

**AGENDA
CITY OF MILLER
FRIDAY, DECEMBER 23, 2016
7:30 A.M.**

Call to Order

Pledge of Allegiance

Approval of Agenda

1. Resolution 2016-22 – Casey's Agreement

Adjourn

RESOLUTION NO. 2016-22

USDA is an equal opportunity provider, employer and lender.

BE IT RESOLVED by the City Council of the City of Miller, South Dakota that the Mayor and City Finance Officer be authorized to sign and record the Easement/Maintenance Agreement with Casey's Retail Company, a copy of which is attached and incorporated by this reference, upon Casey's closing on the property and expiration of the 20-day voter referral period pursuant to SDCL 9-20-6, et seq.

Adopted at Miller, South Dakota, this 23rd day of December 2016.

(SEAL)

Ronald Blachford, Mayor
City of Miller

ATTEST:

Sheila Coss, Finance Officer

Alderman Rangel –
Alderwoman Meyer –
Alderman Steers –

Alderman Odegaard –
Alderman Zeller -
Alderman Auch -

EASEMENT/MAINTENANCE AGREEMENT

THIS EASEMENT/MAINTENANCE AGREEMENT made this ____ day of December, 2016, by and between Casey's Retail Company, an Iowa corporation with its headquarters at One S.E. Convenience Blvd., Ankeny, Iowa and authorized to do business in South Dakota (hereinafter referred to as "Casey's"), and the City of Miller, a South Dakota municipality, having its city offices at 120 West 2nd Street, Miller, South Dakota, (hereinafter referred to as "City");

PRELIMINARY STATEMENTS

City desires to grant to Casey's, for the benefit of Casey's Property (defined below) and Casey's heirs, successors and assigns, non-exclusive access easement, license or other occupancy right to enter upon that certain public right-of-way, that portion of the alley described as the north 200 feet of the North-South alley located in Block 10, William H. Miller's Addition, according to the recorded plat thereof, Hand County, South Dakota and depicted more fully in Exhibit A attached hereto (hereinafter "City Alley").

WITNESSETH:

WHEREAS, Casey's is the owner of certain real estate (hereinafter referred to "Casey's Property") located in Miller, Hand County, South Dakota legally described as follows:

The West 75 feet of Lots One (1), Two (2) and Three (3) and all of Lot Four (4), Block Ten (10), William H. Miller's Addition, according to the recorded plat thereof;

AND

The East 90 feet of Lots One (1), Two (2) and Three (3), Block Ten (10), William H. Miller's Addition to the City of Miller,

upon which property Casey's proposes to develop as a convenience store with gasoline sales facilities;

WHEREAS, the City is responsible for maintaining the City Alley running north and south and adjoining the Casey's Property;

WHEREAS, Casey's and its successors and assigns, desire to have permanent use, maintain and improve the City Alley as a means of ingress and egress to East Third Street, upon the terms and conditions herein contained.

