

22



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
2008-0352	Claim	Claim Report
Drellos Law Firm, LLC. Notice of Claim on behalf of Walters Wrecking, Inc. regarding Breach of Contract relative to removal of fencing on West National Avenue		
Introduced: 5/20/2008		Controlling Body: Administration & Finance Committee

COMMITTEE RECOMMENDATION

Deny

ACTION
DATE:
AUG 05 2008

MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
_____	_____	Barczak				
_____	_____	Czaplewski				✓
_____	_____	Kopplin				
_____	_____	Lajsic	✓			
_____	_____	Narlock	✓			
_____	_____	Reinke	✓			
_____	_____	Roadt				
_____	_____	Sengstock				
_____	_____	Vitale	✓			
_____	_____	Weigel				
TOTAL			4	1		1

SIGNATURE OF COMMITTEE MEMBER

Chair

Vice-Chair

Member

COMMON COUNCIL ACTION

Deny

ACTION
DATE:
AUG 05 2008

MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
_____	_____	Barczak				✓
_____	_____	Czaplewski	✓			
_____	_____	Kopplin				✓
_____	_____	Lajsic	✓			
_____	_____	Narlock	✓			
_____	_____	Reinke	✓			
_____	_____	Roadt	✓			
_____	_____	Sengstock	✓			
_____	_____	Vitale	✓			
_____	_____	Weigel	✓			
TOTAL			8	1		2



OFFICE OF THE CITY ATTORNEY

Scott E. Post
City Attorney

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

July 16, 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:

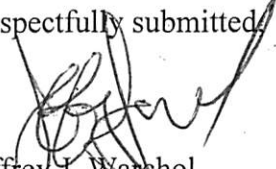
TrustSolutions, LLC/Mary Neustaedter (\$4,822.48)

CEI Services as Subrogees of GE Fleet Services/
Mary Kay Cosmetics/Sandra Hoeft (\$2,766.51)

The following claims/lawsuits have been denied:

Thomas Poppe (\$205.92)
Walters Wrecking Inc. (\$4,085.70)
Tracy Laverdure (\$2,354.00)

Respectfully submitted,


Jeffrey J. Warchol
Assistant City Attorney

JJW:da
Enclosures

cc: Thomas E. Mann, CVMIC



OFFICE OF THE CITY ATTORNEY

Scott E. Post
City Attorney

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

July 14, 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 denied:

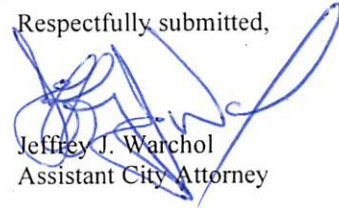
Walters Wrecking Inc. - Amount: \$5,085.70

This is a claim for the value of a chain link fence, as well as, the stands and clamps attached thereto, which was allegedly removed and/or stolen from a job site located at 7725-8001 West National Avenue (the former Laidlaw Bus Company site) in the City of West Allis, Wisconsin. On or about May 15th, 2007, the claimant, by the regular bidding process, entered into a contract with the City of West Allis for demolition work at the former Laidlaw site. Although the demolition work was completed in the latter part of 2007, the claimant, by contract, was required to install and maintain a six-foot high chain link fence around the entire excavation for safety purposes, which was to remain in place until the City Engineer released the fence for removal by the claimant. In March of 2008, the City Engineer, who had been making regular drive-by inspections to insure that a fence was in place, notified the claimant to remove its fence to allow other contractors on the site. When the claimant went to remove the fence, the fence had already come down and been replaced with a different fence under the authority of a contractor on site and unbeknownst to the City of West Allis. Needless to say, the claimant was not able to locate its fence at or near the job site and filed a claim on May 13th, 2008, against the City for the value of the missing chain link fence.

Our investigation into this matter indicated that the City of West Allis is not responsible for the claimant's fence as alleged in its claim. By contract, the claimant was to install the fence, as well as, maintain it until directed by the City Engineer to remove the fence. Although the City Engineer did routine drive-by inspections to make sure that a fence was in place, it was not the City Engineer's responsibility to maintain the fence or even be aware of the specific make and model of the particular fence installed by the claimant. It appears as though the claimant breached the contract with the City by failing to properly maintain its fence and is now trying to shift the blame for its own negligence onto the City of West Allis. Furthermore, if the claimant had any viable claim at all, it would be against the party who actually removed its fence, i.e. another contractor, and not the City of West Allis who at no time had any physical control over the fence in question. The claimant is simply trying to blame someone else for its negligence in this case.

