



CITY OF RAPID CITY

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REPORT OF FINDINGS

TO: Mayor Sam Kooiker
Common Council

FROM: Allison Marsland, Assistant City Attorney
Keith L'Esperance, Risk Manager

DATE: May 21, 2014

RE: Roofing Permit issued for 4745 Mandalay Lane, Rapid City

On April 2, 2014, Rana Graham, the property owner of 4745 Mandalay Lane (the "Property"), presented concerns to the Legal and Finance Committee regarding her experience with the City and its staff pertaining to a re-roofing permit that was pulled by Bolt Construction in October 2013 to re-roof the Property. The Committee recommended, and the Common Council affirmatively voted to instruct City staff to investigate and make a report to the Council. Subsequent to the committee meeting, Mrs. Graham filed a claim form with Risk Management which pertained to the allegations she brought forward on April 2. The following is the requested report. Mrs. Graham's testimony to the committee on April 2 is not reiterated verbatim in this report. Rather, her identified concerns, and concerns raised by committee members are treated under separate headings.

It should be noted that at the committee meeting Mrs. Graham brought up concerns about the handling of a permit for a deck at the Property, which was installed by a different contractor previous to the re-roofing construction. The deck matter was not a part of this investigation, as that complaint was previously dealt with by the Building Services Division, and because the deck matter was not included as part of the claim that Mrs. Graham filed with the City.

Any questions about this report may be directed to Allison Marsland, Assistant City Attorney, and Keith L'Esperance, Risk Manager.

Interviews Conducted

Rana Graham	Complainant
Lawrence Graham	Complainant's Husband
Kathleen Dugan	Complainant's Mother
Lyndon Bolt	Owner, Bolt Construction
Sgt. Sue Fox	Rapid City Police Dept., Criminal Investigations
Brad Solon	Rapid City Building Official
Chuck Janson	Rapid City Code Consultant
Mike Pulkrabek	Rapid City Building Inspector
Nate Schweppe	Owner, Pro Exteriors
Trevor Schmidt	Salesman, Black Hills Exteriors
Aaron London	Project Manager for the re-roofing job at the Property Brief telephone interview conducted; Did not show for follow-up in-person interview
Dave Richins	Associate General Counsel for TAMKO Building Products

Timeline of Events

October 13, 2013	Bolt Construction re-roofed the Property
October 15, 2013	Bolt Construction applied for re-roofing permit for the Property
November 15, 2013	Roofing permit for the Property expired
January 2014	Building Services sent Bolt Construction a list of outstanding permits, including the re-roofing permit for the Property
January 2014	Independent inspections of roof by agents from both Pro Exteriors and Black Hills Exteriors at the request of Rana Graham
February 4, 2014	Bolt Construction sent Rana Graham a letter stating a mechanics' lien would be filed if the roofing bill was not paid within 7 days
February 5, 2014	Scheduled City inspection at the request of Rana Graham; Building Inspector Mike Pulkrabek and Code Consultant Chuck Janson attempted to inspect the roof, but snow cover prevented inspection
February 10, 2014	Mechanics' lien filed against the Property by Bolt Construction
February 12, 2014	City inspected the roof, inspection conducted by Mike Pulkrabek and Chuck Janson; Chuck Janson called Lyndon Bolt to ask that the roofing affidavit be turned in "ASAP"
February 12, 2014	Rana Graham filed a police report that alleged possible fraud and that alleged possible impropriety with a notarized signature on the Mechanics' Lien
February 13, 2014	Chuck Janson noted the file "sent affidavit and waiting for pics" (Bolt e-mailed the pictures to the City Attorney's Office on 4/22/14)
February 19, 2014	Building Official Brad Solon spoke with Lyndon Bolt and informed him the permit would be finalized.
February 24, 2014	Brad Solon sent Lyndon Bolt a letter confirming that the re-roofing permit was "finalized".
March 7, 2014	Pennington County State's Attorney's Office declines to prosecute for alleged improper notarized signature
April 2, 2014	Rana Graham presented her concerns to the Legal and Finance Committee
April 11, 2014	Rana Graham filed a claim form with Risk Management

Alleged Notification by City Staff to Bolt Construction re Mechanics' Lien

At the April 2 meeting, Mrs. Graham alleged that she had a discussion with Chuck Janson about Bolt Construction potentially filing a mechanics' lien because Mrs. Graham had not yet paid for the re-roofing job. Mrs. Graham has contended that she has not paid Bolt Construction as it is her position that the work is not completed. Mrs. Graham stated that she informed Chuck she had called the Pennington County Register of Deeds Office to confirm the deadline for Bolt Construction to file a mechanics' lien, and that she told Chuck the deadline was in a few days.

