MEMORANDUM

TO: Mayor Steve Allender, City Council Members

FROM: Kinsley P. Groote, Assistant City Attorney

DATE: June 19, 2017

RE: LF061417-02 - Approve Resolution No. 2017-044A a Resolution Removing the Rapid City Special Assessment on Tract AR2 of Ridge Park Estates

At the June 14, 2017 Legal and Finance Meeting, council members asked some questions about this item. I will recount a brief summary of the history of this item and attempt to address some concerns that were brought up.

Back in the 1990s, the City engaged in a construction project to extend East Saint Patrick Street near West Boulevard. The only legal remedy available to the City to recoup the money spent on this street extension was to put a special assessment on the benefited properties. See attached Resolution Levying Assessment for St. Patrick Street Extension Project ST93-474. This resolution approved in December of 1993 subjected Tract “A” Revised and Lot 9R2 of Ridge Park Estates Subdivision to a special assessment of $37,895.72 for the East Saint Patrick Street Extension project. The City could not have brought civil suit against the owners of the benefited properties to recoup the costs.

In 1995, Janet and Greg Lester owned the real property legally described as Tract “A” Revised and Lot 9R2 of Ridge Park Estates Subdivision that was subject to the $37,895.72 special assessment. The Lesters wanted to replat the property. The City entered into an agreement with the Lesters on September 21, 1995, to: “set aside and cancel the special assessment on the subject property [Tract “A” Revised and Lot 9R2 of Ridge Park Estates Subdivision], allow the replatting of the property, and re-levy the special assessment against Tract AR2 of Ridge Park Estates Subdivision.” See Agreement. Tract “A” Revised and Lot 9R2 were then replatted in 1995 to their current status of Tract AR2 and Lot 9R3 of Ridge Park Estates. See (Unofficial) Plat of Tract AR2 and Lot 9R3. The City Council then passed a resolution levying a
reassessment of $37,895.72 against new Tract AR2. See Resolution Levying Reassessment for ST93-474.

It appears from County Equalization records that the owners of Tract AR2 stopped paying property taxes on that lot. It further appears that Pennington County went through tax deed proceedings on the property and recorded a Treasurer’s Deed in favor of Pennington County on June 21, 2012. The City’s Parks and Recreation Department went to the Pennington County Commission and requested that the County gratuitously transfer the property to the City, with the intent of the property becoming part of or providing access to Skyline Wilderness Park. The County gratuitously transferred ownership of the property to the City in March of 2013. See Pennington County Resolution.

No part of the original $37,895.72 special assessment was ever paid to the City. Due to accumulated interest and fees, the special assessment now totals around $151,402.51. The City is not able to bring a civil action against past property owners to recoup the cost of this special assessment. However, the City now owns Tract AR2, and there are no plans to ever transfer this property. This piece of property connects East Saint Patrick Street with Skyline Wilderness Park, though the terrain presents some challenges to physical access. The intent is for the property to be dedicated as parkland and officially become part of Skyline Wilderness Park. This property is beneficial as parkland for its access frontage to East Saint Patrick Street, its drainage elements, and its open and undeveloped character. The City Parks and Recreation Department is trying to acquire other properties within this corridor in an effort to expand the hiking and biking access from East Rapid to Skyline Wilderness Park.
PUBLIC HEARING

The Mayor announced that the meeting was open for consideration of the Assessment Roll for St. Patrick Street Extension Project ST93-373. The Finance Officer presented affidavits showing mailing and publication of the notice of hearing, which were examined and found satisfactory and ordered placed on file. No oral or written comments were presented. The Mayor introduced and read the following written resolution and Alderman Coffing moved its adoption:

RESOLUTION LEVYING ASSESSMENT FOR
ST. PATRICK STREET EXTENSION PROJECT ST93-474

BE IT RESOLVED by the Common Council of the City of Rapid City, South Dakota, as follows:

1. The Common Council has made all investigations which it deems necessary and has found and determined that the amount which each lot or tract shall be benefited by the construction of street improvements is the amount stated in the proposed assessment roll.

2. The assessment roll for ST93-474 St. Patrick Street Extension Project is hereby approved and assessments thereby specified are levied against each and every lot, piece or parcel of land thereby described.

