

# **City of Scottsbluff, Nebraska**

**Monday, May 7, 2018**

**Regular Meeting**

## **Item Public Inp1**

**Council to consider sewer back up claim from Jose Gutierrez at 1516 3rd Ave. and make a recommendation to staff.**

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

**City of Scottsbluff**  
**CITIZEN INCIDENT REPORT**

All tort claims under the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall be filed with the clerk, secretary, or other official whose duty it is to maintain the official records of the political subdivision, or the governing body of a political subdivision may provide that such claims may be filed with the duly constituted law department of such subdivision. It shall be the duty of the official with whom the claim is filed to present the claim to the governing body. All such claims shall be in writing and shall set forth the time and place of the occurrence giving rise to the claim and such other facts pertinent to the claim as are known to the claimant.

Date: 4-16-18

Date and location of Incident: 4-15-18 1516 3rd Ave Scottsbluff

Claimant Name: Jose Gutierrez Phone: (808) 225-2286 <sup>(308) Andy</sup> 225-1545

Address: 307 E Overland City: Scottsbluff State and Zip: NE 69361

Tenant Dam (308) 765-5059 Kimberly (308) 315-8293

City Department Contact: \_\_\_\_\_

Narrative of what happened: Basement Flooded

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Estimated amount of damages \$ 7 (attach estimates)

Attachments: Photos: \_\_\_\_\_ Estimates: \_\_\_\_\_ Medical Bills: \_\_\_\_\_

Witnesses: \_\_\_\_\_ Contact Information: \_\_\_\_\_

Citizen insurance information: \_\_\_\_\_

Reported by (city staff): Cindy Dickinson

Received Date: 4/16/18

Signature of Claimant(s): Jose Gutierrez

SUBMIT TO: CINDY DICKINSON, CITY CLERK, CITY OF SCOTTSBLUFF  
2525 CIRCLE DRIVE, SCOTTSBLUFF, NE 69361

## Cindy Dickinson

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**From:** Kent Hadenfeldt <KHADENFELDT@SIMMONSOLSEN.COM>  
**Sent:** Monday, April 30, 2018 3:34 PM  
**To:** Cindy Dickinson  
**Cc:** SCOTTSBLUFF\_CITY OF \_ 2018 CITY CLERK \_21140\_182020\_ E\_Mail \_ 21140\_182020  
**Subject:** RE: sewer back-up claim - City of Scottsbluff/Gutierrez - SB18 0070 [IWOV-iManage.FID277324]

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hello Cindy. I have reviewed the attached documents and followed up with the Waste Water Staff regarding the attached claim. It is my recommendation not to pay the claim. Since the decisions in the Henderson v. Columbus and Essink v. Gretna cases to have a successful claim against a City for a sewer back up there must be some negligence on behalf of the City. According to the evidence in this matter the City acted reasonably in its inspections and maintenance routine. It appears the cause of this back up was an intrusion of tree roots coming from the private sewer lateral at 1319 2<sup>nd</sup> Avenue. It was not caused by the condition of the City's sewer main. As such the City has no duty to clean out a private lateral, but has notified the owner to do so.

My follow up investigation brought up a similar incident which occurred in 2015. At that time the City notified the owner of 1319 2<sup>nd</sup> Avenue that maintenance was required at their private lateral. Because of the prior incident there is a question of foreseeability. However, it does not appear foreseeable that this incident would reoccur. The maintenance reports and City records do not show any type of concern or problem with the City's main in this area. Foreseeable risk is an element in the determination of negligence, not a legal duty. In order to determine whether appropriate care was exercised a fact finder can assess the foreseeable risk at the time of the action. With that assessment and the routine inspection of the city's main, there was no indication of a problem and no signs it would reoccur. The City has acted reasonable under the circumstances. Based upon the foregoing it would be my recommendation that the City withdraw the claim from consideration and tell the claimant that upon the passage of six months, they could withdraw the claim and pursue it in court if they choose. Let me know if you have any questions.

Kent A. Hadenfeldt  
Simmons Olsen Law Firm, P.C.  
1502 Second Avenue  
Scottsbluff, NE 69361  
(308) 632-3811  
(308) 635-0907 (Fax)  
Email: [khadenfeldt@simmonsolsen.com](mailto:khadenfeldt@simmonsolsen.com)  
Website: <http://www.simmonsolsen.com>



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**From:** Cindy Dickinson [mailto:[cdickins@scottsbluff.org](mailto:cdickins@scottsbluff.org)]  
**Sent:** Wednesday, April 25, 2018 11:22 AM

# Memo

**To:** Cindy Dickinson, City Clerk  
**From:** Lynn Garton, Water Reclamation Supervisor  
**CC:** Mark Bohl, Public Works Director  
**Date:** 4/17/2018  
**Re:** 1516 3<sup>rd</sup> Avenue Sewer Call

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At approximately 7:39p.m. Sunday April 15, 2018 Randy Rutter received a call from the Scottsbluff Communication Center indicating that a Mr. Andy Gutierrez from 1516 3<sup>rd</sup> Avenue was reporting a sewer backup at his residence. Randy contacted Clay Rahmig for assistance to investigate the situation. Upon initial investigation they discovered that the manholes at East 14<sup>th</sup> Street, East 15<sup>th</sup> Street and East 16<sup>th</sup> Street had standing water indicating some sort of backup in the sanitary sewer mainline. They found normal flow at the manhole located on East Overland at which time they contacted Eddie Shapland to bring the Jet/Vac truck to the area to perform cleaning of the line.

