

STAFF REPORT  
April 28, 2009

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**No. 09VE005 - Vacation of 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
REQUEST	<b>No. 09VE005 - Vacation of Minor Drainage and Utility Easement</b>
EXISTING LEGAL DESCRIPTION	Lot 13 of Block 22 of Red Rock Estates of Section 29, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 0.37
LOCATION	6415 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 Minor Drainage and Utility Easement be denied.

GENERAL COMMENTS:

The applicant has submitted a Vacation of Minor Drainage and Utility Easement request to vacate a portion the existing 8 foot wide minor drainage and utility easement located along the south and west lot lines 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 south and west lot lines 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.

The property is located approximately 100 feet north of the intersection of Bandon Lane and

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Donegal Way on the west side of Bandon Lane. A single family residence is currently being constructed on the property. In addition, a retaining wall has been constructed within the minor drainage and utility easement located along the south and west lot lines of the property. 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 for the single family residence did not show a retaining wall on the property. A building permit to construct a retaining wall along the south and west lot lines of the property was later submitted and denied noting that the retaining wall would encroach into the minor drainage and utility easement located along these lot lines. 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 lines.

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. As this area continues to develop, the minor utility and drainage easements located along the interior lot line of the lot(s) may be needed to carry drainage flows from the lot(s) to the street rights-of-way as designed when the property was originally platted. As such, staff recommends denial of the vacation of the Minor Drainage and Utility Easement request.

Drainage: The applicant submitted a drainage report identifying that the estimated flows to the 16 foot wide drainage easement located along the south lot line of the property and the adjacent property could be conveyed within the 8 foot wide easement located on the adjacent property. However, the adjacent property should not be required to provide the drainage flows for both lots. In addition, future improvements on the adjacent property may require that the entire 16 foot wide easement be retained to accommodate drainage flows from both lots. As such, staff recommends that the Vacation of the Minor Drainage and Utility Easement request be denied.

Retaining Wall: The applicant has submitted a site plan showing a portion of the retaining wall located on the adjacent property. The applicant should be aware that the retaining wall must be removed from the adjacent property or the adjacent property owner must concur with the construction of the retaining wall on their property. In addition, the minor drainage and utility easement located on the adjacent property must be vacated to allow the retaining wall.

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 is needed to accommodate drainage flows for existing and future development on this property and the adjacent properties. As such, staff recommends that the Vacation of the Minor Drainage and Utility Easement request be denied.