3. Such assessments, unless paid within thirty (30) days after the filing of the assessment roll in the Office of the Finance Officer shall be collected by the City Finance Office in accordance with the procedure in Section 9-43-43 to 9-43-53 of the South Dakota Compiled Laws of 1957, as amended, and shall be payable in ten annual installments bearing interest at the rate not to exceed nine percent (9%).

Dated this 6th day of December, 1993.

ATTEST:

s/ Richard Wahlstrom
Finance Officer
(SEAL)

THE COMMON COUNCIL

s/ Ed McLaughlin
Mayor

The motion for the adoption of the foregoing Resolution was seconded by Meisner. The following voted AYE: Steinburg, Schleusener, O'Grady, Kennedy, Johnson, Knapp, Coffing, Meisner, Buiman and Albrecht; NO: None, whereupon said Resolution was declared duly passed and adopted.

The following Resolution was introduced, and Coffing moved its adoption:

A RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF HEALTH CARE FACILITIES REVENUE BONDS, TO PROVIDE FUNDS FOR A HEALTH CARE FACILITIES PROJECT AND BOND REFUNDING, ON BEHALF OF BLACK HILLS REGIONAL EYE INSTITUTE, A SOUTH DAKOTA NONPROFIT CORPORATION

BE IT RESOLVED by the Common Council of the City of Rapid City, South Dakota (the "City"), as follows:
AGREEMENT

Agreement made this 21st day of SEPTEMBER, 1995, by and between Greg Lester and Janet L. Lester, ("Owners"), and the City of Rapid City, ("City").

I. RECITALS

Owners are the owners of certain real property legally described as Tract "A" Revised and Lot 9R2 of Ridge Park Estates Subdivision located in the NW 1/4 of the NE 1/4 of Section 11, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, which property is subject to certain special assessments heretofore levied by the City. Owners wish to replat the subject property with the special assessment levied against a portion of the replatted property.

The City is willing to set aside and cancel the special assessment to allow the replatting of the property provided that the special assessment will be re-levied against a portion of the replatted property.

II. AGREEMENT

The City will set aside and cancel the special assessment on the subject property, allow the replatting of the property, and re-levy the special assessment against Tract AR2 of Ridge Park Estates Subdivision as shown on the proposed replat.

Owners, and each of them, for themselves, their heirs and executors, agree that they will not sell, encumber, transfer, or assign any right, title, or interest in Tract AR2 until the property has been replatted and the special assessment has been re-levied against Tract AR2, and that they will consent to the re-levying of the special assessment against Tract AR2.

Owners further agree that they will pay to the City the sum of Five Thousand Nine Hundred Sixty-eight Dollars and Fifty-eight Cents ($5,968.58) (which sum represents interest accrued on said assessment through the date hereof) with said sum to be due and payable by Owners only at such time as Owners sell Tract AR2 at which time said sum will be due in full and without any additional interest being charged thereon.

The City further agrees to set aside and cancel any penalties relative to the subject special assessment.

[Signatures]

CITY OF RAPID CITY

By: Ed McLaughlin, Mayor

ATTEST:

[Signature]
Assistant Finance Officer
State of South Dakota    
County of Pennington    

)    SS.    

ACKNOWLEDGMENT    

On this the 21st day of September, 1995, before me, the undersigned officer, personally appeared Greg Lester and Janet L. Lester, husband and wife, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

(Signature)
Notary Public

(SEAL)
My Commission Expires: 08.30.2001

State of South Dakota    
County of Pennington    

)    SS.    

ACKNOWLEDGMENT    

On this the 27th day of September, 1995, before me, the undersigned officer, personally appeared Ed McLaughlin and [Signature], who acknowledged themselves to be the Mayor and Assistant Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Assistant Finance Officer, being authorized so to do, executed the foregoing for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Assistant Finance Officer.

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

(Signature)
Notary Public

(SEAL)

IO: lester.qlag\gree
RESOLUTION APPROVING PLAT

WHEREAS a Plat of Tract AR2 and Lot 9R3 (formerly Tract A Revised and Lot 9R2) of Ridge Park Estates Subdivision, located in NW1/4 of NE1/4 of Section 11, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota was filed with the Finance Officer for the purpose of examination and approval by the governing body, and

WHEREAS it appears that the system of streets set forth therein conforms with the system of streets of the existing plats of the City, that all provisions of subdivision regulations have been complied with, that all taxes and special assessments upon the property have been fully paid, and that such plat and the survey thereof have been executed according to law.

