

8.  
33.



# City of West Allis Matter Summary

7525 W. Greenfield Ave.  
West Allis, WI 53214

File Number	Title	Status
2008-0176	Claim	Claim Report
Richard Schell communication requesting a refund of towing charges which allegedly occurred at 5825 W. Fillmore Drive on February 6, 2008.		
Introduced: 3/18/2008		Controlling Body: Administration & Finance Committee

## COMMITTEE RECOMMENDATION

*POF*

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>MAY 06 2008</u>	<input checked="" type="checkbox"/>		Barczak				
			Czaplewski				
			Kopplin	<input checked="" type="checkbox"/>			
			Lajsic	<input checked="" type="checkbox"/>			
			Narlock	<input checked="" type="checkbox"/>			
			Reinke	<input checked="" type="checkbox"/>			
			Roadt				
		<input checked="" type="checkbox"/>	Sengstock				
			Vitale	<input checked="" type="checkbox"/>			
			Weigel				
			TOTAL	<u>5</u>	<u>-</u>		

## SIGNATURE OF COMMITTEE MEMBER

*Kurt Kopplin* \_\_\_\_\_  
 Chair Vice-Chair Member

## COMMON COUNCIL ACTION

### PLACE ON FILE

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>MAY 06 2008</u>	<input checked="" type="checkbox"/>		Barczak	<input checked="" type="checkbox"/>			
			Czaplewski	<input checked="" type="checkbox"/>			
			Kopplin	<input checked="" type="checkbox"/>			
			Lajsic	<input checked="" type="checkbox"/>			
			Narlock	<input checked="" type="checkbox"/>			
		<input checked="" type="checkbox"/>	Reinke	<input checked="" type="checkbox"/>			
			Roadt	<input checked="" type="checkbox"/>			
			Sengstock	<input checked="" type="checkbox"/>			
			Vitale	<input checked="" type="checkbox"/>			
			Weigel	<input checked="" type="checkbox"/>			
			TOTAL	<u>10</u>	<u>-</u>		



OFFICE OF THE CITY ATTORNEY

Scott E. Post  
City Attorney

Sheryl L. Kuhary  
Jeffrey J. Warchol  
Jenna R. Merten  
Assistant City Attorneys

April 22, 2008

Common Council  
City of West Allis

RE: City Attorney's Report of Claim

Dear Council Members:

The enclosed claim has been referred to this office in accordance with Section 3.05 (6)(a) of the Revised Municipal Code. This office has examined the facts of the claim and the applicable law. Our Opinion regarding liability is as follows:

**It is the recommendation of this office that the following claim be placed on file:**

**Richard Schell- Amount \$ 116.16**

This is a claim for reimbursement for towing charges incurred by the claimant on February 6<sup>th</sup>, 2008, when the claimant's vehicle was ordered to be towed by the West Allis Police Department as a result of a snow emergency violation. On said date, the claimant's vehicle was parked on the wrong side of road in front of 5828 West Fillmore Drive, West Allis, WI. A City of West Allis police officer noticed the violation, ticketed the vehicle and notified dispatch to add this vehicle to the list of other vehicles to be towed that day due to the snow emergency. The towing company did not arrive until ten (10) hours later at which point the claimant had contacted the West Allis Police Department and was told to move the vehicle to the other side and that it would not be towed. Dispatch was not able to notify the towing company in time, which resulted in the claimant's vehicle being on the correct side of the road when towed. On March 12<sup>th</sup>, 2008, the claimant filed a claim against the City for reimbursement of the towing charges in the amount of \$116.16.

This matter was investigated by Deputy Chief Rick Balistrieri who felt that the claimant's vehicle was towed in error and recommended reimbursement to the claimant. Our analysis concurs with the findings of Deputy Chief Balistrieri, especially given the fact that the claimant contacted the Police Department while in violation of the snow emergency and moved his car to the proper side of the street pursuant to the instructions of the desk officer. Considering the overwhelming number of vehicles to be towed this day throughout the City, the claimant's vehicle was simply towed in error as the tow operator responded to the site to tow the vehicle never cognizant that the vehicle was legally parked at that time.

Based upon the above, the City Attorney's Office paid this claim in the amount stated above and obtained a Property Damage Only Release signed by the claimant. Therefore, this claim should be placed on file.

