

15.



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
2008-0563	Claim	Claim Report
Notice of Claim submitted by WE Energies regarding damages allegedly sustained in the area of S. 70 St. and S. 71 St. on W. National Ave. on or about August 5, 2008.		
Introduced: 9/2/2008		Controlling Body: Administration & Finance Committee

COMMITTEE RECOMMENDATION

POF

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>MAR 17 2009</u>			Barczak				
			Czaplewski				
			Kopplin				
	X		Lajsic	✓			
			Narlock	✓			
		X	Reinke	✓			
			Roadt	✓			
			Sengstock				
			Vitale	✓			
			Weigel				
			TOTAL	<u>5</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>MAR 17 2009</u>			Barczak	✓			
	✓		Czaplewski	✓			
			Kopplin	✓			
			Lajsic	✓			
			Narlock	✓			
			Reinke	✓			
			Roadt	✓			
			Sengstock	✓			
		✓	Vitale	✓			
			Weigel	✓			
			TOTAL	<u>10</u>			



OFFICE OF THE CITY ATTORNEY

Scott E. Post
City Attorney

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

March 9, 2009

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 (8) 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 paid and placed on file:

We Energies (S. 70th and 71st Streets & W. Natl. Ave.)– Amount \$13,875.00

This is a claim by We Energies for damages and replacement of a primary electric cable and duct package at the location of 71st Street and West National Avenue in the City of West Allis, WI, which was allegedly cut by a City crew while investigating a water leak in the area. As a result of the damage to the electrical cable and duct package, We Energies filed a claim against the City of West Allis on August 14th, 2008, in the amount \$18,500.63.

Based upon the information obtained in our initial investigation, the City Attorney's Office recommended denial of this claim on or about December 16th, 2008. Said claim was subsequently denied by the Common Council at its meeting of January 6th, 2009.

Subsequent to said denial, additional information came to the attention of the City Attorney's Office, which indicated that the City crew working in the area was in fact primarily negligent for the damages to We Energies electrical cable and duct package at the location as stated in the claim. As a result of this discovery, the City Attorney's Office entered into negotiations with We Energies and settled the claim at a 75-25 percent split in favor of We Energies. This matter was then brought back before the Administration & Finance Committee at the February 17th, 2009, Common Council meeting whereby said Committee approved payment of \$13,875.00 to We Energies on this claim.

To date, the City Attorney's Office paid this claim in the amount stated above and obtained a Property Damage Only Release signed by an authorized representative of We Energies. Based upon the above, it is the recommendation of the City Attorney's Office to place this claim on file.

Respectfully submitted,

Jeffrey J. Warchol
Assistant City Attorney

JJW:da

PROPERTY DAMAGE ONLY RELEASE

KNOW ALL MEN BY THESE PRESENTS that WE ENERGIES, for and in consideration of Thirteen Thousand Eight Hundred Seventy-five and 00/100 Dollars (\$13,875.00) 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 incident on or about August 5th, 2008, when City of West Allis Water Department employees, while excavating through the street in front of a residence near 70th and West National Avenue in order to investigate a water leak, cut through the electrical service with its auger, resulting in property damage to We Energies' electrical cable and duct package.

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.

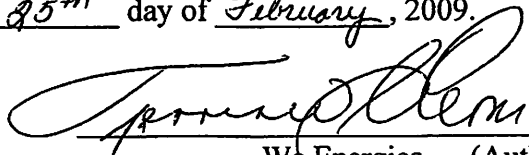
I agree that this is a complete release of property damage only and it is understood and agreed that it doesn't constitute a release for any bodily injury resultant from this accident as there were no bodily injuries as a result of this accident.

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 25th day of February, 2009.



We Energies (Authorized Personnel)

Subscribed and sworn to before me
this 25th day of February, 2009.

