



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701

Public Works Department Engineering Services Division

300 Sixth Street

Telephone: (605) 394-4154 FAX: (605) 355-3083

Web: www.rcgov.org

July 10, 2012

David Smith
1309 12th Street
Rapid City, SD 57701

Re: Private Driveway located in the 12th Street Right of Way

Mr. Smith,

You inquired about the shared driveway located in the 12th Street Right of Way and wanted documentation regarding the status of it being a public street or a private driveway.

The City of Rapid City has no record of the driveway or retaining wall being built as a public project. Therefore, the City of Rapid City does not consider your shared private driveway as a public street. A private driveway can be located in public right of way and there are many instances of this throughout Rapid City such as Quincy just east of E. Blvd., the 300 block of Columbus, and 11th Street between St. Charles and St. Pat just to name a few.

Currently the City Council must formally accept streets and infrastructure as being the responsibility of the City. There is no record that the City Council has accepted your private shared driveway as a City responsibility.

Sincerely,

Dale Tech, PE/LS
City Engineer

Cc: Mayor Sam Kooiker
Terry Wolterstorff, Public Works Director



EQUAL OPPORTUNITY EMPLOYER

Brumbaugh Don

From: Brumbaugh Don
Sent: Tuesday, October 19, 2010 11:57 AM
To: Ellis Robert
Cc: Bloom John
Subject: RE: 1300 Blk of 12th Street

Project completed.

-----Original Message-----

From: Brumbaugh Don
Sent: Tuesday, October 19, 2010 7:55 AM
To: Ellis Robert
Cc: Bloom John
Subject: 1300 Blk of 12th Street

Per our conversation last night, Streets is shaping the private driveway on the west side of 12th as requested by Mayor Hanks, Dave Smith, and Dick Peters.

It is my understanding that all parties have agreed that this is in fact a private driveway and that we are shaping the gravel per the owner's request to help prevent damage to their wooden retaining wall. In addition, from this date forward, maintenance responsibilities for the gravel driveway, including the retaining wall, will be the responsibility of the property owners.

Don Brumbaugh
Street Superintendent
City of Rapid City, SD
(605) 394-4152

Cc: file

Post-It™ brand fax transmittal memo 7671

of pages ▶ 3

To Dale Tech	From Don Brumbaugh
Co.	Co.
Dept.	Phone # 7/27/2012
Fax #	Fax #

RECEIVED

July 20, 2012

JUL 20 2012

RAPID CITY
PUBLIC WORKS

Terry Wolterstorff, Public Works Director
City of Rapid City
300 Sixth Street
Rapid City, SD 57701

Re: Upper Tier of Twelfth Street at its 1300 Block

Dear Mr. Wolterstorff:

This is in response to Dale Tech's letter of July 10, 2012 regarding the above subject roadway. If Public Works' final determination is that this roadway is a shared private driveway, rather than a public road, and its bordering homeowners are responsible for its maintenance, we wish to appeal this matter to the City's Public Works Committee. We wish to appeal on the following grounds:

1. You say the City does not consider this roadway to be a public street because you have no record of it or its retaining wall being built as a public project. The lack of this record does not justify a final determination that the street is a private driveway and not a public street. Possibly, there was no record kept of many of the smaller public projects built or authorized by the City more than sixty years ago. Possibly, the records were destroyed during Rapid City's flood of 1972. You probably also have no record that it was built as a private driveway. Without any record, other facts should be used to determine its status as either a public or private road.

2. The records do show this roadway is most definitely part of Twelfth Street's public right-of-way. The original plat filed with the Pennington County Register of Deeds shows that Twelfth Street's public right-of-way is 80 feet wide. All of the City's official maps show that Twelfth Street's public right-of-way is 80 feet wide. One can determine the roadway lies within this 80 feet right-of-way by simply observing the roadway's location relative to its bordering lots' property corners. One can determine the roadway lies within the 80 feet public right-of-way by simply reviewing its location relative to Twelfth Street's public right-of-way as shown on the City's Rapid Map. No map or document exists that shows the public right-of-way on which this roadway sits has ever been vacated by the City. No map or document exists that shows it is part of a privately-owned lot or private access easement. Because the City's maps show this roadway is part of Twelfth Street's public right-of-way, and no map or document exists to indicate it is anything other than part of this public right-of-way, it is reasonable to argue it has been historically accepted by the City as part of Twelfth Street.

