MEMORANDUM

TO:       City Council Members
FROM:     Kinsley P. Groote, Assistant City Attorney
DATE:     October 26, 2017
RE:       Special Assessment on 113 E. Saint Francis St.

On the October 16, 2017 Council Agenda, LF101117-01 (City Council Item #45) dealt with a resolution for the assessment roll for cleanup of miscellaneous property. On the assessment roll was a property located at 113 E. Saint Francis Street. Mr. James Bialota stated at the City Council meeting that he did not acquire the property until May 30, 2017 by a treasurer’s deed. He asked that the assessment, in the amount of $402, be removed from the property roll. The assessment for 113 E. Saint Francis Street was removed from the resolution. After follow up on this matter, it appears that 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.

Code enforcement abated debris, namely tires and yard waste, on the property located at 113 E. Saint Francis Street on March 3, 2017. The owners at the time of the abatement were Myrtle Schlamann and Jessica Weaver. These owners had not been paying their taxes for quite some time.

Mr. Bialota purchased a tax certificate on this property, 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. On May 30, 2017, Mr. Bialota recorded a treasurer’s 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.

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