



PW082812-17

CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701

Public Works Department

Engineering Services Division

300 Sixth Street

Telephone: (605) 394-4154 FAX: (605) 355-3083

Web: www.rcgov.org

TO: Public Works Committee

FROM: Nicole Lecy, Engineering Project Engineer

DATE: 8/22/2012

RE: Seeking Authorization for the Mayor and Finance Officer to sign a Waiver of Right to Protest a future assessment for the installation of sidewalk along East Omaha Street and LaCrosse Street, per City Ordinance 12.08.060

617 E Omaha Street

Lots 1-6, inclusive of the Starner Tract in Government Lot 2 of Section 6, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 3, Page 253, and all of the Starner Tract in Government Lot 2 of Section 6, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 3, Page 4; Excepting therefrom Lots 1 through 6 of said Starner Tract shown on the plat filed in Plat Book 3, Page 253 and also excepting therefrom Lot H-1 of said Starner Tract shown on the plat filed in Highway Plat Book 2, Page 100.

A building permit application was received at Building Services for an interior remodel of an existing commercial building located at 617 E Omaha Street. Currently, there is no sidewalk along either East Omaha Street or LaCrosse Street, as they front the property. As the building permit is for an expansion of less than 20 percent, City Ordinance does not require the installation of sidewalks at this time; however per City Ordinance 12.08.060.A.5 the property owner is required to sign a Waiver of Right to Protest for a future assessment of the installation of sidewalk.

The City of Rapid City Code of Ordinances, 12.08.060 New and Existing Developments, section (A) states:



EQUAL HOUSING
OPPORTUNITY

EQUAL OPPORTUNITY EMPLOYER

August 22, 2012

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"The construction of a permanent sidewalk fronting or abutting all streets, highways and avenues shall be accomplished by the builder, owner or developer of all new or existing residential or commercial buildings within the city, except in the following circumstances:..."

Section (A.5) states:

"All property with existing development on the effective date of these regulations which is not in compliance with the provisions of these regulations shall be considered nonconforming and allowed to continue until such time as a building permit is granted to enlarge by 20% or more a structure or parking lot on the property or increase the occupant load by 20% or more. A waiver of right to protest shall be required prior to a building permit being granted to enlarge by less than 20% a structure or parking lot on the property or increase the occupant load by less than 20%."

Therefore, as stipulated by ordinance, Engineering Services is seeking authorization for the Mayor and Finance Officer to sign a Waiver of Right to Protest for a future assessment of the installation of sidewalk at 617 E. Omaha Street.



EQUAL OPPORTUNITY EMPLOYER

PREPARED BY: City's Attorney Office
 300 Sixth Street
 Rapid City, SD 57701
 (605) 394-4140

Wen
 7-23-12

AGREEMENT WAIVING RIGHT TO PROTEST
 (SDCL 9-45-26; 9-47-13; 9-48-18; 9-48-42)

THIS AGREEMENT IS MADE and entered into this 13 day of August, 2012, by and for the MERLIN M. FAUTH LIVING TRUST u/t/a DATED July 19, 2006, and the SHIRLEY I. FAUTH LIVING TRUST u/t/a DATED July 19, 2006, hereinafter called "Developers," and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter called the "City."

WHEREAS the Developers have submitted a building permit application; and

WHEREAS it is the intended purpose of the Developers to obtain an exception to waive the requirement to install sidewalk along East Omaha Street and LaCrosse Street; and

WHEREAS the City of Rapid City's regulations require installation of sidewalk, which in this instance would require the Developers to install sidewalk along East Omaha Street and LaCrosse Street as they abut Lots 1-6, inclusive of the Starner Tract in Government Lot 2 of Section 6, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 3, Page 4; excepting therefrom Lots 1 through 6 of said Starner Tract shown on the plat filed in Plat Book 3, Page 253 and also excepting therefrom Lot H-1 of said Starner Tract shown on the plat filed in Highway Plat Book 2, Page 100; and

WHEREAS it is the intent and purpose of both the Developers and the City to enter into an agreement whereby the Developers will consent to a future assessed project for the installation of sidewalk along East Omaha Street and LaCrosse Street as they abut the subject property in exchange for the City not requiring immediate installation of the improvements as required by Rapid City Municipal Code;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is hereby agreed as follows:

1. This agreement pertains to, and includes those properties which are designated and identified as follows:

Lots 1-6, inclusive of the Starner Tract in Government Lot 2 of Section 6, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, as shown on the plat filed in Plat Book 3, Page 4; excepting therefrom Lots 1 through 6 of said Starner Tract shown on the plat filed in Plat Book 3, Page 253 and also excepting therefrom Lot H-1 of said Starner Tract shown on the plat filed in Highway Plat Book 2, Page 100.

