To Whom It May Concern:

First of all, we would like to thank you for your time and consideration of this matter. We would like to make it clear that we understand the city’s position up to this point and would like to have the opportunity to address some of the issues that they were concerned about. We believe that the city can move forward in approving a plan with confidence that a licensed professional engineer has made the recommendations based on the evidence and experience. We are confident that the recommendations moved forward will help the city, builders, developers, and residents come to a compromise that would meet the needs of everyone without compromising the design and function of the easement.

This appeal is based on the following criteria:

* The Rapid City Infrastructure Design Criteria Manual Section 4.1.6 states “Drainage easements shall be established for the 100 year runoff when the drainage way conveys the runoff from two or more lots”. It does not specifically state that it has to be a major drainage easement. In addition it is not defined as a major drainage in this document. Residence of Duckhorn and Vinecliff have requested a definition dating back to July of this year and have yet to be given a formal definition. Please note that a minor drainage easement would allow for the city to
maintain, build, or use the easement for any reason they see necessary but would allow for the fences and current obstructions to stay in place. Ted T. Johnson, Engineering Project Manager: Public Works Department, issues the following response:

“the definition is less formal and more practical. The IDCM’s definition for a ‘drainage easement’ is an easement that handles the drainage from two or more lots. Staff considers this to be a major drainage easement. In contrast, a minor drainage easement is one that primarily is designed to handle only drainage from the lot adjacent to it.”.

In addition, in an email issued from Vicki L. Fisher, Project Manager: Current Planning Division, Community Planning & Development Services, stated that,

“in order to vacate the easement, a drainage analysis from an engineer must be submitted to support the Vacation of Easement requested. (The Engineer’s analysis must identify that the easement does not meet the criteria of a major drainage easement in order for the city to support the request”.

The biggest concern with this is that, if there is no “formal” definition or criteria to identify or establish a major drainage vs. a minor drainage, then how can we possibly provide evidence that our easement does not meet the criteria. So our next question was proposed: Since we have no criteria or definition, how can we possibly prove that it is not a major drainage? And if so, why allow citizens the option to file for a vacation of an easement if there is truly no way that they can vacate or redesign an easement. Following the proposed three alternatives, (which will be discussed later from Gregory T. Barbeauld Licensed Professional Engineer at KTM Design Solutions, INC.), Vicki L. Fischer, issued the following response:

“the information you provided in the attachment is very helpful. I don’t believe that the City can grant an Exception to allow an encroachment into a Major Drainage Easement (Dale-correct me if I am wrong) but reducing the width of the easement is certainly a viable option if the engineering data supports the reduction”.
Our denial letter also references the 20 foot minimum width required by the city. In addition there are no city documents that reference this as a requirement. The previous statement made by Ms. Fischer also disputes this as valid reason to deny our request.

The denial letter also makes reference to needing the 20 foot minimum width to allow for “equipment to reasonably access the area for maintenance”. In the 2 years that we have lived at this residence, no maintenance by the city has been made to our property in the easement. We have also talked to several people who have major drainage easements located on their property and have been told that the city has never done any maintenance on their property dating back 5–10 years. Please keep in mind that this is also a very clean and well established neighborhood. We take pride in our homes, yards, and responsibilities. I do not believe anyone will feel differently about their responsibilities whichever way this is decided, especially considering that the most noted concerns of this easement are home value and safety. Also, please keep in mind that reducing the major drainage easement or redefining it as a minor drainage, would allow for the city to still have access to the area. It would be no different then the side property lines where our fence is located. The minor drainage and utility easement there allows for city and utility employees to construct, operate, maintain, inspect, and repair as they see fit.

In addition, in a document submitted to the city by Licensed Professional Engineer: KTM Design Solutions, Gregory T. Barbeauld states:

“it is my opinion the **20 feet wide major drainage easement is overkill and need not be so wide.** ... Please consider the drainage area the swale accommodates is not very large and the expected storm runoff flow in the swale are not especially significant. This is not to say there is no flow in the swale... there is, but the amount of flow seemingly doesn’t justify such a wide easement”.

