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# City of West Allis Matter Summary

7525 W. Greenfield Ave.  
West Allis, WI 53214

File Number	Title	Status
2008-0735	Claim	Claim Report
Tim Higgins communication requesting a refund of towing charges which allegedly occurred on October 29, 2008.		
Introduced: 12/2/2008		Controlling Body: Administration & Finance Committee

## COMMITTEE RECOMMENDATION

*POF*

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

## SIGNATURE OF COMMITTEE MEMBER

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

## COMMON COUNCIL ACTION **PLACE ON FILE**

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



OFFICE OF THE CITY ATTORNEY

Scott E. Post  
City Attorney

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

February 2, 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:**

**Timothy Higgins– Amount \$141.50**

This is a claim for reimbursement for towing of the claimant's vehicle by the West Allis Police Department as part of an investigation. On or about October 29<sup>th</sup>, 2008, at 1468 South 96<sup>th</sup> Street, West Allis, WI, police officers of the City of West Allis arrested the claimant and decided to have his vehicle towed to the Police Department by N&S Towing for purposes of further investigation of a possible crime that may have occurred in the vehicle. Upon completion of their investigation and release of the vehicle back to the claimant, N&S Towing charged the claimant \$141.50 for the towing and storage of the automobile. The claimant filed a claim against the City of West Allis on November 18<sup>th</sup>, 2008, for reimbursement of the tow charges due to the fact that the City of West Allis Police Department found no evidence of a crime in the vehicle.

The issue in this claim is not whether evidence of a crime was found in the vehicle but who should bare the costs for completing an investigation wherein property of the claimant was towed from one location to another. It is clear that in this instance, the City should be responsible for the costs of towing the vehicle. The Police Department could have conducted an investigation of the vehicle at the claimant's residence and actually impounded the vehicle in the event that evidence of a crime was obtained. The Police Department also could have had the vehicle towed, completed its investigation, and had the vehicle towed back to the claimant's home upon completion. Instead, the police chose to move the vehicle to a location where the investigation would be made easier given the time of day and weather conditions, etc. Although this action is within the Police Department's right, it does not translate into the claimant paying for the costs of said police investigation. Rather, the City should bare the costs of the investigation completed at the sole request of the Police Department as opposed to the claimant.

Based upon the above, the City Attorney's Office paid this claim in the amount stated herein and obtained a Release of all Claims signed by the claimant. This claim should be placed on file.

Respectfully submitted,

  
Jeffrey J. Warchol  
Assistant City Attorney

JJW:da

## RELEASE OF ALL CLAIMS

FOR AND IN CONSIDERATION of the payment to me at this time of the sum of One Hundred Forty-one and 50/100 Dollars (\$141.50), the receipt of which is hereby acknowledged, I, being of lawful age do hereby release, acquit, and forever 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 other persons, firms or corporations who are or might be liable from any and all claims, demands, damages, costs, actions and causes of action of whatever kind or nature which I may now have or may hereafter have, on account of, or in any way growing out of, any and all known and unknown bodily injuries, personal injuries and property damage, whether developed or undeveloped, resulting or to result from an incident that occurred on or about October 29<sup>th</sup>, 2008, at 1468 South 96<sup>th</sup> Street, West Allis, Wisconsin, when City of West Allis Police officers arrested Timothy Higgins and had his vehicle towed by N&S Towing as part of an official police investigation. I hereby declare and represent that the injuries sustained are not permanent and in making this Release and Agreement it is understood and agreed that I rely wholly upon my own judgment, belief, and knowledge of the nature, extent and duration of said injuries, and that I have not been influenced to any extent whatever in making this Release by any representations or statements regarding said injuries, or regarding any other matters, made by the persons, firms or corporations who are hereby released, or by any person or persons representing him or them, or by any physician or surgeon by him or them employed.

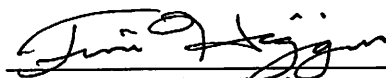
It is further understood and agreed that this settlement is the compromise of doubtful and disputed claims and that the payment of said amount is not to be construed as an admission of liability upon the part of said persons, firms, or corporations released; liability being by it, him or them expressly denied.

