



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

OFFICE OF THE CITY ATTORNEY

300 Sixth Street

Kinsley P. Groote, Assistant City Attorney
City web: www.rcgov.org

Phone: 605-394-4140
Fax: 605-394-6633
e-mail: kinsley.groote@rcgov.org

MEMORANDUM

TO: City Council Members

FROM: Kinsley P. Groote, Assistant City Attorney *KPG*

DATE: October 24, 2017

RE: Removal of Special Assessment on 3628 Washington Street

On October 19, 2017, the City Attorney's Office received a Notice of Small Claims Lawsuit from Dan Boschee regarding a dispute of charges on an abatement of his property located at 3628 Washington Street. (See attached lawsuit.) Our office has looked into this claim and it appears that his claim has merit. It appears that he did not receive proper notice. The letter he received from Code Enforcement was written to a different person and listed a completely different address than his. However, the letter was placed in an envelope addressed to him. After speaking with Code Enforcement, we believe the letters were placed in the wrong envelopes by Code Enforcement Officer Andrew Chlebek. Since Chlebek is no longer an employee of the City, we are unable to confirm this error. However, Code Enforcement believes that Mr. Chlebek's actions were in error.

Notably, the abatement occurred almost two years ago, back in January of 2016. Mr. Boschee wrote a letter to Code Enforcement dated March 15, 2016, after receiving a February 26, 2016 invoice for the abatement. In speaking with Mr. Boschee, he also states that last year he had spoken with someone (a female) in the Finance Office and that person admitted that Code Enforcement's error had occurred and told him that the bill would be written off. The City's Finance Office denies speaking to Mr. Boschee.

For some reason, the assessment of this property by the Finance Office was delayed by over a year and a half. An October 6, 2017 Notice for Assessment for Cleanup of Miscellaneous Property was sent to Mr. Boschee giving information about the potential assessment. Mr. Boschee states that he was very confused when he received this notice almost two years after the assessment because he thought it had already been written off. Mr. Boschee stated that he spoke

with the Code Enforcement and Finance Offices again in October of 2017 and was told nothing could be done about the special assessment. Thereafter, Mr. Boschee filed the attached small claims lawsuit against the City. The City Attorney's Office first received information about this issue when it received the lawsuit.

It appears that Mr. Boschee did not receive proper notice before his property was abated, therefore, it would be proper for the City Council to remove the special assessment on his property at 3628 Washington Street. There is a resolution for the removal of the special assessment attached to this agenda item.

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

STATE OF SOUTH DAKOTA
COUNTY OF PENNINGTON

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IN SMALL CLAIMS COURT
SEVENTH JUDICIAL CIRCUIT

File #: 51SMC17-002914

NOTICE OF SMALL CLAIMS LAWSUIT

Plaintiff

vs.

Defendant

DAN BOSCHEE
3628 WASHINGTON STREET
RAPID CITY, SD 57702

605-348-9941

CITY OF RAPID CITY
C/O CODE ENFORCEMENT
300 6TH ST
RAPID CITY SD 57701

To the Defendant(s):

The plaintiff(s) named has/have made a claim against you in this court for the following dollar amount:
\$327.08.

DESCRIPTION OF CLAIM: DISPUTE OF CHARGES FOR CLEANUP ABATEMENT

You will lose this lawsuit and a judgment by default will be entered against you for the full amount of this claim, UNLESS you file a written denial by November 29, 2017 clearly stating you deny the claim, in whole or in part, specifying your reason for denial.

The default judgment will be entered on December 06, 2017.

IF YOU DENY THIS CLAIM:

The Plaintiff will be notified of your denial and the matter will be set for a court trial and the parties will be notified of the date and time.

If you make such a denial, you must appear at the hearing and should bring with you such evidence as witnesses, account books, receipts or documents upon which you rely to support your denial.

Subpoenas for witnesses, if requested by you in advance of the hearing, will be issued by the Clerk.

IF YOU ADMIT THE CLAIM, but desire time to pay, you must work out terms with the Plaintiff within the required time. THIS OFFICE DOES NOT COLLECT MONEY! A judgment may be entered for any unpaid balance on the above date.