Please also note that as designed right now, no utilities can build or use the major drainage easement. No utilities will be effected by this vacate or redesign. Letters were submitted to the city from the utility companies stating that there would be no objection to the redesign or vacate.
* The 2nd piece of our denial letter references the original plot document. In all respect, as a citizen, I felt that this was a very unclear. There are two different meanings for a shaded and dotted line. By coincidence, the shaded and dotted line is referenced to mean both a minor (Detail “A”) and major drainage easement. It also looked to us as an arrow pointing at the lots behind us. So, in order for us to put this together, we would have had to notice the dotted line, notice the arrow pointed with the description and also in a different place note the line indicating 20’. We are not the only ones that have missed this documentation. In the original submittal with the city, our neighborhood representative had to call and ask who sent the letter because the city zoning and planning department could not see the easement being addressed. In addition, after receiving the letter submitted by the neighborhood, several utility companies also called to ask where the easement was that we were referencing as they did not have it in their easements. In addition, SEVERAL contractors, relators, and builders claim to have not seen this prior to our notification. Not to mention the land surveyor who surveyed our lot. Now, this does not hold the city liable by any means and I am not saying that it was a lack of documentation on their part, but it is simply our way of showing you why we have missed this information for the past two years.

Now, I would like to present you with documents that we feel demonstrate why this whole situation is coming forward to the city council. While building and at closing we were presented with an angle survey of our property prepared by Registered Land Surveyor, Jerry Wedland. Several of our neighbors were also presented with the same survey of their property. **On our individual plot surveys it indicates that there is no major drainage easement. Instead it references an 8’ Utility and _minor_ drainage easement.** So here is the big question, when purchasing or building a home, where would you look for the information regarding your property? In our case, and the case of several of our neighbors we referenced our individual plot survey. The survey that was given to us prior to and at closing. We did not go to the register of deeds and pull up the neighborhood plot. A “mistake” that is now
costing us thousands of dollars and turning our property into an unsafe and unusable piece of land.

So, then we were faced with the decision to ask our builder about the ordinance. Mrs. Jolleen Ericks (a resident of Duckhorn) was given the following response from Mr. Chad Zandstra,

“Joleen this is a pic of Article 3, Section 2 of the covenants. It DOES NOT say anything about a fence”.

So, we referenced our covenants, signed and sealed by the City of Rapid City. These state,

“all owners must keep the area of these easements free from improvements and obstructions including any buildings, walls, hedges, trees and shrubs which could interfere with effective drainage. It is the responsibility of the owner to prevent soil erosion and accumulation of sediment on his or her lot and to see that his or her lot is maintained, mowed, and raked where Major Drainage Easement is located, all as required to allow the drainage improvements to function properly regardless of whether any improvements have been made to the Lot.”

This document does not include the phrase “including but not limited to” and does not make any reference to fences. Again, signed and sealed by the City of Rapid City. So now, we have 3 documents, only one of which references this major drainage easement as it is being enforced on the residence of Duckhorn and Vinecliff. This has been disheartening moving forward with this process. I only mention any of this in an attempt to show that the residents of Duckhorn did not purposefully or maliciously attempt to compromise the easement. It was simply missed information. We are a neighborhood filled with doctors, lawyers, police officers, nurses, city employees, ext. We did not have any intention to break any rules, ordinances, or covenants. We are just asking that you look at these pieces and see why it is in front of you in the first place and why we are asking you to consider the engineers requests.
The denial letter also states “when fences, playground equipment, and sheds are located within a major drainage easement they could impact or impede drainage flows and/or create drainage issues on adjacent lots by not allowing the water to drain as intended”. Again, Gregory T. Barbeauld, Licensed Professional Engineer: KTM Design Solutions proposed the following solution to this problem:

“Grant an exception to allow fences in the easement. A condition of allowing the exception could be the requirement that the fence panels/fence material (everything other than posts) located in the easement be elevated a minimum distance about the existing ground elevation at the rear property line/swale centerline. The vertical clear space (at the swale centerline) could be dimensioned to provide an adequate opening to accommodate the design flow rate. The existing fences would need to be adjusted to provide the required vertical clear space”.

*So this leads us to the final reason the city has decided to deny our request. They have noted that only 15 of the 29 lots that are located in this area have submitted requests to vacate the major drainage easement. In effort not to take offense to this, this is actually a substantial number. Please keep in mind that we are still in the process of being developed! When addressed with this issue in July, Vinecliff was in the process of being constructed. At that time, there were several houses that were still not closed on or had just moved in. Not to mention that many had not started the process of landscaping their lots. To this date there are still 4 unsold lots on Vinecliff represented and owned by Zandstra Construction or Nesland Construction. It should be noted that both of these contractors have contributed to the redesign of the area and have paid for KTM Design Solutions to come in and reevaluate the area in an attempt to come up with a solution that meets the drainage need and the need of the residence on Duckhorn and Vinecliff. They have also submitted letters of support for the recommendations given by KTM Designs. Given that information our number appears to be 19–29. In addition, the proposal from KTM Designs did not offer an alternative resolution for lots 1, 2, and 29. Thus being said, it would not have been in their benefit to file along with the current members of Duckhorn and Vinecliff. So we are only looking at 19–26, might I note that that far exceeds the majority.
In addition, please note that all Lots on Duckhorn Street from Lot 15 (at the very top) to Lot 3 (where the proposed changes ends) all submitted applications to vacate or redefine the easement to a minor drainage easement or a major drainage easement with exceptions. In addition, two homes from Vinecliff also submitted their applications. In my opinion the “dis-contiguous” easement would actually work at the benefit of the drainage. Currently there are no back-to-back privacy fences. The lack of interest for the remainder of the lots to build into the easement would allow for the city to review and look at the area as it is currently designed, with no obstruction of water flow from the fences. I have video of a recent rain storm and the path that the water takes down the hill. It is not being obstructed by any of the fences or sheds currently in place. I have also attached a document showing the neighborhood layout and which lots have submitted applications.

