



City of Grand Island

Tuesday, February 11, 2020

Council Session

Item G-2

Receipt of Official Document – Tort Claim filed by Adam and Shannon Brosz

Staff Contact: Stacy Nonhof, Interim City Attorney

Council Agenda Memo

From: Stacy Nonhof, Interim City Attorney

Meeting: February 11, 2020

Subject: Receipt of Official Document – Tort Claim filed by Adam and Shannon Brosz

Presenter(s): Stacy Nonhof, Interim City Attorney

Background

The City of Grand Island has received a Notice of Tort Claim from Adam and Shannon Brosz alleging certain claims of water damage to their property. The City has a drainage easement in the back of the property. Water has been left standing for a significant time since Spring of 2019 and continues to stand at this time.

Without getting into issues concerning the City's and other parties' liability, and whether the claim of Adam and Shannon Brosz is fair and reasonable, we are simply providing a copy of this claim to you in compliance with the Nebraska Political Subdivision Tort Claims Act.

For a person to assert a tort claim against the City of Grand Island, a written notice of the claim must be filed with the City Clerk, Secretary or other official responsible for keeping official records. The claim must be filed within one year of the accrual of the claim, and the Council has six months to act on the claim. No suit can be filed until after the Council acts on the claim, or the six months has run.

Historically, the City of Grand Island has simply let the six months run. Not all claims result in a suit being filed, so it makes good sense to not act affirmatively in many instances. In any event, if you wish to look further into this claim, please contact the City Attorney's office, and we will provide you with the information which we have in connection with the claim. Our recommendation is to continue to take no affirmative action on tort claims. It must be emphasized that by providing copies of alleged claims to you, we are not making an admission or representation that a claim has been properly filed in any respect. We also recommend that no comments concerning a particular claim be made during Council meetings, unless you decide to bring the matter on for formal consideration. Even then, we ask that comments be carefully considered so that the legal rights of all parties are preserved.

Discussion

This is not an item for council action other than to simply acknowledge that the claim has been received.

Recommendation

City Administration recommends that the Council take no action other than acknowledge receipt of the claim.

Sample Motion

Move to approve acknowledgement of the tort Claim filed by Adam and Shannon Brosz.

STEHLIK LAW FIRM P.C., L.L.O.

A Limited Liability Organization

P.O. Box 400 • 724 West Koenig Street • Grand Island, NE 68802-0400

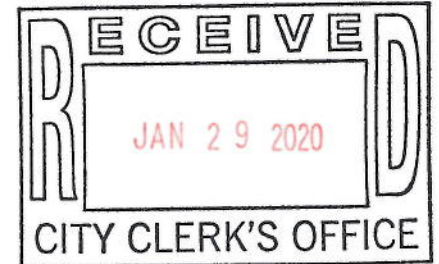
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January 23, 2020

Ranae Edwards
City Clerk for the City of Grand Island
100 East First Street
Grand Island, NE 68801



Re: Adam and Shannon Brosz Claim under Neb.Rev.Stat. §13-901

Dear Ms. Edwards:

Please accept this letter as notification by Adam and Shannon Brosz of a claim against the City of Grand Island under the Political Subdivision Tort Claim Act, Neb. Rev. Stat. §§13-901 et. seq.

Mr. and Mrs. Brosz have previously notified the City of continuing water damage to their property located at 3824 Sparrow Circle in Grand Island. The City has a drainage easement in the back of the property. Water has been left standing for a significant amount of time since the spring of 2019—the water continues to stand at this time. Furthermore, water has not been flowing from the drainage system into the main drainage line (Moore's Creek). My clients contend that the standing water is in beyond the scope of what is considered and allowed under the easement.

My clients contend that the continued standing water is a direct and proximate result of the actions or inactions of the City in regards to failure to maintain the system, faulty design, poor inspection, and failure to make proper repairs to the drainage system.

My clients' property was damaged to such an extent that repairs will be necessary to Plaintiffs' fence and yard. Further, my client's have lost the use of their backyard while the water has been standing due to safety and health hazards resulting from the standing water. My clients have young children and it is unsafe for them to remain in the backyard while water is standing at high levels. My clients will be required to install a retaining wall in their yard to prevent further damage from the standing water and provide safety for their children in their backyard.

My clients have tried to resolve this matter with the City of Grand Island and have been unsuccessful. My clients stand by the proposal made in my November 26, 2019 letter to City Attorney Stacy Nonhof.

cc: Legal
HR
1-29-2020

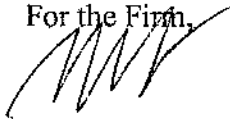
At this time, my clients seek damages as follows:

Cost of building Retaining Wall	\$29,302.70
Cost to repair and replace damaged fence post	\$3,400.00
Cost to repair and replace damaged sod	\$1,000.00
Loss of use of backyard	\$10,000.00

My clients have instructed me to proceed with litigation if this claim is denied or does not receive a response within the statutory period of time. To that end, I enclose a draft of the Complaint we will likely be filing should this matter remain unresolved.

