5/28/2012

Prepared for City of Rapid City, Public Works Committee

Flood Plain Problem
3213 Dover Street
Rapid City, South Dakota

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Representative for
Jennifer Giroux, MD, MPH
Rapid City SD
May 29, 2012

3213 Dover St.

- May 27, 2004, Dr. Giroux purchased Dover St. property
  - Lewis-Kirkeby-Hall Real Estate

Property History

- December 2009, Dr. Giroux contracts with Chamberlin Architects for remodel plan
  - Topographic and utility survey required
  - Obtained bids for survey work
    - Selected Fisk Engineering
- February 2010, Fisk Engineering informs Dr. Giroux Dover property in flood hazard area
  - Flood Plain permit required for remodel
    - Base flood elevation (BFE) 3306.8
    - Basement finished floor 3303.79 (3 feet lower than BFE)

Handout

- 1972-2012
  - 3 Flood Plain Ordinances
  - 5 City Building Permits

Ordinance 1434

- Effective August 25, 1974, Ordinance 1434 added to article IV, Chapter 9
  - Includes description of nonconforming uses and does not allow changes to any non-conforming structure to exceed 50% of its value at the time of its becoming non-conforming. Description of properties was an appendix

Ordinance 2086

- Effective November 18, 1981
  - First FEMA description of properties in flood plain, adopted by City.

Ordinance 3394

- The Flood Insurance Study of the City of Rapid City, data February 18, 1998
  - Areas of special flood hazard identified by FEMA in a scientific and engineering report

Chapter 15.32: Flood Area Construction Regulations (p.3)

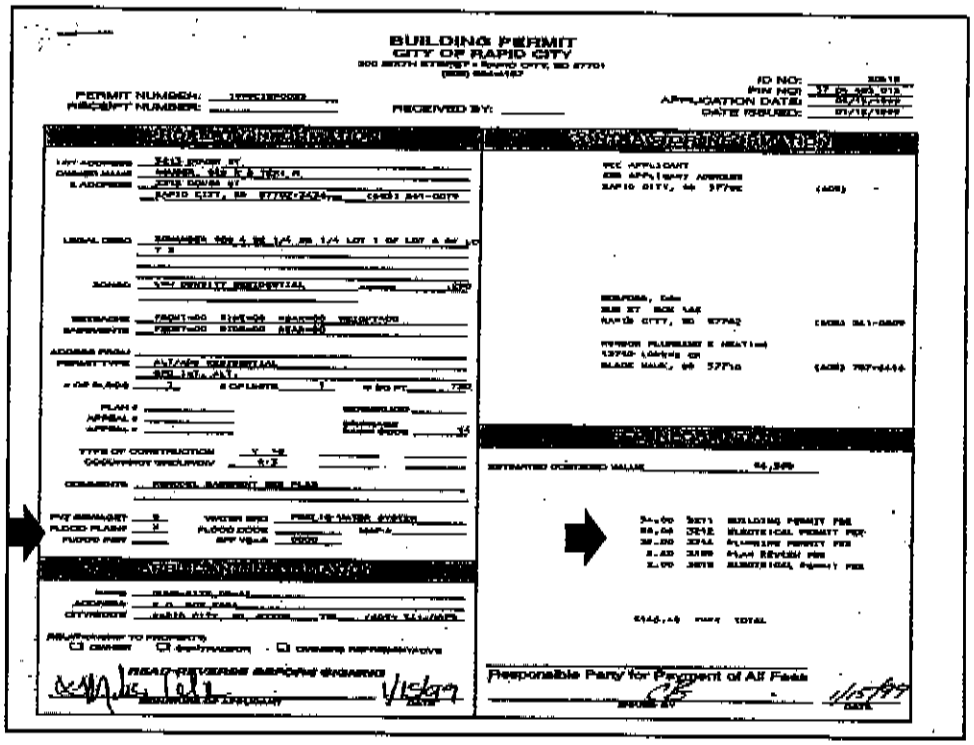
- Descriptions of properties in flood plain
  - Description of Properties
    - **Ordinance 1434**, added to article IV, Chapter 9 effective 8/25/74
  - 15.32.050 A. A complete description of all properties with the flood plain, 11/18/81.... City Engineer.
    - **Ordinance 2086**
  - 15.32.050 B. The Flood Insurance Study for the City of Rapid City, 2/18/98
    - FEMA identified areas of special flood hazard
    - Adopted by reference and declared part of chapter.
    - Studies on file Public Works Department
    - **Ordinance 3394**

