

STAFF REPORT  
November 5, 2009

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**No. 09VR007 - Vacation of Right-of-way**

**ITEM 32**

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GENERAL INFORMATION:

APPLICANT	Jerry Horst for Horst Properties, LLC
AGENT	FMG, Inc.
PROPERTY OWNER	Horst Properties, LLC
REQUEST	<b>No. 09VR007 - Vacation of Right-of-way</b>
EXISTING LEGAL DESCRIPTION	20 foot wide section of Rand Road right-of-way adjacent to Lot B of Tract F of Deadwood Avenue Tract and Lot C of Fowler Subdivision, all located in the NE1/4 NW1/4 of Section 34, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately .176 Acres
LOCATION	That portion of Rand Road south of Commerce Road and east of Deadwood Avenue
EXISTING ZONING	General Commercial District - Light Industrial District
SURROUNDING ZONING	
North:	Light Industrial District
South:	General Commercial District - Light Industrial District
East:	Light Industrial District
West:	General Commercial District
PUBLIC UTILITIES	City sewer and water
DATE OF APPLICATION	10/9/2009
REVIEWED BY	Vicki L. Fisher / Ted Johnson

RECOMMENDATION:

Staff recommends that the Vacation of Right-of-way be approved with the following stipulations:

1. Prior to City Council approval, the applicant shall submit a signed utility easement retaining this portion of Rand Road as a "Public and Private Utility Easement"; and,
2. Approval of this Vacation of Right-of-way request by the Planning Commission shall authorize the vacation of the right-of-way pursuant to SDCL 11-6-22.

GENERAL COMMENTS:

The applicant has submitted a Vacation of Right-of-way request to vacate a 20 foot wide portion of the Rand Road right-of-way located adjacent to Lot B of Tract F of Deadwood Avenue Tract and Lot C of Fowler Subdivision. The applicant has also submitted a

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miscellaneous document identifying this 20 foot wide area of right-of-way retained as a public and private utility easement.

This portion of Rand Road is located north of Deadwood Avenue and south of Commerce Road. Currently, gas, cable, telephone and electric lines as well as water and sewer service lines are located within this area of the right-of-way.

**STAFF REVIEW:**

Staff has reviewed the Vacation of Right-of-way request and has noted the following considerations:

**Utilities:** As noted above, gas, cable, telephone and electric lines as well as water and sewer service lines are currently located within this area of the right-of-way. As such, the applicant is proposing to retain this area of the right-of-way as a public and private utility easement. All of the utility companies have indicated concurrence with the proposed Vacation of Right-of-way request contingent upon the recording of the proposed public and private utility easement.

Staff recommends that prior to City Council approval, the applicant submit a signed utility easement retaining this portion of Rand Road as a "Public and Private Utility Easement". Once the Vacation of Right-of-way resolution is filed at the Register of Deed's Office, staff will submit the public and private utility easement to the Register of Deed's Office for recording.

**Street Classification:** Rand Road is classified as an industrial street requiring a minimum 59 foot wide right-of-way. Currently, Rand Road is located in a 120 foot wide right-of-way. Vacating the western 20 feet as proposed will retain a 100 foot wide right-of-way which exceeds the minimum required right-of-way width for an industrial street. In addition, the street is not identified on the Major Street Plan. As such, staff recommends that the Vacation of Right-of-way be approved.

**SDCL 11-6-22:** South Dakota Codified Law 11-6-22 states that the acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment, change of use, acquisition of land for any street or other public way, ground place, property, or structure, shall not be 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. Since this Vacation of Right-of-way request is being reviewed by the Planning Commission, it can also serve as the tool to authorize the vacation of the right-of-way pursuant to SDCL 11-6-22.

As noted above, 100 feet of right-of-way is being retained which exceeds the minimum requirement of 59 feet for an industrial street. In addition, the street is not identified on the Major Street Plan. The applicant is also retaining this portion of the right-of-way as a public and private utility easement. As such, staff recommends that the Planning Commission authorize the Vacation of Right-of-way request pursuant to SDCL 11-6-22.

Staff recommends that the Vacation of Right-of-way request be approved with the above stipulations of approval.