SOUTH DAKOTA BOARD OF REGENTS

Committee on Budget and Finance

AGENDA ITEM: III – T

DATE: December 12-13, 2012

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SUBJECT: Resolution requesting the grant of a perpetual easement on lands occupied by the Black Hills State University in Lawrence County, South Dakota, to the City of Spearfish for installation, maintenance reconstruction, repair and operation of a sidewalk.

BACKGROUND: Black Hills State University requests that the Board adopt a resolution requesting the commissioner of school and public lands to draw up all necessary documents and to request that the Governor approve the grant of a perpetual easement on lands occupied by the Black Hills State University in Lawrence County, South Dakota, to the City of Spearfish for installation, maintenance reconstruction, repair, and operation of a sidewalk. The city proposes to widen the intersection of Hillsview Drive and Saint Joe Street, lying just east of the BHSU Campus Suites apartment complex. The expansion would take a sliver of land outside existing rights of way comprising 133 square feet. At the standard rate of compensation granted by the City of Spearfish for such properties, the tract has a value of $260.75.

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RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR

Adopt a resolution pursuant to the power vested in the Board under SDCL § 5-2-10, requesting the commissioner of school and public lands to draw up all necessary documents and to request that the Governor approve the grant of a perpetual easement on 133 square feet of real property occupied by the Black Hills State University in Lawrence County, South Dakota, to the City of Spearfish for installation, maintenance reconstruction, repair, and operation of a sidewalk located at the southwestern corner of the intersection of Hillsview Drive and Saint Joe Street in the City of Spearfish. Which easement is shown on an engineering document set forth as Exhibit A to the resolution and incorporated therein as though fully set forth.
RESOLUTION

Request for grant of a perpetual easement to the City of Spearfish, South Dakota, to permit the installation, maintenance reconstruction, repair and operation of a sidewalk on, over and under land occupied by the Black Hills State University.

The South Dakota Board of Regents (hereinafter referred to as “Grantor”), on behalf of University of , in consideration for one dollar ($1) and other good and valuable consideration, and pursuant to the authority vested in Grantor under SDCL § 5-2-11, hereby requests the commissioner of school and public lands to draw up all necessary documents and to forward them to the Governor to request their execution in order to effect the grant a perpetual easement on 133 square feet of real property occupied by the Black Hills State University in Lawrence County, South Dakota, to the City of Spearfish for installation, maintenance reconstruction, repair, and operation of a sidewalk located at the southwestern corner of the intersection of Hillsview Drive and Saint Joe Street in the City of Spearfish. Which easement is shown on an engineering document set forth as Exhibit A to the resolution and incorporated therein as though fully set forth.

Grantor requests that any grant of easement provide that Grantor shall not be liable for any personal injury, property damage, or other liability to Grantee, its agents, employees, invitees, or to any other party caused by or related to Grantee’s use of the premises, irrespective of how such injury or damage may be caused, whether by action of the elements or acts of negligence of Grantee or any other party, and that Grantee further agree to reimburse Grantor for any judgment against it arising from Grantee’s use of the property.

Dated this thirteenth Day of December 2012

SOUTH DAKOTA BOARD OF REGENTS

By _________________________________

Kathryn O. Johnson
President

Certification:

I have compared the foregoing with an action taken by the Board of Regents at a regular meeting of the Board in Spearfish, South Dakota, on the thirteenth day of December 2012, and I hereby certify that the same is a true, correct, and complete copy thereof and that the same has not been rescinded.

Dated this thirteenth Day of December 2012

SOUTH DAKOTA BOARD OF REGENTS

By _________________________________

Randy Schaefer
Secretary
City of Spearfish

Dr. Kathy Johnson  
VP of Finance & Administration-BHSU  
Kathy.Johnson@bhsu.edu

Re: 2013 Hillsview Road/St. Joe Street Intersection Improvements Project- request for easement

Dr. Johnson:

I would like to make a formal request on the City's behalf, to seek approval from BHSU and the South Dakota Board of Regents for a permanent public access and sidewalk easement of 133 square feet within the BHSU property located at the southwest corner of the Hillsview Road and St. Joe Street intersection. The legal description for the noted parcel is Lot 1 of the subdivision of NE ¼ NE ¼ of Section 9, T6N, R2E, B.H.M., Hillsview Addition Subdivision, Spearfish, South Dakota.

