Dear Council,

Please find attached the memo I prepared in response to Mr. Shafai’s statement that there were other items on the May 6th agenda exactly like his which were being approved. Since the memo was drafted, Dream Design has provided a written response and there have been several meetings to discuss this topic. In order to avoid confusion, read my memo first, then read the remainder of this message. The first section in italics is Dream Design’s response. The balance of the message are my observations based on Dream Design’s response and some of the additional projects Dream Design referenced in our meetings. In conclusion, I outline your options. I am also sending this to Mr. Shafai and Mr. Treloar and will have them linked to the Council agenda.

DREAM DESIGN RESPONSE:

Joel,

Per our conversation I am forwarding the details of the oversize request. The request was made to recover the oversize costs associated with installing oversized regional and offsite sewer infrastructure that needed to serve near 170 acres owned by several different entities. The request was simplified to one half the cost of the offsite and adjacent sewer that was installed in Creek Drive. We had suggested several ways for the city to recover the costs, similar to other projects and as dictated by city ordinance, such as per acre fees for the regional benefits, linear footage connection fees for adjoining platted property, etc, but ultimately left the details of cost recovery to City Staff.

I also had a few comments regarding information found in the memo:

1. The oversize request was not limited to the difference between 8” and 10” sanitary sewer main, the request was made for the fair share of costs associated with the large diameter pipe, offsite installation and regional benefit created by the installation of the sanitary sewer main consistent with City ordinance. In addition, Yasmeen Dream(developer) had also submitted a variance to not install the Creek Drive and reroute the sewer to better serve its property and still serve all the neighboring properties which was denied by City Staff. The sewer was instead required to be installed in Creek Drive to serve already platted properties at a significant cost to the developer. The developer always agreed that the sewer installed within the subdivision was their responsibility and that only asked to be treated fairly and consistent with City Code.

2. The design was done consistent with the IDCM which requires that the developer evaluate regional flows. The report identified that a 10” sewer main was required for the basin which is much larger than the project and includes several properties not owned by the developer. Yasmeen Dream consistently evaluates the current and future needs of the community, per the IDCM as required by city ordinance, when developing projects and did not need to be asked to install the sewer to the end of its property where it provides service to its neighboring properties.

3. This project is an infill project and not a “leap frog” development. The city limits extend a minimum of 2 miles in every direction. Further the property was listed at $2.50 a square foot – significantly higher than property generally associated with the outskirts of city limits. The city can and has funded utility projects that stretch or
even run outside of city limits. In fact the extra sewer costs further reinforce the extra costs associated with developing infill property.

4. The area/properties benefiting breakdown is misleading. The Valley Park request serves 120 acres outside its boundaries whereas the Black Hills Power request only serves 25 acres. The 120 acres has the potential to be subdivided into many more than 15 properties. One of the properties is on a septic system and wants to connect as soon as the line is complete.

5. We would prefer to not discuss Lazy P6 Land Company as it was not a standard project and went through litigation to be resolved.

6. As to the Bid Law concerns – Yasmeen Dream requested oversize reimbursement and not a construction fee agreement. The connection fee agreement was suggested during the public works committee meeting due to limited oversize funds.

Finally, as funding is a significant obstacle for staff approval of the oversize request, I wanted to reiterate that Yasmeen Dream is willing to carry the costs for up to the next two years to allow time for the city to budget for the project, even though this was not required by any of the other applicants for oversize request. Our intent has always been for the fair treatment of all the citizens of Rapid City and to continue to coordinate with the city for our community development.

Please let me know if you have any questions.

Thank You and have a great night!

SUPPLEMENT TO MY MEMO:

I cannot help but feel that a lot of this dispute comes down to semantics and the perspective from which you look at the projects the developer has compared to his project. I think the developer believes it is unfair that he should be responsible for the entire cost of infrastructure others could benefit from, whether or not he needs the infrastructure just to serve his development. I think his belief that his project is “the same” as other projects that the staff has supported is based on his higher level view that the projects he has pointed to are projects where the City has funded infrastructure that allowed for the development of additional land that primarily benefited a single developer or property owner. However, if you look at the specifics of each project there are also differences from those projects and his reimbursement request on this project. Oversize has a specific meaning which relates to situations where the City has requested a developer install more or larger infrastructure than was required for the developer’s project and pays the difference in the cost between what the developer needs and what the City has requested. True oversize payments have never been used to pay for the proportionate cost of other landowner’s share of an infrastructure project. The fairness of having a developer extend off-site infrastructure at their own expense is an issue we have discussed a number of times, there is currently no policy or funding source by which the City can pay these off-site costs.

