



City of Grand Island

Tuesday, September 22, 2015

Council Session

Item G-3

**Receipt of Official Document – Tort Claim filed by Dumale
Bariyiga**

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: September 22, 2015

Subject: Receipt of Official Document – Tort Claim filed by Dumale Bariyiga

Item #'s: G-3

Presenter(s): RaNae Edwards, City Clerk

Background

The City of Grand Island has received a Notice of Tort Claim from Dumale Bariyiga alleging certain claims in connection with the death of her daughter, Nubari Koffree, that occurred on July 18, 2015 at the Island Oasis Water Park.

Without getting into issues concerning the City's and other parties' liability, and whether the claim of Dumale Bariyiga 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. The mere statement of these allegations does not make them true. By formally accepting this claim, the City is not admitting any liability, negligence or other wrong doing.

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

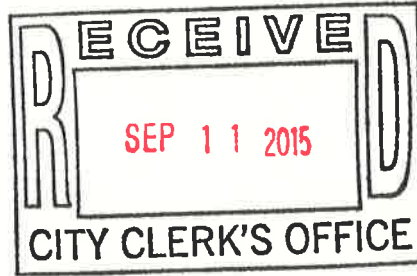
City Administration recommends that the Council take no action other than acknowledge receipt of the claim.

Sample Motion

Move to approve acknowledgement of the Tort Claim filed by Dumale Bariyiga.

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September 8, 2015

RaNae Edwards
Grand Island City Clerk
P.O. Box 1968
Grand Island, NE 68801

RE: Political Subdivision Tort Claim of Dumale Bariyiga for the wrongful death of her daughter, Nubari Koffree on July 18, 2015, at the Island Oasis Water Park, 321 East Fonner Park, Grand Island, Nebraska

Dear Clerk Edwards:

Please consider this letter as Dumale Bariyiga's Political Subdivision Tort Claim pursuant to NEB. REV. STAT. §13-905. I have also enclosed a Claim Form that was available on the City Attorney's website. We are also sharing this with the Human Resource Department per instructions on the Claims Form. I represent Dumale Bariyiga in the wrongful death action of her daughter, Nubari Koffree, that occurred on July 18, 2015, at the Island Oasis Water Park in Grand Island, Nebraska.

Nubari Koffree was at the Island Oasis Water Park at 321 East Fonner Park on July 18, 2015, when she drowned. Nubari was along the east edge of the wave pool near the lifeguard's chair on the east side of the wave pool when the drowning occurred. At 3:46 p.m. Nubari is seen to be struggling in the water and going under in a video we have obtained. At approximately 3:47 or 3:48 p.m., swimmers notify the lifeguard who is sitting on the chair on the east side that Nubari is at the bottom of the pool. The lifeguard tells the person who notified her not to get Nubari. The lifeguard brought Nubari up from the bottom and waited in the water with Nubari for the back board and headrest to be brought to her in the water. It appears that the lifeguards were waiting for a seventh lifeguard to show up who knew how to give CPR before bringing Nubari out of the water. During this critical and painful time in the water with six lifeguards standing around, no CPR was being given to Nubari. There may have been a minute delay when Nubari was finally brought out of the water before CPR was started. The lifeguards were

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negligent in failing to timely see that Nubari was in distress in the water when it happened right in front of the lifeguard's chair and for failing to timely provide CPR when Nubari was brought out of the water.

Ms. Bariyiga is making a Political Subdivision Tort Claim for the cost of the Fire Department (\$1,501.40), the hospital bills (\$9,745.47), the funeral bills (\$7,326.67), and for the life of Nubari Koffree for one million dollars. If you need any additional information, please let me know.

Sincerely,



Melanie J. Whittamore-Mantzios
mmantzios@wolfesnowden.com

Enclosure

cc: Grand Island Human Resources
Robert Sivick, City Attorney
Scott G. Vala (EMC Insurance)
Randall Goyette (Attorney for EMC Insurance)
Dumale Bariyiga