Memorial Park. The property is currently zoned Flood Hazard District. The adjacent property to the north is currently zoned Civic Center District. The adjacent property to the south is currently zoned General Commercial District. The adjacent properties to the east and west are currently zoned Flood Hazard District.

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The applicant is proposing to use the property for a free Hills Alive music festival on July 18, and 19, 2009. The proposed festival will begin at 12:00 noon and conclude at 10:00 p.m. on both days. In addition to the requested dates for the festival, the applicant is proposing to use July 16 and 17, 2009 to set up and July 20, 2009 to remove the festival.

The applicant has indicated that the festival will include concerts by a number of musical groups as well as a number of food vendors and other entertainment. The submitted site plan shows a fun zone area which will consist of various outdoor activities. The site plan also shows portable restrooms and a first aid station. The applicant has indicated that the expected attendance for the festival over the two day time period is approximately 40,000.

This festival has been held for several years. The most recent SDCL 11-6-19 Review for the festival was approved on April 20, 2006 and authorized the festival from 2006 through 2008. The applicant is now asking that the festival be approved for 2009.

South Dakota Codified Law 11-6-19 states that "whenever any such Municipal Council shall have adopted the comprehensive plan of the municipality or any part thereof, then and thenceforth, 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 as defined in § 11- 6-26, until and unless the location and extent thereof shall have been submitted to and approved by the Planning Commission". The proposed location for the festival is located within the area covered by the Rapid City Comprehensive Plan requiring that the improvements be reviewed and approved by the Rapid City Planning Commission.

STAFF REVIEW: Staff has reviewed the proposed SDCL 11-6-19 Review and has noted the following issues:

Flood Plain: The proposed site for the music festival is located within the 100 Year Federally Designated Flood Plain and will require a Flood Plain Development Permit. After reviewing the site plan that was submitted with this application, staff noted that some of the proposed structures appear to be located within the Federally designated Flood Way. The approximate boundary for the Federally designated Flood Way in Memorial Park is the bike path to the north side of the pond at Memorial Park. All structures must be located to the north of the bike path. As such, prior to Planning Commission approval, the applicant must submit a revised site plan locating all structures to the north of the bike path and out o f the Federally Designated Flood Way for review and approval. In addition, prior to Planning Commission approval, the applicant must obtain a Flood Plain Development Permit.

(Updated October 29, 2008) As of this writing, the applicant has not obtained a Flood Plain Development Permit.

(Updated November 7, 2008) As of this writing, the applicant has not obtained a Flood Plain Development Permit.

(Updated November 24, 2008.) On November 19, 2008 a Flood Plain Development Permit

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for this application was denied. The applicant has indicated that an application for special exception to the Flood Standards will be submitted. The next deadline for an application for the special exception is December 26, 2008. If the applicant submits an application for special exception prior to the application deadline, the special exception will be considered at the January 22, 2009 Planning Commission meeting. As such, staff recommends that the SDCL 11-6-19 to allow temporary structures on public property be continued to the January 22, 2009 Planning Commission meeting to allow the applicant to address the flood plain development requirements.

(Updated January 13, 2009.) As of this writing, the applicant has not obtained a Special Exception as provided in Section 15.32.240, the Flood Area Construction Regulations of the Rapid City Municipal Code. As such, staff recommends that the SDCL 11-6-19 Review to allow temporary structures on public property be continued to the February 5, 2009 Planning Commission meeting.

(Updated January 23, 2009.) As of this writing, the applicant has not obtained a Special Exception as provided in Section 15.32.240, Flood Area Construction Regulations, of the Rapid City Municipal Code. The application was submitted on January 29, 2009 and will be considered by the Planning Commission on February 19, 2009 and the City Council on March 2, 2009. As such, staff recommends that the SDCL 11-6-19 Review to allow temporary structures on public property be continued to the March 5, 2009 Planning Commission meeting.

(Updated February 20, 2009) On February 19, 2009 the Rapid City Planning Commission recommended that the Special Exception to the Flood Area Construction Regulations be approved. The Special Exception will be considered by the City Council on March 2, 2009.

Recreational Vehicles: the site plan identifies several recreational vehicles parked on the grass in Memorial Park. Staff has serious concerns about allowing the applicant to park vehicles on the grass in the park. The sustainability of the park is a great concern to the City of Rapid City and measures must be taken to ensure that the park will be protected for the enjoyment of all of the citizens of the area. As such, prior to Planning Commission approval, the applicant must submit a revised site plan locating all recreational vehicles on paved surfaces and off of the grass.