Based upon the above, it is the recommendation of the City Attorney's Office to deny this claim pursuant to the provisions of Wisconsin Municipal Claims Statute 893.80.

Respectfully submitted,


Jeffrey J. Warchol
Assistant City Attorney

JJW:da



DRELLOS LAW FIRM, L.L.C.

Legal and Mediation Services
Admitted in Wisconsin and Florida

631 N. Mayfair Road
Wauwatosa, Wisconsin 53226
Office 414-475-9480
Fax 414-475-9481

dawn.drellos@alumni.marquette.edu

RECEIVED

MAY 13 2008

CITY OF WEST ALLIS
CLERK/TREASURER

May 12, 2008

Mr. Paul Ziehler, Clerk
City of West Allis
West Allis City Hall
7525 W. Greenfield Avenue
West Allis, Wisconsin 53214

SENT CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dear Mr. Ziehler:

I am legal counsel for Walters Wrecking, Inc. and hereby submit this letter with sworn affirmation as Walters Wrecking, Inc.'s 120-day notice to the City of West Allis for certain claims as outlined below:

As Against the City of West Allis: Breach of Contract for the authorized removal of fencing on the National Avenue site in violation of West Allis' contract with Walters Wrecking, Inc.

Walters Wrecking, Inc., a demolition and excavation company, which is located at 1300 S. Barker Road, Brookfield, Wisconsin, 53045.

On May 15, 2007, Walters Wrecking, Inc. (hereinafter "Walters"), entered into a contract with the city of West Allis for demolition work involving the following addresses: 7725 West National Avenue, 7741 West National Avenue, 7939-43 West National Avenue, 8001 West National Avenue, and 80** West National Avenue. Around late June early July 2007 Walters commenced demolition work on the site.

Per Walters' contract with West Allis, the following addendum was added:

ADDENDUM NO. 1

FENCING AROUND OPEN EXCAVATIONS

Installation of a safety fence around excavations will be necessary to safeguard against public access and potential injury. Temporary safety fencing shall be installed to prevent access to the site from the surrounding areas. The excavation area will be fenced with six (6) feet high chain link fence topped with three barbed wire strands securely bolted to the ground. This fence will remain in place following excavation activities until released for tear-down by City Engineer. *Contractor* will then dismantle fence. (Emphasis added).

Mr. Paul Ziehler, Clerk
May 12, 2008
Page 2

Walters duly complied with this provision of the contract and arranged for the installation of fencing from Federal Rent-A-Fence during its excavation and after it had left the work site. In late March 2008, Walters received one voice mail message from a City of West Allis representative named Chris St. Clair who stated in this message that the fence had been dismantled and was waiting to be picked up. Soon after, Walters contacted Federal to pick up the fence. However, when Federal arrived on the site the fence and its material was gone. When a representative from Federal contacted Chris St. Clair about the missing fence, Mr. St. Clair, a public servant and representative of the City, replied that he did not "give a damn" as to what happened to the fence.

The current contractor on site indicated that it had no knowledge of the whereabouts of the fence and speculated that its fencing contractor, National may have removed it by mistake when it dismantled the fence. I spoke with a representative from National Fence by the name of Kay who searched her records and stated that National came to the West Allis site in January of 2008 and was directed by a person named Ed Persons or Parsons to remove the Federal fence and replace it with that of National's. According to Kay's records, National dismantled and stacked the Federal fencing material on site at the direction of "Ed" and left, but did not remove the Federal fencing materials. In addition, according to Kay, National has not been back on site since January, and there is information that the fence was still on site as late as March 2008.

On May 2, 2008, I spoke with Patrick Schloss of the City of West Allis, another public servant, who had very little information to share and indicated that I should take this matter up with the City Attorney's Office.

Walters did not receive a voice-mail message from the City of West Allis that the Federal fence was ready for pick up until late March 2008, despite the fact that according to National, the Federal fence had been dismantled and removed in January 2008. West Allis' handling of this matter is also contrary to its contract with Walters for Walters was to be responsible for the dismantling, not the City or another contractor. Unfortunately, Walters is being billed \$5,085.70 for a fence that was removed in violation of its contract and is now missing.

It is Walters' intention to file a claim for \$5,085.70 for the loss fence that was mishandled by the City of West Allis and the contractor on site in breach of its contract with the City. Therefore, please be advised that this is Walters Wrecking, Inc.'s notice of claim relative to the missing fence.