SUPREME COURT RULE 08-3 authorizes the clerk to dismiss without prejudice a small claims action if the plaintiff elects not to pursue further notification after notice to the defendant is returned undelivered – without refusal by the defendant, or if further notification is unsuccessful after ninety (90) days.

If you have any questions, you may contact this office at the following address:

SMALL CLAIMS DIVISION, BOX 230, RAPID CITY, SD 57709 or call 394-2688.

Dated this 17th day of October, 2017.

DEFENDANT(S)
CITY OF RAPID CITY

/s/ Ranae Truman, Clerk Magistrate

by: jsr10214, Clerk Magistrate/Deputy

STATE OF SOUTH DAKOTA
COUNTY OF PENNINGTON

IN MAGISTRATE COURT
SEVENTH JUDICIAL CIRCUIT

Dan Boschee

**PLAINTIFF'S STATEMENT
OF SMALL CLAIMS**

Plaintiff Names or Business Name

SMC Case #: 17-2914

City of Rapid City SD
Code Enforcement

Defendant Names or Business Name

Describe the basis for your claim: (use additional sheet if necessary)

I was charged for a Cleanup abatement without being notified. I previously talked to Code Enforcement in March of 2016 and was advised they were in error (see letter dated 3/15/16) however, nothing was done.

On Oct 6th I received a letter from city again advising of the charge. Contacted both City Finance and Code Enforcement and was advised they could not do anything about it.

Principal	\$ <u>302.⁰⁰</u> (exclude interest and filing fees)
Interest	\$ _____
Filing Fees	\$ <u>25.⁰⁸</u> <small>Small Claims Fee Calculator - http://ijs.sd.gov/Self_Help_Center/smallclaimscalculator</small>
Plaintiff's Total	\$ <u>327.⁰⁸</u>

- Sheriff Service only – no certified mail
- Sheriff/Personal Service requested if certified mail returned undelivered

Additional fees charged for service options listed above. It's the plaintiff's responsibility to contact the Sheriff's Office or process server for fee amounts and to file the Return of Service.

Pennington County, SD
FILED
IN CIRCUIT COURT

Dan J. Boschee
Signature of Plaintiff

10-16-17
Date

Ranae Truman, Clerk of Courts
By: [Signature] Deputy



CITY OF RAPID CITY
RAPID CITY, SOUTH DAKOTA 57701-5035

Finance Office

300 Sixth Street
Telephone: (605) 394-4143
FAX: (605) 394-2232
Web: www.rcgov.org

October 6, 2017

Certified Return Receipt

Danny & Debra Boschee
3628 Washington St
Rapid City SD 57702

RE: Assessment for Cleanup of Miscellaneous Property

NOTICE IS HEREBY GIVEN that an Assessment Roll for Cleanup of Miscellaneous Property was filed with the City Finance Officer on the 18th day of September, 2017.

A HEARING WILL BE HELD on the Resolution Levying Assessment in the Council Chambers of the City / School Administration Center, 300 Sixth Street, on the 16th day of October, 2017 at 6:30 P.M. At said time and place the City Council will consider any objections to the assessment roll by owners liable to be assessed for the improvement.

THE PROPERTY WHICH YOU OWN ABUTTING THE PROJECT AND LIABLE FOR ASSESSMENT IS AS FOLLOWS:

Sunnyvale, Block 2	
Lot B Revised of Lot 18-22 of Tract C	\$302.00
3628 Washington St	
PIN: 38929	
Rapid City, Pennington County, South Dakota	

If you have any questions regarding this assessment, please contact the City Finance Office at (605) 394-4143.

Pauline Sumption
Finance Officer
City of Rapid City,
South Dakota

3/15/2016

City of Rapid City, SD
300 6th St.
Rapid City, SD 57701

Attn: Code Enforcement

ENCLOSURES:

1. Copy of invoice.
2. Copy of letter received from Code Enforcement addressed to Ronald & Kathleen Jeffries.
3. Copy of envelope that enclosed letter addressed to Danny & Debra Boschee, 3628 Washington St., Rapid City, SD 57702.

TO WHOM IT MAY CONCERN:

I am in receipt of your invoice numbered 40043 dated 2/5/2016. We are in dispute of this invoice as we were not notified of not being in compliance as well as over inflated charges.

