From: George Nelson [mailto:gjnlaw@gmail.com]
Sent: Friday, August 29, 2014 5:02 PM
To: Cushman Carla
Subject: RE: Steele Construction Suspension

Sorry Carla, but a jurisdictional argument can be raised at any time.

"Jurisdictional issues can be raised at any time and determination of jurisdiction is appropriate." *Id.* ¶ 5, 763 N.W.2d at 549–50 (citing *Sazama v. State ex rel. Muilenberg*, 2007 S.D. 17, ¶ 9, 729 N.W.2d 335, 340). Further, subject-matter jurisdiction cannot be acquired by agreement, consent, waiver, or estoppel. *Honomichl v. State*, 333 N.W.2d 797, 799 (S.D.1983). The idea that this legal defense for my clients can be waived is incorrect.

The City approved the reroofing done by my clients. There was no reason for Ross/Larson to have called the City on July 26 except to complain about the approval. Their call and letter were at least 3 months past the appeal deadline. The City's legal position doesn't make any sense (going against its own building inspector?) and is legally untenable. Because the Ross/Larson appeal was untimely filed, the Board of Appeals had no jurisdiction to overrule Mike P. My clients' contractor's license should not have been suspended for a homeowner just because the homeowner doesn't want to pay full price for the work performed. Again, there was no life-safety or public-concern issue here. Not one asphalt shingle has fallen off this house. Not one drop of rain has seeped through its double-layered underlayment. Not one warranty has been voided.

To reiterate what I've written before, the City should reinstate my clients' license. Each day the suspension stays in effect, Steel Construction suffers thousands of dollars in damages. This has been an unlawful taking of my clients' property rights. The Ross/Larson appeal was illegal.

Why is the City government exposing itself and the taxpayers to benefit one homeowner in a civil lawsuit?-- that is the question. Instead of admitting its error, the City continues with its selective enforcement; enforcement of an interpretation of the IRC that contradicts the writings and practices of the City's own staff.

There are far reaching consequences of this that go beyond my clients. It affects every homeowner out there who has had their roof re-shingled within the past year. What is the City thinking—that this interpretation will fade away and apply to just one house? Other homeowners will be suing the City for the negligence of its Building Inspector's office. What's next? Attorneys advertising in the RCJ for such claims?

I ask that you share this email with all City Council Members and the Mayor.

George Nelson
Attorney for Steele Construction Company, Inc.

From: Cushman Carla [mailto:Carla.Cushman@rcgov.org]
Sent: Friday, August 29, 2014 3:19 PM
To: George Nelson
Subject: RE: Steele Construction Suspension

George:

Ross/Larson's appeal to the Building Board was sent to the Building Inspection Office on August 2, 2013. I have attached a copy of that letter. The letter references conversations that took place on July 26, 2013 between Ross/Larson and City staff that initiated the homeowner's complaint to the Board. I believe that the appeal is timely; in the alternative, the delay in objecting means that your client has waived the right to argue that the appeal is untimely.

I disagree that the appeal heard in October/November 2013 was related to the final inspection done by Inspector Pulkrabek. I also disagree with your assumption that a City inspection is the only decision which a homeowner could refer to the Building Board. It is unreasonable to read the ordinance as providing only a three-week span of time in which a homeowner may raise issues about their contractor's work in a way that could prompt Board review. Here, the homeowners approached City staff about supposed code violations on work that had been completed a few months before, and when City staff declined to pursue any action, the homeowners timely brought the issue before the Board. Under the ordinance, this was a proper and timely appeal.

I also wanted to let you know that a prior version of RCMC 15.04.130 was in place at the time of the Board's meeting in November. The previous version of the ordinance is available here: http://archive.rcgov.org/ca20130107/LF121212-14.pdf. As you can see, the timelines for an appeal were different than the current ordinance provides. The current version of RCMC 15.04 was approved by Council on October 21, 2013 and became effective on November 10, 2013.

Finally, your letter sent to the Legal and Finance committee earlier this week mentions that you are uncertain as to the timeliness of Ross/Larson's recent appeal concerning suspension of your client's license. I wanted to bring to your attention that Ross/Larson asked for permission from the Council to waive the fee to bring this appeal, and that the Council recognized the appeal and waived the fee at its June 16, 2014 meeting. A link to the minutes from that meeting are here: http://www.rcgov.org/pdfs/Finance/CityCouncilMinutes/061614mn.pdf.

I know that this information is not likely to lesson our disagreements about this matter, but hopefully it clarifies the City's position. If you need anything further from me in advance of Tuesday night's meeting, please feel free to give me a call or send me an email.

Carla R. Cushman
Assistant City Attorney
300 Sixth Street
Rapid City, SD 57701
605.394.4140
carla.cushman@rcgov.org

From: George Nelson [mailto:gjnlaw@gmail.com]
Sent: Friday, August 29, 2014 8:12 AM
To: Cushman Carla
Subject: Steele Construction Suspension

Carla,
I never got an answer during the Legal & Finance Committee meeting as to when Denise Ross/David Larson filed their appeal of Mike Pulkrabek's approval of the reroofing of their house. Can you provide me that and the supporting documentation verifying that it was timely?
Thanks,
George