

Discussion/Decision regarding complaints filed by Marko Dapceвич regarding a water line fee and water and sewer charges for 104 Remington Way.

POSSIBLE MOTION after Assembly discussion:

I MOVE TO approve the requests filed by Marko Dapceвич for the reimbursement of a water line connection fee in the amount of \$_____ and reimbursement of water and sewer service fees in the amount of \$_____ that were collected during the time Marko Dapceвич was disconnected from the municipal water system.

Memorandum

To: Assembly
From: Robin Koutchak, CBS Attorney
Date: August 5, 2015
Re: Dapceвич Claim and Complaint

Marko Dapceвич has filed a formal complaint with the Administrator regarding monetary damages he has claimed to have suffered on two water issues.

They are chiefly as follows:

1. Waiver from having to pay the water line hook up fee.

Dapceвич's neighbor, Jacoby, installed a driveway (in 2004, over ten years ago) partially over the top of the Dapceвич utility easement. Dapceвич claims that because of this he was unable to access the easement to repair his water line. CBS claims that because utility easements are private in this subdivision, and the Harborview Subdivision agreement states that it is the responsibility of the owner of the lot, on which the easement is located, to maintain the easement and not construct or place material on top of the easement, the fact that Jacoby was allowed to install his driveway on top of the easement is not CBS's fault. Dapceвич counters that CBS did enforce the code against him when he tried to build his garage on top of this easement, a few months before the Jacoby permit in 2004, so he opines "why didn't CBS stop Jacoby from putting in the driveway on the easement".

The city did approve a grading plan in 2004 for the home and driveway at 104 Rands Drive (Jacoby) which is only partially over the Dapceвич utility easement. CBS Building Department enforces building codes, not subdivision covenants or dictating where driveways go. Driveways and fences can be torn up or dug up, whereas buildings cannot be torn down as easily. The general policy of CBS is that you can't build or put a building on an access or utility easement but you are allowed to place a fence or a driveway on top of said easement. Indeed, had CBS granted Dapceвич his permit, he might have had to remove his garage to fix his water line.

In 2006, Dapceвич did in fact receive a similar permit to construct a rock wall or rock fill placement which abutted the property line of Jacoby and another resident which appears to also be on top of the utility easement.

Legal opinion is that Dapceвич has no colorable claim for his water line failure and his inability to access the water line. He did have the ability to access the old water line and could have done so at Jacoby's expense. CBS is not at fault on this issue. The hook up fee is codified (SGC 15.05.240) and the administrator does not have the authority to waive this.

2. Waiver of payment of water and sewer fees during the period in which Dapceвич had his water shut off.

Dapceвич claims that because he had a water failure last year and had his water turned off in October, and it remained turned off from October to June, essentially with a couple more shut offs and turns on during construction, he should not be required to pay water or sewer bills.

Dapceovich's turn off fee in October, 2014 and turn on fee in May, 2015 have been waived. They amount to \$50 each. He was also given the City vacation credit of \$313 per SGC 15.05.630 which allows for ¼ discount of the bill for 4 months, and can be extended with approval from the Administrator. However, he is responsible for paying water and sewer bills during the remaining time, whether or not his water was turned off.

Nothing in the code states that a resident must pay for water and sewer if it is turned off. Nor does it state that the fee is waived. The argument from staff for the constant fee is that water and sewer is not metered. You do not pay for the "use" *per se*, but you pay for the infrastructure in place and the ability to access that infrastructure. The public policy behind this is that CBS does not want to encourage people to dig their own wells or install septic tanks, CBS wants them to be "connected" to the infrastructure for health and safety issues.

Currently the exceptions to this are the vacation rate, which is set forth in the SGC 15.05.630 and the "owner accounts" which are not in the code but instead are utility billing "policy" which allow landlords to not be charged for water and sewer when their rentals are vacant. This shows an inconsistency in policy and code.

Dapceovich engaged the Administrator in email and discussions and the Administrator and staff remained steadfast that Mr. Dapceovich was without a claim of monetary damages. Nonetheless, an offer by the Administrator to "find a middle ground" was rejected. Dapceovich believes he has a right to a formal appeal process before the assembly. He points to a Water System Customer Service Policy manual at section at 15.05.160, for that proposition, along with the general idea that any decision an Administrator makes can be "appealed" to the Assembly. This section however is clearly only an appeal for Granting or Denial of a Permit. He believes the granting of the permit by CBS to Jacoby to build a driveway makes this section, which is not a city code but merely a Customer Service Policy, applicable to him. The granting of the permit to Jacoby is over 10 years old and Dapceovich has failed to show the granting of this permit has caused his water line to fail, nor has he shown that he would not have been able to access or dig up the waterline under Jacoby's driveway (which would have been a viable claim by Dapceovich against Jacoby, most likely.) The denial of the building permit to Dapceovich to build his garage on top of his water easement, appears to not be contested by Dapceovich and had probably worked to Dapceovich's advantage in that he may have had to destroy or remove his own garage from the easement in this instance due to the failure of his water line, had he been allowed to construct it as applied for in 2004.

