



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

OFFICE OF THE CITY ATTORNEY


300 Sixth Street

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MEMORANDUM

TO: City Council

FROM: Allison Marsland, Assistant City Attorney 

DATE: April 25, 2012

RE: Sidewalk Request – Stoney Creek Townhomes

JCP Land Company, Inc., developed residential lots within the City. At the time the land was developed, the City's subdivision regulations required that the developer install sidewalks. The developer was required to post surety to secure the completion of the public improvements, including the sidewalks. After the subdivision was approved, the City amended the sidewalk ordinance and developers are no longer required to install a majority of the sidewalks. The responsibility for sidewalks on residential lots has been transferred to the homebuilders. In reality that is what normally took place and the ordinance amendment codified that reality. The City now confirms that sidewalks are installed prior to issuing a certificate of occupancy for the residential structure on the lot.

In this case, the developer has completed all of the public improvements, including most of the sidewalks required under 16.16.090 of the Rapid City Municipal Code. In 2008 the City and developer entered into an agreement, whereby the City accepted the public improvements, but required the developer to continue posting surety to secure completion of the rest of the sidewalks.

The developer is requesting the Council terminate the existing agreement, and that the responsibility for the installation of the remaining sidewalks on buildable lots *only* be shifted to the homebuilders as is currently done for new subdivisions.

JCP Land Company

March 28, 2012

City of Rapid City, Engineering Services
Attn: Brandon Quiett

300 6th Street
Rapid City, SD 57701

Subject: Stoney Creek Townhomes Sidewalk Request
Knowledge Drive, Princeton Ct.

Mr. Quiett:

In 2009, JCP Land Company entered into an agreement with the City of Rapid City and posted surety for sidewalks for its multi family townhomes lots in southwest Rapid City. Since that time, the city has amended their sidewalk policy to allow for installation of public sidewalks as part of the building permit for the home with construction of sidewalks to be completed prior to issuance of a Certificate of Occupancy.

We are requesting the City Council terminate the existing agreement and shift the responsibility of the remaining sidewalks to the homebuilders, as is the current policy.

If you have any questions, please feel free to contact me at (605)391-0420.

Sincerely,

Chad Lewis



JCP Land Company Inc.

• **SIDEWALK IN**
X **HC RAMP IN**
← **SIDEWALK ON LOTLINE**



Legend

Roads

- Not classified
- Interstate
- US Highway
- SD Highway
- County Highway
- Main Road
- Minor Arterial
- Collector
- Ramp
- Paved Road
- Unpaved Road
- FS Unpaved Road
- Driveway
- Paved Alley
- Unpaved Alley
- Unimproved Road
- Trail
- Not yet coded

Address Points

Township/Section Lines

- TOWNSHIP
- SECTION

Tax Parcels

Lot Lines

- <all other values>
- Lot Line
- Parcel Line

County Line

City Boundaries

- RAPID CITY
- BOX ELDER
- NEW UNDERWOOD



Scale: 1: 2,312

385.3 0 192.66 385.3 Feet

DISCLAIMER: This map is provided 'as is' without warranty of any representation to accuracy, timeliness, or completeness. The burden of determining accuracy, completeness, timeliness, merchantability, and fitness for or the appropriateness for use rests solely on the user. Rapid City and Pennington County make no warranties, express or implied, as to the use of the map. There are no implied warranties of merchantability or fitness for a particular purpose. The user acknowledges and accepts the limitations of the map, including the fact that the data used to create the map is dynamic and is in the constant state of maintenance, correction, and update. This documents does not represent a legal survey of the land. There are no restrictions on the distribution of printed Rapid City/Pennington County maps, other than the City of Rapid City copyright/credit notice must be legible on the print. The user agrees to recognize and honor in perpetuity the copyrights and other proprietary claims for the map(s) established or produced by the City of Rapid City or the vendors' furnishing said items to the City of Rapid City.

Map Notes:
• **SIDEWALK NOT IN**
X **NO HC RAMP IN**
← **NOT IN ON THIS LOT LINE**

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND JCP LAND COMPANY, INC.
TO ALLOW FOR ACCEPTANCE OF PUBLIC
IMPROVEMENTS BEFORE THE COMPLETION OF SIDEWALKS FOR
STONEY CREEK TOWNHOMES SUBDIVISION.**

This agreement is entered into on this day ____ of _____ 2008, by and between the City of Rapid City, a municipal corporation located at 300 Sixth Street, Rapid City, SD 57702, herein after referred to as the "City" and JCP LAND COMPANY, INC. of 1240 JACKSON BLVD., RAPID CITY, SD, 57702, herein after referred to as the "Developer."

