



CITY OF RAPID CITY

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MEMORANDUM

TO: City Council

FROM: Joel P. Landeen, City Attorney

DATE: 6-2-17

RE: Request to Revise Project Plan for TID #54

At Wednesday's meeting, the Legal & Finance Committee expressed a desire to have a summary of staff issues and/or concerns with the request to revise the project plan for TID #54 and reallocate additional costs to various line items within the plan. I met with Public Works, Planning, and Finance staff on June 1st in order to better understand the staff's concerns in an effort to provide this summary. Based on my meetings with staff here are the primary concerns and/or issues with the applicants request:

1. The TID was finally certified by the applicant in December of 2012. Unless the project plan and developer's agreements for a TID specifically identify multiple phases, the City has always required that certification be done once, after all the improvements have been completed. To my knowledge, the City has never certified projects piece meal as invoices come in. The City's development agreements, including those with this applicant, state the developer shall complete the improvements identified in the plan, and *upon completion* of the improvements certify their costs. As someone who has dealt with this issue several times, Mr. Estes is fully aware of the City's requirements. In fact, this project was amended to designate phases so that the applicant could begin getting paid on some of the improvements before the work on the other improvements was completed. Since the final costs for many of the public improvements were certified in 2012, the fact that the applicant is now requesting to increase the design fees and project costs by tens of thousands of dollars five years later makes staff question the legitimacy of these costs. In particular, staff is concerned that these new costs represent 100% of the developers expenditures related to this subdivision rather than just the costs related to the public improvements in the tax increment district. On its face, \$180,000 in design fees for a \$600,000 water main is excessive. At best, it appears that the applicant wanted to start getting paid, so

falsely certified the costs were final even though they were not final so the Finance Office would begin repayment.

The applicant has pointed to the fact that they did not receive a bill from the City for the engineering work on the booster station until 2014 so they had no way to certify this cost. The invoice for the engineering work in 2014 was \$84,660.00. I would agree that the applicant has a legitimate claim related to certification of those costs (even though they have had that invoice for approximately three years). However, the applicant has not limited their request to be reimbursed to this amount. The applicant's current request is to increase various line items within the project plan to allow an additional \$613,883.43 to be reimbursed. While there may be an argument that there is a legitimate justification for why \$84,660 of these costs were not certified in 2012, there has been no clear justification provided by the applicant for why the other \$529,223.43 they are requesting you reallocate was not certified at that time.

2. As already discussed, the staff has concerns about the legitimacy of the costs being submitted. Planning and Engineering staff have made a cursory review of the invoices and there is a concern that the applicant is including ordinary subdivision expenses in its reallocation request that should not be reimbursed as part of the TID. Staff also has no way of knowing at this time if there are invoices that include the same items so there is a potential for double dipping. It also appears that the design fees for the roadway and other normal developer borne subdivision improvements are incorporated into the costs for the water main. Staff questions the legitimacy of the roadway costs as a reimbursable expense under the TID. It is my understanding the applicant justifies these costs by claiming the City forced them to redesign the roadway. The reason the City did not accept the initial roadway design was because it did not comply with the City's minimum standards. Later, the applicant changed the design of the roadway to accommodate a full City street in order to facilitate the future platting of residential lots along the roadway. This was a decision made by the applicant to benefit himself and is a subdivision expense unrelated to the design of the water main. Based on a cursory review, the design costs for the public improvements seem excessive. For example, a normal design fees for the improvements in this TID generally range from approximately 8% to 14% of the construction costs, but the design costs for the booster station are approximately 33% of the construction costs and the fees for the water main are approximately 30% of the construction costs. The invoices from the applicant's engineer contain too little detail to accurately determine what work was actually done and whether it was related to the public improvements identified in the project plan or whether it includes work done on subdivision improvements that are a developer expense. Staff will need to go through every invoice and likely need to request more information from the applicant and their engineer to make these determinations. This process is made much more difficult based on the fact that this work was completed over five years ago. Patsy Horton in Planning (with assistance as needed from Public Works engineering staff) is responsible for this analysis and she is currently working on certification of four districts, dissolution of two districts, two TID amendments, and a new TID application. These projects are in addition to her future planning obligations. Based on her current work load she has not had time to go through the invoices in the detail necessary and likely will not be able to do so for some time.

Ultimately, the applicant has failed to diligently pursue reimbursement of the improvement costs and design fees on this project. Somehow, the applicant has discovered an

additional \$529,000 in project costs over 5 years after certifying that the costs for this TID were final and several years after the improvements identified in the project plan were actually completed. That does not pass the smell test. In addition, the design costs appear excessive on their face. By delaying the request to reallocate these costs for so long the applicant has made it more difficult to accurately determine whether the costs being requested are legitimate or not. I would point out that under our agreements with the applicant it is his responsibility to document that the costs are legitimate, not the City's responsibility to show that they are not. If you want to reallocate the \$84,660 that the developer was billed after the 2012 certification you could do so and it would not cause much of an issue. The City knows that the bill is legitimate and was for an improvement actually identified in the project plan. However, if you reallocate the balance it will require that staff go through every invoice to insure that the amounts expended were legitimate costs related to the improvements identified in the project plan. Based on the length of time which has passed and staff's cursory review of what has been submitted, it is likely that a significant portion of the costs you are being asked to reallocate are unlikely to ever be certified. Reallocating these amounts will place a significant burden on staff's workload, will take a fair amount of time to complete, and will likely end up in front of you again anyway when the applicant requests that you overrule the costs that staff has rejected.

Staff will available to answer any questions you have on this matter Monday night.