



City Attorney's Office

Scott E. Post
City Attorney

Sheryl L. Kuhary

Jenna R. Merten

Nicholas S. Cerwin

Assistant City Attorneys

September 26, 2018

Common Council
City of West Allis

RE: City Attorney's Report of Claim – Mary Radspinner

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. This office's recommendation is to place this claim on file based on the summary below:

Facts: In November 2015, a City Water Department employee exchanged the meter at Mary Radspinner's mobile home, located at 10211 W. Greenfield Avenue. On November 18, 2016, the Water Department sent Ms. Radspinner a letter that advised her to inspect the heat tape on her pipes on a yearly basis to ensure that the pipes did not freeze. According to Ms. Radspinner, on December 13, 2016, the water at her home froze. She hired a repair company who informed her that the heat tape appeared to be cut around the water meter. On December 15, 2016, the City replaced Ms. Radspinner's water meter. Ms. Radspinner claims that the water meter froze due to the heat tape around the water meter being cut and not wrapped properly.

Claim: Ms. Radspinner is claiming that the City was negligent and should reimburse her for the repair costs and replacement water meter. She is seeking \$972.00.

Analysis: The claim should be placed on file. The City has previously denied the same claim by Ms. Radspinner on May 8, 2017. The rationale in 2017 for the denial is as follows:

First, the Water Department employees who installed the meter in November 2015 and replaced the meter on December 15, 2016 deny that they cut the heat tape and improperly wrapped the water meter. Second, the City reminded Ms. Radspinner approximately one month before this incident occurred to have her heat tape inspected; however, she failed to do so. Under these facts, Ms. Radspinner would not likely meet the burden of proof in a civil action to show that the City caused her damages.

Ms. Radspinner does reference a different case with similar facts that the City had paid a claim on. In that separate case, a different (former) employee had admitted to cutting the heat tape. That installation occurred months before the installation of Ms. Radspinner's installation. DPW has investigated this issue and determined that same (former) employee was not involved in the installation or work at Ms. Radspinner's property. The employee who installed Ms. Radspinner's meter denies cutting any heat tape. Even if the heat tape had been removed during the installation of a new water meter, the resident is responsible to maintain their system and ensure that the system is properly insulated prior to the winter months. The City does send out reminder. Ms. Radspinner failed to inspect or have her system inspected.

Therefore, based on the above analysis, the City Attorney Office's recommendation is to place this claim on file as it has already been denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'N. Cerwin', is centered on the page. The signature is fluid and cursive, with a large initial 'N' and a long, sweeping underline.

Nicholas Cerwin
Assistant City Attorney