Respectfully submitted,

  
Jeffrey J. Warchol  
Assistant City Attorney

JJW:da

**PROPERTY DAMAGE ONLY RELEASE**

KNOW ALL MEN BY THESE PRESENTS that RICHARD T. SCHELL, for and in consideration of One Hundred Sixteen and 16/100 Dollars (\$116.16) the receipt whereof is hereby acknowledged, do hereby forever release, acquit and discharge the City of West Allis, Wisconsin, a municipal corporation, its departments, commissions, officials, agents and employees, his, her, its or their successors and assigns and all others directly or indirectly liable, from any and all claims and demands, actions and causes of action, damages, both known and unknown, including future developments thereof, costs, loss of service and compensation on account of, or in any way growing out of, any and all known and unknown property damage resulting or to result from that certain situation on or about February 6<sup>th</sup>, 2008, when during a snow emergency, the City of West Allis Police Department ordered that Mr. Schell's vehicle be towed by N&S Towing. In the interim, Mr. Schell moved his vehicle to the proper side of the street to be in compliance with the snow emergency ordinance.

I agree that this settlement is in full compromise of a doubtful and disputed claim both as to the question of liability and damages and that the payment is not to be construed as an admission of liability.

I agree that this is a complete release of property damage only and it is understood and agreed that it doesn't constitute a release for any bodily injury resultant from this accident as there were no bodily injuries as a result of this accident.

I further agree that this release and payment pursuant thereto is not to be construed as a waiver by or an estoppel of any party released to prosecute a claim or action against the undersigned for any damages sustained.

This Release contains the ENTIRE AGREEMENT between the parties hereto, and the terms of this Release are contractual and not a mere recital.

**I HAVE READ THE FOREGOING RELEASE AND FULLY UNDERSTAND IT. I FURTHER UNDERSTAND THAT I HAVE THE OPPORTUNITY TO DISCUSS AND NEGOTIATE THE TERMS OF THIS RELEASE WITH THE WEST ALLIS CITY ATTORNEY AND SPECIFICALLY WAIVE SUCH OPPORTUNITY.**

Signed and sealed this 18<sup>th</sup> day of April, 2008.

Richard T. Schell  
Richard Schell

Subscribed and sworn to before me this 18<sup>th</sup> day of April, 2008.

*Darlyn Adams*  
**DARLYN ADAMS**  
Notary Public, State of Wisconsin  
My Commission Expires: 4/10  
**STATE OF WISCONSIN**





RECEIVED  
MAR 17 2008  
WEST ALLIS  
CITY ATTORNEY



DEPARTMENT OF POLICE

Dean Puschnig  
Chief of Police

414/302-8000  
414/302-8099 (Fax)  
TTY 414/302-8000 (Hit Space Bar)

Police Department  
11301 West Lincoln Avenue  
West Allis, Wisconsin 53227

[www.ci.west-allis.wi.us](http://www.ci.west-allis.wi.us)

03/14/2008

Office of the City Attorney  
Attn: Jeffrey Warchol

Re: Claim by Richard T. Schell  
Request for Towing Bill Reimbursement

Mr. Warchol,

On March 13<sup>th</sup>, 2008 I received a written request and documentation, from Richard T. Schell of 5825 W. Fillmore Drive, West Allis, WI 53219 for reimbursement to cover the towing of his vehicle (at the request of the Police Department). He believed that his vehicle was towed in error and claimed that the vehicle was legally parked. I turned the request for reimbursement over to Monica Schultz of the Clerk Treasurer's Office on March 13<sup>th</sup>, 2008.

My investigation of this request does reveal that N & S Towing towed Mr. Schell's vehicle during a 2-day declared snow emergency and that vehicle was towed at the request of the Police Department. Our request with N & S Towing was made at 1:46 p.m. on February 6<sup>th</sup>, 2008 after Officer Paul Rosen issued a ticket to Mr. Schell's vehicle for being parked on the wrong side of the street during the snow emergency. The Nissan X-terra was parked in front of 5828 W. Fillmore and thus ticketed for the violation (ticket #1613721). Officer Rosen notified the dispatch center to add this vehicle to the list of vehicles to be towed. The vehicle was towed at 11:45 p.m., TEN HOURS LATER.