- **Project Description**: The City of Spearfish is scheduled to have public infrastructure improvements constructed to approximately 1.5 miles of Hillsview Road from North Avenue to McGuigan Road in 2013. Reconstruction to the St. Joe Street intersection is one of the primary tasks of the project and will include updating the existing traffic signals and widening the intersection to improve right-lane turning movements. As expected, the proposed improvements and widening will require some additional area along all corners of the intersection which are outside of the City's existing right-of-ways. An intersection improvement plan is attached and shows the existing and proposed layouts as well as the land on the BHSU parcel which would be needed for the easement in order to re-construct the adjacent sidewalk.

- **Project Benefits for BHSU**: Hillsview Road is one of only two east-west roadways (due to Spearfish Creek) which provides a means of travel from the Interstate and east side of Spearfish to the BHSU campus which is located on the west side. The intersection improvements at St. Joe Street will help to improve traffic flow and allow for easier movement through the intersection for larger vehicles such as buses, emergency vehicles and delivery trucks. Please also note that all costs for the project improvements will be funded by the City.

The City will also be removing an existing traffic controller cabinet from the noted BHSU property to allow for an unobstructed view of a future/proposed BHSU welcome sign (sign was discussed during a 6/20/12 meeting at BHSU) and a new handicap accessible ramp/sidewalk.

- **Attachments**: The following are a list of provided attachments which contain additional information.
  1. BHSU 6-20-12 meeting minutes
  2. St. Joe Intersection Improvement plan-sheet 4 (also shows possible BHSU sign
location).

3. Aerial photo with BHSU parcel information
4. Proposed easement document with exhibit

The City appreciates your support of the project and believes that it will be a great enhancement to the community and BHSU as well. Please call or email with any questions or if any additional information will need to be provided. I may be reached at (605) 642-1333.

Thanks,

Kyle Mathis, City Engineer
City of Spearfish Engineering/Floodplain Department
cc: Al Foster-FMG Engineering, Cheryl Johnson-Public Works Administrator, Art-Jones-BHSU, file
June 22, 2012

Dr. Kathy Johnson
VP of Finance & Administration
Black Hills State University
Kathy.Johnson@bhsu.edu

Re: 2013 Hillsvie Drive/St. Joe Street Intersection Improvements Project - 6/20/12 meeting minutes

Dr. Johnson:

Thank you for meeting with us on Wednesday to discuss the City’s upcoming Hillsvie Drive project and the need for the City to acquire approximately 200 square feet of BHSU’s/S.D. Board of Regent’s property at the southwest corner to widen the right turn lane.

Below is a recap of items that were discussed:

- Attendees: Dr. Johnson-BHSU VP of Finance & Administration, Art Jones- BHSU Director of Facilities Services, Kyle Mathis-Spearfish City Engineer, Al Foster-project design engineer with FMG Engineering.

- Project is currently under design by FMG Engineering. Limits of project are within Hillsvie Drive from North Avenue to McGuigan Road. Scheduled for bid in early 2013. Construction likely to commence April 2013 and completion mid-August 2013. Project costs are 100% City.

- We discussed changes to the southwest corner of the intersection due to the proposed project improvements which included the following items:
  - Relocate existing traffic signal controller to a location that will not block views of a new BHSU sign. Al Foster has dimensions of similar BHSU signs and will show proposed locations for the sign and controller on the intersection plan for Art and Kathy to review.
  - The traffic signal system at the intersection will be improved.
  - Extent of work on St. Joe Street is approximately 50’ south of the intersection.
  - Sidewalk widths will remain the same (5’ along Hillsvie, 6’ along St. Joe).
  - Minimal utility improvements in project, primarily street improvements.

- I informed Art and Kathy that the City would ideally like to have the 200 square feet of property donated to the City however, the owner has full rights for just compensation and an appraisal (note: City has tentative agreement with property owner on northeast corner to purchase property for $2.70/square foot). The Uniform Act was discussed, informing Art and Kathy of property owner rights for the right-of-way acquisition process. I provided Kathy with a copy of a FHWA Uniform Act handout “Acquisition, Acquiring Real Property for Federal and Federal-Aid Programs and Projects” as well as a flowchart of the acquisition process. This document, as well as additional information about the Uniform Act, can also be viewed online at http://www.fhwa.dot.gov/realestate/realprop/. She also requested an electronic copy so she could forward it on to the Board of Regents (copy is attached).