We did receive a letter from the City of Rapid City Code Enforcement, however, it addressed property located at 1804 Fremont St., Rapid City, SD 57702.

No where in this letter does it address that 3628 Washington St., Rapid City, SD or the legal description: **LOT B Revised of Lot 18-22 of Tract C, Block 2, Sunnyvale Subd. Parcel 38929** was out of compliance.

In fact, without notification, you cut/trimmed bushes located inside my property fence without permission. This included trespassing into my property, cutting the bushes and then over charging me for you illegal actions.

Please provide me with a withdraw of any and all charges against myself and wife as property owners in writing.

If this is not acceptable I will pursue any available legal action.

Very truly yours,

Dan Boschee

**CITY OF RAPID CITY
300 6TH STREET
RAPID CITY, SOUTH DAKOTA 57701
(605) 394-4143**

INVOICE **40043**
INVOICE DATE 2/26/2016
DUE DATE 3/25/2016

SOLD TO

**DEBRA & DANNY BOSCHEE
3628 WASHINGTON ST
RAPID CITY SD 57702**

Description

Pay this amount

**BILLING FOR ADMINISTRATIVE COSTS AND FEES DURING THE
ABATEMENT OF YOUR PROPERTY LISTED BELOW**

\$202.00

Additional Details

**3628 WASHINGTON ST
AND ADDITIONAL \$100.00 WILL BE ASSESSED TO
INVOICES NOT PAID BY DUE DATE
0008-3418 \$160.00
0008-3193 \$42.00**

2 - Customer Copy



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701

Code Enforcement

Mailing Address: 300 Sixth Street

Office Location: 333 Sixth Street

Telephone: 605-355-3465

email: codeenforcement@rcgov.org

Memorandum

DATE: February 5, 2016

TO: Finance Department

FROM: Code Enforcement - AC 

RE: Billing statement for trimming of sight triangle bushes at: 3628 Washington St.

Legal Description: Lot B Revised of Lot 18-22 of Tract C, Block 2, Sunnyvale Subd.

Parcel ID: 38929

R#30359

Owners: Debra & Danny Boschee
3628 Washington St
Rapid City, SD 57702

Work Completed: Bush trimming.

3418 Vendor Fees: \$160.00 – labor

Building Inspection Fees:

3193 Administrative Fees:	
\$42/inspection	\$42.00
Total:	\$202.00



EQUAL OPPORTUNITY EMPLOYER



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701

Code Enforcement

Mailing Address: 300 Sixth Street

Office Location: 333 Sixth Street

Telephone: 605-355-3465

email: codeenforcement@rcgov.org

December 1, 2015

Ronald & Kathleen Jeffries
1732 Mesa St
Rapid City, SD 57702

Dear Ronald & Kathleen Jeffries:

The City of Rapid City recently completed an inspection of the property at 1804 Fremont St. The inspection revealed large bushes on the corner of the property, **affecting the view for pedestrians and motorists**. The City requests that bushes be trimmed to meet sight triangle requirements.

The Rapid City Municipal Code states in §17.50.335 that intersections shall have a sight triangle based on the speed limits of the adjoining access-ways that is **between two and one-half (2 1/2) feet** and ten (10) feet above the edge of the roadway. (Fig. 1 enclosed)

Additionally, any bushes extending into the right-of-way should be trimmed back toward the property and off of the right-of-way.

The City of Rapid City requests your cooperation in correcting the sight triangle. The property will be reviewed again on or around **December 18, 2015**.

The City of Rapid City requires your compliance in correcting these items. These items must be in compliance within the time period specified. Not complying by this date will initiate abatement of the property, administrative costs and/or legal action. **Costs to resolve these items will be assessed to the owner of the property**

Thank you for your prompt attention to this matter. Please call with questions.

Sincerely,

Andrew Chlebek
Ordinance Officer



EQUAL OPPORTUNITY EMPLOYER

CITY OF RAPID CITY

CODE ENFORCEMENT

300 Sixth Street

Rapid City, South Dakota 57701-2724

COPIES RETURN SERVICE REQUESTED

Danny & Debra Boschee
3628 Washington St
Rapid City, SD 57702

JAIASHP 57702

