



City of Grand Island

Tuesday, February 26, 2002

Council Session

Item G2

Receipt of Official Document - Tort Claim Filed by Wayne A. and Nora G. Devine

The City of Grand Island has received a Notice of Tort Claim on behalf of Wayne and Norma Devine alleging certain claims in connection with an alleged sanitary backup on or about December 23, 2001.

Without getting into issues concerning the City's and other parties' liability, and whether the claim of Wayne and Norma Devine 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. This is not an item for council action other than to simply acknowledge that the claim has been received. The claim has been referred to the City's insurer for review.

It is recommended that Council take no action other than acknowledging receipt of the claim.

Staff Contact: Charlie Cuypers



BEFORE THE CITY COUNCIL OF GRAND ISLAND, HALL COUNTY, NEBRASKA

WAYNE A. DEVINE AND
NORMA G. DEVINE,

Claimants,

vs.

CITY OF GRAND ISLAND, A Political
Subdivision,

Defendant.

Claim No. _____

**NOTICE
OF TORT CLAIM**



COMES NOW Wayne A. Devine and Norma G. Devine and for their Amended Tort Claim against the City of Grand Island, Nebraska a Political Subdivision, hereby alleges as follows, pursuant to the Nebraska Political Subdivision Tort Claim Act §13-901, *et seq.*

1. Plaintiffs are residents of Grand Island, Hall County, Nebraska and have been for all times material hereto. Plaintiffs are owners of residential property located within the corporate city limits of the City of Grand Island.
2. Defendant City of Grand Island (hereafter "City") is a Political Subdivision organized, functioning and existing within the purview of the Nebraska Political Subdivision Tort Claim Act § 13-901, *et seq.* for all times relevant herein.
3. The events which form the basis to Plaintiff's tort claim took place within the corporate limits of the City, and involve equipment, fixtures and services exclusively owned, operated and maintained by the City of Grand Island for all times material herein.
4. That in conjunction with the City's activities, the City provides, in exchange for a monthly fee or charge to its residents, sewer service from residences such as Plaintiffs' herein. That, in conjunction therewith the City undertakes to monitor, repair, service, inspect, and maintain its pipes, pumps, lift stations, grading and hydrologic drainage of its sewer system pursuant to local, state and federal laws, as well as regulations generated by the Defendant City and other similar situated regulatory bodies, to insure that residential waste materials are properly and safely moved through its system to prevent backups and contamination of air and water qualities, amongst other statutory and other common laws and regulations

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A. W. K.

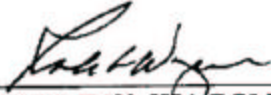
applicable. That in conjunction with said affirmative duties, the City has a duty to warn its users, shutdown parts of its system, and repair segments of its sewer system to prevent the above described ills when it knows or should know, in the exercise of reasonable care, of defects posing a threat to persons or property within its jurisdiction and /or connected to its sewage services. That the City as sole occupant and operator of its sewage system, is aware that residential users are unable to detect defects and / or preform inspections and / or effectuate repairs of instrumentalities wholly within the exclusive control of the City and its employees. That the City, by law, is to utilize, posses and maintain sufficient operating policies and procedures to effectuate its duties to users, such as Plaintiffs herein, to prevent sewage backups into residential properties causing damage to persons and property.

5. That on or about December 23, 2001, Plaintiff, sustained a one (1) foot plus sewage backup in their basement through the connecting drain to the City sewer, which had backed up due to inadequate inspection and negligent monitoring repair when the City knew or should of known of a blockage in the City's sewage pipe system and / or lift station failure occurred. That a number of City service subscribers on West Anna Street and surrounding neighborhoods exhibited and / or experienced a similar fate as did your Plaintiffs herein on or about said date. That the City was timely notified of the defective condition by its users, but failed to timely remedy the defect in their sewage system, thus causing damage to the Plaintiff herein.
6. That a Political Subdivision, exercising reasonable care would have taken such timely corrective action, as was indicated, to prevent and/or ameliorate the conditions created by the City's negligence and the conditions there and then existing.
7. That as an approximate result or an approximate contributing result, Plaintiffs have incurred out of pocket expenses of \$1,011.00 receipts attached, in damages to their residence and its contents to date; additional damage in vacating and effectuating necessary reasonable repairs to their residence and its contents as a proximate result of the Defendants negligence. Plaintiffs invoke theories res ipsa loquitur, and / or specific allegations of negligence, violation of statues and ordinances, including strict liability as a basis for recovery, should this matter progress via discovery and to trial.
8. Plaintiffs also demand reimbursement for attorney's fees and costs, as the City has refused to reimburse Plaintiffs herein, contrary to law, after Plaintiffs timely presentation of their tort claim to the City and its representatives on or about February 15, 2002.

WHEREFORE, Plaintiffs pray for recovery as set forth above.

WAYNE A. DEVINE and NORMA G. DEVINE,
Claimants

BY:


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Grand Island, NE 68802
Phone: (308) 384-9905

CERTIFICATE OF SERVICE

The undersigned hereby certifies, as counsel of record for the Claimants, that copies of the foregoing Amended Notice of Tort Claim were sent to the following by Certified mail, postage prepaid, on the 15th day of February, 2002.

CITY CLERK
CITY OF GRAND ISLAND
100 E 1ST STREET
GRAND ISLAND NE 68801

CITY SEWER DEPARTMENT
CITY OF GRAND ISLAND
100 E 1ST STREET
GRAND ISLAND NE 68801


ROBERT W. WAGONER, #18426
Attorney at Law