In any event, legal analysis is that the Charter, at Section 17.10, controls this complaint in a more direct way than a reference to a city policy for customer service. The charter states that *a person who has suffered a personal or property injury due to negligence or gross negligence of the CBS would set forth the nature and extent of the claim (it says under oath) to the administrator and he would then present this claim to the assembly.* Although portions of this section are clearly outdated and adverse to the law (for instance, you must state the claim within 4 months or it is barred, clearly in contravention of a two year statute of limitations imposed by law), the general procedures would be applicable in this complaint. Dapceovich asserts a property injury (the break in the water line) and a personal injury (having to pay for the connection and service fees) and he is asserting that we are negligent in assessing those fees, etc.

Section 17.10

Claims for Injuries

(a) **Notice of Injury.** The municipality shall not be liable in damages for injury to person or property by reason of negligence or gross negligence unless, within four months after the injury occurs, the person damaged or his representative serves written notice to an officer upon whom process may be served. The notice shall state that the person intends to hold the municipality liable for damages and shall set forth with clarity the time and place of the injury, the manner in which it occurred, the nature of the act or defect complained of, the extent of the injury so far as known, and the names and addresses of witnesses known to the claimant. (b) **Presentation of Claim.** No person may bring an action against the municipality for damages to person or property by reason of negligence or gross negligence unless the action is brought within the period prescribed by law and he or she has first presented to the administrator a claim in writing under oath setting forth specifically the nature and extent of the injury and the amount of damages claimed. The administrator shall promptly present the claim to the assembly for action.

(c) **Failure Bars Action.** Failure to give notice of injury or to present a claim within the time and in the manner provided shall bar an action upon the claim.

(d) **Defense of Immunity.** This section does not waive any defense of immunity which the municipality may have from claims for damages to persons or property.

Accordingly, this dispute comes before the Assembly for you to discuss and decide.

Mr. Dapceвич has provided documentation and will be available to speak. The Mayor can decide a reasonable amount of time for him to speak – ten minutes or less would be deemed reasonable. Staff will be available as well to answer questions. Mr. Dapceвич may then be given a few minutes for any rebuttal he wishes to present, then the Assembly will be free to discuss and decide whether or not he presents a colorable claim. If so, the Assembly can then direct the Administrator to adjust his bill (s) accordingly if it so desires, balancing the need for fairness and equity among all users and rate payers and being mindful of possible undesired precedent or claims of arbitrary and capricious treatment.

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In addition, Mark Buggins as provided the following synopsis and CBS analysis which may be helpful to the Assembly as decision makers.

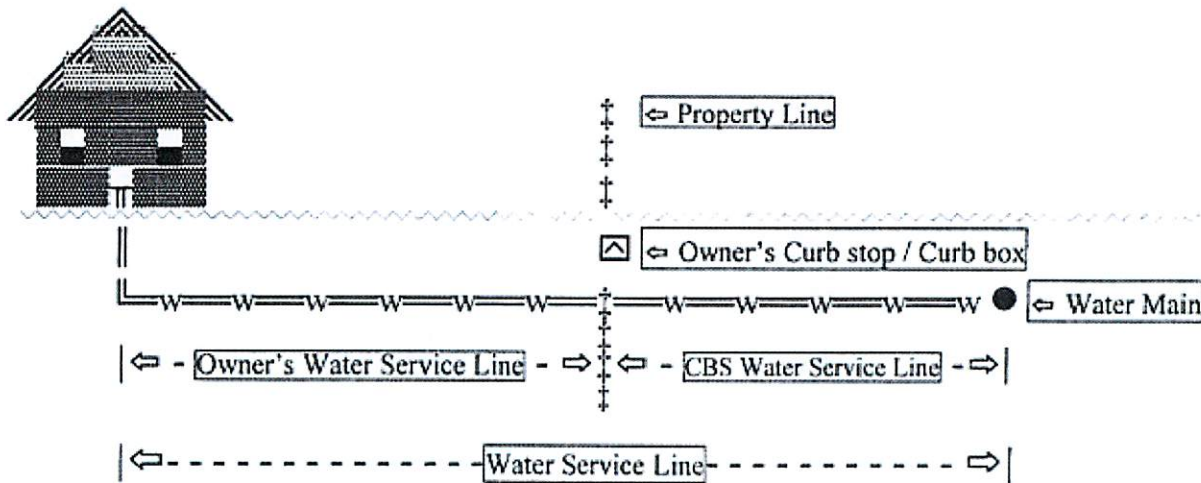
“The water service for Marko’s house on Remington Way runs from the city main in Rands Drive which is down grade from Remington Way. Remington Way is an easement, not a city ROW that does not have water or sewer utilities. The lots on Remington are served through the lots that front Rands Dr. via private easements; this is how the original subdivision was constructed over 30 years ago. There is a curb stop for Marko’s water line at the Rands Drive ROW before the line enters the private easement. This curb stop location is correct and typical for a water service that runs through an easement and basically follows the definition from the SGC below with the addition of the private lots and easement in between the ROW and the subject property.