The grand number of vehicles that had to be towed during this snow emergency explains the delay. The police dispatch center compiled a list of tows, three pages long, and sent the list to N & S Towing by fax (confirmed by me through conversations with our dispatch supervisor and Debbie at N & S Towing). The N & S Towing receipt DOES NOT indicate which side of the street the vehicle was towed from, only that it was 58<sup>th</sup> and Fillmore. The driver of the tow truck does not remember which side of the street the vehicle was towed from.

Mr. Schell claims the following:

His vehicle was ticketed at 1:46 p.m. for being parked on the wrong side of the road. He was unaware of the snow emergency ordinance.



At approximately 3:00 p.m. he called the police department and talked to a desk officer about the ticket and was instructed how to set the ticket up for court; he was also told to move his car to the correct side of the street (odd numbered side).

At about 3:30 p.m., Mr. Schell moved his car to the odd side of the street and parked in front of his home, 5825 W. Fillmore. This claim is supported by a neighbor; Fred Schmidt of 5831 W. Fillmore Dr. home phone 321-2217.

At about 11:45 p.m., N & S Towing towed his vehicle from the correct side of the street.

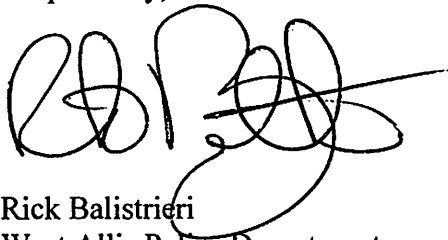
My finding supports Mr. Schell's claim. The overwhelming number of vehicles to be towed created a great delay and regretfully this tow was made in error – the N & S driver simply responded to 58<sup>th</sup> and Fillmore to tow the vehicle that was on his lengthy list, not realizing that the car was now legally parked.

I am requesting that Mr. Schell promptly be reimbursed the amount of \$116.16, which is the amount he had paid to recover his vehicle from N & S Towing on 02/07/2008.

As a side note: Mr. Schell later arranged a court date for the parking ticket, he entered a plea of No Contest and agreed to pay \$15.00.

Please feel free to contact me should you have any questions or concerns.

Respectfully,

A handwritten signature in black ink, appearing to read 'Rick Balistrieri', with a long horizontal stroke extending to the right.

Rick Balistrieri  
West Allis Police Department  
Deputy Chief of Police – Support Services

Monica -

I talked to Jeff Warchol about this - he suggests we process as usual. He will be assigned this incident & I will parallel with my investigation from this side.

Thank you,

Rick Balistrieri

West Allis Police Department  
Citizen Complaint Form

Date: 3/12/2008

<b>Complainant Information</b>			
Name:	<u>Schell</u> <small>(Last)</small>	<u>Richard</u> <small>(First)</small>	<u>T</u> <small>(Middle)</small>
Address:	<u>5825 W Fillmore Dr. West Allis 53219</u>		
Phone:	<u>(cell) (847) 942-7835</u>	Date of Birth:	<u>10/16/72</u>
Business Phone:	<u>(home) (414) 321-7807</u>	Work Hours:	<u>8-5pm</u>

<b>Officer Involved</b>	
Name, Badge #, Rank (if known) or description	<u>Unknown</u>

<b>Incident Information</b>					
Date:	<u>2/6/08</u>	Time: approx.	<u>11:45</u>	Location:	<u>5825 W. Fillmore Dr.</u>

<b>Witness Information</b>			
Name:	<u>Schmidt</u> <small>(Last)</small>	<u>Fred</u> <small>(First)</small>	<u></u> <small>(Middle)</small>
Address:	<u><del>5825</del> 5831 W Fillmore Dr. West Allis 53219</u>		
Phone:	<u>contact Richard Schell for #</u>	Business Phone:	<u>RECEIVED</u>
Name:	<u>Schell</u> <small>(Last)</small>	<u>Paul</u> <small>(First)</small>	<u></u> <small>(Middle)</small>
Address:	<u>5825 W. Fillmore Dr.</u>		
Phone:	<u>414-321-7807</u>	Business Phone:	<u></u>
Additional witness names can be added to the back of the form			

**Details of Complaint**

Please also see summary of events attached.