- Kathy asked when the City would need a decision by and noted that the Board of Regents would have to approve. The Regents October 2012 meeting was discussed as a possible time for when a decision on the requested property would be voted on and finalized. I informed Kathy and Art if the City could get a good indication of whether an approval of the acquisition would be likely or not then the October meeting would work with the project timeline. I added that the City was holding off FMG Engineering on
finalizing the intersection design until we had a level of comfort that the properties needed, could be acquired. Kathy and Art expressed their support for the project and property acquisition.

Please let me know if there was anything else we discussed that is not noted or if any of the notes above are inaccurate. Call or email me with any questions or concerns as well as any updates about the Board of Regents position on the matter. I may be reached at (605) 642-1333.

Thanks again,

Kyle Mathis, City Engineer
City of Spearfish Engineering/Floodplain Department
cc: Al Foster-FMG Engineering, Cheryl Johnson-Public Works Administrator, Art-Jones-BHSU, file
College Property

Identify Results

Layer: TPARCELS

Sw corner
Public Access & Sidewalk Easement

This easement was made and entered in this ____ day of ____________, 2012, by the CITY OF SPEARFISH, a Municipal Corporation of 625 Fifth Street, Spearfish, South Dakota 57783, hereinafter referred to as “City” and by SOUTH DAKOTA BUILDING AUTHORITY, 330 South Poplar, Suite 102, Pierre, South Dakota 57501;

South Dakota Building Authority is the owner of real property described as Lot 1 of the subdivision of the NE ¼ NE ¼ of Section 9, T6N, R2E, B.H.M., Hillsview Addition Subdivision, City of Spearfish, Lawrence County, South Dakota recorded in Plat Book 2 Page 29 (the “Property”);

WHEREAS, South Dakota Building Authority is providing a perpetual public access and sidewalk easement on the Property for the purpose of reconstructing a sidewalk and maintaining a permanent right-of-way for pedestrian travel across said sidewalk now therefore,

WITNESSETH:

Subject to the terms and conditions set forth below, South Dakota Building Authority does hereby grant to the City a perpetual public access and sidewalk easement across Lot 1 of the subdivision of the NE ¼ NE ¼ of Section 9, T6N, R2E, B.H.M., Hillsview Addition Subdivision, City of Spearfish, Lawrence County, South Dakota, as more fully set forth in Exhibit “A” attached hereto.

South Dakota Building Authority agrees this easement is to be binding upon its, administrators, successors and assigns.
IN WITNESS WHEREOF, the parties have set their signatures the day and year first above written.

SOUTH DAKOTA BUILDING AUTHORITY

By: ________________________________

Title: ________________________________

(print)

ATTEST:

By: ________________________________

Title: ________________________________

(print)

(SEAL)

CITY OF SPEARFISH

By: ________________________________

Jerry A. Krambeck, Mayor

ATTEST:

______________________________
David H. Dutton, Finance Officer

(SEAL)

State of South Dakota )

) ss
County of Lawrence )

On this _____ day of _____________, 2012, before me, the undersigned officer, personally appeared ___________________ and ____________________, who acknowledged themselves to be the _____________________ and
of SOUTH DAKOTA BUILDING AUTHORITY, and that she/he, as such ____________, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the SOUTH DAKOTA BUILDING AUTHORITY by themselves as ________________ and ________________.

In Witness Whereof, I have set my hand and official seal.

__________________________
Notary Public

(SEAL)
My Commission Expires: ________________

State of South Dakota )
 ) ss
County of Lawrence  )

I, the undersigned, a notary public in and for the county and state aforesaid, do hereby certify that Jerry A. Krambeck, personally known to me to be the Mayor of the City of Spearfish, a municipal corporation, and David H. Dutton, personally known to me to be the City Finance Officer of said corporation and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and City Finance Officer, they signed and delivered the said instrument as Mayor and City Finance Officer, they signed and delivered the said instrument as Mayor and City Finance Officer of said municipality and caused the corporate seal of said municipality to be affixed thereto pursuant to authority given by the corporate authorities of the City of Spearfish as their free and voluntary act and as the free and voluntary act and deed of said municipality for the uses and purposes therein set forth.

Given under my hand and official seal this _____ day of ____________, 2012.

__________________________
Notary Public

(SEAL)
My Commission Expires: ________________