(Updated October 29, 2008) On October 27, 2008 staff met with the applicant. During that meeting it was determined that the Recreational Vehicles will be allowed on the grass during the 2009 event. However, staff from the Parks and Recreation Department will be monitoring any damage caused by the Recreational Vehicles in order to make a determination of allowing Recreational Vehicles on the grass for future events.

(Updated November 7, 2008) On October 27, 2008 staff met with the applicant. During that meeting it was determined that the recreational vehicles will be allowed on the grass during the 2009 event. However, staff from the Parks and Recreation Department will be monitoring any damage caused by the recreational vehicles.

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Special Events Permit: The proposed event will be located in Memorial Park and will require that the applicant obtain a Special Events Permit from the City Parks and Recreation Department. As such, prior to Planning Commission approval, the applicant must obtain a Special Events Permit.

(Updated October 29, 2008) As of this writing the required Special Events Permit has not been obtained.

(Updated November 7, 2008) As of this writing the required Special Events Permit has not been obtained.

(Updated November 24, 2008) On November 24, 2008 Growth Management staff spoke with Parks and Recreation staff regarding the Special Events Permit for Hills Alive. The Parks and Recreation staff indicated that the applicant applied for a Special Events Permit on October 22, 2008. However, as of this writing, a copy of the approved permit has not been submitted. As such, staff recommends that the SDCL 11-6-19 Review to allow temporary structures on public property be continued to the January 22, 2009 Planning Commission meeting.

(Updated January 13, 2009.) On November 24, 2008, the Parks and Recreation Department approved a Special Events Permit for the proposed festival.

Fifth Street Crossing: The applicant submitted a letter of intent with this application identifying a goal of 40,000 visitors to the park for the proposed event. Significant discussion has recently occurred in front of the Planning Commission regarding pedestrian safety particularly at the 5th Street and New York Street location. The Rapid City Police Department Traffic Division staff has requested that a safety plan be submitted for the event. Prior to Planning Commission approval, staff recommends that the applicant submit a plan for safe pedestrian access to Memorial Park to the Growth Management Department for review and approval.

(Updated October 29, 2008) As of this writing, the required plan for safe pedestrian access to Memorial Park has not been submitted.

(Updated November 7, 2008) As of this writing, the required plan for safe pedestrian access to Memorial Park has not been submitted.

(Updated November 24, 2008.) On November 21, 2008 staff received the required traffic plan for the Hills Alive event. A copy has been linked to the report. The Rapid City Police Department has indicated that they will be working with the applicant to implement the safety plan.

Fencing: The letter of intent that was submitted with this application identifies the use of fences in the park. However, the site plan does not identify the location of the proposed fences. As such, prior to Planning Commission approval, the applicant must submit a revised site plan identifying the location of any fences to be located in the park. The applicant should be aware that no fences will be allowed in the Federally Designated Flood Way and that any

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fence being placed in the 100 Year Federally Designated Flood Plain will require a Flood Plain Development Permit.

(Updated October 29, 2008) On October 28, 2008 the applicant submitted a revised site plan identifying the location of all fences to be located in the park. The site plan identifies the fences to be located outside of the Federally Designated Flood Way. However, as of this writing, the applicant has not obtained a Flood Plain Development Permit.

(Updated November 7, 2008) On October 28, 2008 the applicant submitted a revised site plan identifying the location of all fences to be located in the park. The site plan identifies the fences to be located outside of the Federally Designated Flood Way. However, as of this writing, the applicant has not obtained a Flood Plain Development Permit for the fencing proposed to be located in the 100 year flood plain.

One Year Permit: The City has received numerous complaints about noise and the impact of the park caused by this event. Staff recommends that this request be approved for one year only to allow additional monitoring of the noise issues as well as the safety concerns. It should also be noted that the Parks and Recreation Advisory Board is currently developing a Park Use Policy. That policy may affect the location and extent of future uses such as this request.

Building Permits: Staff noted a Temporary Use Permit must be obtained prior to initiation of the event. Staff also noted that all electrical wiring shall comply with all applicable Building and Electrical Codes.