Mrs. Graham went on to allege that after the February 12, 2014 City inspection, fifteen minutes after he left her house Chuck called Lyndon Bolt. She stated that during that phone call Chuck warned Lyndon Bolt that he only had a few days left to file a mechanics' lien before the statutory time to do so would run.

Mrs. Graham stated that she was basing this assertion on the fact that the City's Building Service's file for her property includes a documented call by Chuck Janson to Lyndon Bolt on February 12, 2014. Chuck noted in the City's file that he called on that day, and his note states the following: "ASK (sic) LYNDON BOLT FOR AFFIDAVIT ASAP HE SAID HE WOULD GET ONE TO ME RIGHT AWAY".

Mrs. Graham brought up the alleged warning by Chuck to Lyndon Bolt at least five times during her testimony before the Legal and Finance Committee. She stated to the committee around the 1:02:55 mark that "because of this Inspector contacting this contractor and informing him that he only had a certain period of time, I will now in order to get this lien removed have to pay \$10,000 to a lawyer to take it to circuit court to get it removed."

UNFOUNDED: Re-canted by complainant – City is not liable. **City staff cleared of any wrongdoing.**

It is very important to note that the investigation revealed that the conversation as described by Mrs. Graham in her appearance on April 2 did NOT occur. The lien was filed on February 10, 2014, and the inspection was not done until two days later on February 12, 2014. During Rana Graham's interview for this report, she stated that she had mixed up some of the dates when she was making her statements to the Legal and Finance Committee. She stated that she had realized after the committee meeting that the telephone call documented by Chuck to Lyndon Bolt was made after the mechanics' lien had already been filed.

Further, when interviewed for this report both Chuck Janson and Lyndon Bolt categorically denied that any conversation about the mechanics' lien ever took place between the two of them. Their respective statements were found to be credible.

In addition, Bolt Construction appears to have been well aware of the lien filing deadline, as it sent Mrs. Graham a letter on February 4, 2014, stating it would file a mechanics' lien if the bill was not paid within seven days.

Other Concerns Relayed Regarding City Staff

In addition to the matters addressed in this report, Mrs. Graham relayed concerns at the April 2 meeting regarding the demeanor and conduct of City staff. Also, the investigation revealed that two documents provided to City staff by Mrs. Graham at the February 12, 2014 inspection have been lost or misplaced.

FOUNDED CONCERN.

REMEDY: Personnel actions have been recommended for these two issues.

Personnel matters are confidential. Therefore, recommended actions are discussed in a separate confidential personnel report.

Allegedly Fraudulent Mechanics' Lien

At the April 2 meeting, Mrs. Graham alleged that the mechanics' lien filed by Bolt Construction on the Property was fraudulent due to potentially improper notarization of the lien at issue. Mrs. Graham alleged, and Lyndon Bolt confirmed, that he was in Arizona at the time the mechanics' lien was notarized here in Rapid City. Lyndon Bolt instructed his accounting firm to use his signature stamp to "sign" the lien, and a member of Lyndon Bolt's office staff then notarized the stamped signature.

Around the 1:02:40 mark Mrs. Graham states, "I did report this to the police, and it was a second class misdemeanor."

FINDING: This issue is between the complainant and the contractor – City is not liable. No charges were filed as a result of the police investigation.

Sgt. Fox with the Rapid City Police Department, Criminal Investigation Division conducted the investigation after Mrs. Graham contacted the department to make a complaint.

Improper notarization would potentially lead to charges for violating one or more of the "Notaries Public" state statutes found in SDCL Ch. 18-1. Any potential charge stemming from the alleged acts would have been a class two misdemeanor. Because it was a potential violation of state law, after completing her investigation Sgt. Fox discussed the results with the Pennington County State's Attorney's Office.

It has been confirmed that the Pennington County State's Attorney's Office declined to prosecute the notary who notarized Lyndon Bolt's stamped signature.