It is further understood and agreed that this Release and payment pursuant thereto is not be construed as a waiver by or estoppel of any party released to prosecute a claim or action 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 23 day of January, 2009.

  
\_\_\_\_\_  
Timothy Higgins

Subscribed and sworn to before me  
this 23<sup>rd</sup> day of January, 2009.

  
( Darrell M. Williams )  
Notary Public, State of Wisconsin  
My Commission Expires 12/24/10  
JJW:da  
L:jeff/claims/release/WestAllis/Higgins

RECEIVED  
NOV 18 2008  
CITY OF WEST ALLIS  
CLERK/TREASURER

Tim Higgins  
1468 S. 96  
West Allis, WI. 53214

ON 10-29-08 I transported a female to U.A. hospital to be treated for self inflicted knife wounds. I was never accused of anything or any crime. Several hours after I brought the female to the emergency room, the police towed my vehicle. A detective from West Allis P.D. gave me a ride to N.S. towing that morning to pick up my vehicle. At this point, all I am looking for as compensation is the \$ I had to pay to get my car from N.S. towing

To: West Allis common council,  
or,  
To whom this may concern:  
Re: Wrongful tow.  
Request for recovery of bill  
!N the amount of \$141.50



**"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		W.P. Higgins - Timothy J Higgins		DATE	10/29/08	CASH	
ADDRESS		1428 So 91st	RO#		PO#	CHARGE	OFFIC
FLATBED TOW	LOCKOUT	START	TIRE	GAS	MAKE Chevy	DRIVER	SS
					YEAR	TRUCK #	46
LICENSE #	5H-102F	STATE	WI	LOCATION	1428 So 91st		100
VIN #	1G1AA18F83B720342		MILEAGE	24			10
NAME	14252-8106-3430-08		44797100	14799058			9
ADDRESS	11-30-63 - 2014		PHONE ( )				
DL#	44797100	DOB	90581	ADVANCE-CHARGES		134	50
ACC#		EXP:	1/1	STORAGE	/ / TO /		
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 #	281991
						TAX	7.50
						TOTAL	141.50

**PAID**

X [Signature]  
OWNER/ REPRESENTATIVE

X [Signature]  
DRIVER

30904



CITY CLERK/TREASURER'S OFFICE  
414/302-8200 or 414/302-8207 (Fax)  
[www.ci.west-allis.wi.us](http://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*

November 20, 2008

Tim Higgins  
1468 S. 96 St.  
West Allis, WI 53214

Dear Mr. Higgins:

This letter acknowledges receipt of your communication requesting a refund of towing charges which allegedly occurred on October 29, 2008.

The original document will be submitted to the Common Council at its meeting of December 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



OFFICE OF THE CITY ATTORNEY

Scott E. Post  
City Attorney

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

February 4, 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.

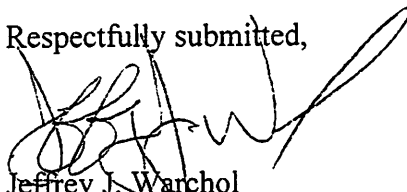
**The following claims/lawsuits have been paid and placed on file:**

Terri Ratayczak/Mainline Sewer & Water Inc. (\$1,759.04)  
Barbara M. Loeffler (\$974.90)  
✓Timothy Higgins (\$141.50)

**The following claims/lawsuits have been denied:**

Jennifer Grieve (\$638.88)  
Thomas R. O'Grosky (\$318.67)

Respectfully submitted,



Jeffrey J. Warchol  
Assistant City Attorney

JJW:da  
Enclosures

cc: Thomas E. Mann, CVMIC



# City of West Allis

## Referral Notice

### Common Council

7525 W. Greenfield Ave.  
West Allis, WI 53214

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**To:** City Attorney  
**From:** Common Council  
**Date:** Tuesday, December 2, 2008

The following items are being referred to you for your review and response. Special instructions may follow each item. Please contact the City Clerk if you cannot respond by the due date listed.

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**2008-0735**      Tim Higgins communication requesting a refund of towing charges which allegedly occurred on October 29, 2008.

**Due Date:**  
**Instructions:**

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If there are any questions concerning this notice, please direct them to the CITY CLERK.