I will leave you with the final thoughts of Gregory T. Barbeauld, Licensed Professional Engineer: KTM Design Solutions, INC., who states:

“Finally, we believe it would be wise to keep the major drainage easement in the area surrounding the drainage grate/ inlet, but the easement accommodating the swale could be reduced or an exception could be granted allowing fences within the easement with no adverse impact to the performance of the drainage swale. We hope you’ll give these alternatives fair and honest consideration.”

So, here we are left at the mercy of a city council vote. I would encourage any member of the city council to come take a look for themselves, and please look at this evidence with an open mind. We have been thrown through what feels like a roller coaster ride in an attempt to educate and collect information. We have gathered all information requested of us and have attempted with all of our might to come up with a solution that meets the needs of the city, builders, engineers, and neighbors. At this point, we have no known objections to these proposals. The proposals are coming forward from a licensed engineer who is confident that these compromises will simply allow everyone to move forward without destroying our investments and losing the privacy and safety of our backyards. None of the proposals are compromising the design or function of the easement and feel that
we can move forward confidently knowing that the remainder of the neighbors will continue to be protected by the easement. We have signed letters from the builders, developers, and engineers to confirm this. Please take all of this information into consideration as you move forward into making a decision. We look forward to meeting and looking further into this. Please contact me with any questions or concerns. Thank you for your time and consideration of this matter.

Lance & Karissa Steiger

4418 Duckhorn Street
Rapid City, SD 57703
(605) 519-4452
klblsteiger@icloud.com
November 08, 2016

Community Planning & Development Services  
City of Rapid City  
300 Sixth Street  
Rapid City, SD  57701

RE:  Rear Yard Drainage Swale at Duckhorn/Vinecliff  
      KTM Project No. 16-0803

Dear City Staff:

I am providing this letter at your request. As the General Contractor responsible for constructing the Elks Crossing Subdivision, I have no objection to the alternatives recommended by KTM Design Solutions in their letter to you dated September 19, 2016. The alternatives identified in the KTM letter were recommended to address and resolve the issue of fences in the rear lot line drainage swale/ easement situated between Duckhorn Street and Vinecliff Drive. I’m confident should any of the KTM alternatives be implemented, the drainage swale would still function generally as designed and the storm drainage in the area would not be adversely impacted.

If you have further questions or comments, please contact KTM Design Solutions.

Sincerely,

Chad Zandstra
September 19, 2016

Community Planning & Development Services
City of Rapid City
300 Sixth Street
Rapid City, SD  57701

RE:  Rear Yard Drainage Swale at Duckhorn/Vinecliff
KTM Project No. 12-0645

Dear Review Engineer:

The design of the rear yard lot line drainage swale (ditch) situated between Duckhorn Street and Vinecliff Drive required (per the City’s rules) a major drainage easement. The easement width was based on a swale width which accounted for the 100-year flow rate and the required one foot of freeboard. A 20 feet wide drainage easement, centered on the rear lot lines, was provided to accommodate the swale.

At least a few of the lot owners with properties situated along the swale have since installed fences – primarily of the privacy fence variety – and other obstructions along their property’s rear and side lot lines. The fences, as constructed, will almost certainly partially obstruct/block the flow of storm runoff in the swale. City staff has reportedly ordered the property owners to remove their fences from within the drainage easement.

It is my opinion the 20 feet wide major drainage easement is overkill and need not be so wide. Since the 20 feet width is the City’s minimum standard, no objection was made during the design phase. However, on behalf of the impacted property owners, we are now revisiting the easement situation and requesting some accommodation be made for the fences.

Please consider the drainage area the swale accommodates is not very large and the expected storm runoff flow rates in the swale are not especially significant. This is not to say there is no flow in the swale...there is, but the amount of flow seemingly doesn’t justify such a wide easement.