Alleged Issues re Permit Finalization

At the April 2 meeting, Mrs. Graham brought forward concerns she had with the re-roofing permit, which are as follows:

1. The permit was issued after work commenced on her roof, and in fact the re-roofing was entirely completed prior to Bolt Construction obtaining a permit;
2. The permit expired before a City inspection had been conducted, or an affidavit with pictures had been turned in by Bolt Construction, and before being finalized; and
3. The permit was finalized after City Inspectors were shown items on the roof that were not to City code.

Each of these issues is treated separately below.

1. Permit issued after work was commenced.

As the timeline above confirms, the work was entirely completed prior to Bolt Construction obtaining a permit. Mrs. Graham and Lyndon Bolt both confirmed this.

FOUNDED CONCERN.

REMEDY: Double fee for the permit at issue.

Pursuant to Rapid City Municipal Code (“RCMC”) Section 15.04.300, a double fee must be paid for a permit if work is commenced prior to obtaining a permit where one is required.

Lyndon Bolt admitted during his interview that the work was commenced prior to obtaining a permit, and further added that he would be willing to pay the double fee if it was assessed against him.

It is RECOMMENDED that Building Services assess a double fee against Bolt Construction for the permit at issue.

It should be noted that in scenarios where the re-roofing is completed entirely on the weekend, as was the case here, under the current processes in place City staff would have no way of knowing at the time a permit is applied for that the contractor actually completed the work prior to pulling the permit. The permit application dates are entirely dependent on the contractor. In order to alleviate this issue, proactive measures would most likely be needed, such as making random stops at job sites in order to verify the proper permits have been obtained. For this reason, it appears there is currently no easy or feasible way to rectify this issue based on current staffing and resources available.

2. Permit expired prior to finalization.

As the timeline above confirms, the permit expired long before it was finalized.

FOUNDED CONCERN.

REMEDY: Timelier follow-up by Building Services, which is already happening.

During his interview for this report, Brad Solon relayed that the process for following up on expired permits involves Building Services staff generating a report from TRAKiT, which is the system the City uses to track permits, code cases, and scheduled inspections, etc. At the time this permit expired, which was in November 2013, staff had identified that there were issues with the TRAKiT system report used to track expired permits. Rather than send letters about expired permits with incorrect or missing permit information, Building Services made the decision to wait until the TRAKiT system reporting function at issue had been fixed.

The TRAKiT system issue was fixed sometime in December, and Building Services made a decision to send the expired permit letters to contractors in January, so that all expired but still pending permits that existed through 2013 year-end would be included in the report.

The foregoing are the reasons why Lyndon Bolt was sent a notice about the expired re-roofing permit at the Property in January 2014, even though the permit had expired in November 2013.

Since the TRAKiT report at issue has been fixed, Building Services now has a practice of sending to contractors on a monthly basis lists that include all expired but un-finalized permits. Once the notification letter has been sent, Building Services continues to follow-up by calling the contractors if the expired permits remain outstanding. When these calls are made, contractors are instructed to bring in an affidavit with pictures, or to schedule an inspection. Follow-up continues until an affidavit is received, or an inspection is scheduled and passed for code compliance.

3. Permit finalized after City staff were aware the roof did not comply with Code.

Present at the City inspection on February 12, 2014 were the following: Rana Graham; her husband Lawrence Graham; the two contractors from whom Rana Graham had obtained independent inspections – Nate Schweppe with Pro Exteriors, and Trevor Schmidt with Black Hills Exteriors; Building Inspector Mike Pulkrabek and Code Consultant Chuck Janson. Of those present, only Rana Graham did not go up on the roof.

The testimony of the people who were on the roof for the inspection was consistent: Nate and Trevor were showing Mike and Chuck the alleged issues with the roof that had been identified in the independent inspections. The interaction that day makes sense from the standpoint that Nate and Trevor had been up on the roof once already sometime in January 2014.

City Inspectors noted the following on the Inspection Report:

- Permit taken out on 10-15-13
- No inspection made as of 2-12-14 or affidavit provide (sic)
- Two shiners
- Used ARC. not 3 tab or starter
- Shingles sealing well

- Pro Exterior removed shingles

The timing of the permit being pulled on October 15, 2013, is addressed earlier in this report. Regarding the affidavit, as previously noted, when Chuck returned to City offices after the February 12 inspection, he called Lyndon Bolt and asked him to get the affidavit to the City “ASAP”. Bolt subsequently submitted a signed affidavit for the roofing job at the Property.