While my memo focuses on the oversize items on the May 6th agenda, in the meetings with Dream Design since the memo was drafted Dream Design has also identified several additional projects they believe prove their point. While these were beyond the scope of what was said at the meeting, I followed up on the projects and two of them were City managed projects which were not constructed by a developer. Both also dealt with capacity and pressure problems for existing development vs. new development. While they were needed to address issues with existing development, they also increased capacity and allowed for further development on adjacent property. From Dream Design’s perspective this was similar to their request in that it was a City funded infrastructure project that increased capacity and opened up new areas for development. These projects are also different from the present request because they were projects approved and funded out of the .16 Fund in 2011 and 2012. The City Council eliminated the .16 Fund at the end of 2017. When we met with Dream Design on June 13th, they also brought up the City paying oversize for extending a water main in Homestead Street for Copperfield Vista. The primary reason for bringing up this project was that the City paid for the difference between the 8” and 12” main (approximately $21,000), but the benefited area all belonged to the same developer. While this project may support Dream Design’s position that the City has paid oversize for lines which benefit a single developer, it is also different than their request. The City did not pay half the cost of the line, it paid the difference between the 8” and 12” main. I should also note that projects like this project resulted in the Public Work’s
Director making a decision to direct engineering staff to stop doing oversize agreements for the benefit of a single developer because houses were being built faster than the fees were being imposed so the City could not recoup the oversize costs.

There is one issue the developer has raised where I believe he is technically correct. The basis for staff’s determination that the developer needs the 10’ line to serve his development is the fact that they are considering all of the developer’s property adjacent to the current plat, rather than just the area in the plat itself. These parcels are owned by different corporate entities and technically could be considered oversize for this application. In staff’s defense, the developer has consistently presented this project as a large unified development and the entire area is shown as a single development on Dream Design’s website. If the additional 2’ is determined to be an oversize cost, rather than the additional cost being imposed only on the three non-developer owned lots (4.21 acres), the benefiting area would also include the balance of the developer owned land (120 acres) which will become Shepard Hills. Practically, the cost difference between the lines is so small, it is probably not even worth putting a construction fee over such a large area.

A few other observations about Mr. Treloar’s response:

1. The “regional benefit” has not ever been considered “oversize” unless it necessitated an increase in the size or length of the infrastructure. As experienced developers Dream Design is aware of this. If you look at their design report for this project (both the original and updated report) they do not identify this sewer as “oversize.” They do however, identify the detention pond as an “oversize” item and further state that City funding would be required. Dream Design has never submitted anything to show that they could develop their property with something less than what has been proposed and designed. Mr. Treloar states that the sewer line was installed in Creek Dr. at a significant cost to the developer. At the meeting on the variance he said the cost difference was approximately $30,000.

2. This also responds to #4. The vast majority of the 120 acres referenced may be outside of the North Valley Park plat, but belongs to the same developer and are later phases of this development. There are three properties which potentially “benefit” from the sewer main not owned by the developer. These properties total 4.21 of the 120 acres.

3. I agree this is not infill. In my memo I was making a more general statement regarding the impact of paying for off-site improvements needed to serve new developments. However, Mr. Treloar’s statement is misleading. He states in his response that the properties making up the Shepard Hills development were listed for $2.50 a sq.ft. The developer has made a statement to staff that he paid approximately $25,000 an acre which equates to roughly $.50 a sq.ft. I also looked at the sales prices for the properties that were available online and the amount paid was $.40, $.30 and less than $.10 (Johnson Ranch property 274.81 acres for $1,000,171) a sq.ft.

4. The exception to bid law in SDCL 5-18C-4 applies to situations where a municipality requires a developer to infrastructure at the expense of the developer and the municipality requires the size of the infrastructure to be larger than the developer’s requirements. The exception states that the cost difference between the size required by the developer and the size that is installed is exempt from bid law. I do not believe the exception to bidding in SDCL 5-18C-4 applies to the developer’s request for half the cost of the sewer main. To the extent it applies, it would only apply to the difference in cost between the 8” and 10” main. The cost difference between the 8” and 10” main is significantly less than what the developer has requested.

CONCLUSION

In my opinion the Council has the following options:

1. Deny the developer’s request.
2. Approve paying the difference in cost between the 8” and 10” main, which is approximately $10,000. If you choose to pursue this option we will need to determine the precise amount and it will come back to you for approval in the form of an oversize agreement.

3. Pay the developer’s entire request. Since I do not believe the developer’s request for half the cost of the entire main, rather than the cost difference between an 8” and 10” main, qualifies as “oversize” pursuant to SDCL 5-18C-4, choosing this option is legally questionable. If this payment was challenged I believe it would be found to violate state law and be disallowed. Even if no one legally challenges the payment, it could result in a negative finding on the City’s financial audit.

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