

STAFF REPORT  
April 28 2009

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**No. 09VE004 - Vacation of a Minor Drainage and Utility Easement      ITEM**

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GENERAL INFORMATION:

APPLICANT	Rushmore Construction, Inc.
AGENT	Rich Marsh for CETEC Engineering
PROPERTY OWNER	Nesland Construction Company, LLC
REQUEST	<b>No. 09VE004 - Vacation of a Minor Drainage and Utility Easement</b>
EXISTING LEGAL DESCRIPTION	Lot 9 of Block 22 of Red Rock Estates, Section 29, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 0.33 acres
LOCATION	6416 Bandon Lane
EXISTING ZONING	Low Density Residential District
SURROUNDING ZONING	
North:	Low Density Residential District
South:	Low Density Residential District
East:	Low Density Residential District
West:	Low Density Residential District
PUBLIC UTILITIES	City sewer and water
DATE OF APPLICATION	3/13/2009
REVIEWED BY	Vicki L. Fisher / Mary Bosworth

RECOMMENDATION:

Staff recommends that the Vacation of a Minor Drainage and Utility Easement be denied.

GENERAL COMMENTS:

The applicant has submitted a Vacation of Minor Drainage and Utility Easement request to vacate the existing 8 foot wide minor drainage and utility easement located along the east lot line of the property. The applicant has submitted a site plan showing that a retaining wall has been constructed in a portion of the easement located along the east lot line of the property.

On February 3, 2006, the City approved a Final Plat (File #06PL008) creating 56 lots as a part of the Red Rock Estates development. The Final Plat included this property.

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The property is located approximately 100 feet north of the intersection of Bandon Lane and Donegal Way on the east side of Bandon Lane. A single family residence is currently being constructed on the property. In addition, as noted above, a retaining wall has been constructed along the east lot line of the property within a portion of the minor drainage and utility easement located along the lot line. However, to avoid any prejudice, staff has reviewed the request as if the construction had not been constructed prior to obtaining the required approvals.

**STAFF REVIEW:**

Staff has reviewed the Vacation of Minor Drainage and Utility Easement request and has noted the following considerations:

**Preservation of Utility Easements:** A building permit was issued for the single family residence currently being constructed on the property. The site plan submitted with the building permit for the single family residence did not show a retaining wall on the property nor was a separate building permit submitted for the retaining wall as required. The applicant has, subsequently, constructed the retaining wall without the required building permit and within the minor drainage and utility easement located along the interior lot line of the property.

Utility and minor drainage easements are required along all property lines and are held in trust for the public to insure that areas are available to accommodate future development. As a matter of policy and practice, easements are secured to insure that a sufficient area on each lot exists to carry drainage flows from the property to the adjacent street section or drainage way. There is significant elevation differential between this lot and the adjacent properties. To date, the applicant has not demonstrated that the existing drainage easements can accommodate the drainage from this site if this easement is vacated as proposed. As such, staff recommends denial of the vacation of the Minor Drainage and Utility Easement request.

**Drainage:** As previously noted, a retaining wall has been constructed along the east lot line of the property. In addition, a retaining wall is currently constructed on the adjacent property with an approximate ten foot wide separation between the two walls. The applicant has submitted a drainage report identifying that drainage “should be allowed to sheet flow between the walls so as not to concentrate the flow towards the wall(s)”. In addition, the report identifies that the drainage from this area will flow north. However, the report does not address whether the existing minor drainage and utility easement located along the north lot line can accommodate the flows. In addition, future development on the adjacent properties may require that the minor drainage and utility easements be retained in order to carry the flows as designed when the property was originally platted. Since the drainage report does not document that adequate easements are being provided to accommodate the drainage, staff recommends denial of the vacation of the Minor Drainage and Utility Easement request.

**Utilities:** The affected utility companies have indicated concurrence with the request to vacate the utility easement.

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As noted above, that portion of the easement secured as a minor drainage easement may be needed to accommodate drainage flows as the adjacent properties are developed. As such, staff recommends that the Vacation of the Minor Drainage and Utility Easement request be denied.