



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

Growth Management Department

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MEMORANDUM

TO: Rapid City Council

FROM: Michael Maxwell, Planner I *MM*

DATE: November 8, 2005

RE: Authorization for Mayor and Finance Officer to sign a waiver of right to protest a future assessment for street improvements.

Legal Description: Lot 1, Block 5, Farrar Business Park, and a portion of the NE1/4, Se1/4, Section 16, all located in the NE1/4, SE1/4, Section 16, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota.

A Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, sidewalk and sewer and reduce the surface width along Deadwood Avenue as it abuts Lot 1, Block 5, Farrar Business Park, and a portion of the NE1/4, SE1/4, Section 16, all located in the NE1/4, SE1/4, Section 16, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota. A stipulation of approval of the Variance to the Subdivision Regulations requires that the applicant sign a waiver of right to protest a future assessment for the installation of curb, gutter, sidewalk and sewer and reduce the surface width along Deadwood Avenue as they abut the subject property. The document also requires the signature of the Mayor and the Finance Officer.

Staff Recommendation: Authorize the Mayor and Finance Officer to sign the waiver of right to protest a future assessment for the installation of curb, gutter, sidewalk and sewer and reduce the surface width along Deadwood Avenue as they abut the above legally described property.

(File #05SV071)



EQUAL HOUSING
OPPORTUNITY

EQUAL OPPORTUNITY EMPLOYER

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

JPL
11-3-05

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 8TH day of NOVEMBER, 2005, by and for FARRAR REAL ESTATE, 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 submitted a proposed subdivision plat; 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, and sewer, which in this instance would require the Developer to install curb, gutter, sidewalk, and sewer and increase the street surface width along Deadwood Avenue as it abuts Lot 1, Block 5, Farrar Business Park, and a portion of the NE1/4 SE1/4, Section 16, all located in the NE1/4 SE1/4, Section 16, T2N, R7E, 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, and sewer and to increase the street surface width along Deadwood Avenue as it abuts Lot 1, Block 5, Farrar Business Park, and a portion of the NE1/4 SE1/4, Section 16, all located in the NE1/4 SE1/4, Section 16, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota., in exchange for the City not requiring immediate installation of the improvements 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:

Lot 1, Block 5, Farrar Business Park, and a portion of the NE1/4 SE1/4, Section 16, all located in the NE1/4 SE1/4, Section 16, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota.

2. This agreement specifically references the installation of curb, gutter, sidewalk, and sewer and the street surface width along Deadwood Avenue as it abuts Lot 1, Block 5, Farrar Business Park, and a portion of the NE1/4 SE1/4, Section 16, all located in the NE1/4 SE1/4, Section 16, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota.

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 desirable to install curb, gutter, sidewalk, and sewer and to increase the street surface width along Deadwood Avenue as it abuts Lot 1, Block 5, Farrar Business Park, and a portion of the NE1/4 SE1/4, Section 16, all located in the NE1/4 SE1/4, Section 16, T2N, R7E, 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, and sewer and to increase the street surface width along Deadwood Avenue as it abuts Lot 1, Block 5, Farrar Business Park, and a portion of the NE1/4 SE1/4, Section 16, all located in the NE1/4 SE1/4, Section 16, T2N, R7E, 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 immediately install curb, gutter, sidewalk, and sewer and increase the street surface width along Deadwood Avenue as it abuts Lot 1, Block 5, Farrar Business Park, and a portion of the NE1/4 SE1/4, Section 16, all located in the NE1/4 SE1/4, Section 16, T2N, R7E, 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, and sewer and increase the street surface width along Deadwood Avenue as it abuts Lot 1, Block 5, Farrar Business Park, and a portion of the NE1/4 SE1/4, Section 16, all located in the NE1/4 SE1/4, Section 16, T2N, R7E, 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.