Marko has made statements that he does not have a curb stop and there should be one at his property line, suggesting that section of his water service that runs through the easement should be the city’s

responsibility. This is clearly not the case; the city’s responsibility stops at the curb stop at the Rands Drive ROW and does not enter private property.
 From Sitka General Code 15.05.010

Graphical Representation Of:

- Owner’s Water Service Line
- CBS Water Service Line
- Water Service Line



Marko’s water service has been leaking for some time. It is difficult to locate the leak through the easement, but by closing the curb valve at the Rands ROW is it clear the leak is on the owner’s water service line section. At least one other Remington way property owner has replaced their water service up the steep hill from Rands Drive, this took place several years ago. Marko choose to install a new water service down the Remington Way easement rather than repair/replace his service line up the steep hill from Rands Dr. Marko is contesting the connection fee charged (and paid by him) for this new service location. The SGC is clear that when changing location of a service line the fee is charged. Further, the SGC is clear the costs of installation from the city main (in this case Shotgun Alley) are the responsibility of the customer. See current SGC references below (note the fee has increased since Marco’s permit was issued):

V 15.05.240 Service connection charge. Revised 7/15

A. At the time the applicant files for a connection permit where no service previously existed; or, if the applicant is filing for a change in service location, or size, or to serve a new structure, the applicant shall submit with this application the service connection charge of seven hundred twenty-five dollars. This charge is to cover permit fees, inspection and administrative costs.

A. The property owner is responsible for all costs for installation of a service line or fire line from the water main to the structure. Only a licensed contractor qualified to install municipal water systems and approved by the public works director shall perform the installation of the water service line from the water main to the structure being served. All installations shall be made according to the Uniform Plumbing Code adopted by the state of Alaska and the CBS, and as shown on the applicable standard details of the CBSS. The property owner shall obtain a permit from the CBS prior to installation.

It is noteworthy that during the city's project several years ago we installed a 4" water stub out off the Shotgun Alley water main for potential future use along the Remington Way easement. The connection permit issued for Marko's new connection and service line allowed connection to this stub out. Utilizing this stub out rather than having to go into the Shotgun Alley ROW/pavement and tap the main resulted in a very significant savings to Marko's project, estimated upwards to \$10,000 range.

Additional info:

The permit requested and issued for this new water service was for a 1" line serving Marko's house. When Marko's contractor actually installed the new line, a 2" was installed, extended and connected to the lot at the end of Remington Way. This modification was not requested nor approved nor was an additional connection fee paid for the change in service location for that residence at the end of Remington Way. "

Public Works has presented a breakdown of the costs and fees as follows:

Marko Dapcevich Claim

Money paid by Marko to CBS PW

\$731.00 Utility connection permit May 29, 2015

Things done for Marko by the water department, but not charged

\$50.00 Water turned off October 20, 2014

\$50.00 Water turned on May 27, 2015

Credits given

\$313.79 Vacation credit from utility department

Please see attached for breakdown of water, sewer, and garbage charges

Materials purchased and charged to Jerome Mahoskey for project

Note - this has been billed, and will be paid by Jerome Mahoskey.

\$456.88 6/18/2015

Water and sewer rates charged for the period of October 20, 2014 - May 27, 2015

\$724.20

Water charged at 35.42 a month

Sewer charged at 50.59 a month

Sales tax 5% Oct-March, 6% April -May

Staff Hours spent on the claim

Dan Tadic 6

Dave Longtin 2
