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03/22/2005 10:45a 26.00
Pennington County, South Dakota
Donna M. Mayer Misc Real Est

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

CA
2/10/05

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 10th day of February, 2005, by and for Lazy P-6 Properties, LLC, hereinafter called "Developer," and the City of Rapid City, a municipal corporation of the State of South Dakota, hereinafter called the "City."

WHEREAS the Developer has proposed a plat to be located and developed according to the attached final subdivision plat and it is the intent of the Developer to meet the conditions of the subdivision regulations required for the proposed final plat of this property and approved by the Rapid City Council on N/A, 2005; and

WHEREAS it is the intended purpose of the Developer to obtain final approval for this subdivision plat; and

WHEREAS the City of Rapid City's subdivision regulations require installation of curb, gutter, sidewalk street light conduit, water, sewer and pavement which in this instance would require the Developer to install curb, gutter, sidewalk street light conduit, water, sewer and pavement along Elm Street as it abuts that portion of the NE1/4 NW1/4 NW1/4 GL 1, Section 19, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota; and

WHEREAS it is the intent and purpose of both the Developer and the City to enter into an agreement whereby the Developer will consent to a future assessed project for the installation of curb, gutter, sidewalk street light conduit, water, sewer and pavement along Elm Street as it abuts that portion of the NE1/4 NW1/4 NW1/4 GL 1, Section 19, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, as required by Rapid City Subdivision Regulations;

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:

That portion of the NE1/4 NW1/4 NW1/4 GL 1, Section 19, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota

2. This agreement specifically references the installation of curb, gutter, sidewalk street light conduit, water, sewer and pavement along Elm Street as it abuts that portion of the NE1/4 NW1/4 NW1/4 GL 1, Section 19, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota.

[Handwritten mark]

3. The Developer acknowledges 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 Developer agrees that if at any time in the future the City determines it is necessary or desirous to install curb, gutter, sidewalk street light conduit, water, sewer and pavement along Elm Street as it abuts that portion of the NE1/4 NW1/4 NW1/4 GL 1, Section 19, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, through an assessed project, Developer or its 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 curb, gutter, sidewalk street light conduit, water, sewer and pavement along Elm Street as it abuts that portion of the NE1/4 NW1/4 NW1/4 GL 1, Section 19, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota. It is understood by the Developer that the City of Rapid City's primary consideration for the granting of the approval for a subdivision plat on the herein described property and forbearance from requiring Developer to install curb, gutter, sidewalk street light conduit, water, sewer and pavement along Elm Street as it abuts that portion of the NE1/4 NW1/4 NW1/4 GL 1, Section 19, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, is the Developer's covenant and promise to waive any right to object to the assessed project and its consent to the assessed project.

4. Developer further covenants and agrees for itself, its heirs, assigns, and successors in interest, that should it or any of its heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, the immediate installation of curb, gutter, sidewalk street light conduit, water, sewer and pavement along Elm Street as it abuts that portion of the NE1/4 NW1/4 NW1/4 GL 1, Section 19, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, which is required in the City subdivision regulations will be required within 90 days of the objection in order to comply with the City of Rapid City's subdivision regulations. 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 Developer.

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 Developer, 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.

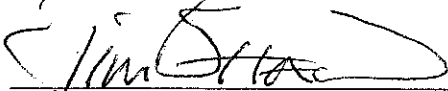
7. If any section(s), or provision of this application is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this application if they can be given effect without the invalid section(s) or provisions.

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 18 day of MARCH, 2005.