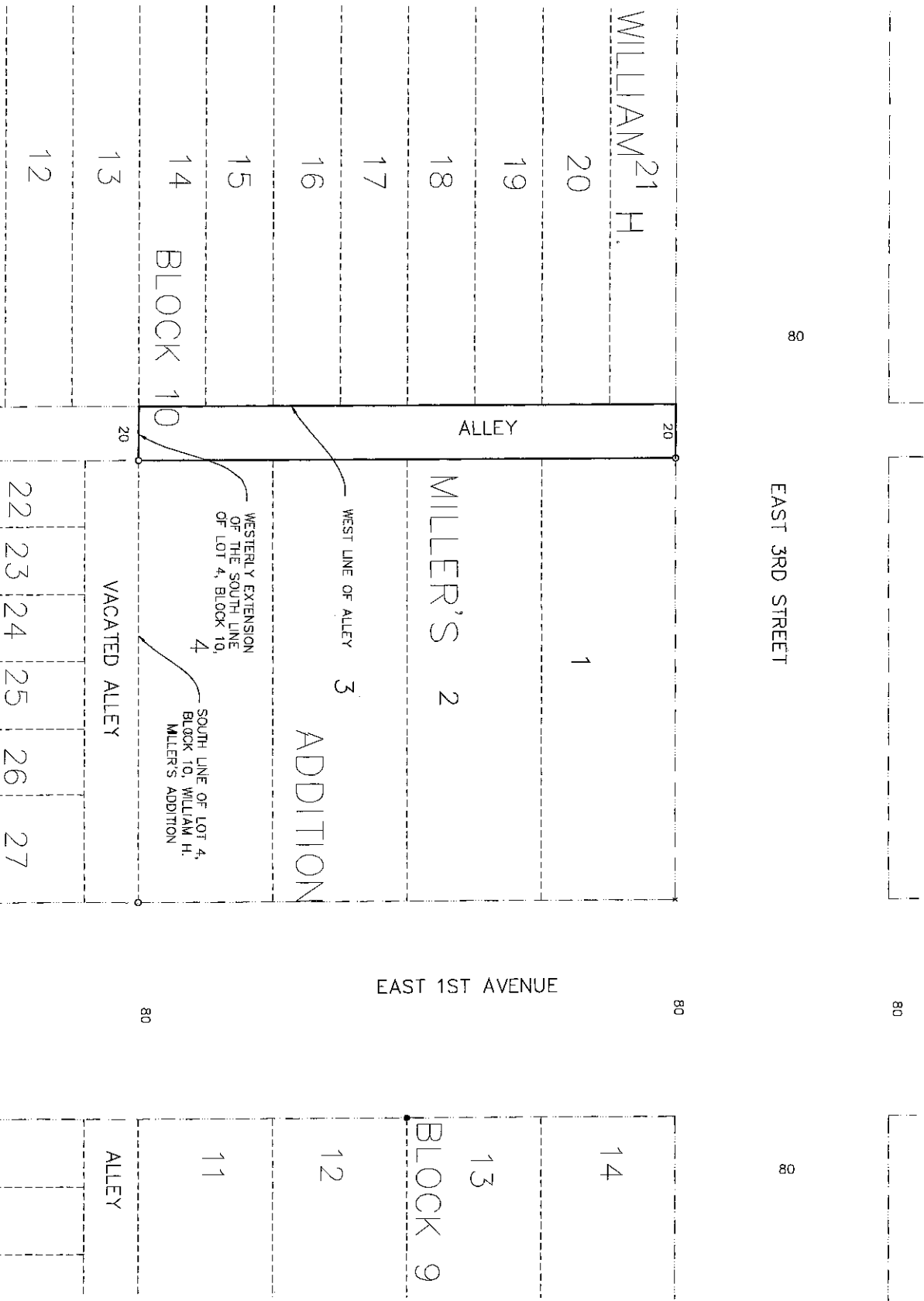
NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. GRANT OF EASEMENT. City hereby grants to Casey's for the benefit of the Casey's Property and Casey's successors and assigns a perpetual non-exclusive easement over the City Alley.
2. MAINTENANCE AGREEMENT. The City hereby grants and conveys unto Casey's a non-exclusive maintenance agreement over the City Alley and Casey's agrees to keep the City Alley in a safe condition and maintain and repair said City Alley.
3. PURPOSE. The parties agree that the Easement is given for the purpose of allowing ingress and egress to and from the Casey's Property and the City Alley by Casey's, the City and their respective employees and business invitees. The parties further agree that they will sign any and all necessary forms to effectuate the granting of said ingress and egress easement and the construction of the paved approach to East Third Street, including, but not limited to cooperation in signing all necessary South Dakota Department of Transportation permit forms and/or Miller City permit forms.
4. CONSTRUCTION AND MAINTENANCE. Casey's shall pave the City Alley and shall construct and pave an access approach thereto from East Third Street. Casey's shall be responsible for the maintenance and repair of the Easement Area and for the removal of snow and debris from the same. Each of the parties agrees to use its best efforts to assure that the above-described City Alley is kept free of obstructions to the free flow of vehicular traffic over and across the City Alley. The parties agree that Casey's will not begin paving the City Alley prior to notification from the City that they have completed the utility repairs in the area or September 1, 2017, whichever is earlier. City shall have no liability to participate in or share the cost of such construction, pavement, repair or maintenance.
5. UTILITY REPAIR. The parties hereby acknowledge that there are existing underground utility lines located within the City Alley. The parties hereby agree that the City and its officers, agents, employees and contractors shall have the right at any and all reasonable times, upon reasonable notice to Casey's, to perform any and all acts necessary or convenient for the operation, maintenance, repair or replacement of the aforementioned utility lines and associated equipment. In the event that the paving in the City Alley has to be removed, Casey's shall be responsible for all the costs related to said removal and replacement of the paving.
6. INDEMNIFICATION. Each party hereto shall protect, defend, hold harmless and indemnify the other from and against any and all claims, losses, damage or liability arising out of its use of the City Alley caused by its agents' negligence.
7. BINDING EFFECT. This Easement/Maintenance Agreement constitutes the entire agreement among the parties and shall be binding upon, and inure to the benefit of the parties hereto and their successors and assigns. Such Agreement may not be assigned without the written consent of both parties.

8. CHOICE OF LAW. The laws of the State of South Dakota shall govern as to the interpretation, validity and effect of this Agreement. Any disputes or litigation interpreting the Agreement shall be venued in Hand County Circuit Court.

WHEREFORE, the parties have executed the Maintenance Agreement on the date and year first written above.

