



OFFICE OF THE CITY ATTORNEY

CLAIMS MEMORANDUM #DC-2021-026

TO: Mayor and City Council

FROM: Kelea L. Fisher 
Deputy City Attorney

DATE: September 30, 2021

MEETING: October 12, 2021

RE: Damage claim of
Johnny Owens, Central District Commissioner
on behalf of Comanche County
315 SW 5th Street
Lawton, OK 73501

Submitted in the amount of \$2,895.00 on August 2, 2021

RECOMMENDATION: Approval in the amount of \$2,895.00

BASIS OF CLAIM: Johnny Owens, Central District Commissioner, has filed a claim on behalf of the Comanche County Sherriff's Department in the amount of \$2,895.00. On April 20th, 2021 an employee of the Sherriff's Department storage lot located at 913 SW 2nd Street, Lawton, Oklahoma started having issues with the sewer service line backing up. The employee used an auger to try to clear the blockage with no success. Claimant hired Andy's Plumbing and they snaked the line with no success. Due to the line holding Andy's plumbing ran a camera down the line and felt there was a problem at the connection. Andy's then dug up the tap and found it was not connected to the City's main. Claimants have submitted three invoices from Andy's Plumbing one in the amount of \$260.00 to snake the line, another in the amount of \$135.00 to camera the line, and the other in the amount of \$2,500.00, which represents the amount charged for discovering the problem and digging down to the City's main to find the issue.

DATE OF DAMAGE: April 20, 2021

FACTS: According to Britt Hubbard, Construction Inspector for the City of Lawton, Sewer System Technical Division, on May 3, 2021, Andy's Plumbing contacted City of Lawton, Sewer Construction Division to inform them that the Sherriff's lot was not connected to the City's main. John Santos, Sewer Construction Superintendent, responded to the call and found the service line was in fact not connected to the main. A Construction crew was dispatched the same day to make a new connection from the service line to the City main and backfill the area. According to Mr. Hubbard, the City's main was replaced in the area of 913 SW 2nd Street on March 5, 2014 as part of the SSES work project in Sub-Basin 102 and the City crews likely failed to tie the service line back into the City's main after the project was complete.

LEGAL BASIS FOR APPROVAL OF CLAIM: Pursuant to Title 51, Oklahoma Statutes, §151 et seq., municipalities are held accountable in the same manner as private entities or individuals for negligent acts or omissions that result in harm to others. However, negligence is never presumed, and the burden of proving negligence and that it was the proximate cause of the harm complained of, is on the complaining party. Oklahoma Ry. Co. v. Ivery, 204 P.2d 978 (Okla. 1949). In the case of a defective water and sanitary sewer system, the Oklahoma Supreme Court has held that a complaining party does not meet his burden of proving negligence unless prior notice of the defective condition, actual or constructive, has been received by the entity controlling and managing the system. City of Holdenville v. Griggs, 411 P.2d 521 (Okla. 1966). In that instance, a duty arises to abate the defect within a reasonable time. Id. at 522.

Generally, because the failure to tie the service line to the main occurred in 2014, approximately seven years ago, this claim would be time barred because a claimant has one (1) year from the date of loss to present a claim to the City. Title 51 O.S. § 156(B). However, in this case, the discovery rule applies. The discovery rule is designed to allow limitations in tort cases to be tolled until the injured party knows or, in the exercise of reasonable diligence, should have known of the injury. Where applicable, the discovery rule tolls the limitations period until a plaintiff learns of an injury and, through prudent investigation, can obtain sufficient facts to state a cause of action. Woods v. Prestwick House, Inc., 2011 OK 9, ¶ 3, 247 P.3d 1183, 1186. The facts of this case indicate that the “injury” – the disconnected service line – was not discovered until April 2021, when the Claimants hired a plumber to resolve a plumbing issue. There is no significant evidence at this point to indicate that Claimants knew or should have known, discovered, or should have discovered the disconnected service line prior to that date. Therefore, in this limited instance, the discovery rule applies and the claim was timely filed within one (1) year of discovery.

This office recommends approval of this claim for the following reason:

1. The City failed to reconnect the Claimants’ service line to the City’s main and would therefore be liable for this claim.

This office recommends approval in the amount of \$2,895.00.

KELEA L. FISHER
DEPUTY CITY ATTORNEY


Mincie Beamesderfer
Claims Investigator