3. This roadway was built for the general good of the public and not for just a few private homeowners. According to the original subdivision plat filed with the Pennington County Register of Deeds, eleven lots were platted on the west side of the 1300 block of Twelfth Street. Twelfth Street's public right-of-way was platted to border these lots and dedicated to serve as their public access. Between 1911 and 1950, the roadway probably was no more than a dirt or graveled road that served as a maintenance road for City ditches and dams that were constructed as part of a drainage system that crossed these lots. Following the abandonment of

this drainage system, the roadway probably was improved and next used primarily by Black Hills Power and Light to service a substation built on Lot 11, Block 42, boulevard Addition and a portion of St. James Street adjacent to that lot. This substation was built to augment the City's electrical grid. Surely, the City considered using its public right-of-ways for this utility purpose was for the public good (see Rapid City Special Election August 15, 1950). It was soon after the roadway was improved for this purpose that it was further improved to serve residential homes that were being built on the remaining lots. (The original eleven lots have since been re-assembled into five lots which are now owned by three different owners.) This roadway has always been accessible to the public. No private drive sign or privacy gate has ever been placed on this roadway since it was built.

4. This roadway was located and designed as it is to best serve the purpose for which Twelfth Street's public right-of-way at its 1300 block was dedicated. It was located and designed to assure it could serve the west side lots of the 1300 block of Twelfth Street. These lots are significantly higher in elevation than the lots across the street. Because of these lots' higher elevation, Twelfth Street at its 1300 block had to be built as a multi-tiered boulevard to provide access to these lots. (The fronts of the lots across the street actually face Fairview Street and St. James Street and did not necessarily originally require Twelfth Street for access.)

5. Until the City's current administration, this roadway had always been maintained by the City since at least 1958. This is according to current and past homeowners who are familiar with the roadway's history. According to the original developer of Lots 1-10 (Vess "Babe" Steinberg), the City agreed, either in late 1957 or early 1958, that the City would be responsible for this roadway's maintenance after it allowed a house to be moved up the roadway onto one of the lots bordering it, which caused significant damage to the roadway and the retaining wall the developer had just constructed to improve the roadway. Following that agreement, the City always did maintain the roadway. Certainly, the City had additional reason to maintain the roadway for the twenty-five years (1970-1996) that the City's Fire Chief (Jim Tish) lived on it, so he could reach his work. Certainly, it probably was important to maintain it when a City mayor (W. F. Raff) lived on it (1961-1963). Also, it probably was important to maintain it when a City Alderman (Robert Asheim) and an important business (Black Hills Power & Light) owned property along it and required it for access (1962-1963 and 1955-1979).

6. Based on its history, it can be reasonably argued that this roadway probably was first developed by the City as a public project. Its purpose was to serve as a maintenance road for the City's then current Boulevard area drainage system. It can be further argued that the roadway's current retaining wall also probably was constructed by or under the authorization of the City as a public project after the City agreed in 1958 to be responsible for the roadway's maintenance. The retaining wall soon thereafter was rebuilt.

7. If a similar City regulation existed then, as it does today, the retaining wall supporting this roadway could not have been built unless it was built for a public purpose (see Municipal Code 12.12.050.A.) Specifically, the code states: "No person shall erect or maintain any building, fence, sign or structure upon any public right-of-way or upon any public property. This section shall not apply to structures erected or maintained for public purposes by the city or under its authority."

