

RECEIVED

JUN 01 2011

MAYOR'S OFFICE

TO: THE CITY OF RAPID CITY
FROM: JOHN REINTS

**NOTICE OF APPEAL OF SPECIAL ASSESSMENT OF MAY 2, 2011
AGAINST PROPERTY AT 234 SOUTH CANYON ROAD**

1. This appeal is based on the City's failure to follow City policy and the City's failure to give adequate notice of alleged ordinance violation as required by Municipal Code 18.16.035, the Constitution of the United States and the South Dakota Constitution. As a direct result of the City's failures, I was unaware of any alleged violation of ordinance at the premises of my home at 234 South Canyon Road, Rapid City, at the time of alleged service of notice of alleged ordinance violation, at the time of deadline for administrative appeal of the allegation and, also, at the time of the apparent abatement action, March 3, 2011. I could not exercise my right of appeal to the Building Official, nor my right of appeal to the Circuit Court from any adverse action of the Building Official on my appeal. because of said failures to follow City policy and to afford adequate notice, receipt of which is my fundamental right..

2. By reason of the City's failures here set forth in Paragraph 1, the abatement action ordered by the City which apparently took place on March 3, 2011, was an unlawful intrusion upon my home and a violation my fundamental rights, including but not limited to my fundamental right to protection of the Constitutional requirement that I not be deprived of property without due process of law.

3. By the reasons set forth in paragraphs 2 and 3 herein, the Special Assessment of May 2, 2011, in the total amount of \$207.00, is without basis in law and cannot be lawfully assessed. Accordingly, it must be removed from the Assessment role and not entered against the property at the premises of my home at 234 South Canyon Road, Rapid City, South Dakota.

CITY'S FAILURE TO FOLLOW CITY POLICY

4. The City policy regarding alleged violation of the Municipal Code is stated on the City's website at <http://www.rcgov.org/Code-Enforcement/index.html>. On this title page of the Code Enforcement Division it is clearly stated in Paragraph 2 that:

"Once an inspection action is commenced the Ordinance Officer will attempt to make person-to-person contact with the tenant and/or owner of the property and if necessary start the legal notification process."

5. Attention of the members of the City Council and its Legal and Finance Committee is respectfully directed to the one-page document, EXCERPT, TRANSCRIPT OF TELEPHONE CONVERSATION BETWEEN JOHN REINTS AND ANDREW CHLEBECK, ON AUGUST 20, 2010, with its affidavit, which is hereto attached and labeled "Notice of Appeal EXHIBIT ONE." The transcript shows that Mr. Chlebeck agreed to provide notice by email to me at the email address,

jordtz@gmail.com, if Code Enforcement issued any notice, or alleged any ordinance violation at 234 South Canyon Road, starting as of our telephone conversation on August 20, 2010, since I was absent from Rapid City and would not, or might not, receive any mailed notice.

6. Mr. Chlebeck has claimed in a telephone conversation with me on May 31, 2011, that a post-card notice was issued and mailed to 234 South Canyon Road on February 25, 2011, alleging violation of Municipal Code 12-20-070 and stating a re-inspection date of February 28, 2011, three days after Mr. Chlebeck claims the notice was mailed. No post card notice of February 25, 2011, was ever received by me. I was out of Rapid City at that time and my absence was involuntarily prolonged by illness; Further, no such notice was in my mail which I claimed upon my return to Rapid City on May 16, 2011.

7. On February 28, 2011, Mr. Chlebeck knew exactly how to communicate with me informally and instantaneously, and he failed to do so. In addition, he had explicitly agreed to inform me by email of any notice and of any business with his office concerning the premises of my home. Nevertheless, Mr. Chlebeck failed to contact me informally concerning the alleged notice of February 25, 2011, thereby violating his explicit agreement and the clearly-stated City policy that the Ordinance Officer "*...will attempt to make person-to-person contact with the tenant and/or owner of the property...*" concerning any allegation of ordinance violation. Mr. Chlebeck sent no email, an act which would have occupied fully five minutes of his time. My fundamental right to not be deprived of property without due process of law was thereby violated, since I am entitled, as a matter of right, to have benefit and protection of established City policy, just like any other citizen. As I was away from my home, I was unaware of any ordinance violation or notice of alleged ordinance violation. In fact, I learned of this alleged violation only on or about May 27, 2011, when I received the Certified Letter concerning hearing on this special assessment. Had I been contacted as Mr. Chlebeck was obliged to do, and I had confirmed with the friend who was looking after the premises of my home that there was an ordinance violation, I would, as Mr. Chlebeck well knows, either have immediately corrected the violation or, if I disputed it, filed a timely administrative appeal.

