

# **City of Scottsbluff, Nebraska**

**Monday, August 15, 2016**

**Regular Meeting**

## **Item Reports2**

**Council to consider the personal property claims submitted by residents on West 42nd Street and give a recommendation to staff.**

**Staff Contact: Nathan Johnson, City Manager**



August 9, 2016

Cindy Dickinson, City Clerk  
City of Scottsbluff  
2525 Circle Drive  
Scottsbluff, NE 69361

Dear Cindy:

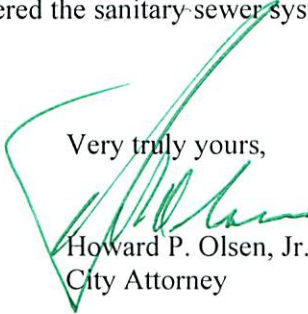
You have asked for our legal opinion with regard to the City liability for five sewer backups in the Ken Dill Subdivision that occurred on June 12, 2016. On that date, the National Weather Service reports a .77 inch rainfall in a short period of time. That kind of rainfall could be considered an "Act of God" for which generally the City would not be liable unless its employees were negligent in some manner. Historically, the doctrine of inverse condemnation (taking property of an individual without compensation) has been used to assign liability for sewer backups to the city that owned and operated the sanitary sewer system. The recent case of Henderson v City of Columbus watered down that theory of recovery by holding that one must first prove that the city intended to exercise its right of eminent domain, by taking action that it knew or could foresee would result in the taking of damaging of private property. The Court of Appeals in a previous review of this case determined that no negligence took place by the City of Columbus.

This subdivision constituted as SID #7 was given permission to hook to the City sanitary sewer in January 1969. I have looked at the sanitary sewer system on the ground and the records showed the last inspection was April 9, 2015. The City has a regular inspection and maintenance program. I also reviewed the staff report which noted the camera showed no issues in the sanitary sewer line at this location.

It was noted that the caps for the cleanouts in the borrow pit that serve the Northside Mobile Home Ranch service line were not in place and that the western most manhole in the City's main line which is located behind the Morton building location was offset approximately two inches. It appeared to the City crew that a heavy piece of equipment must have hit that manhole to move it. The City is on a five to seven year rotation for inspection and maintenance except for trouble spots. This line has never been identified as a trouble spot. The manhole was in place as it should have been during our last scheduled inspection in April 2015. The City has no responsibility for the cleanouts or the service line that serves the Ranch. Our crew advised the Mobile Home Ranch that their cleanout caps needed to be replaced and the Ranch has complied.

Conclusion: the City has determined that water entered the locations described through no fault of the City and that the additional volume entered the sanitary sewer system and caused the backup's alleged which causes no legal liability to the City.

Very truly yours,

  
Howard P. Olsen, Jr.  
City Attorney