Building Permits
City of Rapid City

- No mention of Dover St. property being in flood plain
  - August 14, 1972
    - Building permit
      - Joist 1st floor- replacing sheet rock and tile
      - Joist 2nd floor- flooring
    - Approved by Dean Rafferty
  - November 7, 1996
    - Mechanical Permit
      - Replace furnace
    - Inspected by Seibert

Building Permits
City of Rapid City

- Dover St. Property classified NOT in Flood Plain
  - January 15, 1999
    - Building permit
    - Electrical permit
    - Plumbing permit
    - Plan review
      - Completed basement: constructed bedroom, bathroom, laundry room, family room, office and three egress windows
  - Issued by CB



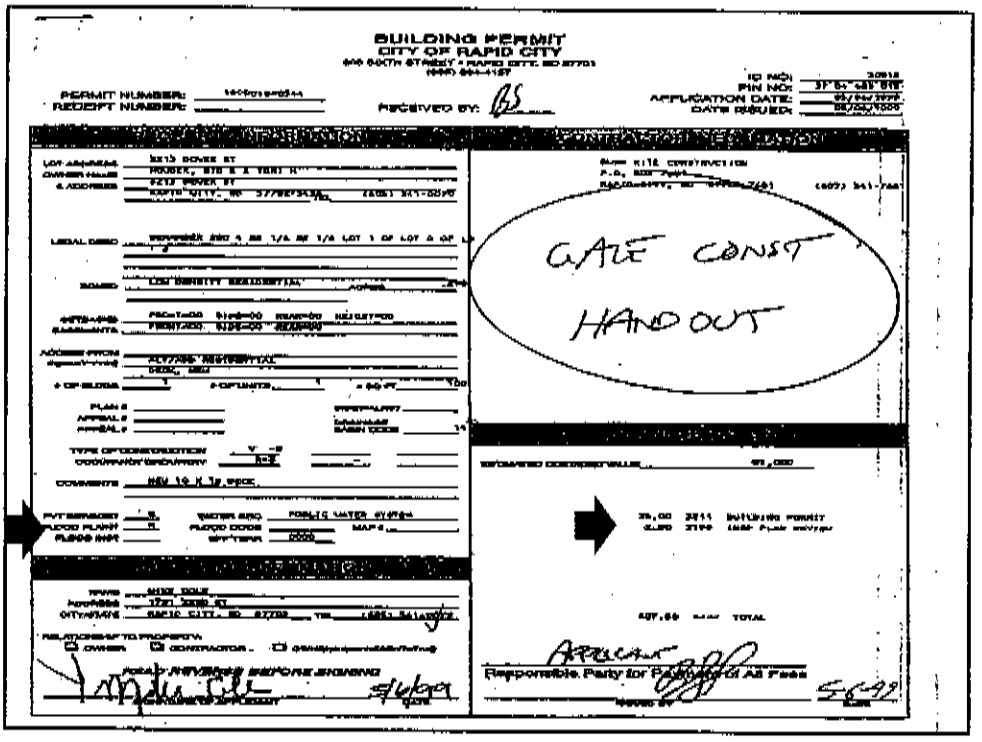
BUILDING PERMIT
CITY OF RAPID CITY

PERMIT NUMBER:
RECEIPT NUMBER:
RECEIVED BY:
ID NO:
PIN NO:
APPLICATION DATE:
DATE ISSUED:

Responsible Party for Payment of All Fees

Building Permits
City of Rapid City

- Dover St. Property classified NOT in Flood Plain
  - May 6, 1999
    - Building permit
    - Plan review
      - New 10 x 10 deck
  - Issued by BS



