

STAFF REPORT  
January 21, 2010

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**No. 09VR010 - Vacation of Right-of-way**

**ITEM 32**

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GENERAL INFORMATION:

APPLICANT	South Dakota Game Fish and Parks
AGENT	David Muck for Ferber Engineering Co.
PROPERTY OWNER	Synagogue of the Hills
REQUEST	<b>No. 09VR010 - Vacation of Right-of-way</b>
EXISTING LEGAL DESCRIPTION	North 40th Street Right-of-Way located in Section 33, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota more particularly described as: Commencing at a found plastic cap marked Renner #2652 at the Northwest corner of Lot 4 of Block 1 of Tract G of Meadowwood along the southern right-of-way line of Dean Lane, the true point of beginning; THENCE, S01°57'54"W, a distance of 149.60' feet along the east right-of-way line to a found cap marked Polenz #4208; THENCE, S01°57'54"W, a distance of 130.02 feet along the east right-of-way line; THENCE, N88°03'10"E, a distance of 60.06 feet; THENCE, N01°58'10"E, a distance of 279.68 feet along the west right-of-way line to a found cap marked FMG #4225; THENCE, N00°22'58"E, a distance of 89.86 feet along the west right-of-way line to a found cap marked Renner #2652; THENCE, S88°00'09"E, a distance of 60.09 feet along the north right-of-way line; THENCE, S02°03'12"W, a distance of 60.58 feet to the true point of beginning
PARCEL ACREAGE	Approximately 0.47 acres
LOCATION	At the northern terminus of North 40th Street and west of Sturgis Road
EXISTING ZONING	Public District - Low Density Residential District
SURROUNDING ZONING	
North:	Public District - Low Density Residential District
South:	Low Density Residential District
East:	Public District
West:	Public District
PUBLIC UTILITIES	City sewer and water
DATE OF APPLICATION	12/23/2009

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REVIEWED BY

Vicki L. Fisher / Karley Halsted

RECOMMENDATION:

Staff recommends that the Vacation of Right-of-way be continued to the February 4, 2010 Planning Commission meeting.

GENERAL COMMENTS:

The applicant has submitted a Vacation of Right-of-way request to vacate the northern 340 feet of N. 40<sup>th</sup> Street. The applicant has indicated that a miscellaneous document identifying this area of right-of-way being retained a public utility easement will be submitted for review and approval. In addition, the applicant has submitted a SDCL 11-6-19 Review (File #09SR125) to construct a South Dakota Game Fish and Parks regional complex with offices, a museum and classrooms, a shop, storage units and an outdoor campus. The outdoor campus includes walking trails, picnic shelters, a fire pit, outdoor classroom(s), a council ring and water features, including a water fall.

The applicant also has submitted a Vacation of Right-of-way request (File #09VR009) to vacate a portion of the 60 foot right-of-way known as Dean Lane located adjacent to Lot 2, NWE Subdivision. In addition, the applicant has submitted a Vacation of a Sanitary Sewer Easement (File #09VE018) and a SDCL 11-6-19 Review application (File #09SR117) to allow construction of Dean Lane and to extend public utilities through the South Dakota Game Fish and Parks property.

The area of the N. 40<sup>th</sup> Street right-of-way to be vacated is located south of Dean Lane and north of Timothy Street. Currently, gas and communication cable lines as well as City water and sewer mains are located within this area of the right-of-way. In addition, a driveway has been constructed in the southern portion of the right-of-way to provide access to an adjacent property located west of the right-of-way currently owned by the Synagogue of the Hills.

STAFF REVIEW:

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

Utilities: As noted above, gas and communication cable lines as well as City water and sewer mains are located within this area of the right-of-way. As such, the applicant is proposing to retain the right-of-way as a public 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 utility easement. In addition, the two abutting property owners, Synagogue of the Hills and South Dakota Game Fish and Parks, have signed the petition to vacate the right-of-way.

Staff recommends that prior to City Council approval, the applicant submit a signed utility easement retaining this portion of N. 40<sup>th</sup> Street as a "Public Utility Easement". Once the Vacation of Right-of-way resolution is filed at the Register of Deed's Office, staff will submit the public utility easement document to the Register of Deed's Office for recording.

Turnaround: The applicant has submitted a drawing showing a cul-de-sac with a landscape island in the middle of the cul-de-sac being constructed at the northern terminus of N. 40<sup>th</sup>

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Street. A portion of the cul-de-sac is shown to be located on the adjacent property owned by the Synagogue of the Hills. The Fire Department has preliminarily reviewed the drawing and indicated that it meets with their approval. However, to date, construction plans for the turnaround have not been submitted for review and approval. In addition, an access easement or right-of-way must be secured on the adjacent property for that portion of the turnaround located outside of the right-of-way.

Staff recommends that the SDCL 11-6-19 Review be continued to allow the applicant to submit signed and sealed construction plans for the turnaround and to secure that portion of the turnaround to be located outside of the right-of-way within an access easement or right-of-way.

Permits: The property is located within the 100 year federally designated floodplain. As such, prior to Planning Commission approval, a Floodplain Development Permit must be obtained to allow the construction of the turnaround. In addition, prior to the start of construction, a Permit to Work in the Right-of-way must be obtained from the City.

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, the area of right-of-way to be vacated is being retained a public utility easement. In addition, the street is not identified on the Major Street Plan. 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 SDCL 11-6-19 Review be continued to allow the applicant to address the issues as identified above.