2. This agreement specifically references the installation of sidewalk along East Omaha Street and LaCrosse Street as they abut the subject property.

3. The Developers acknowledge the City has the power to make assessments for local improvements on property adjoining or benefited thereby, to collect same in the manner provided by law, and to fix, determine and collect penalties for nonpayment of any special assessments. The Developers agree that if at any time in the future the City determines it is necessary or desirable to install sidewalk along East Omaha Street and LaCrosse Street as they abut the subject property through an assessed project, Developers or their heirs, assigns, or successors in interest, waive any right to object to such an assessed project as allowed under state law in consideration for the final approval of the subdivision plat without the immediate installation of sidewalk. It is understood by the Developers that the City of Rapid City's primary consideration for the granting of the exception on the herein described property and forbearance from requiring Developers to immediately install sidewalk along East Omaha Street and LaCrosse Street is the Developers' covenant and promise to waive any right to object to the assessed project and their consent to the assessed project.

4. Developers further covenant and agree for themselves, their heirs, assigns, and successors in interest, that should they or any of their heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, the immediate installation of sidewalk along East Omaha Street and LaCrosse Street as they abut the subject property, which is required in the Rapid City Municipal Code, will be required within 90 days of the objection in order to comply with the Rapid City Municipal Code. Should the weather prevent immediate installation of these subdivision improvements, the City Council may accept a surety bond in an amount equal to the estimated cost of installation of the improvements, whereby the improvements will be made and utilities installed without cost to the City in the event of default of the Developers.

5. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of the Developers, and be considered as a covenant running with the above-described property. Furthermore, it is agreed that, in accepting title to the above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of this agreement recorded with the Pennington County Register of Deeds' Office pursuant to the provisions of South Dakota statutes.

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 owner of said property its reasonable expenses, including attorney's fees incurred with respect to such action.

7. If any section(s), or provision of this application is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this application if they can be given effect without the invalid section(s) or provisions.

8. This agreement shall be construed according to the laws of the State of South Dakota. No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

9. If the Developer is a corporation, it has the power to enter into this agreement and its officers signing for it have full power and authority to do so.

DATED this _____ day of _____, 2012.

CITY OF RAPID CITY

Sam Kooiker, Mayor

ATTEST:

Finance Officer

(SEAL)

State of South Dakota)
 ss.
County of Pennington)

On this the _____ day of _____, 2012, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)

MERLIN M. FAUTH LIVING TRUST

By: Merlin M. Fauth
Merlin M. Fauth, Co-Trustee

By: Shirley I. Fauth
Shirley I. Fauth, Co-Trustee

SHIRLEY I. LIVING TRUST

By: Merlin M. Fauth
Merlin M. Fauth, Co-Trustee

By: Shirley I. Fauth
Shirley I. Fauth, Co-Trustee

State of South Dakota)
 ss.
County of Pennington)

On this the 13 day of August, 2012, before me, the undersigned officer personally appeared Merlin M. Fauth and Shirley I. Fauth, who acknowledged themselves to be the Co-Trustees of the MERLIN M. FAUTH LIVING TRUST, and that as such Co-Trustees, being authorized so to do, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained.

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


Notary Public, South Dakota

My Commission Expires:

(SEAL)



My Commission Expires
September 9, 2017

State of South Dakota)
 ss.
County of Pennington)

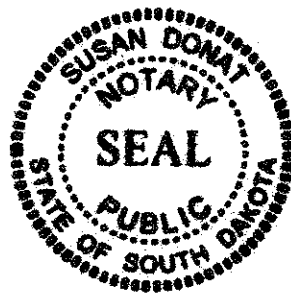
On this the 13 day of August, 2012, before me, the undersigned officer personally appeared Merlin M. Fauth and Shirley I. Fauth, who acknowledged themselves to be the Co-Trustees of the SHIRLEY I. FAUTH LIVING TRUST, and that as such Co-Trustees, being authorized so to do, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained.

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


Notary Public, South Dakota

My Commission Expires:

(SEAL)



My Commission Expires
September 9, 2017