Jean M. Austin
(Jean M. Austin)
Notary Public, State of Wisconsin
My Commission Expires: 6/26/2011
JJW: da
L/Jeff/Claims/Releases/PD OnlyWe Energies-70&National

Jeffrey Warchol

From: Scott Post
Sent: Tuesday, February 10, 2009 10:00 AM
To: kurtkopplin@tds.net
Cc: Paul Ziehler; Mike Pertmer; Jeffrey Warchol
Subject: We Energies Claim: 71st & National

This claim arises from an incident on 8-5-08 where a PW crew drilled through an electrical line in the street. Originally we recommended denial of the claim based on our investigation and the statements of the PW crew. The CC then adopted our recommendation to deny. After that, We Energies (WE) contacted us as to why we denied the claim. We then held a meeting with WE where their contractor who marked the road made it very clear that we were at fault. Our PW employees had no answer and the PW Director was of the opinion that the claim should be paid. Based on this, I think the matter should be put on the agenda for the Feb. 17th CC meeting in closed session so that I may discuss it with the committee and receive authorization to reopen this claim and settle the matter. If that is okay with you, I'd ask Paul to have Jeanette put it on the agenda.

Thanks.

Scott E. Post

West Allis City Attorney

7525 West Greenfield Ave, West Allis, WI

414-302-8450 Fax 414-302-8444

spost@ci.west-allis.wi.us

WE Energies
settled

\$ 13,875.00

MUST GO TO CC

75/25 SPLIT



City of West Allis Meeting Agenda

SCOTT POST
CITY ATTORNEY

Administration & Finance Committee

Aldersperson Kurt E. Kopplin, Chair
Aldersperson Vincent Vitale, Vice-Chair
Alderspersons: Thomas G. Lajsic, Richard F. Narlock, Rosalie L. Reinke

Tuesday, February 17, 2009

7:00 PM

West Allis City Hall Room 118

RECESS MEETING - CLOSED SESSION

- A. CALL TO ORDER
- B. ROLL CALL
- C. CLOSED SESSION

RECEIVED
FEB 12 2009
WEST ALLIS
CITY ATTORNEY

PLEASE TAKE NOTICE that the Administration & Finance Committee of the City of West Allis will meet, at approximately 7:00 p.m., or as soon thereafter as time permits, on Tuesday, February 17, 2009, in Room 118, City Hall, 7525 West Greenfield Avenue, West Allis, Wisconsin, to vote on a motion to convene in closed session at said time and place to confer with the City Attorney regarding WE Energies Claim for 71st and National Avenue incident on 8/5/08, and to take such further action as may be necessary and appropriate with respect to such matter.

A closed session for the above purpose is authorized pursuant to the provisions of Wis. Stats. Section 19.85(1)(g), which authorizes a governmental body, upon motion duly made and carried, to meet in closed session to confer with legal counsel for the governing body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

Upon conclusion of the closed session, the Administration & Finance Committee will convene in open session at said time and place to consider its public agenda, including motions to recommend approval or rejection of above-listed deliberations or any of the public agenda items that have not been acted upon.

- D. ADJOURNMENT

Scott Post

From: Scott Post
Sent: Tuesday, February 10, 2009 2:56 PM
To: Paul Ziehler
Cc: 'kurtkopplin@tds.net'; Dan Devine; Monica Schultz; Jeanette Wardinski
Subject: RE: We Energies Claim: 71st & National

Closed session for the recess meeting is all we need for now. I'll have to cogitate on the method for getting it back on the CC agenda once we've hammered out a settlement.

Scott E. Post
West Allis City Attorney
7525 West Greenfield Ave, West Allis, WI 414-302-8450 Fax 414-302-8444 spost@ci.west-allis.wi.us

-----Original Message-----

From: Paul Ziehler
Sent: Tuesday, February 10, 2009 2:25 PM
To: Scott Post
Cc: kurtkopplin@tds.net; Dan Devine; Monica Schultz; Jeanette Wardinski
Subject: RE: We Energies Claim: 71st & National

Scott: We will do a closed session of A&F during recess for talking about this claim again. Does the claim also need to go back on the CC agenda as a new item, or a "reconsideration" of the previous denial, (by one of the Alderpersons who voted in the majority)?? Thanks!! pz

-----Original Message-----

From: Scott Post
Sent: Tuesday, February 10, 2009 1:09 PM
To: Paul Ziehler
Subject: FW: We Energies Claim: 71st & National

If you could have Jeanette put it on the agenda, I'd be grateful. No Darilyn this week.
Thanks.

Scott E. Post
West Allis City Attorney
7525 West Greenfield Ave, West Allis, WI 414-302-8450 Fax 414-302-8444 spost@ci.west-allis.wi.us

-----Original Message-----

From: Kurt Kopplin [<mailto:kurtkopplin@tds.net>]
Sent: Tuesday, February 10, 2009 10:34 AM
To: Scott Post
Subject: Re: We Energies Claim: 71st & National

Dear Scott:

Please put it on the agenda.