Upon Eddie's arrival he set up to perform cleaning of the mainline from East Overland, heading to the North. At approximately 250 feet they encountered a blockage in the mainline. After several attempts they dislodged the blockage and flows began to return to normal. As the flows began to recede, they visually saw roots, rags and toilet paper in the flows. At that point Randy contacted Mr. Gutierrez via phone to let him know that the line had been opened. The crew then left the area.

On April 16<sup>th</sup> the collection crew returned to the area and conducted a televised inspection of the mainline in question. At that approximate 250 foot mark, a large root mass was found protruding from the lateral of the residence located at 1319 2<sup>nd</sup> Avenue. (Exhibit A) no other obstructions were noted. The crew returned to the plant and prepared the Jet/Vac truck with a wire spinner head that would be used to remove the root ball the next day.

On April 17, 2018 the crew returned to the area to complete the cleaning (see Exhibit B) the wire spinner head removed the root ball from the mainline as indicated in the 1<sup>st</sup> photo, the 2<sup>nd</sup> photo shows the remaining root ball in the lateral of 1319 2<sup>nd</sup> Avenue that would need to be removed by a plumbing outlet. Exhibit C shows the lateral connection from the residence of 1516 3<sup>rd</sup> Avenue where the call originated.

# Wastewater Treatment Plant Sewer Call Work Record

Reviewed by Supervisor:

Date: 4-15-18 Time of Call: 7:39 pm Received By: Comm Center Given to: Randy Rella Time Given: 7:55  
 Caller: Andy Quieterrez Phone #: 308-225-1545 Owner if Known: N/A  
 Location / Address: 1516 3rd ave  
 Work Request: check sewer main

## WORK PERFORMED

Field employees must answer all items numbered 1 through 14 and turn the Work Record over to the Wastewater Supervisor for Review.

1) Time of Arrival: 8:10 pm

2) Upon arrival, the following manholes were checked to determine what was happening in the City's collection system:

Between	And...	On (What St or Ave)	Flow in Manholes: Write what was found below.	Picture Taken Yes or No
Example: E 16 <sup>th</sup> St	E 17 <sup>th</sup> St	12 <sup>th</sup> Ave	Normal	Yes
16 <sup>th</sup> st	14 <sup>th</sup> st	3rd ave	Standing Water	NO
		Eastoverland	Normal Flow	

3) After checking manholes, what additional work was performed to correct this problem:

\_\_\_\_\_ I informed the customer that they will need to contact a plumber to assist them with their private lines as the City's manholes have been checked in the area and the flow is okay. Who did you inform \_\_\_\_\_

or \_\_\_\_\_ I informed the plumber that they will need to take a closer look at the customer's private lines as the City's manholes have been checked in the area and the flow is okay. Who did you inform \_\_\_\_\_

of. Cleaning performed: Pulled Sewer main line

4) What did you find in the sewer lines or manholes? (grease/toilet paper, etc) Roots, Rags & Toilet Paper

5) Number of feet jetted: 250 ft

5) If jetting was performed and the flows in manholes were normal, explain why we went ahead and jetted the City's main lines.

7) Did this location have flooding or damage occur of some sort? Yes ☐ No ☐ Unsure ☒

8) If yes or unsure, did you provide them with the City's Letter from Management and EPA Brochure? \_\_\_\_\_

9) Who did you give the letter and brochure to? \_\_\_\_\_

10) Date Completed: 4-15-18 11) Personnel Time Involved 2 hrs

12) Sewer JET Hours Involved \_\_\_\_\_ 13) Sewer CAMERA hours Involved: \_\_\_\_\_