Regarding improperly placed and unsealed nails on the roof, commonly known as “shiners”, there was a difference of opinion between the two independent roofers and the two City Inspectors. All four individuals agreed that some “shiners” are typical and acceptable in roofing work, although what certain number of shiners that would be deemed acceptable was not indicated. Both independent roofers were of the opinion that the number of “shiners” in this particular instance, along with the other issues identified in their respective reports, warranted replacing the roof entirely. Both City Inspectors were of the opinion that the number of “shiners” in this particular instance fell well within what’s generally accepted in industry practice. As either independent roofer potentially stands to financially gain if granted a contract to re-roof the Property, the “shiner” question was not considered dispositive when turning on the question of the permit being finalized.

What is considered dispositive is the documented improper starter course.

FOUNDED CONCERN; Permit should not have been finalized.

REMEDY:

It is RECOMMENDED that Building Services “un-final” the permit at issue.

The operative building code for this re-roofing job is the International Residential Code (“IRC”), as the IRC is adopted for one and two family dwellings pursuant to RCMC Section 15.13.010. Chapter 9 of the IRC regulates “Roof Assemblies”. The International Code Council publishes the various building codes the City has adopted. The codes are copyright protected, and for this reason the City does not publish the regulations online, and it is for this reason that a copy of IRC Chapter 9 is not attached to this report. However, the applicable sections at issue in this matter are quoted for your convenience. Copies of all of the City’s adopted building codes, including the IRC, are available for review in the Building Services Division.

IRC Section 907 regulates “Reroofing”. IRC 907.1 states that “materials and methods of application used for re-covering or replacing an existing roof covering shall comply with the requirements of Chapter 9” – meaning the regulations in the rest of the chapter also apply.

The Improper Starter Course

IRC 905.1 “roof covering application,” states in part that “roof coverings shall be applied in accordance with the applicable provisions of this section *and the manufacturer’s installation instructions.*” (emphasis added). By all accounts the shingle product used by Bolt Construction to re-roof the Property was the Tamko Heritage 30 year architectural shingle. The shingle packaging

has instructions printed on it. The package instructions include a statement that the most current application instructions can be found online at the manufacturer's website.

The application instructions for Tamko's Heritage asphalt shingles that are available online state that a starter course "[m]ay consist of TAMKO Shingle Starter, TAMKO 10-inch Starter or self-sealing 3-tab shingles." None of these manufacturer approved methods was used for the starter course for the re-roof at the Property. As is listed on the City's inspection form, regular architectural shingles were used in making a starter course.

The TAMKO instructions state the starter course "may consist of" . . . , which would seem to imply that other starter course methods "may" be used. However, Nate Schweppe, Trevor Schmidt, Chuck Janson, Mike Pulkrabek, and Lyndon Bolt all stated that the starter course method used to re-roof the Property was not proper. In fact, Lyndon Bolt stated during his interview that he "got on his guys" regarding the starter course, and that he didn't know why his crew used architectural shingles as a starter course instead of one of the approved methods, which is Bolt Construction's regular practice.

The affidavit that was submitted by Bolt Construction to the City attested, in part, that the re-roofing "was properly installed as per manufacturer's instructions and per Chapter 9 of (sic) IRC". The affidavit was submitted to the City after the February 12, 2014 inspection, which revealed that Bolt Construction "used ARC. not 3 tab or starter." At the time the affidavit was submitted, City staff knew or should have known that the starter course on the roof had not been installed per manufacturer instructions, as the starter course used was not proper nor accepted practice in the roofing industry. The starter course used in this instance was not compliant with the code. As such, the permit at issue should not have been finalized.

Recommendation to Un-Finalize the Permit

As discussed, the permit should not have been finalized, and it is recommended that the permit be "un-finalized."

Pursuant to subsection B. of RCMC 15.04.250 "inspections generally":

Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code, the Adopted Construction Codes, or other city ordinances. Inspections presuming to give authority to violate or cancel the provisions of this code, the Adopted Construction Codes, or other city ordinances shall not be valid.

Based upon the findings of this report, the starter course was not installed pursuant to code, and therefore the finalization of the permit was not valid. As such, Building Services is authorized under RCMC 15.04.250 (B.) to change the status of the permit and "un-final" it.

Further, pursuant to RCMC 15.04.310:

The Building Official or his or her duly authorized representatives shall, upon substantiated evidence of violation of any provision of this title, issue written notice to the owner, contractor, lessee, firm, corporation or other individual(s) responsible for the violation to correct same. Such corrective work shall start within 30 days and finish within 60 days, or as otherwise determined by the Building Official. Any corrective work related to a roofing permit must be finished within 30 days.