Please contact me with any questions or concerns. I look forward to hearing from you as soon as possible.

For the Firm,



Mitchell C. Stehlik
mitchell.stehlik@stehliklawfirm.com

Enc.

IN THE DISTRICT COURT OF HALL COUNTY, NEBRASKA

ADAM BROSZ AND SHANNON)
BROSZ,)
Plaintiffs,)
vs.)
CITY OF GRAND ISLAND,)
Defendant.)

Case No. CI 20-_____

COMPLAINT

COPY

COME NOW the Plaintiffs, Adam Brosz and Shannon Brosz, by and through their attorney of record, Mitchell C. Stehlik, and for their cause of action against the City of Grand Island state and alleges as follows:

1. Plaintiffs own property located at 3824 Sparrow Circle in Grand Island, Hall County, Nebraska, legally described as:

Lot 22, Block 1, Summerfield Estates Seventh Subdivision of the City of Grand Island, Hall County, Nebraska.
2. Defendant City of Grand Island is a political subdivision duly organized under the laws of the State of Nebraska and located in Hall County, Nebraska.
3. Between the dates of April 1, 2019 and January 20, 2020, water from the City of Grand Island’s drainage system overflowed onto Plaintiffs’ property as described in paragraph one (1) and remained standing for a lengthy amount of time resulting in substantial property damage to the premises and improvements thereon.
4. As a direct and proximate result of the actions or inactions of the Defendant in regards to maintenance, design, inspection, and repair of the drainage system for the public use, Plaintiffs’ residence was damaged to such an extent that repairs will be necessary to Plaintiffs’ fence and yard. Further, Plaintiffs’ lost the use of their yard while the water was standing due to

safety and health hazards resulting from the standing water. Plaintiffs will be required to install a retaining wall in their yard to prevent further damage from the standing water as a result of the Defendant's actions and/or inactions.

5. The actions or inactions of the City of Grand Island and the subsequent damage to Plaintiffs' property constituted a taking by the Defendant of a portion of the Plaintiffs' property, pursuant to Neb. Const. Art. 1, Section 21; and Plaintiffs are entitled to have the damages determined fairly by a board of appraisers as outlined in Neb. Rev. Stat. § 76-701 et seq.

6. Plaintiffs have made a demand upon the City of Grand Island to both fix the problem with the drainage system and to pay their damages and the City of Grand Island has refused to do so.

WHEREFORE, Plaintiff prays that the Court appoint a board of appraisers consisting of three disinterested freeholders of the county to ascertain and determine the damages the Plaintiffs have incurred and that the Defendant be ordered to pay the Plaintiff the amount of money the Board of Appraisers determines that Plaintiff is fairly entitled to receive for the cost of repairs to Plaintiffs' fence and yard, the cost of building a retaining wall, and a fair and reasonable amount to compensate Plaintiffs' for their loss of use of the property, together with attorneys' fees and costs, and appraiser's fees and costs as the Plaintiff's Award and for such other and further relief as this Court may deem just and equitable.


DATED _____, 2020.

ADAM BROSZ AND SHANNON BROSZ,
Plaintiffs.


BY: _____
 Mitchell C. Stehlik, # 24451
 STEHLIK LAW FIRM, P.C., L.L.O.
 724 West Koenig Street
 P.O. Box 400
 Grand Island, NE 68801
 T: (308) 675-4035
 F: (308) 675-4038
 Email: mitchell.stehlik@stehliklawfirm.com

STATE OF NEBRASKA)
) ss:
 COUNTY OF HALL)

Adam Brosz, being first duly sworn upon oath, deposes and states that he is one of the Plaintiffs in the above-entitled cause; that he has read the above Complaint; knows the contents thereof; and that the facts therein contained are true as he verily believes.

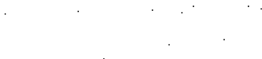
_____ 
 Adam Brosz

SUBSCRIBED in my presence and sworn to before me _____, 2020.


_____ 
 Notary Public

STATE OF NEBRASKA)
) ss:
 COUNTY OF HALL)

Shannon Brosz, being first duly sworn upon oath, deposes and states that she is one of the Plaintiffs in the above-entitled cause; that she has read the above Complaint; knows the contents thereof; and that the facts therein contained are true as he verily believes.

_____ 
 Shannon Brosz

SUBSCRIBED in my presence and sworn to before me _____, 2020.

_____ 
 Notary Public