During snow emergency on Feb 6, 2008, vehicle Lic# 178-FWA was ticketed for being parked on incorrect side during emergency. After discussing w/ desk officers on 2/6, vehicle was moved to correct side (ODD). On evening of Feb. 6, vehicle was towed from ODD side. After abiding by city ordinance to park on odd side, this vehicle should not have been towed.

I am requesting that the city of West Allis reimburse me for the tow charge of my vehicle. Please contact me to discuss. Richard Schell (847) 942-7835

- ATTACHED DOCUMENTS:**
- 1) Summary of Events
  - 2) Witness Statements (x2)
  - 3) Citation + Tow Receipt (copy)
- (414) 321-7807 (home)

# SUMMARY OF EVENTS

DATE: 2/6/2008

VEHICLE: NISSAN EXTERRA LIC# 178-FWA

Approx. 12pm - transferred vehicle from odd side to even side of Fillmore drive, under impression that even side of street was correct side for date of 2/6 and also to allow plow to complete snow removal

---

1:46pm Parking citation is issued to vehicle for snow emergency ordinance. City ordinance requires vehicles be parked on ODD side of street during declared snow emergency

---

Approx. 3pm - Consulted w/desk officer at West Allis Police Dept. regarding nature of citation. Was instructed to address issue with municipal court.

---

Approx. 3:30pm - relocated vehicle to ODD side of street to comply to ordinance. Parked vehicle in front of 5825 W. Fillmore Dr. (vehicle owner's home address)

---

Approx. ~~11:30pm~~ 11:45pm - vehicle is towed from ODD side of street.



# WITNESS STATEMENT

Account of incidents by the following individual:

Name: FRED SCHMIDT

Address: 5831 W. FILLMORE DR  
WEST ALLIS, WI 53219


I, FRED SCHMIDT Print name was witness to the following event(s)

1) On Wednesday, February 6, 2008, a blue Nissan Exterra, license #178-FWA was parked in front of 5825 West Fillmore Drive, on the ODD side of the street at approximately 9pm.

2) On the evening of Wednesday, February 6, <sup>2008</sup>~~2008~~, a blue Nissan Exterra, license #178-FWA was towed from the street in front of 5825 West Fillmore Drive, on the ODD side of the street.

Estimate of approximate time of tow: 11:45 PM

I hereby verify that all information listed above is a correct and a true account of events that occurred.

Signature: 

Date: 3/3/08

# WITNESS STATEMENT

Account of incidents by the following individual:

Name: PAUL SCHELL

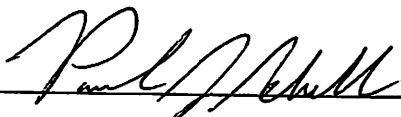
Address: 5825 W. FILLMORE DR.

WEST ALLIS, WI 53219

I, PAUL SCHELL was witness to the following event(s)  
Print name

- 1) On Wednesday, February 6, 2008, a blue Nissan Exterra, license #178-FWA was parked in front of 5825 West Fillmore Drive, on the ODD side of the street from 5pm until time of towing.

I hereby verify that all information listed above is a correct and a true account of events that occurred.

Signature: 