Pursuant to RCMC 15.04.310, based upon the findings of this report the Building Official is required to notify Bolt Construction in writing to correct the identified code violation, the improper starter strip. As it is corrective work related to a roofing permit, the work must be commenced within 30 days, and completed within 30 days after commencement.

Facilitation of the correction is between Mrs. Graham and Bolt Construction. However, it should be noted that Mrs. Graham has stated that she will not allow Bolt Construction back onto her property. The City's primary concern is that the roof is done properly, and Building Services staff should continue to follow-up as the permit will not be finalized until the identified correction has been made. The contractor selected to correct the work and determination of who will pay for those services is between Mrs. Graham and Bolt Construction.

Note about the Visible Hail Damage

Mrs. Graham discussed what she described as hail damaged flashing at the April 2 committee meeting. Alderwoman Charity Doyle corroborated these statements when she informed the committee around the 1:14:50 mark that she "could see from the street" that what she described as the flashing was hail damaged, and that it had not been replaced.

In speaking with the roofers and City staff involved in this matter, it has been confirmed that what is visible from the street is actually what's referred to as "gutter apron," not flashing. Gutter apron, as the name implies, is part of the installation for gutters on residences. Witness interviews for this investigation revealed conflicting statements regarding the expectations about gutter replacement as between Rana Graham and Bolt Construction.

Regarding gutters, the IRC states the following: "R801.3 Roof drainage. In areas where expansive or collapsible soils are known to exist, all dwellings shall have a controlled method of water disposal from roofs that will collect and discharge roof drainage to the ground surface at least 5 feet (1524 mm) from foundation walls or to an approved drainage system." While the IRC requires a roof drainage system (in other words, a gutter system) in certain instances, it does not go further and regulate the quality of the materials or the installation methods that may be used.

Under the code, Bolt Construction was not required to replace the hail damaged gutter apron. Further, the City does not permit for gutter installation, and therefore does not inspect.

FINDING: For these reasons, the visible hail damage on the gutter system at the Property is an issue that is between Mrs. Graham and the contractor.

Roofing Inspection Policies and Procedures: Current Practice and Reasons Therefore

Affidavit in Lieu of Inspection

The roofing affidavit in lieu of inspection exception was adopted at the time the roofing permit requirement was adopted. It was put in place in order to allow roofing contractors to work evenings and weekends. Otherwise, the roofing work would need to stop at the point the ice and water shield was installed in order for the City to conduct an on-site inspection. (See RCMC 15.04.270 “approval required”: “work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the Building Official”; and RCMC 15.04.250 “inspections generally”: “[c]onstruction or work shall remain accessible and exposed for inspection purposes until approved by the Building Official.”)

Under code, an ice and water shield (also known as an “ice dam” or an “ice shield”) is required to be installed on new roofs and when re-roofing occurs. The codes that regulate roofing are the aforementioned IRC which applies to one and two family dwellings, and the International Building Code which “[i]s adopted for all occupancies except 1- and 2-family dwellings”. In all cases, “if the ice dam is not inspected, the contractor shall provide an affidavit that the ice dam was installed properly.”

In addition to the ice dam certification set-out in ordinance, the affidavit form includes a certification by the contractor that the roof “was properly installed as per manufacturer’s instructions”. Also, Building Services has adopted the practice of requiring pictures along with the affidavit to add an extra measure of verification that the work completed was carried out on the structure listed on the permit. Contractors who submit affidavits are asked to submit three pictures: one showing ice and water shield to verify it was installed, one showing the structure from the perspective of the street to verify it is the structure listed on the permit, and one showing the perspective of the neighborhood to further assist staff in verifying it was the correct structure. The types of pictures requested are not set-out in writing or in ordinance, but are requested verbally from contractors by Building Services staff.

As stated, neither the certification in the affidavit that the roof was installed per manufacturer’s instruction nor the picture requirement is set-out in City ordinance. However, pursuant to RCMC 15.04.030, both practices fall under the authorization of the Building Official to set rules and regulations in conformance with the intent of City ordinance and the Adopted Construction Codes. RCMC 15.04.030 “Authority of Building Official” in relevant part states that:

The Building Official shall have the power to render interpretations of this title and to adopt and enforce rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformance with the intent and purpose of this code and the Adopted Construction Codes.