CITY OF RAPID CITY



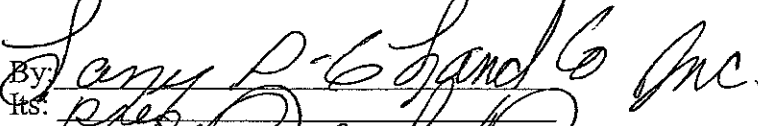

Jim Shaw, Mayor

ATTEST:


Finance Officer

(SEAL)

LAZY P-6 PROPERTIES, LLC

By: 
Its: 

State of South Dakota)
 ss.
County of Pennington)

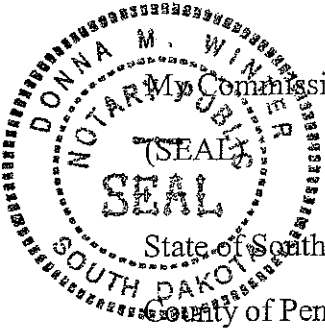
On this the 18th day of March, 2005, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing Agreement Consenting to Assessed Project 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.

Donna M. Winter
Notary Public, South Dakota

My Commission Expires: 4-19-2005



State of South Dakota)
ss.)
County of Pennington)

On this the 10th day of February, 2005, before me, the undersigned officer, personally appeared Orvil Davis who acknowledged himself to be the President, of LAZY P-6 PROPERTIES, LLC, and that he, as such President, being authorized so to do, executed the foregoing Agreement Waiving Right to Protest for the purposes therein contained by signing the name of the corporation by himself as President.

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

Wanda L. Schmalz
Notary Public, South Dakota

My Commission Expires: 12-23-10



Elkins Marcia

From: Centrline@aol.com
Sent: Monday, November 03, 2003 10:17 AM
To: mayor@rcgove.org; alan.hanks@ci.rapid-city.sd.us; tom.murphy@ci.rapid-city.sd.us; bill.waugh@ci.rapid-city.sd.us; ray.hadley@ci.rapid-city.sd.us; ron.kroeger@ci.rapid-city.sd.us; sam.kooiker@ci.rapid-city.sd.us; rick.kriebel@ci.rapid-city.sd.us; martha.rodriguez@rcgov.org; jean.french@rcgov.org; jeff.partridge@rcgov.org
Cc: princ@gwgc.net; marcia.elkins@rcgov.org
Subject: Re: Lazy P-6 WORP request

Subj: Lazy P-6 WORP request

RE: Lazy P-6 Agenda Item 93 - Variance request No. 03SV038

Dear Council Members:

Planning Commission at their October 9 meeting denied the above request. It's for that portion of proposed Elm St. adjoining the east boundary of the Lazy P-6 property. (700 ft +/-).

This item was then continued from the October 20 Council meeting. There was some discussion by Council about the adjoining owner's concerns. I believe those concerns were about drainage, not the WORP, although the owner has not spoken to P-6. He has spoken to staff.

Please reference the email sent to you on October 17. P-6 continues to request this WORP under these unusual circumstances.

1. Building a road in the middle of nowhere does not seem like an option.
2. Posting surety for an indefinite amount of time is equally inefficient and uneconomical.
3. A WORP gives the adjoining owner the assurance that when he's ready to build, P-6 will participate.
4. If this sets a precedent, perhaps it's just as well, since this circumstance will not appear very often, but would need a similar decision if it did.

This request is prompted by the unusual circumstance of Elm coupled with an adjoining owner who so far has not shown any tangible evidence of interest in this project. Lazy P-6 asks the Council to approve this request.

Lawrence M. Kostaneski, PE for
Lazy P-6 Land Co., Inc.

Fisher Vicki

From: Elkins Marcia
Sent: Friday, October 17, 2003 4:31 PM
To: Fisher Vicki
Subject: FW: Lazy P-6 WORP request

FYI. To file. m.

-----Original Message-----

From: Centrline@aol.com [mailto:Centrline@aol.com]
Sent: Friday, October 17, 2003 10:54 AM
To: mayor@ci.rapid-city.sd.us; alan.hanks@ci.rapid-city.sd.us; tom.murphy@ci.rapid-city.sd.us; bill.waugh@ci.rapid-city.sd.us; ray.hadley@ci.rapid-city.sd.us; ron.kroeger@ci.rapid-city.sd.us; sam.kooiker@ci.rapid-city.sd.us; rick.kriebel@ci.rapid-city.sd.us; martha.rodriquez@rcgov.org; jean.french@rcgov.org; jeff.partridge@rcgov.org
Cc: proinc@gwtc.net; marcia.elkins@rcgov.org
Subject: Lazy P-6 WORP request

RE: Lazy P-6 Agenda Item 74 - Variance request No. 03SV038

Dear Council Members:

Planning Commission at their recent meeting denied the above request. It's for that portion of Elm St. adjoining the east boundary of the Lazy P-6 property. (700 ft +/-).