IF A POSTCARD NOTICE OF ALLEGED VIOLATION OF MUNICIPAL CODE
12.20.070 WAS ACTUALLY MAILED ON OR ABOUT FEBRUARY 25, 2011,
THAT EGREGIOUSLY FAILED TO SATISFY THE DUE PROCESS REQUIREMENTS OF
OF THE CONSTITUTION OF THE UNITED STATES AND
THE CONSTITUTION OF THE STATE OF SOUTH DAKOTA

8. The Fifth Amendment to the federal Constitution provides that "No person shall be ... deprived of life, liberty, or property, without due process of law;" and the South Dakota Constitution adopts identical language in Article VI, §2., wherein it is provided that "No person shall be deprived of life, liberty or property without due process of law."

9. The Supreme Court of the United States has made crystal-clear that “adequate notice” prior to any enforcement or abatement action, and the ability of a person accused of municipal ordinance violation to “meaningfully participate” in a hearing on the alleged violation, are both necessary to satisfy due process requirements.

‘The fundamental requisite of due process of law is the opportunity to be heard.’...This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest...An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.... The notice must be of such nature as reasonably to convey the required information... and it must afford a reasonable time for those interested to make their appearance.” *Mullane v. Central Hanover Bank Tr. Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950),

10. The United States Supreme Court has also made crystal clear that mere mechanical mailing of a notice to an address — as Mr. Chlebeck has claimed in conversation with me was done in the instant case — does not satisfy the requirement for adequate notice.

“ But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected.” *Mullane*, 339 U.S. at 313-16, 70 S.Ct. 652

11. Mr. Chlebeck knew precisely how to make sure I received the alleged notice of February 25, 2011, and he did not use that means, namely an email to jorntz@gmail.com. Moreover, Mr. Chlebeck failed to observe his explicit agreement with me, made in telephone conversation on August 20, 2011, to inform me of “any notice” by email, to the email address he had for me in his own email inbox, namely, jorntz@gmail.com. Due to these failures by the City, I did not receive any notice of the alleged violation, and as a direct consequence I was unable to exercise my due-process-right-to-appeal-and-I-was-denied-my-fundamental-right-to-benefit-of-hearing-at-which-I-might-meaningfully-participate. I was also denied the right created by the presumed written notice, to correct the alleged violation if I agreed there was a violation. The City dramatically failed to “ (Provide notice as if genuinely trying to contact)

12. By reason of the City’s failure to provide adequate notice of the alleged violation, the City violated my fundamental right to due process of law, so that the City’s attempt to obtain \$207.00 of my property by entering the Special Assessment of May 2, 2011, is an effort to unlawfully confiscate my property. Accordingly, I respectfully request and demand that this special assessment not be approved by the City Council, since any such action would be unlawful although carried out under color of law. The instant Notice of Appeal puts the City of Rapid City

on notice concerning the unlawful acts its employees and agents have carried out and are contemplating.

THE NOTICE ALLEGEDLY PROVIDED BY MAILING A POST CARD
ON FEBRUARY 25, 2011, WITH RE-INSPECTION FOR FEBRUARY 28, 2011,
EVEN IF PROVED, DOES NOT COMPLY WITH REQUIREMENTS OF
ORDINANCE NOR THE SOUTH DAKOTA STANDARD FOR ADEQUATE NOTICE

13. As Municipal Code 12.20.070 explicitly states, enforcement of this ordinance is based upon sidewalk ice and snow being declared “a nuisance.” Abatement of any nuisance is governed by Municipal Code 18.16.035:

“The Community Resources Director or his or her designee, is authorized and empowered to notify, in writing, the owner of any lot, place or area within the city, or the agent of the owner, or the occupant of the premises, to remedy or abate a public nuisance on the property and to prevent future violation of this chapter. The notice may be hand delivered or sent by first-class mail addressed to the owner of record, agent or occupant at his or her last known address, and said notice shall notify the owner, agent, or occupant to remedy or abate a public nuisance within 14 days of the date the notice was delivered or mailed.”