Under the authority granted pursuant to RCMC 15.04.030, the Building Official has adopted supplemental regulations for re-roofing in requiring a certification via affidavit that a roof was installed “per manufacturer’s instructions”, and in requiring certain pictures of the roofing work in order to verify code compliance.

In cases where the affidavit exception is utilized, contractors are not required to have an on-site inspection of the roofing job.

On-Site Inspection Practices

Turning to on-site inspections, it is the practice of Building Services to inspect the following elements of a roofing job at the site:

- Ice shield – in order to verify that it was installed;
- Building paper – in order to verify that it was installed; and
- Tear off – in order to verify that the old shingles were torn off (the building paper verification aids in this regard, because the building paper cannot be put down until the tear off is complete).

City building inspectors verify the ice shield, building paper, and tear off elements from ground level from the front of a structure. If possible, the building inspectors go around to the back of the structure to verify the ice shield, building paper, and tear off elements from the ground level from that perspective. Upon occasion, building inspectors will look at the installation instructions printed on the wrapper of the shingle packaging, and will then look up to see if the manufacturer instructions are being followed. However, this practice is not followed on a regular basis.

If it is determined that any of the elements listed above are not done, or have been done incorrectly by the contractor, the building inspector notifies the contractor. The notification includes the corrections to be made, and informs the contractor that the work will not be passed until said corrections are made. Sometimes, the corrections require tear-off of materials that have already been put on the roof, as the materials were not put on correctly. Building Services practice is to follow-up on such required corrections with follow-up inspections to verify the work was corrected.

Once the building inspector determines that all of the aforementioned elements have been completed correctly, the work passes the interim inspection. The permit would not be finalized at that time, however. It is the practice of Building Services to verify that the roofing work was completed entirely. Sometimes, this second inspection takes place after the contractor calls for a final inspection. Very often, the contractor does not call. Because of this, it is the practice of Building Services to print a report on a monthly basis of the roofing permits that passed interim inspection but have not yet been finalized. On-site inspections to verify the roofs were completed are then conducted.

At these second “final” inspections, building inspectors look to verify the roof is completely done, that any dumpsters have been removed, and to check from the ground that the roof was installed properly. There are times when needed corrections are identified at these final inspections. When such is the case, Building Services notifies the contractor, and additional follow-up occurs until the corrections have been made.

Whether more Thorough Inspection Practices are Warranted

As has been discussed, the roofing regulations require that installation is made “per manufacturer’s instructions.” This would seem to have a tendency to lead one to believe that when City building inspectors finalize a roofing permit that the City is signing-off on the roof, so to speak. As Alderwoman Doyle stated during the April 2 committee meeting around the 1:09:34 mark, citizens have communicated to her that if a roof is signed-off by the City, it is expected that it was done correctly.

Under current practices:

- In cases of roofing permit finalization via affidavit, the City is relying entirely on the word of the contractor that the roof was installed pursuant to City code and manufacturer instruction.
- In cases of on-site inspections, the City is relying on eyes on the ground, not up on the roof for a closer inspection.

A public policy balance must be struck among the competing factors of:

- Providing protection to the public;
- Safe and cost effective roofing inspection practices; and
- Inspection practices that allow for flexibility for the business community.

The Question of on-the-roof Inspections:

City Inspectors do not go up on the roof to conduct an inspection, except in atypical scenarios such as the inspection conducted at Mrs. Graham’s home – where there is a specific request for an on-the roof inspection. Even then, Building Services requires the property owner to sign a waiver before City staff will go up on the roof.

There are many reasons why on-the-roof inspections are not the practice of Building Services. Staff safety is of the utmost importance to the City. There are inherent risks of potential physical injury to City staff with getting up on a roof, walking around on the roof to conduct an inspection, and then getting back down from the roof. In addition, there are potential risks to the property owner, including being named in a lawsuit should a City employee become injured during the inspection, or accidental property damage to the roof during the inspection.

Secondary to safety concerns is the issue of cost. Each on-site ground-level roofing inspection is estimated to take about 20 minutes (10 minutes of drive-time, and 10 minutes of time to inspect). Going up on the roof of each home in the City for which a roofing permit is pulled is

simply not feasible with the number of building inspectors employed by the City. Building Services estimates that on-the-roof building inspections would take about 30 minutes (10 minutes of drive-time, and an average of 20 minutes of time to inspect). There were approximately 1844 residential roofing permits pulled in 2013. An on-the-roof inspection on each of those roofs would have taken approximately 300 additional hours of staff time when compared to the average time required for a ground-level inspection.