This is similar to a previous request for a road along their north boundary, which P-6 has since withdrawn. In that case the adjoining owner submitted development plans that included the road, and both owners are now coordinating its construction.

This current request does not have the benefit of a collaborative adjoining owner, however. Two years ago Lazy P-6 and other owners signed an agreement to proceed with preliminary design of Elm. The adjoining owners never signed this agreement, which is a clear indication of their commitment.

It's been suggested that P-6 force an assessed project. This wouldn't work since the adjoining owner would simply need to add a short length to the project to have the majority. And the image of 700 feet of street in the middle of nowhere doesn't have much appeal in any case.

Posting surety - the conventional approach - ignores the uncertainty of having significant capital tied up for an unacceptable length of time. If the City could guarantee a construction start in say, 18 months, that might change the decision. But for obvious reasons the City can't give that assurance.

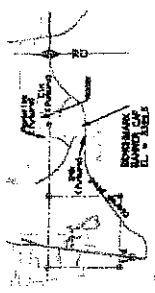
If economic development with minimum impact to the taxpayer is the ultimate goal, then it would seem this situation is suited for a WORP, even if unconventional. All the issues identified above vanish, leaving only a firm commitment from one of the future participants.

This request is prompted by the unusual circumstance of Elm coupled with an adjoining owner who so far has not shown any tangible evidence of interest in this project. Lazy P-6 asks the Council to approve this request.

Lawrence M. Kostaneski, PE for
Lazy P-6 Land Co., Inc.



NE 1/4 NW 1/4 NW 1/4 CL. 1
 Section 18 11N R6E
 10 Acres +/-
 LARS P&L LAND COMPANY, INC.
 P.O. BOX 100, CATWICH BLVD.
 RAINO CITY, SD 57001
 605.931.2017



- LEGEND**
- Proposed
 - Existing
 - Utility
 - Easement
 - Right of Way
 - Proposed
 - Existing
 - Utility
 - Easement
 - Right of Way

NOTES REGARDING 8TH STREET
 1. All proposed concrete road and utility structures are to be constructed in accordance with the intersection with Interstate Road, this project.

NOTES REGARDING ROW
 1. Local SAU collector and collector descriptions shown constructed to provide second egress to Catwvch from this project.
 2. Other per City Major Street Plan.

NOTES REGARDING UTILITIES
 1. Water and sewer mains shown extending north of 8th St to be extended with Parkway Dr and Hwy 78 water extension project, to nearest lift station structure.
 2. Internal water and sewer 8' minimum. (8' min. water is set as soon with approved design)

REFERENCES:
 SOUTH TRUCK ROUTE DRAINAGE BASIN PLAN
 8TH STREET DESIGN PLAN
 GREAT AVENUE PLANS (REV)

PRELIMINARY: NOT FOR CONSTRUCTION

LAYOUT PLAN

REVIEWED BY CITY ENGINEERING DIVISION	
City Engineer	_____/____/____
Assistant City Engineer	_____/____/____
Public Works Director	_____/____/____
Public Works Assistant Director	_____/____/____
Public Works Engineer	_____/____/____
Public Works Inspector	_____/____/____
Public Works Surveyor	_____/____/____
Public Works Planner	_____/____/____
Public Works Administrator	_____/____/____
Public Works Clerk	_____/____/____
Public Works Secretary	_____/____/____
Public Works Receptionist	_____/____/____

Contractor shall be responsible for obtaining all necessary permits from the City Engineering Division before starting any of the proposed public improvements.

Designs shall be in accordance with the City of Rapid City Engineering Division standards, unless otherwise noted.