Date: 3-3-08

**"DAMAGE FREE"  
TOWING**

## N & S TOWING

1719 S. 83rd Street  
West Allis, WI 53214  
24 HOUR ROAD SERVICE  
(414) 476-TOWS  
(8697)



Specialized  
Motorcycle  
Towing



**"DAMAGE FREE"  
TOWING**

**N & S TOWING, INC.**  
1719 So. 83rd Street • West Allis, WI 53214  
476-8697 • Fax 476-7828  
- 24 HOUR ROAD SERVICE-



**FLAT BED SERVICE**

TOWED FOR <u>Richard T. Schell</u>		DATE <u>2.7.08</u>		CASH	
ADDRESS <u>5825 W. Fillmore <sup>West Allis</sup> <del>West Allis</del> WI 53219</u>		RO#	PO#	CHARGE	
FLATBED <input checked="" type="checkbox"/>	TOW <input checked="" type="checkbox"/>	LOCKOUT	START	TIRE	GAS
MAKE <u>Nissan X-Terra</u> YEAR <u>01</u>		DRIVER <u>off</u>		TRUCK # <u>DT</u>	
LICENSE # <u>178-FWA</u> STATE <u>WI</u>	LOCATION <u>WASHI 58th &amp; Fillmore</u>			100	00
VIN # <u>5N1EP28481C531541</u>	MILEAGE				
NAME					
ADDRESS		PHONE ( ) -			
DL# <u>SH00-7587-2376-00</u>	DOB <u>10/16/72</u>	ADVANCE CHARGES			
ACC#	EXP: <u>10/16/15</u>	STORAGE <u>2.7.08 TO 1.1</u>	10.00		
I agree to not hold N&S Towing responsible for damages done to my vehicle due to services provided by them unless negligence can be proven and also I agree to pay total amount of invoice according to card issuers agreement and/or N&S Towing's billing policy if credit voucher.		AUTHORIZATION # <u>003216</u>	TAX	6.16	
		TOTAL	116.16		

[Signature] X  
OWNER/ REPRESENTATIVE DRIVER

69161

LICENSE NUMBER <u>178 FWA</u>	PARKING CITATION WEST ALLIS, WISCONSIN		No. <u>1613721</u>
YEAR <u>08</u> STATE <u>WI</u> MAKE & COLOR <u>Nissan Blue</u>	CASH DEPOSIT \$ <u>30.</u>		DATE <u>02.07.08</u>
NAME	ADDRESS	ZIP CODE	TIME <u>1:46</u> AM/PM
LOCATION <u>5828 W Fillmore</u>	ORDINANCE NUMBER / VIOLATION DESCRIPTION		OFFICER'S SIGNATURE <u>[Signature]</u>
<ul style="list-style-type: none"> <li>___ 346.53(2) ALLEY BUSINESS DISTRICT</li> <li>___ 10.10(2) ALLEY PARKING OTHER</li> <li>___ 346.53(5) CROSSWALK CLOSER THAN 15'</li> <li>___ 346.53(4) ENTRANCE ALLEY OR DRIVE CLOSER THAN 4'</li> <li>___ 346.53(3) FIRE HYDRANT CLOSER THAN 10'</li> <li>___ 356.53(1) LOADING OR BUS ZONE</li> <li>___ 10.14(7)(a) METER VIOLATION</li> <li>___ 10.105 NIGHT PARKING: ___ NO PERMIT ___ WRONG SIDE ___ SUCCESSIVE NIGHTS</li> <li>___ 10.10(1) OVERTIME PARKING</li> </ul>	EMPLOYEE # <u>138</u>		

1719 S. 83 ST.  
WEST ALLIS, WI 53214  
(414) 476-8697

**COPY**  
02/07/2008 12:36:43  
Sale:

Transaction # 11  
Card Type: [Redacted]  
Acc: [Redacted]  
Entry: Swiped  
Total: 116.16

Reference No.: 815752971  
Auth. Code: 003210  
Response: APPROVAL 003210  
Sequence Number: 0011

CUSTOMER COPY



OFFICE OF THE CITY ATTORNEY

Scott E. Post  
City Attorney

Sheryl L. Kuhary  
Jeffrey J. Warchol  
Jenna R. Merten  
Assistant City Attorneys

April 28, 2008

Common Council  
City of West Allis

RE: City Attorney's Report of Claims/Lawsuits

Dear Council Members:

The enclosed claims/lawsuits have been referred to this office in accordance with Section 3.05 (6)(a) of the Revised Municipal Code. This office has examined the facts of each claim/lawsuit and the applicable law. Our Opinion regarding liability is attached to each claim/lawsuit.

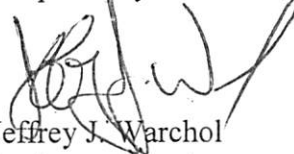
**The following claims/lawsuits have been placed on file:**

Richard Schell (\$116.16)  
Park Bank/Wisconsin Athletic Club (\$10,000.00)  
Marcellinia Caponigro (\$3,439.09)

**The following claim/lawsuit has been denied:**

Karen Schumacher (\$520.00)

Respectfully submitted,



Jeffrey J. Warchol  
Assistant City Attorney

JJW:da  
Enclosures

cc: Thomas E. Mann, CVMIC