BUILDING PERMIT
CITY OF RAPID CITY

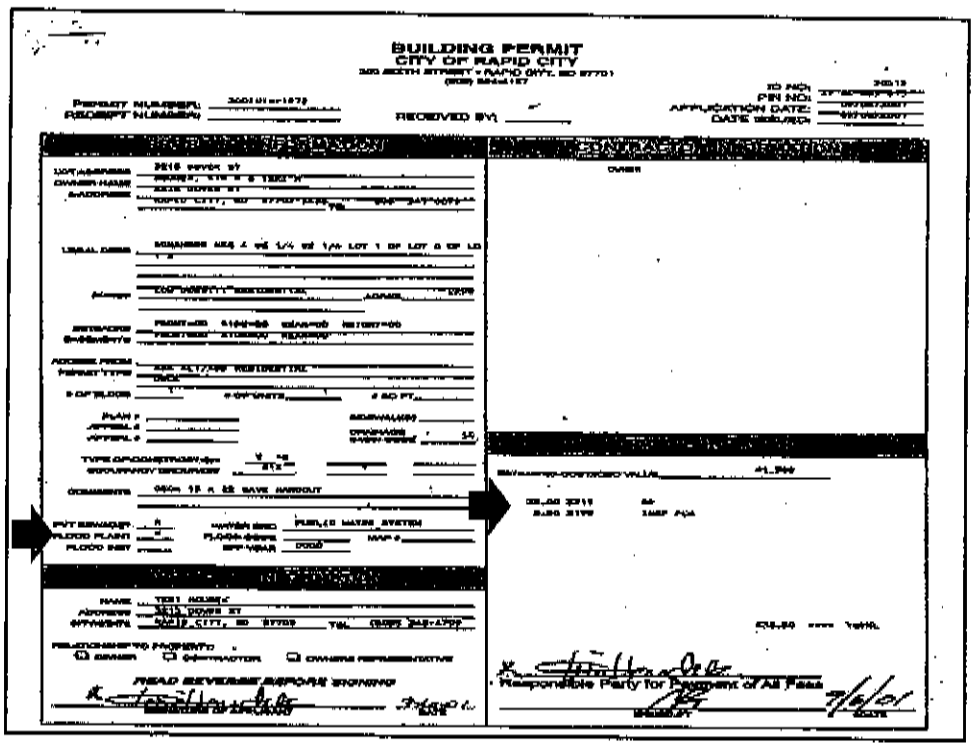
PERMIT NUMBER:
RECEIPT NUMBER:
RECEIVED BY:
ID NO:
PIN NO:
APPLICATION DATE:
DATE ISSUED:

GATE CONST
HAND OUT

Responsible Party for Payment of All Fees

Building Permits
City of Rapid City

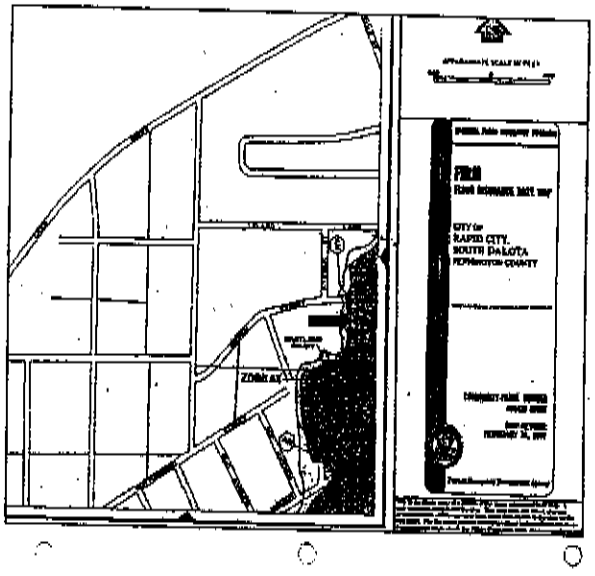
- Dover St. Property classified NOT in Flood Plain
  - September 6, 2001
    - Building permit
    - Plan review
      - New 15 x 22 deck
  - Issued by CB



BUILDING PERMIT
CITY OF RAPID CITY

Gaps in the System

- 1972-2010 (38 years)
  - No documentation that City of Rapid City informs 3213 Dover St. property owner's that property is in flood hazard area
    - 3 Flood Plain Ordinances: 74, 81, 98
    - 5 City Building permits: 72, 96, 99, 99, 01
    - 7 Property sales: 75, 85, 88, 89, 91, 02, 04
- Dr. Giroux informed of property being in flood hazard area by Fisk Engineering, 2010



3213 Dover not only in the Flood Hazard Area
Basement is greater than 3 feet below BFE

Chapter 15.32:
Flood Area Construction Regulations (p.8 & 10)