RECEIVED
AUG 14 2008
WEST ALLIS
CITY ATTORNEY

CITY CLERK/TREASURER'S OFFICE
414/302-8200 or 414/302-8207 (Fax)
www.ci.west-allis.wi.us
Paul M. Ziehler
City Admin. Officer, Clerk/Treasurer
Monica Schultz
Assistant City Clerk
Rosemary West
Treasurer's Office Supervisor

August 14, 2008

Donna Bufkin
WE Energies
Claims Dept - P418
231 W. Michigan St.
PO Box 1132
Milwaukee, WI 53201-1132

Dear Ms. Bufkin:

This letter acknowledges receipt of your Notice of Claim, claim number 2008198829, regarding damages allegedly sustained in the area of S. 70 St. and S. 71 St. on W. National Ave. on or about August 5, 2008.

The original document will be submitted to the Common Council at its meeting of September 2, 2008.

It is not anticipated that a decision regarding this matter will be made on this date. Generally, all communications are directed to the City Attorney's office for investigation. Common Council action regarding your communication will not be taken until the City Attorney's investigation is completed. Any questions you may have regarding this matter should be directed to their attention.

Sincerely,

Monica Schultz
Assistant City Clerk

/amn

cc: City Attorney

we energies



Legal Services
Claims Department - P418
P.O. Box 1132
Milwaukee, WI 53201-1132
Phone: 414-221-3437
Fax: 414-221-3449
E-mail: damageclaims@we-energies.com

NOTICE OF CLAIM FOR DAMAGES

TO: City of West Allis
City Clerk
7525 West Greenfield Avenue
West Allis WI 53214

PLEASE TAKE NOTICE, that pursuant to Sec. 893.80, Wis. Stats, We Energies, 231 W. Michigan St., Milwaukee Wisconsin by Donna Bufkin, Claims Analyst, hereby gives notice that on or about August 5, 2008 at approximately 9:20 a.m. the claimant suffered damage and associated loss of electrical consumption in the area of 70th and 71st Street on National Avenue, City of West Allis, Wisconsin.

PLEASE TAKE FURTHER NOTICE, that at the aforementioned time and place, the claimant sustained damage to duct package as a result of investigating water leak.

PLEASE TAKE FURTHER NOTICE, that all times material City of West Allis through its officials, employees, agents or representatives, including but not limited to Water Department was careless and negligent by not observing underground electric facilities.

PLEASE TAKE FURTHER NOTICE, that the damages suffered by We Energies were directly and proximately caused by the negligence and carelessness of City of West Allis Water Department in that its employee in the normal course of employment did damage duct package.

RECEIVED
AUG 14 2008
CITY OF WEST ALLIS
CLERK/TREASURER

we energies



Legal Services
Claims Department - P418
P.O. Box 1132
Milwaukee, WI 53201-1132
Phone: 414-221-3437
Fax: 414-221-3449
E-mail: damageclaims@we-energies.com

City of West Allis

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PLEASE TAKE FURTHER NOTICE, that by reason of the aforesaid negligence and carelessness of City of West Allis sustained damages for which it makes claim upon City of West Allis in the sum yet to be determined and such other relief as provided by law.

PLEASE TAKE FURTHER NOTICE, that Donna Bufkin is the representative of the claimant in this matter and any request for further information should be addressed to said individual at PO Box 1132, Milwaukee, Wisconsin, 53201-1132.

Dated at Milwaukee, Wisconsin, this 13th day of August, 2008.

WE ENERGIES

By Donna Bufkin
Donna Bufkin, Claims Analyst

P.O. ADDRESS:

We Energies

Claims, Room P418

PO Box 1132

Milwaukee WI 53201-1132

Telephone: 414-221-2432

Claim Number 2008198829



OFFICE OF THE CITY ATTORNEY

Scott E. Post
City Attorney

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

March 9, 2009

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 (8) 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 paid and placed on file:

Advanced Waste Services, Inc. (\$68,444.59)
Lana Bainer (\$645.81)
We Energies/S. 70th & 71st Streets & W. Natl. Ave. (\$13,875.00)
Nicholas Yets (\$1,024.21)

Respectfully submitted,



Jeffrey J. Warchol
Assistant City Attorney

JJW:da
Enclosures

cc: Thomas E. Mann, CVMIC