8. You say a private driveway can be located in a public right-of-way. The City's Infrastructure Design Criteria Manual (IDCM) Section 2.16.1.4) states that public right-of-way cannot be used for private purposes. Even if it can happen, we suspect the City would not allow it to happen without first giving its formal approval for it to happen. We refer you to the City's

own Municipal Code 12.04.090 as evidence of this likely requirement. We suspect the City also would require some written acknowledgment from the driveway's users that they, and not the City, would be responsible for the roadway's maintenance (see IDCM 2.5). We suspect the City also would require a written shared access easement agreement between the driveway's users to provide evidence that it was a shared private driveway (see IDCM 2.5 and 2.16.9). For their protection, the lot owners who would be dependent upon the driveway for their access would want some written legal documentation that they were being allowed to use public right-of-way as a private driveway. Certainly, title insurance companies also would want legal documentation that this was a shared private driveway. Based on our research of the City and County records, and discussions with our title insurance company, there is no evidence that any of these approvals or documents exist. Most likely, they do not exist because the City and the roadway's users accepted the roadway when it was built to be a public street, instead of a shared private driveway.

9. According to the City's own design criteria, this roadway cannot be a private street, not only because it is not located on a private easement, but also because it serves more than four lots (see IDCM 2.5). This roadway was originally built to serve as access for eleven lots. It now serves as access for five lots assembled from these eleven lots, plus some Fairview Street and St. James Street vacated right-of-ways.

10. Even the City's designation of this roadway as being a private driveway does not necessarily preclude the City from still having the responsibility to maintain it. Because the roadway is in the public right-of-way and no maintenance agreement exists that states it is the property owners' responsibility to maintain it, it can be argued it still is the City's responsibility to maintain it.

11. You say that currently the Council must formally accept streets and infrastructures as being the responsibility of the City. First, infrastructure contracted by or constructed directly by the city is exempt from this requirement (see Municipal Code 12.04.170.A.). Second, while a formal record of this acceptance may be a current requirement, it probably was not a requirement sixty years ago. In fact, sixty years ago, the City was not governed by a City Council. It was governed by a City Manager. The City's historic willingness to maintain the road certainly is an indication of the City's acceptance of this road as being a public road and that it remains the City's responsibility to maintain it.

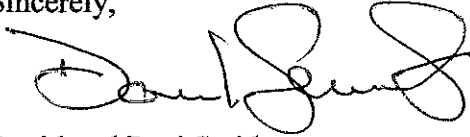
12. It has only been during the last two years that Public Works has begun to refuse to maintain this roadway. We suspect this is because Public Works has neglected to maintain parts of this roadway (i.e. its retaining wall) for a long time; and its deteriorating condition has now become a concern. Because of this neglect, significant expenditures soon may be required to return it to a good condition. Even more expenditures would be required if this roadway had to be brought up to current codes. We believe Public Works is attempting to avoid these maintenance responsibilities and expenditures, and pass them on to the homeowners instead, by trying to redefine this public road as a shared private driveway. This is not appropriate. We pay our taxes just like all other citizens who expect the public street in front of their homes to be maintained in return for their tax payments. The prices we paid for our houses assumed the roadway in front our homes was a City-owned and maintained roadway, since no public record exists that indicates otherwise.

13. The west end of Fairview Street, which intersects Twelfth Street, has similar characteristics as this roadway, except it serves as a driveway for only one house. The City just recently re-graded and graveled this section of Fairview Street for that house. We agree the City

should maintain this short section of Fairview Street, even if it serves only one house, because it is public right-of-way. We must ask, however, why the same right to City maintenance shouldn't be applied to the short section of Twelfth Street which serves our houses, since it also is public right-of-way?

We respectfully request one more time that Public Works take some action to return this road to a safe and decent condition. Currently, we are only asking that it be re-graded with some new gravel, plus some drain tile be installed to prevent future erosion. We hope that we will not have to take legal action to resolve this matter.