Mr. Paul Ziehler, Clerk
May 12, 2008
Page 3

ITEMIZATION OF DAMAGES¹

Missing Fence 6x12, 56 footage, \$75 per unit \$4,200.00
Missing Stands 56 footage, \$10 per unit, \$560.00
Missing Clamps, 56 footage, \$1.00 per unit, \$56.00
Subtotal: \$4,816.00
Tax: \$ 269.70
Total Due: \$5,085.70

Sincerely,

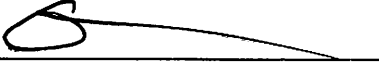
Dawn L. Drellos²

Cc: Walters Wrecking, Inc.

SWORN OATH³

I, Dawn L. Drellos, on May 12, 2008, at approximately 1:30 p.m., in my office located at 631 N. Mayfair Road, Wauwatosa, Wisconsin 53226, stood before a notary of public who is authorized to conduct a sworn affirmation that I do hereby *raise my hand and do solemnly declare and affirm* that the contents of this letter dated May 12, 2008, composed of 4 pages including the Jurat, are truthful to the best of my knowledge and that this document is submitted as to the 120-day notice requirement under Wis. Stat. § 893.82. I also affirm that I signed this letter made herein before the notary, and willing and voluntarily sign this sworn oath without duress and void of any promises made. Finally, I affirm that Walters Wrecking has authorized me to represent it and compose and forward this letter in this matter.

Dated: 5.12.08


Dawn L. Drellos, Esq.

¹ See Attached Invoice from Federal Rent-A-Fence, Marked Ex. A

² Licensed in Wisconsin, Florida and the District of Columbia

³ Notary Jurat follows on next page.

Mr. Paul Ziehler, Clerk
May 12, 2008
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STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Dawn L. Drellos came before me this 12th day of May, 2008, and raised her hand and affirmed that the facts and information contained within this letter written by her dated May 12, 2008, are true and correct to the best of her knowledge, and that she is forwarding this document to the City of West Allis relative to the 120-day notice requirement as the duly authorized legal representative of Walters Wrecking, Inc. .

Notary Public, State of Wisconsin
My Commission expires: 6/26/09

Notary Public: Christine M. Crisp





DRELLOS LAW FIRM, L.L.C.

Legal and Mediation Services
631 N. Mayfair Road
Wauwatosa, Wisconsin 53226

CERTIFIED MAIL™



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UNITED STATES
POSTAL SERVICE

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53214

U.S. POSTAGE
PAID
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AMOUNT

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Clerk's Office

Mr. Paul Ziebler, Clerk
City of West Allis
West Allis City Hall
7525 W. Greenfield Avenue
West Allis, Wisconsin 53214

5-13

5321434688 C017





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

May 13, 2008

Ms. Dawn L. Drellos, Esq.
Drellos Law Firm, LLC.
631 N. Mayfair Road
Wauwatosa, WI 53226

Dear Ms. Drellos

This letter acknowledges receipt of your Notice of Claim on behalf of Walters Wrecking, Inc. regarding Breach of Contract relative to removal of fencing on West National Avenue.

The original document will be submitted to the Common Council at its meeting of May 20, 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,

A handwritten signature in cursive script that reads "Monica Schultz".

Monica Schultz
Assistant City Clerk

/jml

cc: City Attorney



7525 West Greenfield Avenue
West Allis, Wisconsin 53214-4688



CITY ADMINISTRATIVE OFFICE

PAUL M. ZIEHLER

City Administrative Officer
Clerk/Treasurer

414/302-8294

414/302-8207 (Fax)

City Hall

7525 West Greenfield Avenue
West Allis, Wisconsin 53214

pziehler@ci.west-allis.wi.us
www.ci.west-allis.wi.us

NOTICE OF DISALLOWANCE OF CLAIM

August 6, 2008

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mr. Kevin Thompson
Walter's Wrecking, Inc.
1300 South Barker Road
Brookfield, WI 53045

Re: Your Claim Against the City of West Allis
Date of Loss: March 2008

Dear Mr. Thompson:

At its meeting on August 5th, 2008, the Common Council of the City of West Allis considered your claim received on May 13th, 2008, regarding Breach of Contract relative to removal of fencing on West National Avenue, West Allis, Wisconsin and denied it in full.

Please be advised that no lawsuit may be brought on this claim against the City of West Allis or any of its officials, officers, agents or employees after six (6) months from the date of receipt of this letter.

Sincerely,

Paul M. Ziehler
City Administrative Officer
Clerk/Treasurer

PMZ:da
L:\jeff\claims\denialLtrs\ltr-denial-W Wrecking

cc: City Attorney's Office
City Clerk's Office ✓
Attorney Dawn L. Drellos