In addition, there may be special equipment the City would be counseled to purchase in order to ensure employee safety, and in order to satisfy the City's insurance carrier (e.g. harnesses, or City-owned ladders). Further, verifying on-the-roof that it was installed "per manufacturer's instructions" would imply a significantly higher amount of staff time in preparing for the inspection and scrutinizing of the roof by the building inspector. Building inspectors would be expected to be versed in all of the various roofing products on the market in order to effectively inspect on-the-roof for each detail required by the manufacturer's instructions. The amount of additional staff time required for such an endeavor for each inspection is not known.

For the foregoing reasons, it is not recommended that roofing inspection policy be changed to require on-the-roof inspections.

The Question of Affidavits in Lieu of Inspection:

As previously mentioned, the affidavit in lieu of inspection process was put in place at least in part to allow roofing contractors to work evenings and weekends. In speaking with Building Services staff, it was the local roofing contractors that requested this exception at the time the roofing permit requirement was put in place.

Because of the climate in Rapid City, there are a limited number of prime roofing days. Being able to only partially complete a roof when roofers are working during non-City working hours in order to meet the inspection requirement in the code would severely hamper the productivity of the roofing contractors. In addition, it is possible homeowners would also be unhappy, as roofers may need to leave a job half-done on a Saturday to wait for an inspection on Monday, only to have the weather turn on Sunday and negatively impact the quality of the new roof.

Turning to the potential time-impact component, repealing the affidavit exception would require additional staff-time, as additional on-site inspections would take place. At the April 2 committee meeting around the 1:11:20 mark, Brad Solon estimated that approximately one-seventh of the roofing permits were finalized via an affidavit. In 2013, that would have equated to approximately 263 additional on-site roofing inspections, for total additional staff-time of approximately 87 hours. Based on these numbers, it appears that Building Services could reasonably accommodate the additional on-site inspections under current staffing levels.

Whether or not the City should keep the current affidavit process, or do away with it and require on-site ground-level inspections in all cases is a policy question for the Council to decide. As indicated, it appears Building Services could accommodate the additional inspections.

However, it is assumed local roofing contractors, and possibly homeowners, would resist repealing the affidavit process.

Conclusion regarding Current Policy:

The roofing permit regulations were put in place in order to protect the public from the so-called “fly-by-night” companies that roll into town after storm events. There is a measure of protection to the public in place by virtue of the fact that roofing contractors must be licensed, and must obtain permits, which are followed-up on, sometimes extensively depending on the circumstances. As stated, it is recommended that on-site roofing inspections remain on-the-ground, and not on-the-roof inspections. Whether the affidavit process should remain is a policy question.

Upon review of the processes currently in place, it seems the current practices of Building Services in carrying out the requirements of the roofing ordinances are striking a good balance. The licensing, permitting and on-the-ground inspection processes provide a measure of protection to the public from un-licensed contractors, and help ensure the standards set out in the code are being met. At the same time, the affidavit process provides flexibility for the business community that ensures licensed roofing contractors can work evenings and weekends during good roofing weather.

Human error on the part of City staff and business practices on the part of contractors have the potential to create difficulty for homeowners who have contracted for construction services. This is true no matter how strict or thorough the regulations at issue may be. Further, quality of workmanship is between the contractor and the homeowner. The codes set-out the minimum standards that must be met, and City inspections verify that the construction meets code.

Conclusion regarding 4745 Mandalay Lane:

In the matter at hand, Building Services follow-up on the roofing permit for 4745 Mandalay Lane should have been timelier, and the permit should not have been finalized because of the non-code compliant starter course. As Alderwoman Doyle stated at about the 1:18:04 mark at the April 2 committee meeting: “the process as it was intended is good, and solid, it should work. I think this is a case where it’s not working.”

Alderwoman Doyle was correct, in the case of the roofing permit at 4745 Mandalay Lane, the process didn’t work the way it was intended to work. As previously discussed, the remedy for that is to “un-finalize” the permit, and to order the correction of the identified code violation. As previously stated, facilitating the correction is for Mrs. Graham and Bolt Construction to work out between the two of them.

It is recommended that Building Services reviews this report, and instructs staff accordingly regarding roofing inspections going-forward.