WHEREAS, the Developer owns certain residential lots within STONEY CREEK TOWNHOMES Subdivision in Rapid City; and

WHEREAS, prior to approval of the final plat for STONEY CREEK TOWNHOMES Subdivision the Developer was required to post surety to guarantee the completion of various public improvements within the subdivision; and

WHEREAS, this surety includes the cost for completing sidewalks within the subdivision; and

WHEREAS, the Developer has completed all of the improvements required under the City's Subdivision Regulations with the exception of various sidewalk segments fronting non-contiguous residential lots; and

WHEREAS, the Developer has requested that it be allowed to construct the remaining sidewalks in conjunction with the construction of the homes on the individual lots; and

WHEREAS, this manner of constructing sidewalks in residential areas is consistent with current development practices and is also consistent with policies and ordinances that have been recently adopted by the City; and

WHEREAS, this subdivision was approved prior to the adoption of the new policy; and

WHEREAS, the Developer has requested that the City accept the completed improvements and start the running of the warranty period once the improvements have been officially accepted; and

WHEREAS, the City is willing to accommodate the Developer's request if it can insure that the sidewalks are completed.

NOW THEREFORE, the parties agree as follows:

1. The Developer will provide an updated estimate of the cost to construct all required sidewalks that remain to be built within the subdivision. The Developer will

then provide the City with a new surety or may reduce the original surety in an amount sufficient to cover the cost of installing the sidewalks as shown in the updated estimate. The surety shall be in a form acceptable to and approved by the City Attorney's Office.

2. In exchange for the Developer providing the updated estimate and a surety sufficient to cover the cost of completing the sidewalks within the subdivision, the City will conduct a final inspection of all improvements, other than the sidewalks, within STONEY CREEK TOWNHOMES Subdivision required under the City's Subdivision Regulations. Upon the improvements passing the final inspection and the Developer providing the City with sufficient surety to cover the cost of any punch list items and the sidewalks per Paragraph 1 of this agreement, the City will issue a letter to the Developer officially accepting the public improvements. Upon issuance of the letter of acceptance by the City the two year warranty period will begin to run.

3. The Developer agrees that all sidewalks will be installed within two years of the approval of this agreement. If any sidewalks in STONEY CREEK TOWNHOMES Subdivision are not completed by this time the City has the right to draw on the surety and construct the sidewalk. If the amount of the surety is insufficient to fully cover the cost of constructing the sidewalks, the Developer agrees to pay to the City the difference between the amount of the surety and the actual cost of constructing the sidewalk.

4. The following lots are covered by this agreement:

Lots 4, 5, 6, 7, and 8 (North lot line only) of Block 5; Lots 1 (North lot line only), 2, and 3 of Block 7, all in Stoney Creek Subdivision

5. The Developer acknowledges that the City's agreement to accept the public improvements for the subdivision and start the running of the warranty period prior to the completion of the sidewalks required under the City's Subdivision Regulations is sufficient consideration for the promises made herein.

6. The City may undertake any legal or equitable action available to enforce the provisions of this agreement in addition to any remedy provided herein. In the event the City is required to undertake any action to enforce the terms of this agreement or its subdivision regulations in connection with this agreement, the undersigned, heirs, assigns or successors in interest agree the City may recover from the Developer its reasonable expenses, including attorney's fees incurred with respect to such action.

7. This document represents the entire agreement of the parties. No other writing is a part of this agreement. All other prior representations, writings, oral statements or negotiations have been merged into this document and are either included herein or intentionally excluded.

8. The parties' rights and obligations under this agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this agreement shall be venued and litigated in the Circuit Court for the

Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

DATED this _____ day of _____, 2008.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

JCP LAND COMPANY, INC.

Paula Lewis
By: *Paula Lewis*
Its: *Owner*

STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF PENNINGTON)

On this ___ day of _____, 2008, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[SEAL]

Notary Public, State of South Dakota
My Commission Expires: _____