EASEMENT EXHIBIT



| NO. | DATE | DESCRIPTION |
|-----|----------|-------------|
| 1 | 11-28-91 | AS SHOWN |
| 2 | | JDS |
| 3 | | DJB |

| | | |
|-------------|----------|--|
| DATE: | 11-28-91 | 11 HERBERY CERTIFY THAT THIS SURVEY IS AN OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF SOUTH DAKOTA. |
| SCALE: | AS SHOWN | |
| DRAWN BY: | JDS | |
| CHECKED BY: | DJB | |
| PROJECT NO. | 017-0013 | |
| DATE: | 9909 | |



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December 9, 2016

Sheila Coss, Finance Officer
City of Miller
120 West 2nd Street
Miller SD 57362

RE: Review of Casey's Drainage
Miller, South Dakota

Dear Sheila:

We have reviewed the drainage/grading plan for the proposed Casey's to be located on the southwest corner of Highway 14 and East 1st Avenue. Our review of the proposed grading plan provided by Casey's found all of the properties on the west side of the alley to be at least 0.5 feet above the west edge of the proposed elevations of the Casey's property. In addition, the majority of the Casey's property is graded to drain to the east side of the property. The small portion of the west side of the property does drain to the west to a proposed valley gutter and to an inlet on the southwest part of the lot. However, the lower elevation of the Casey's property as compared to the properties to the west should prevent damage to the west properties by runoff from the Casey's property.

I should note that the grading plan doesn't cover the proposed improvements to the alley between Casey's and the properties to the west. As such, I would recommend the agreement regarding the alley include a statement that the drainage from any improvement to the alley be directed towards the Casey's property.

At our meeting last Friday, Terry requested that the replacement of the water main in the alley discussed above be added to Phase 1. As such, I recommend that this be discussed with Casey's at a minimum or possibly added to the agreement to coordinate the improvements. Even though I read the agreement as indicating that Casey's is responsible for making repairs to the alley following utility improvements, it doesn't make sense for Casey's to surface the alley to be tore up within a few weeks to replace the water main.

If you have any questions, don't hesitate to contact me.

Sincerely,

SCHMUCKER, PAUL, NOHR & ASSOCIATES

Terry L. Aaker, P.E.

Principal/Project Manager

EAST 3RD STREET

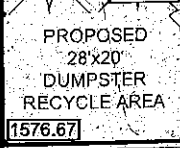
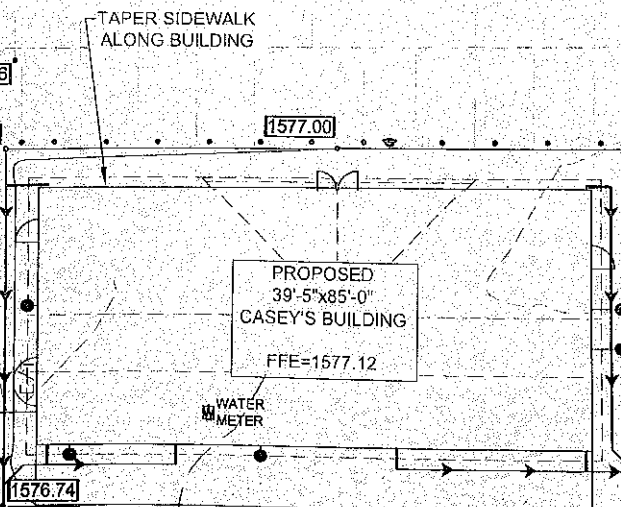
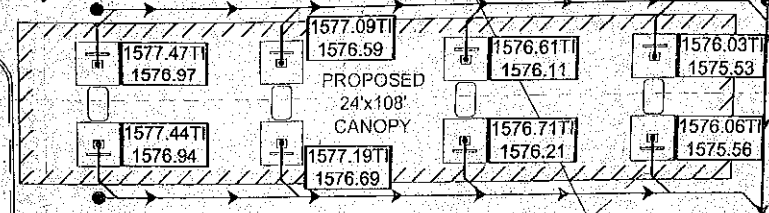
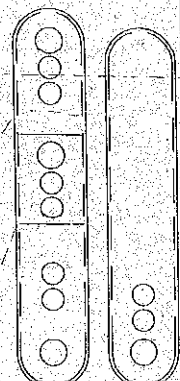
JACH
ARD

MATCH INTO EXISTING
CURB AND GUTTER

PROPOSED CASEY'S
3-PRODUCT PYLON
SIGN

MATCH IN
CONCRET

1577.03 1576.49 1576.21 1575.93 1575.65 1575.37 1574.78
1577.24 1576.59 1576.31 1576.03 1575.75 1575.47 1574.88
1576.95 1577.00 1576.04 1574.96
1576.78 1576.96 1577.09T 1576.59 1576.61T 1576.03T
1577.47T 1576.97 1576.11 1575.53
1577.44T 1576.94 1577.19T 1576.21 1576.06T 1575.56
1576.56 1576.76 1577.00 1577.00 1575.78 1574.89 1573.97 1573.85
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1576.47 1576.69 1576.50 1576.77 1576.74 1575.86 1573.76
1576.67 1576.94 1576.77 1575.35 1573.77 1573.67
1576.54 1577.10 1578.06 1577.95 1576.50 1574.05 1574.04
1576.75 1577.25 1577.25



CATCH BASIN
RIM: 1572.50
INV: 1569.15

LEY
SLOPE
LINE

GRADE BREAK

GRADE BREAK

TAPER SIDEWALK
ALONG BUILDING

MATCH INTO EXISTING
CONCRETE