14) Work Performed By: Randy Rutter Ellice Shuman

I Randy Rutter received call from the Comm Center at 7:39 pm 7-15-18 Sunday Evening and was informed of a call from the landlord of a rental home at 1516 3rd ave about at Sewer backup the Contact Name and Number I was given was Andy Duitierrez 308-225-1545 and was told he was the landlords son, I called Clay Rahmig for assistance, I proceeded to the Waste Water plant to get the service truck, Clay met me at the plant and we proceeded to the call location, we checked the manhole on 16<sup>th</sup> st and found standing water, I called Eddie Shapland and told him we needed the Sewer Jet truck at our location, we checked the manhole on 15<sup>th</sup> and 14<sup>th</sup> st and also found standing, we opened the manhole on Eastoverland and found normal flow, I called Eddie and told him to meet us at that manhole to pull the line, Eddie arrived with the Sewer Jet and started pulling the line, we made contact with the line plug at 250 ft, after repeated attempts we broke through the plug and had normal flow, I called Andy Duitierrez and informed him we had opened up the line, he said he would call the landlord and the renter and let them know the ~~wa~~ line was open, we closed the manhole and Clay and I proceeded back to 16<sup>th</sup> st to check that manhole again and we found good flow, we headed back to the plant to put everything away.

Randy L. Rutter

City of Scottsbluff  
2525 Circle Drive  
Scottsbluff, NE 69361  
Phone: 308-630-6291



1516 3rd Ave

MH  
Cleaned  
From



Roots  
In lateral  
1319 2nd  
Ave  
(Blockage  
was here)

MH Cleaned From  
↓  
Cammed to





**West Nebraska Claims  
Service**

P.O. Box 140  
Scottsbluff, NE 69363-  
0140  
wncs-sb@wncs.net  
308-632-4161 - Phone  
308-632-4055 - Fax

**LOSS REPORT**

**Final**

Reference: City Of Scottsbluff  
2525 Circle Drive  
Scottsbluff, NE 69361  
Attention: Cindy Dickinson  
Insured: City of Scottsbluff  
2525 Circle Drive  
Scottsbluff, NE 69361

Report #: 0  
Catastrophe Number:  
Policy Number: UNAVAILABLE  
Claim Number: UNAVAILABLE  
Date of Loss: 4/16/2018  
Type of Loss: Backup of Sewer or Drain  
File Number: SB18-0070

**ENCLOSURES:**

Estimate, Statement of Loss, Bill for Services, Photos (19), Diagrams

**COVERAGE:**

Liability	\$0.00	Eff. Dates:	From:	To:
		Mortgagee:		
		Deductible:	\$0.00	
		Co-Ins. Policy:	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
		Forms:		

**Property Report**

**Loss Description:** I was advised that the sewer backed into the basement of the real property of Jose Gutierrez, 1516 Third Avenue, Scottsbluff, NE 69361 and caused damage to the real property and to the personal property of the tenant, Pam Coley.

**Assignment:**

**Received:** 04/16/2018  
**Contacted:** 04/16/2018  
**Inspected:** 04/18/2018  
**Contact Person:** Andy Gutierrez, Pam Coley

**Claimant Real Property:** Jose Gutierrez, 307 East Overland, Scottsbluff, NE 69361, phone number 308-225-2286, and claimant's son, Andy Gutierrez, phone number 308-225-1545.

**Claimant Personal Property:** Pam Coley, 1516 Third Avenue, Scottsbluff, NE 69361, phone number 308-765-5059.

**Photos:** Attached are the photos of the claimant's property and the damage sustained to the claimant's property.

**Diagram:** Attached is the diagram of the damaged area in the claimant's dwelling.

**Scope of Damage:** The claimant states that the sewer water backed up through the basement floor drain. The sewer water backed up into the laundry room, hallway, bathroom and bedroom. There was plaster damage to the hallway and bedroom, those rooms will have to have the walls repaired and then painted. The laundry room and bathroom only had sewer water on the floors. The total amount of damage to the real property was \$1,965.86 and after the deduction for depreciation, the net claim for the real property is \$1,771.19, the damage to the personal property is \$161.82 and after the deduction for depreciation, the net claim for the personal property is \$80.91. The total amount of damage after depreciation is \$1,852.10

**Salvage:** None

**Adjustments & Damages:** Pursuant request, I have spoken with the claimants, obtained photos of the damage and



estimated the replacement cost and the actual cash value of the real property and the personal property. If you have any questions, please advise.

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**STATEMENT OF LOSS:**

<b>Item</b>	<b>RCV</b>	<b>Dep</b>	<b>ACV</b>	<b>Limit</b>
Liability	\$2,046.77	\$194.67	\$1,852.10	\$0.00
<b>TOTALS</b>	<b>\$2,046.77</b>	<b>\$194.67</b>	<b>\$1,852.10</b>	

Deductible \$0.00

Less Prior Payments \$0.00

Claim Payable \$1,852.10

Due Insured **\$1,852.10**

Recoverable Depreciation Totals: \$0.00

Non-Recoverable Depreciation Totals: \$194.67

Net Claim Without Rec. Depreciation: \$1,852.10

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**RECOMMENDATIONS:**

No recommendations are in order since I was to write the estimate of repair and not determine liability.

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_____	<u>4/19/2018</u>
Marvin Richard	Date