- 15.32.110 Flood Plain development permit
- 15.32.130 Residential construction
  - New construction and substantial improvement of any residential structure shall:
    - A. <u>Have the lowest floor (including basement) elevated to 1 foot above the base flood elevation.</u>
- 15.32.170 Construction materials and methods
  - A, B, C

Chapter 15.32: Flood Area Construction Regulations (p.19-20)

- 15.32.250 Nonconforming uses.
  A structure the use of a structure or premises which was lawful before the passage or amendment of this chapter but which is not in conformity with the provisions of this chapter may continued subject to the following conditions:
  - A. No such structure or use shall be expanded, changed, enlarged or altered in a way which increases its nonconformity and any such expanding changes, enlargement or alterations shall be conforming
  - B. No structural alteration, addition or repair to any nonconforming structure over the life of the structure shall exceed 50% of the value at the time of its becoming a nonconforming use, unless structure is permanently changed to a conforming use.
  - F. Except as provided in this section, any use which has been permitted as a special exception use shall be considered a conforming use.

Working with the City

- March 2010
  - Dr. Giroux begins meetings with
    - Steve Schelske, Flood Plain Administrator;
    - Marsha Elkins, City Planning Office;
    - Mike Schad, Office of City Attorney
  - Chapter 15.32 Flood Area Construction Regulations http://www.amlegal.com/nxt/gateway.dll/South%20Dakota/rapidcity_sd/cityofrapidcitysouthdakotacodeofordinanc?f=templates$fn=default.htm$3.0$vid=amlegal:rapidcity_sd

Working with the City

- April -May 2010
  - After numerous discussions an approach identified
    - Submit a Flood Plain Development Permit Application
      - It will be denied
    - Then Dr. Giroux would qualify to submit a Special Exception Permit
      - Simultaneously submit Abatement and/ or Refund of Property Taxes

Working with the City

Flood Plain Development Permit Application

- To submit a Flood Plain Development Permit Application
  - Dr. Giroux required to complete architectural plans informed by topography and utility survey requirements, $
- Flood Plain Development Permit Application
  - Submitted May 7, 2010
  - Denied May 14, 2010
    - Permit lacking required item number 5- estimated cost. Proposed improvements do not make the residence or shed conforming, the improvements most likely are substantial therefore permit is denied.

Working with the City

Special Exception Permit & Abatement and/ or Refund of Property Taxes

- June 2010- March 2011
  - Researched property's history
  - Explored options
    - Elevate home 4 feet
    - De-construct the basement and fill-in (move furnace, hot water heater, washer and dryer to top floor (844 sq.ft)
    - Sell property
    - Sell current structure and build new structure

Working with the City

Special Exception Permit

- Special Exception Permit
  - Submitted April 4, 2011
    - Description of Request: Owner will not be at risk of violation or penalty under 15.32.270 as a result of previous lack of compliance with 15.32.250. Owner request that structure be held as conforming (lowest finish floor is 1 ft above BFE for 1) rectify the Registered Deeds and recording the residence as existing in flood zone and 2) noting that basement should a) NOT be used for sleeping quarters for risk of life and b) NOT be counted in the finished sq ft of house for purpose of property sale or value. That these terms pass on with the sale of the property.

Working with the City

Special Exception Permit

- April 2011
  - Schelske, Elkins, Schad no longer with the City
  - Mr. Tech did not support Special Exception approach to resolution

Working with the City

Special Exception Permit

- May 2011
  - Met with new team: Dale Tech, Patsy Horton, Wade Nyberg and Brad Solon,
    - Raise house 4 feet
    - De-construct and fill-in basement.
    - Consider re-submitting Special Exception permit to Dale Tech. He would deny it; but last recourse to take issue to City Council.

Working with the City

Abatement and/ or Refund of Property Taxes

- Abatement and/ or Refund of Property Taxes
  - Submitted April 4, 2011
    - Improvements on any real property were considered or included in the valuation of the real property, which did not exist on the real property at the time fixed by law for making the assessment
    - Other: Rapid City, SD Codes of Ordinances Chapter 15.32.250 Nonconforming Uses. City of Rapid City repeatedly authorized Building Permits (96, 99) that increased the nonconformity of structure, thus violating Ordinance and actually devaluing the property.