14. The time between February 25 and February 28 is not fourteen days. The result of an administrative policy in which three days from the date of mailing of notice is the compliance date is a gross violation of adequate notice requirements, because it leaves zero days to exercise the right of appeal established by Municipal Code 18.16.050, which provides that any notice ordering abatement of a nuisance “*may be appealed to the building official, in writing and within 15 days of the issuance of the order. Such written notice of appeals shall be submitted to the Building Inspection Division, 300 6th Street, Rapid City, South Dakota, 57701.*” Abatement during the period allowed for administrative appeals plainly violates well-established Constitutional requirements, and is also unreasonable and absurd. Any notice which may actually have been mailed on February 25 with a compliance date of February 28, was therefore invalid.

15. Municipal Code 12.20.070 is rendered unconstitutionally vague, and thus unenforceable, by its effort to equate the date of mailing with the date of delivery, in computation of time for compliance and/or appeal, in both 12.20.070(a) and 12.20.70(b). The South Dakota standard, that no less than three days be allowed for the time between mailing and delivery, in the computation of any period for appeal, is established by SDCL 15-6-6(e):

“Additional time after service by mail--Facsimile and electronic mail transmission service exempt. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him, or whenever such service is required to be made a prescribed period before a specified event, and the notice or paper is served by mail, three days shall be added to the prescribed period.”

The ability of the municipality to make and enforce ordinances is derived from the State authority; and there is no authority anywhere for treating the day of mailing and the day of delivery as the same. To do so places the recipient of a City notice or order to abate an alleged nuisance in the position of not being able to obtain the hearing in which he or she may "meaningfully participate," as a matter of fundamental right. Accordingly, any and all notices and special assessments issued pursuant to 12..20.070 are invalid and unenforceable.

16. I respectfully draw to the attention of the City Council that "electronic mail transmission" is explicitly recognized, in SDCL 15.6.6(e), as a legitimate means of service which suspends the three-day requirement. Service of the alleged notice of February 25, 2011, by electronic mail transmission is exactly what Mr. Chlebeck had agreed to do and failed to do.

17. It is probably the intention of City, or at least of the present City Attorney, to place notice recipients in the position of not being able to appeal or being sufficiently confused upon receipt of some notice so that they are thereby deterred from making an appeal, a position which, if proven, amounts to a conspiracy to violate the civil rights of disfavored citizens, and perhaps of all citizens.

18. That the day of mailing cannot be the same as the date of delivery is also a rule of reason, since no one can deny that delivery of the United States mail is not instantaneous.

19. For all of the above-stated reasons, the Special Assessment entered against the premises of my home at 234 South Canyon Road, Rapid City, on May 2, 2011, is invalid and should not be approved by the Legal and Finance Committee, nor by the City Council.

20. I respectfully demand a clear, written grant or denial of this Appeal by the legitimate municipal authority. It is a well-established pattern for the City of Rapid City to simply throw away any administrative appeal which raises issues the City Attorney prefers to ignore while continuing confiscation of property or some other fundamental abuse, thereby violating the fundamental rights, and in this case, also the statutory rights, of the victim(s) of illegitimate orders or demands.

Dated this 1st day of June, 2011



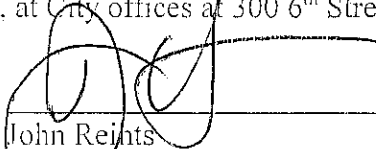
John Reints
234 South Canyon Road
Rapid City, South Dakota 57702
johnreints@gmail.com

NOTICE OF SERVICE

I hereby certify that, on June 1, 2011, I personally served a true and complete copy of this Notice of Appeal, with its attachment, by hand delivery, upon the Office of the Mayor of Rapid

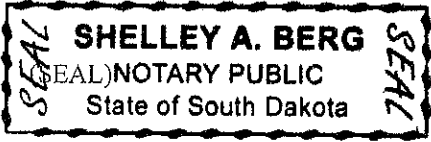
City, and upon each member of the City Council's Legal and Finance Committee present at this Committee's meeting at 12:30 p.m. on June 1, 2011, at City offices at 300 6th Street.

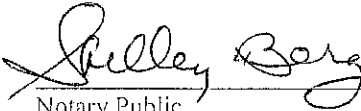
Dated this 1st day of June, 2011



John Reints
234 South Canyon Road
Rapid City, South Dakota 57702

On this 1 of June, 2011, there personally appeared before me John Reints, known to me to be or proved by adequate instruments to be the above-inscribed individual; and he signed this instrument in my presence for the purposes contained therein.