Sincerely,

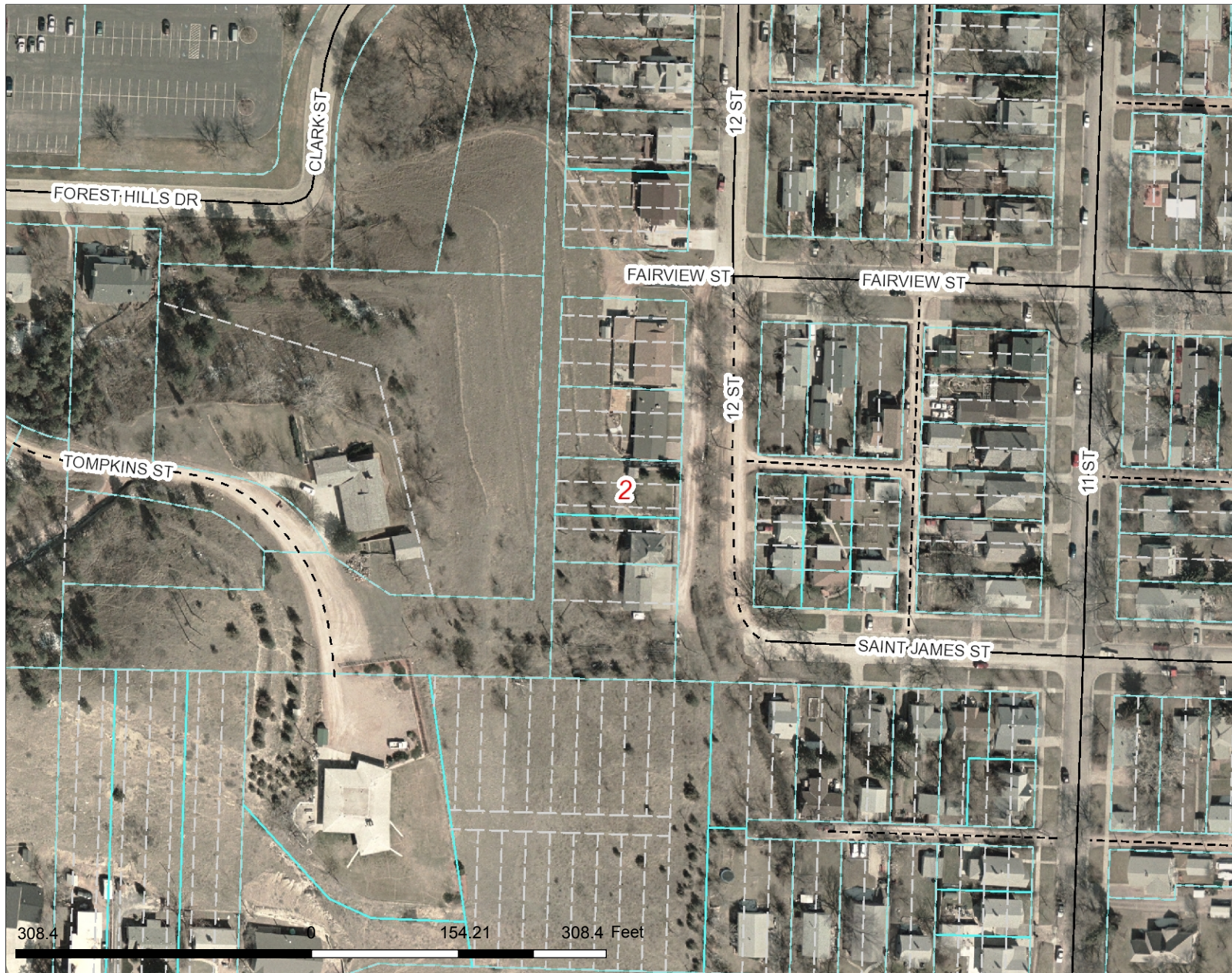
A handwritten signature in black ink, appearing to read 'David and Patti Smith', with a large, stylized flourish at the end.

David and Patti Smith
1309 Twelfth Street

Cc: Mayor Sam Kooiker
Alderman Ron Sasso
Alderwoman Bonny Petersen
Dale Tech, City Engineer

Legend

- Roads**
- Not classified
 - Interstate
 - US Highway
 - SD Highway
 - County Highway
 - Main Road
 - Minor Arterial
 - Collector
 - Ramp
 - Paved Road
 - Unpaved Road
 - FS Unpaved Road
 - Driveway
 - Paved Alley
 - Unpaved Alley
 - Unimproved Road
 - Trail
 - Not yet coded
- Township/Section Lines**
- TOWNSHIP
 - SECTION
- Tax Parcels**
- Lot Lines**
- <all other values>
 - Lot Line
 - Parcel Line
- County Line**



Scale: 1: 1,850

Map Notes:

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