A structure or the use of a structure or premises which was lawful before the passage or amendment of this chapter but which is not in conformity with the provisions of this chapter may continued subject to the following conditions:

A. No such structure or use shall be expanded, changed, enlarged or altered in a way which increases its nonconformity and any such expanding changes, enlargement or alterations shall be conforming

Working with the City

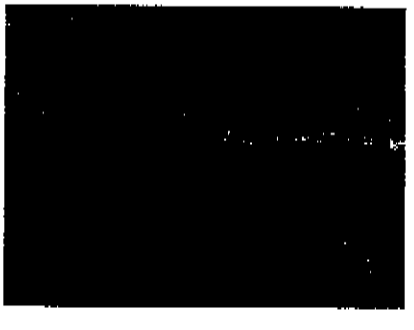
Abatement and/ or Refund of Property Taxes

- May 2011
  - Met with County Commissioners
    - Application routed via City.
      - I was not informed of City meeting so was not present. In my absence, motion made "to deny"
      - When informed of this missed opportunity with City , I requested my application be re-routed. Request granted.
  - Abatement application deferred to Attorney.
    - F/u with attorney.
      - No case history for situation.
      - Time limit appropriate to restricted use, Spring 2010.
      - Attorney suggested resolving the Special Exception Permit issue before re-applying for abatement.
  - Retracted Abatement application

Working with the City

- Dead end on Special Exception Permit approach discussed May 2010 with Schelske, Elkins and Schad
- May 2011
  - Contacted
    - Dave Davis
    - Bill Waugh later replaced by Jerry Wright,
  - Alderman Wright facilitated meeting with new Mayor Kooiker
- July 2011
  - Mayor Kooiker, Alderman Wright, Mary Bosworth visited residence.
- September 2011
  - Letter from Wade Neyberg- suggest consult an attorney

Thank you



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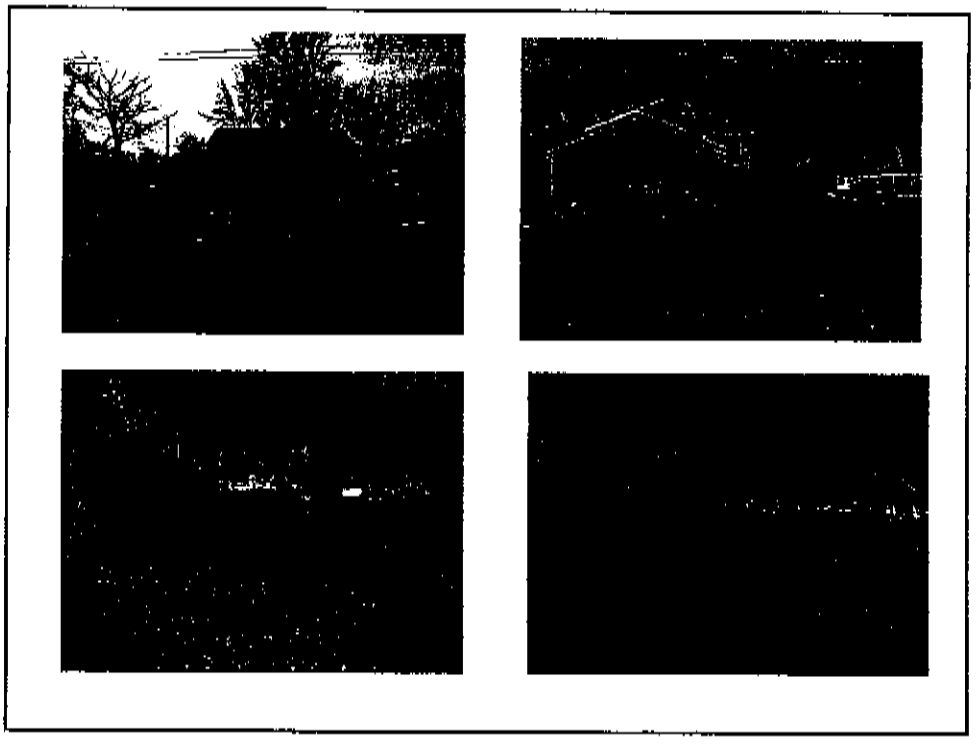

