



ENGINEERING DEPARTMENT

Michael G. Lewis

Director of Public Works / City Engineer

414/302-8360

414/302-8366 (Fax)

City Hall

7525 West Greenfield Avenue  
West Allis, Wisconsin 53214

[www.westalliswi.gov](http://www.westalliswi.gov)  
[mlewis@westalliswi.gov](mailto:mlewis@westalliswi.gov)

## Memorandum

TO: Gary Barczak, Chair, Board of Public Works  
Michael Czaplewski, First District  
Martin Weigel, Second District  
Daniel Roadt, Fourth District  
James Sengstock, Fifth District

FROM: Michael Lewis, Director of Public Works/City Engineer

DATE: November 15, 2011

RE: **Communication from the Director of Public Works/City Engineer regarding Alderman Roadt's suggestion that the City rebate any liquidated damages received for late completion of street construction contracts back to the affected residents.**

Alderman Dan Roadt asked that this idea be placed on the agenda for discussion. The thought would be to rebate, in some way, any liquidated damages the City may receive from the contractor for late projects. It would compensate the residents for their inconvenience, etc.

In general, liquidated damages are supposed to reimburse the municipality for its additional costs when a contract is late. It should have some relationship to those additional costs. Most of our contracts have a range of \$500 to \$2,000 per *working* day, which is higher than the normal amounts used by the Wisconsin Department of Transportation.

We use *working* day instead of *calendar* day for clarity and fairness. If the contractor is unable to work that day because of rain, private utility issues (WE Energies), etc., it just isn't counted as a *working* day. If we used *calendar* day, we would have to factor in some kind of extension to make the same allowance.

Setting the number of working days is not an exact science and now with the potential of rebating some of the special assessments, it becomes an argument between my staff and our residents.

Judging by the type of phone calls we receive, we understand that people are confused and upset when they don't see anything being done in front of their house. But, private utility work sometimes gets in the way, concrete has to cure, many times their street is one of many on one contract and the contractor may be working at another location.

Also, just because the rain has stopped, doesn't mean the contractor can get into their dumpsites. These open, unpaved areas can take days to dry up.

We have a number of problems and concerns about this issue:

- 1) It could raise a number of arguments between our residents and the City about what is a working day, how much extra time should be given to do extra work on the contract, what is the appropriate length of time for a given project and of course, the amount of the liquidation damages. We always try to weigh the contract length against the additional cost of specifying an unreasonably short time limit.
- 2) We routinely allow special access to a resident with a special occasion (weddings, graduations, family home from Iraq, etc.) and if this impacts the schedule, we grant an appropriate number of additional working days. We don't want to be in the middle of neighbors fighting; one for their special occasion and the other for their rebate payment.
- 3) It wouldn't be fair to residents who didn't get a rebate in past years to start now.
- 4) This idea would hamper our ability to adjust the schedule on our projects. Very often we are able to negotiate cheaper costs on extra work because of our ability to adjust the schedule. If every additional working day would now potentially affect a resident's special assessment, it would cause a great deal of conflict between the Engineering Department and the affected residents, with the District Aldermen in the middle.
- 5) The additional paper work to adjust or send money back to residents would be expensive and the amounts relatively small. According to Chris St. Clair, on average, we may collect only \$2,000 in a given year from all our contracts.
- 6) These funds are better used by placing them towards the street paving program.
- 7) Many times the delays are not the contractor's fault. If WE Energies causes the delay, we cannot penalize them, but the contractor could still be blamed.
- 8) There are times when the residents are not really inconvenienced, for example on isolated pavement replacement work or when a street is actually opened for traffic, but say, the sod work is late. Determining who is really affected may be difficult.
- 9) By offering a rebate, we may give residents the motivation to delay the contractor's work. Residents not happy with the work now park in restricted areas, move or damage the contractor's materials/equipment. We could be encouraging more of these actions.

If you have any questions regarding this memo, please contact me. I will be at Tuesday nights meeting.

Cc: Common Council  
Mayor Dan Devine  
Paul Ziehler, CAO