NOW, THEREFORE, BE IT RESOLVED, that the Plat of Tract AR2 and Lot 9R3 (formerly Tract A Revised and Lot 9R2) of Ridge Park Estates Subdivision, located in NW1/4 of NE1/4 of Section 11, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota, be, and the same is hereby approved and the City Finance Officer of Rapid City is hereby authorized to endorse on such plat a copy of this Resolution and certify to its correctness.

Dated at Rapid City, South Dakota, this 21st day of August, 1995.

THE COMMON COUNCIL

ATTEST:

[Signature]

Mayor

[Signature]

Finance Officer

(SEAL)
RESOLUTION LEVYING REASSESSMENT FOR ST93-474

WHEREAS, an Agreement was entered into on September 21, 1995 between the City of Rapid City and Greg and Janet Lester; and

WHEREAS said Agreement states that 1) the City will set aside and cancel the special assessment on Tract A Revised and Lot 9R2 of Ridge Park Estates Subdivision in order to allow the replatting of said property; and 2) the property owners will not sell the property or object to the reassessment against Tract AR2 of Ridge Park Estates Subdivision; and

WHEREAS, a Resolution Approving the Assessment Roll for ST93-474 was adopted by the Common Council on December 6, 1993, which resolution levied the assessment against Tract A Revised and Lot 9R2 of Ridge Park Estates; and

WHEREAS, it is necessary to assess the costs of this project against the new legal description created when the property was replatted.

NOW, THEREFORE, BE IT RESOLVED that the attached Reassessment Roll for ST93-474, which does amend the assessment to correspond with the platted legal description, be approved, and that the assessments be paid in ten equal installments bearing interest at nine percent per annum.

Dated this 4th day of December, 1995.

THE COMMON COUNCIL

ATTEST:

______________________________
Mayor

______________________________
Asst. Finance Officer

(SEAL)
OWNERSHIP/RE-ASSESSMENT ROLL
STREET & UTILITY EXTENSION PROJECT FOR
WEST ST. PATRICK STREET PROJECT ST93-474

004897001
5779

Tract AR2
Ridge Park Estates Sub.

Greg & Janet Lester
2020 Pendar Lane
Rapid City, SD 57702

$ 37,895.72
PENNINGTON COUNTY RESOLUTION

WHEREAS, Pennington County is the owner of a 3.25 acre parcel (Tax ID # 48970) located adjacent to the Skyline Wilderness Park in Rapid City, South Dakota; and

WHEREAS, the City of Rapid City has identified this parcel of land as an ideal location allowing for an improved bike/pedestrian trailhead access to the Skyline Wilderness Park that would fit into the City’s Vision Fund Project 2013-2014 trail and trailhead development plan, and

WHEREAS, at a regular scheduled meeting of the Pennington County Commission on Tuesday, March 19, 2013, the City of Rapid City requested that Pennington County consider donating said parcel of land to the City for the public purpose stated herein; and

WHEREAS, SDCL §§ 6-5-2 and 6-5-3 authorize the gratuitous transfer of real property from one political subdivision to another when deemed to be in the best interest of the public; and

WHEREAS, The 3.25 acre parcel is not currently held by Pennington County for public use and the Pennington County Commission finds that the proposed use of the parcel for access to a public park is desirable and would serve the best interest of the public; now

THEREFORE, BE IT RESOLVED by the Pennington County Commission that the 3.2 acre parcel (Tax ID # 48970) be donated through proper conveyance to the City of Rapid City for the public purpose stated herein; and

BE IT FURTHER RESOLVED by the Pennington County Commission that the Pennington County Auditor is hereby authorized to deliver a deed conveying said parcel of land to the City of Rapid City and to record the same with the Pennington County Register of Deeds.

Duly passed and adopted by the Pennington County Commission on the 19TH day of March, 2013.

PENNINGTON COUNTY COMMISSION:

Lyndell Petersen, Chairman

PENNINGTON COUNTY AUDITOR/DEPUTY:

Pennington County Auditor/Deputy