The width of flow at the 100-year normal depth of flow in the upstream swale segments is no more than five (5) to seven (7) feet, and no more than 10 feet at the very downstream end of the swale. Also, since the 100-year normal depth in the drainage swale is less than one foot, the additional one foot of freeboard required provides a channel capacity at least 15 times greater than what is
needed in the upstream swale segments and seven (7) times greater than what is needed in the downstream swale segments. For this situation, the one foot of freeboard seemingly results in an unreasonable easement width and deprives the property owners the full benefit and use of their property.

All things reasonably considered, it appears there may be room for compromise with regards to the fences. In an effort to somewhat salvage the situation, we propose the following three (3) alternatives. Each of the alternatives will allow the generally unimpeded flow of storm runoff in the drainage swale while allowing the property owners to enjoy as much of their rear yard area as practical. In each alternative the drainage swale will perform generally as designed.

Alternative No. 1: Grant an exception to allow fences in the easement. A condition of allowing the exception could be the requirement the fence panels/ fence material (everything other than posts) located in the easement be elevated a minimum distance above the existing ground elevation at the rear property line/ swale centerline. The vertical clear space (at the swale centerline) could be dimensioned to provide an adequate opening to accommodate the design flow rate. The existing fences would need to be adjusted to provide the required vertical clear space. This alternative allows for a single rear property line fence system between properties.

Alternative No. 2: Reduce the width of the drainage easement consistent with the design width of flow and forgo the need for freeboard. The drainage easement does not need to be as wide as was platted. Note with this alternative the easement width would get incrementally larger moving downstream. The enclosed exhibit shows the flow width at select property line locations. With this alternative the existing fences would need to be relocated outside the easement consistent with the revised easement widths.

This alternative would promote dual/ opposing rear property line fence systems. The positioning of the rear fences may not be in straight alignment when looking upstream or downstream. In addition, this alternative introduces swale maintenance (mowing) concerns. The individual property owners are tasked with mowing the swale. Since the swale would be located outside of the lots’ fenced areas, it’s possible the swale mowing could be neglected. It’s possible the homeowner’s association would need to be involved in maintaining the swale.

Alternative No. 3: Reduce the width of the easement and grant an exception to allow fences in the easement. This alternative is a combination of the first two alternatives and provides maximum benefit to the property owners.
Finally, we believe it would be wise to keep the major drainage easement in the area surrounding the drainage grate/inlet, but the easement accommodating the swale could be reduced or an exception could be granted allowing fences within the easement with no adverse impact to the performance of the drainage swale. We hope you’ll give these alternatives fair and honest consideration and look forward to your decision.

Thank you for your assistance with this matter. If you have further questions or comments, please do not hesitate to contact me at (605) 791-5866 or gregb@ktmdsi.com

Sincerely,
KTM DESIGN SOLUTIONS, INC.

[Signature]
Gregory T. Barbeaud

Enclosure

X:\600-649\645 Duckhom\Drains\Letter Easement Vacation Request SEP2016.pdf
November 3rd, 2016

Rapid City Council Members,

I am writing in reference to the major drainage easement located between Duckhorn Street and Vinecliff. It has been brought to my attention that several members of the neighborhood have been asked to remove landscaping, fences, sheds, etc. that are located within the major drainage easement. I have also had the opportunity to review the work that Kyle Treloar and his team at KTM Design Solutions, Inc. on redesigning the easement to meet the needs of the neighborhood while still maintaining its purpose. I feel that these recommendations are within reason and should be given an honest look at. I would appreciate your time and help in resolving this matter. I am hopeful that the city and neighborhood can reach a compromise that would help to resolve any further issues and believe that the recommendations given would be a step in the right direction. Thank you for your help.

Sincerely,

[Signature]

Mike Nesland
Nesland Construction
November 08, 2016

Community Planning & Development Services
City of Rapid City
300 Sixth Street
Rapid City, SD  57701

RE:  Rear Yard Drainage Swale at Duckhorn/Vinecliff
     KTM Project No. 16-0803

Dear City Staff:

I am providing this letter at your request. As the Developer of the Elks Crossing Subdivision, I have no objection to the alternatives recommended by KTM Design Solutions in their letter to you dated September 19, 2016. The alternatives identified in the KTM letter were recommended to address and resolve the issue of fences in the rear lot line drainage swale/ easement situated between Duckhorn Street and Vinecliff Drive. I’m confident should any of the KTM alternatives be implemented, the drainage swale would still function generally as designed and the storm drainage in the area would not be adversely impacted.

If you have further questions or comments, please contact KTM Design Solutions.

Sincerely,

Steve Zandstra