



Dustin Johnson, Chair
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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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April 4, 2007

Mr. Wayne Fletcher
Director of Public Works
City of Brandon
P. O. Box 95
Brandon, SD 57005-0095

Mr. Jeremy Scadden
Jerry Scadden Construction
P. O. Box 243
Valley Springs, SD 57068-0243

Mr. Roger Hunt
Attorney at Law
Hunt Law Office
P. O. Box 827
Brandon, SD 57005-0827

Re: In the Matter of the Complaints filed by the
City of Brandon, Brandon, South Dakota,
against Jeremy Scadden Construction,
Valley Springs, South Dakota
Dockets OC06-007, OC06-008, OC06-009
and OC06-010

Dear Folks:

Enclosed each of you will find a copy of Notice of Hearing in the above captioned matters. This is intended as service upon you by mail.

Very truly yours,

Kara Van Bockern
Staff Attorney

Enc.

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINTS FILED)	NOTICE OF HEARING
BY THE CITY OF BRANDON, BRANDON,)	OC06-007
SOUTH DAKOTA, AGAINST JEREMY)	OC06-008
SCADDEN CONSTRUCTION, VALLEY)	OC06-009
SPRINGS, SOUTH DAKOTA)	OC06-010

On October 2, 2006, pursuant to SDCL 49-7A-17, the South Dakota One Call Board (Board) received a complaint filed by the City of Brandon, Brandon, South Dakota (Brandon), against Jeremy Scadden Construction, Valley Springs, South Dakota (Scadden). (Docket OC06-007.) According to the complaint, Scadden dug a basement at 101 Country Club Avenue, Brandon, South Dakota, without first obtaining a valid locate request. The complaint alleged that Scadden failed to notify the one-call center before excavating in violation of SDCL 49-7A-5.

On October 2, 2006, pursuant to SDCL 49-7A-17, the South Dakota One Call Board (Board) received a complaint filed by Brandon against Scadden. (Docket OC06-008.) According to the complaint, Scadden cleared trees and brush for a new home and driveway at 205 Fairway Avenue, Brandon, South Dakota, without first obtaining a valid locate request. The complaint alleged that Scadden failed to notify the one-call center before excavating in violation of SDCL 49-7A-5.

On November 13, 2006, pursuant to SDCL 49-7A-17, the South Dakota One Call Board (Board) received a complaint filed by Brandon against Scadden. (Docket OC06-009.) According to the complaint, Scadden was excavating at 213 Fairway Circle, Brandon, South Dakota, without first obtaining a valid locate request. The complaint alleged that Scadden failed to notify the one-call center before excavating in violation of SDCL 49-7A-5.

On November 13, 2006, pursuant to SDCL 49-7A-17, the South Dakota One Call Board (Board) received a complaint filed by Brandon against Scadden. (Docket OC06-010.) According to the complaint, Scadden was excavating at 205 Fairway Avenue, Brandon, South Dakota, without first obtaining a valid locate request. The complaint alleged that Scadden failed to notify the one-call center before excavating in violation of SDCL 49-7A-5.

Pursuant to SDCL 49-7A-23 and 49-7A-24, copies of the complaints in Dockets OC06-007 and OC06-008 were sent to Scadden on October 6, 2006, advising him that he must file answers in writing by October 27, 2006. Scadden filed answers to these complaints on November 2, 2006.

Pursuant to SDCL 49-7A-23 and 49-7A-24, copies of the complaints in Dockets OC06-009 and OC06-010 were sent to Scadden on November 16, 2006, advising him that he must file answers in writing by December 13, 2006. Scadden filed an answer to the complaint in Docket OC06-009 on January 9, 2007. Scadden did not file an answer to the complaint in Docket OC06-010.

Pursuant to SDCL 49-7A-22, a five member panel (Panel) was appointed by Jerry Schroeder, Chairman of the Board, for the purpose of determining whether there was probable cause to believe there had been a violation of any statute or rule of the Board. The Panel met on November 3, 2006, to consider Dockets OC06-007 and OC06-008. Pursuant to SDCL 49-7A-25, based on the complaint in Docket OC06-007 filed by Brandon, the Panel determined by unanimous vote that there had been violations of the statute as alleged in the complaint. Pursuant to SDCL 49-

7A-25, based on the complaint in Docket OC06-008 filed by Brandon, the Panel determined that there was insufficient evidence to determine that probable cause existed to show that Scadden had violated SDCL 49-7A-5 without providing advance notice to the South Dakota One Call System as required by statute and recommended dismissing the complaint.

Pursuant to SDCL 49-7A-22, a five member panel (Panel) was appointed by Jerry Schroeder, Chairman of the Board, for the purpose of determining whether there was probable cause to believe there had been a violation of any statute or rule of the Board. The Panel met on January 18, 2007, to consider Dockets OC06-009 and OC06-0010. Pursuant to SDCL 49-7A-25, based on the complaints filed by Brandon, the Panel determined by unanimous vote that there had been violations of the statute as alleged in the complaints.

Pursuant to SDCL 49-7A-27, a copy of the Panel's recommendations in each docket was sent to the parties. The Board has not received acceptances or rejections from the parties in any of the dockets of the Panel's recommendations.

The Board finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-7A, including 49-7A-2, 49-7A-4, 49-7A-5, 49-7A-8, 49-7A-10, 49-7A-12, 49-7A-17 through 49-7A-27, inclusive, and SDCL Chapter 1-26.

A hearing shall be held on May 4, 2007, at 9:00 a.m. in the International East Conference Room, Holiday Inn City Centre, 100 West 8th Street, Sioux Falls, South Dakota. All persons testifying will be subject to cross-examination by the parties.

The issue at the hearing in each docket shall be whether Scadden violated SDCL 49-7A-5 by commencing excavation without providing advance notification to the one-call center. Also at issue shall be whether penalties shall be imposed by the Board pursuant to SDCL 49-7A-18 and/or 49-7A-19, and, if so, what those penalties shall be.

The hearing shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Board will consider all evidence and testimony that was presented at the hearing. The Board will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of the hearing, the Board shall determine whether Scadden violated any statute or rule of the Board, and, if so, whether any penalties shall be imposed.

The Board's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please call 1-800-781-7474 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 4th day of April, 2007.



Kara Van Bockern
Attorney for the One Call Board
500 East Capitol
Pierre, SD 57501
Telephone (605) 773-3201

CERTIFICATE OF SERVICE

I hereby certify that copies of Notice of Hearing were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the addresses shown below on this the 4th day of April, 2007.

Mr. Wayne Fletcher
Director of Public Works
City of Brandon
P. O. Box 95
Brandon, SD 57005-0095

Mr. Jeremy Scadden
Jerry Scadden Construction
P. O. Box 243
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