MEMORANDUM

TO: City Council Members

FROM: Kinsley P. Groote, Assistant City Attorney

DATE: December 13, 2021

RE: Special Assessment on 631 Lemmon Ave.

On April 7, 2021, Code Enforcement abated a nuisance at 631 Lemmon Avenue. The fee for this abatement was $525.00, plus a late fee of $100. The property owner at the time of this abatement was Rose Suliveres. Ms. Suliveres did not pay for the abatement, so City Council assessed the costs and fees to the property on May 17, 2021, pursuant to WS051221-11 - Resolution 2021-046 A Resolution Levying Assessment for Abatement of Nuisances (City Council Item #12).

In the meantime, the Pennington County Treasurer’s Office issued a Treasurer’s Deed to James Bialota Jr. on April 27, 2021. Mr. Bialota had purchased a tax certificate for 631 Lemmon Avenue back in December of 2017, but he could not legally possess the property until he acquired the treasurer’s deed (also referred to as a tax deed) on the property. Soon after the Treasurer’s Deed was issued, Mr. Bialota recorded the deed at the Pennington County Register of Deed’s Office. According to South Dakota Codified Law 10-25-12, a tax deed vests title in the person taking the tax deed only subject to certain claims or liens, specifically, “any claim that the state may have in the real property for taxes, liens, or encumbrances” and “any lien for past-due installments of special assessments for the financing of municipal improvements levied pursuant to chapter 9-43.” Therefore, a municipality’s claim or lien for a special assessment does not survive the issuance of a tax deed unless it is a chapter 9-43 special assessment (aka, a special assessment for “local improvements” such as sidewalks, curb, and gutter). The assessment levied on this property was NOT a chapter 9-43 special assessment. Thus, the City does not legally have a claim against Mr. Bialota or 113 E. Saint Francis Street for a special assessment and cannot have a lien against Mr. Bialota or 113 E. Saint Francis Street for a special assessment.
Therefore, the City’s special assessment has been wiped out as a matter of law. However, to formally get the special assessment off of the books, the City should pass a resolution to remove the special assessment.

If there is any further way I can be of assistance, please call me at 394-4140 or email kinsley.groote@regov.org.