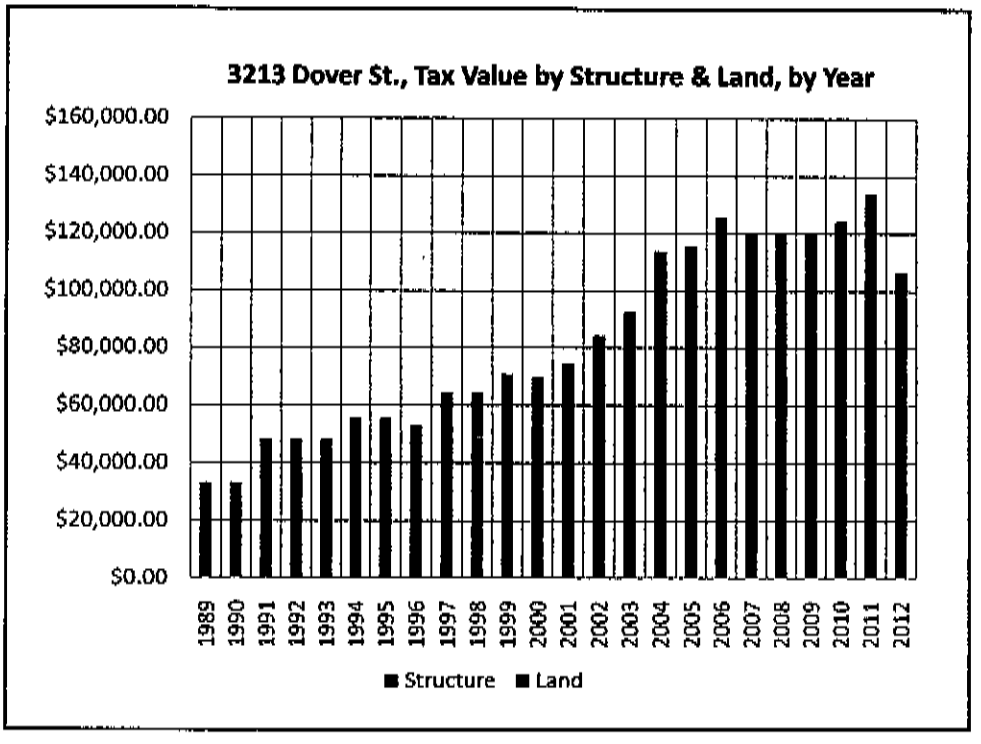
3213 Dover St., Tax Value by Structure & Land, by Year
$160,000.00
$140,000.00
$120,000.00
$100,000.00
$80,000.00
$60,000.00
$40,000.00
$20,000.00
$0.00
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
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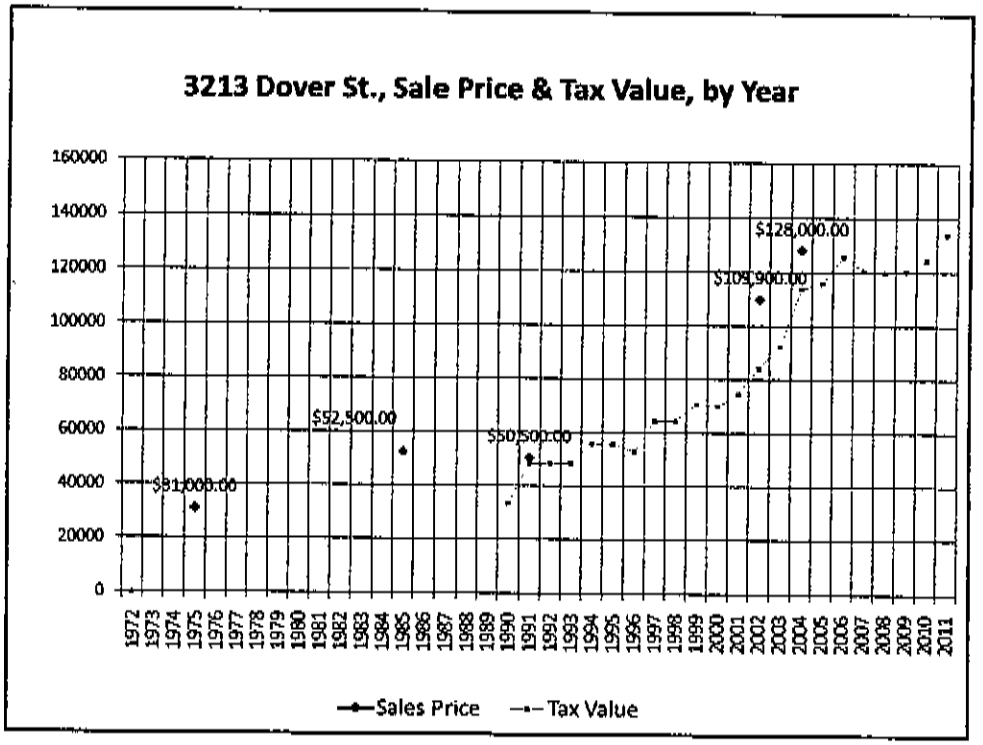
2006
2007
2008
2009
2010
2011
2012
Structure
Land