Restroom facilities: The Building Official stated that 55 restrooms (including at least two handicapped accessible restrooms) are required to be provided for this event. As such, prior to Planning Commission approval, a revised site plan must be submitted for review and approval identifying the location of the 55 portable restrooms.

(Updated October 29, 2008) On October 28, the applicant submitted a revised site plan that identifies the required 55 restrooms.

(Updated November 7, 2008) On October 28, the applicant submitted a revised site plan that identifies the required 55 restrooms.

Signage: Staff noted that signs shall be on-premise signs only as per Section 15.28 of the Rapid City Municipal Code and a sign permit shall be obtained prior to installation of any signage. In addition, the location of any signage must be identified on the site plan. Staff also noted that no banners shall be allowed within the public right-of-way or on fences.

Fire Code: The Fire Department has stated that the petitioner must submit complete plans for all proposed tents at the time a Temporary Use Permit application is submitted. Additionally, a tent checklist form and a tent inspection must be completed prior to initiation of the event and adequate access for Fire Department apparatus must be continually maintained for the duration of the special event.

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Evacuation Plan: The standards for review for a SDCL 11-6-19 Review located within the Flood Hazard Zoning District (Section 17.28.040 (D) of the Rapid City Municipal Code) require that an evacuation plan be developed and posted when structures are proposed within the Flood Hazard Zoning District. Staff is recommending that prior to issuance of a Temporary Use Permit for the festival, a copy of this plan be submitted for review and approval.

Ongoing Security/Maintenance: The safety of the special event participants and the maintenance of the public park are a significant concern. Staff is recommending that the applicant provide security for the duration of the special event and that special event staff be responsible to ensure that the park grounds will be kept free of trash and debris. The applicant has indicated that they will provide Rapid City licensed security personnel on site from 6:00 p.m. on the July 16, 2009 through 8:00 a.m. on July 20, 2009. In addition, because of concerns associated with the close proximity of Rapid Creek, staff is recommending that a weather radio be located on-site and monitored continually during the event.

Camping: The proposed event will be located within the 100 Year Federally Designated Flood Plain. The applicant should be aware that no camping is permitted within the 100 Year Federally Designated Flood Plain.

Noise Complaints: The City has received numerous complaints about this event in the past. As a result, the City will be closely monitoring this event to ensure that the noise is kept to a moderate level and that the festival concludes at the proposed time. This will allow the City to determine if this is an appropriate location for an event of this size.

(Updated October 29, 2008) On October 27, 2008 staff met with the applicant to discuss additional information about the event, during that meeting the applicant indicated that they would provide contact information for a person that would be present during the event. This will allow for better communication between the applicant and the City in case of any complaints.

(Updated November 7, 2008) On October 27, 2008 staff met with the applicant to discuss the staff recommendations. During that meeting the applicant indicated that they would provide contact information for a person that would be present during the event. This will allow for better communication between the applicant and the City in case of any complaints.

Staff recommends that the SDCL 11-6-19 Review to allow temporary structures on public property be continued to the December 4, 2008 Planning Commission meeting to allow the applicant to submit the additional required information.

(Updated November 24, 2008.) As of this writing, the Special Events permit and Flood Plain Development Permit have not been obtained. As such, staff recommends that the SDCL 11-6-19 Review be continued to the January 22, 2009 Planning Commission meeting.

(Updated January 13, 2009.) As of this writing, the applicant has not obtained a Special Exception as provided in Section 15.32.240, the Flood Area Construction Regulations of the

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Rapid City Municipal Code. As such, staff recommends that the SDCL 11-6-19 Review to allow temporary structures on public property be continued to the February 5, 2009 Planning Commission meeting.

(Updated January 23, 2009.) As of this writing, the applicant has not obtained a Special Exception as provided in Section 15.32.240, Flood Area Construction Regulations, of the Rapid City Municipal Code. As such, staff recommends that the SDCL 11-6-19 Review to allow temporary structures on public property be continued to the March 5, 2009 Planning Commission meeting to allow consideration of the Special Exception.

(Updated February 20, 2009.) The location and the extent of the proposed temporary structures are consistent with the adopted Comprehensive Plan and the current regulations. As such, staff will recommend that the SDCL 11-6-19 Review to allow temporary structures in a public park be approved, if the City Council approves the Special Exception to the Flood Area Construction Regulations.