

Advised

THE LAW FIRM OF
SCHMIDT, SCHROYER, MORENO & LEE, P.C.
 A PROFESSIONAL CORPORATION
 Pierre Professional Plaza, Suite 201
 124 S. Euclid Avenue - P.O. Box 1174
 PIERRE, SOUTH DAKOTA 57501-1174

Ronald G. Schmidt
 Charles P. Schroyer
 Mark A. Moreno
 Thomas E. Lee
 Ethan W. Schmidt

TELEPHONE
 (605) 224-0461

FAX
 (605) 224-1607

DATE: February 11, 2003

TO: Michael Booher
 Assistant City Attorney
 Rapid City, South Dakota

FAX NO.: (605) 394-6633

FROM: Ron Schmidt

Re: Opposition and Protest of Joanne O'Brien and Kevin
 Kirkland to Legal and Finance Committee Agenda Item 20
 Scheduled for Hearing on Wednesday, February 12, 2003

NO. OF PAGES: (Including cover sheet) 5

* * * IMPORTANT NOTICE * * *

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COMMENTS: See attached Memorandum which I understand you will distribute to the members of the Legal and Finance Committee, Council and Mayor Munson in connection with the above.

IF YOU HAVE ANY PROBLEMS RECEIVING THIS FACSIMILE, PLEASE CONTACT CHRIS AT (605) 224-0461 IN PIERRE, SOUTH DAKOTA.

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THE LAW FIRM OF
SCHMIDT, SCHROYER, MORENO & LEE, P.C.

A PROFESSIONAL LEGAL CORPORATION
PIERRE PROFESSIONAL PLAZA - SUITE 201
124 S. EUCLID
P.O. BOX 1174
PIERRE, SOUTH DAKOTA 57501-1174

RONALD G. SCHMIDT
CHARLES P. SCHROYER
MARK A. MORENO
THOMAS E. LEE
ETHAN W. SCHMIDT

TELEPHONE
605/224-0461
FAX
605/224-1607

Rapid City Office
4200 Beach Drive, Suite 1
P.O. Box 860
Rapid City, SD 57709
Telephone: (605) 341-0112

MEMORANDUM

TO: Members of the Rapid City Legal and Finance Committee,
Council, and Mayor Jerry Munson

FROM: Ron Schmidt

SUBJECT: Opposition and Protest of Joanne O'Brien and Kevin
Kirkland, 2621 Arrowhead Drive, Rapid City, SD 57702,
to Legal and Finance Committee Agenda Item 20 Scheduled
for Hearing Wednesday, February 12, 2003 ---
No. LF021203-06 -- Introduction and First Reading of
Ordinance No. 3913 -- An Ordinance Amending Sections
17.50.280 of Chapter 17.50 of the Rapid City Municipal
Code Relating to Storage and Parking of Trucks,
Trailers and Commercial Vehicles

DATE: February 11, 2003

I represent the above-referenced parties, Joanne O'Brien and Kevin Kirkland of Rapid City. My clients purchased their above-described real estate during the year 2000. Kevin Kirkland is a tilesetter and of necessity maintains his tools and supplies in a pickup which he has parked on his premises since the purchase of the home.

Prior to purchasing their home, Joanne called the City Planning Office and specifically asked if it would be okay to park Kevin's vehicle in the driveway at the residence they were planning to buy. Joanne talked to a "Brenda" and was expressly advised that it would be okay to park the 1-ton commercial vehicle on the

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premises. Kevin's vehicle has a "1-ton rating as specified by the manufacturer's designated series." My clients expressly relied upon the City's representation in buying their home.

During late 2002, my clients were advised by Brenda Rose, Ordinance Officer, of the City of Rapid City, that Kevin's vehicle violated Rapid City Municipal Code § 17.50.280. I understand the City Attorney's office has construed Rapid City Code § 17.50.280 as giving rise to a violation by my clients. I respectively disagree with the City Attorney's interpretation.

Subsections 1, 2, and 7 of Ordinance 17.50.280 read as follows:

"17.50.280A. Allowed storage. Vehicles and trailers of all types, including commercial, travel, boat, camping, storage and hauling, shall not be parked or stored on any lot occupied by a dwelling or on any lot in any residential or commercial district except in accordance with the following provisions:

"1. Number. Only one vehicle used principally for commercial purposes per family living on the premises shall be permitted.

"2. Vehicle size. Vehicles parked in residential districts shall not exceed one ton rating as specified by the manufacturer's designated series. These restrictions shall not apply to recreational vehicles.

" * * *

"7. Parking of commercial vehicles. Any commercial truck or trailer other than a construction trailer, used for the storage or transport of merchandise, equipment or business supplies shall be located on a commercial lot which contains an existing principal structure. Such a truck or trailer shall be screened by a 6-foot opaque fence or plant materials from any abutting residential lots and public ways or housed in an enclosed building." (Emphasis added)

These Ordinances are clear, and may be construed harmoniously and consistently when read together. The intent and meaning of the quoted subsections is clear as follows:

- (1) One commercial vehicle with a 1-ton rating as specified by the manufacturer's designated series is clearly allowable under §§ 1 and 2; and