Chapter 15.32:
Flood Area Construction Regulations (p.5-7)

- 15. 32.060 Definitions
  - 14. Lowest Flood(r)?. The lowest floor of the lowest enclosed area (including basement).....
  - 18. Nonconforming Use. A structure or the use of a structure or premises which was lawful before the passage or amendment of this chapter but which is not in conformity with the provisions of this chapter.
  - 25. Start of Construction. Includes substantial improvement and means the date of the building permit was issued, provide the actual start of construction, repair, reconstruction....
  - 27. Substantial Repair. Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of market value of the structure...
  - 28. Value. The assessed value at the time of the structure becoming nonconforming use.

Chapter 15.32: Flood Area Construction Regulations (p.7)

- 15.32.070 Compliance with provisions required.
  - No structure of land shall hereafter be used, and no structure shall be located, extended, converted or structurally altered without full compliance with the terms of this chapter and other applicable regulation, which apply to uses within the jurisdiction of this chapter.

Chapter 15.32: Flood Area Construction Regulations (p.8 & 10)

- 15.32.110 Floodplain development permit
- 15.32.130 Residential construction
  - New construction and substantial improvement of any residential structure shall:
    - A. Have the lowest floor (including basement) elevated to 1 foot above the base flood elevation.
- 15.32.170 Construction materials and methods
  - A, B, C

Chapter 15.32: Flood Area Construction Regulations (p.13 & 15)

- 15.32.230 Administration
  - A. *Generally,* The City Engineer, or his or her designee, as designated by the mayor and the Common Council of Rapid City, shall administer and enforce this chapter.....
- 15.32.240 Application for special exceptions
  - All applications for special exceptions shall be filed with the City Engineer or his or her designee.....

Chapter 15.32: Flood Area Construction Regulations (p.19-20)

- 15.32.250 Nonconforming uses.
  - A structure the use of a structure or premises which was lawful before the passage or amendment of this chapter but which is not in conformity with the provisions of this chapter may continued subject to the following conditions:
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    - B. No structural alteration, addition or repair to any nonconforming structure over the life of the structure shall exceed 50% of the value at the time of its becoming a nonconforming use, unless structure is permanently changed to a conforming use.
    - F. Except as provided in this section, any use which has been permitted as a special exception use shall be considered a conforming use.

Chapter 15.32: Flood Area Construction Regulations (p. 20)

- 15.32.270 Violation – Penalty
  - A. Violation ..... shall constitute a misdemeanor
  - B. Any person who violates this chapter or fails to comply with any of it requirements shall, upon conviction thereof, be fined not more than $100 or imprisoned for not more than 30 days, or both and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.
  - C. Nothing herein contained shall prevent the city from from taking such other lawful action as is necessary to prevent or remedy any violation.

Property History Giroux

- Repairs and Improvements
  - New roof
  - All new windows
  - New paint throughout
  - Basement: radon mediation, installed new basement flooring
  - Main floor: pulled old floors and carpets. Tiled kitchen floor. Refinished hard wood floors.
  - Installed gas fireplace
  - Finished back deck: flipped boards and constructed railings and steps
  - Landscaping of yard: removal of 4 gigantic cottonwoods, hauled-in compost dirt, trenched french-drains NW side of house.

Property History
City Building Permits

- 1972- Repair 1st floor sheet rock and tile 2nd floor flooring.
- 1996- Mechanical permit. Replaced furnace in basement.
- 1999- Bldg, electrical, and plumbing permit. Finished construction of basement: put in bedroom, bathroom, laundry room, family room, office and 3 egress windows
- 1999- Front deck
- 2001- Back deck