Notary Public

My Commission Expires
January 24, 2012

My Commission Expires _____

EXCERPT, TRANSCRIPT OF TELEPHONE CONVERSATION
BETWEEN JOHN REINTS AND ANDREW CHLEBECK,
ON AUGUST 20, 2010

Reints: Now, you understand that I'm not in Rapid City...and

Chlebeck: Yes, that was relayed to me, Yes..

Reints: ... and that because Mr. Nyberg was very well aware of that and had been in regular communication with me by email, what the City has done is not consistent with its responsibilities for giving notice, in my opinion. The reason that I mention that is, you have my email as well. If you have any business with me, or any business concerning my house, I believe you are under an obligation to inform me of that business by email, because you know you can communicate with me in that way. Regardless of whether you agree with me about the obligation, will you do so?

Chlebeck: Ah....that is...I mean, I sent notices to whatever the record of the owner record shows up at the County... I sent it to that address...

Reints: ...And would...

Chlebeck: ...We have your e-mail address, he informed of that after the fact. Yes, he does have that.

Reints: And...and would you answer the question that I asked, there. Will you please send, ah... by the email that you have there in your inbox, ah...any notice or any business that you have with me? Let me know by email about it.

Chlebeck: Ah... I can do that. (Emphasis supplied)

Reints: Good. Thank you very kindly. Bye.

Chlebeck: OK

END OF EXCERPT
END OF PHONE CONVERSATION

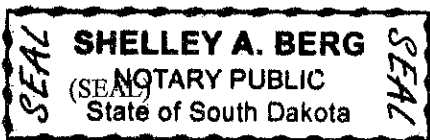
Affidavit of John Reints

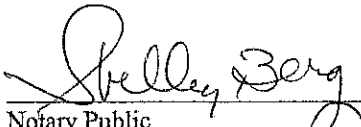
1. On August 20, 2010, starting at approximately 2:49 pm in the afternoon, I lawfully recorded the telephone conversation between myself and Andrew Chlebeck of which the transcript excerpt appearing on this page is a true and accurate excerpt. On May 31, 2011, I transcribed the above excerpt, and I hereby swear and affirm that is a true and accurate transcript of the included portion of said conversation.

Dated this 1st day of June, 2011


John Reints

On this _____ of May, 2011, there personally appeared before me John Reints, known to me to be or proved by adequate instruments to be the above-inscribed individual; and he swore and affirmed in my presence that his statements in this instrument are true and accurate to the best of his knowledge and understanding; and he signed this instrument in my presence for the purposes contained therein.

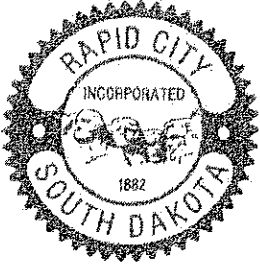



Notary Public

My Commission Expires
January 24, 2012

My Commission Expires _____

NOTICE OF APPEAL - EXHIBIT 1



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-5035

Finance Office

300 Sixth Street
Telephone: (605) 394-4143
FAX: (605) 394-2232
Web: www.rcgov.org

May 28, 2011

*March 3-11
Credit
\$1100.65*

Certified Return Receipt

John and Anne Reints
234 South Canyon Road
Rapid City SD 57702

RE: Assessment for Cleanup of Miscellaneous Property

NOTICE IS HEREBY GIVEN that an Assessment Roll for Cleanup of Miscellaneous Property was filed with the City Finance Officer on the 2nd Day of May, 2011.

A HEARING WILL BE HELD on the Resolution Levying Assessment in the Council Chambers of the City / School Administration Center, 300 Sixth Street, on the 6th Day of June, 2011 at 7:00 P.M. At said time and place the City Council will consider any objections to the assessment roll by owners liable to be assessed for the improvement.

THE PROPERTY WHICH YOU OWN ABUTTING THE PROJECT AND LIABLE FOR ASSESSMENT IS AS FOLLOWS:

Pleasant Valley Block 6	
Lot 10	\$207.00
234 South Canyon Road	
Rapid City, Pennington County, South Dakota	

If you have any questions regarding this assessment, please contact the City Finance Office at (605) 394-4143.

Pauline Sumption
Finance Officer
City of Rapid City,
South Dakota