

3.



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
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2005-0466 Claim Claim Report

Amended Summons and Complaint in the matter of WASHINGTON MUTUAL BANK v CITY OF WEST ALLIS DEPARTMENT OF DEVELOPMENT, HOUSING DIVISION, ET AL.

Introduced: 7/5/2005

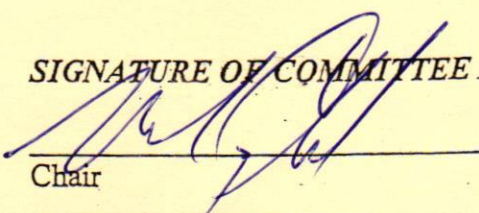
Controlling Body: Administration & Finance Committee

COMMITTEE RECOMMENDATION

Place on file

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
				<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Barczak
	<input type="checkbox"/>	<input type="checkbox"/>	Czaplewski	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Dobrowski	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Kopplin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Lajsic	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Narlock	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Reinke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Sengstock	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Vitale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Weigel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			TOTAL	<u>5</u>	<u>0</u>		

SIGNATURE OF COMMITTEE MEMBER



Chair

Vice-Chair

Member

COMMON COUNCIL ACTION

place on file

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
				<u>1-2-07</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Barczak
	<input type="checkbox"/>	<input type="checkbox"/>	Czaplewski	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Dobrowski	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Kopplin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Lajsic	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Narlock	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Reinke	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Sengstock	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Vitale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Weigel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			TOTAL				<u>1</u>

unanimous

**STANDING COMMITTEES OF THE
CITY OF WEST ALLIS COMMON COUNCIL
2004**

ADMINISTRATION & FINANCE

Chair: Michael J. Czaplewski
Vice-Chair: Martin J. Weigel
Gary T. Barczak
Thomas G. Lajsic
Rosalie L. Reinke

PUBLIC WORKS

Chair: Richard F. Narlock
Vice-Chair: Linda A. Dobrowski
Kurt E. Kopplin
Vincent Vitale
James W. Sengstock

SAFETY & DEVELOPMENT

Chair: Thomas G. Lajsic
Vice-Chair: Vincent Vitale
Gary T. Barczak
Martin J. Weigel
Rosalie L. Reinke

LICENSE & HEALTH

Chair: Kurt E. Kopplin
Vice-Chair: James W. Sengstock
Linda A. Dobrowski
Richard F. Narlock
Michael J. Czaplewski

ADVISORY

Chair: Rosalie L. Reinke
Vice-Chair: Gary T. Barczak
Linda A. Dobrowski
Vincent Vitale
Martin J. Weigel



OFFICE OF THE CITY ATTORNEY

Scott E. Post
City Attorney

Sheryl L. Kuhary
Jeffrey J. Warchol
Cheryl L. Wentland
Assistant City Attorneys

December 19, 2006

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 placed on file:

Washington Mutual Bank, FA v. Kevin G. Budney and City of West Allis
Milwaukee County Case No. 04-CV-009840

This is a Foreclosure action against Kevin G. Budney where the City of West Allis, Department of Development, Housing Division was named as a Defendant due to said Department issuing a Loan in an amount of \$4,000.00 to Mr. Budney for the purchase of a home on or about October 1st, 2002. The City recorded an Affidavit of Interest on the Budney property with the Milwaukee County Register of Deeds on November 20th, 2002, to secure its interest in the Budney real estate. On or about April 7th, 2005, contrary to the advise of the City Attorney's Office, the Housing Division signed a Subordination Agreement to subordinate the City's Loan to that of Washington Mutual Bank, FA, the Plaintiff in this Foreclosure case. Shortly thereafter on June 17th, 2005, after Mr. Budney defaulted on the Loan to Washington Mutual Bank, FA, it filed a Foreclosure action naming the City as a Defendant due to its subordinated interest in the property.

On June 27th, 2005, the City Attorney's Office filed a Notice of Appearance and Demand for Surplus in an attempt to protect the City's interest in this case should the Foreclosure action result in a Sheriff's Sale in an amount above what is owed to the primary lender. As is customary with most Foreclosure actions, the Budney property sold at Sheriff's Sale for the exact amount owed to the primary lender and said sale was confirmed by the Circuit Court on May 15th, 2006. At said confirmation, the City's Lien on the property, by virtue of its Mortgage, was extinguished and the City was forever barred from claiming any interest in the property.

Although the Foreclosure wiped out the Lien, the Mortgage Note was still legally enforceable as against Mr. Budney. As a result of the same, the City Attorney's Office sued Mr. Budney in Milwaukee County Small Claims Court and obtained a Judgment in the amount of \$2,460.00, the amount outstanding on the Budney Loan. Despite the City's Judgment, Kevin Budney filed Bankruptcy and obtained a Discharge of all debts, including the City's Judgment, on August 29th, 2006.

As a result of the Foreclosure action, coupled with the Bankruptcy Discharge, the City Attorney's Office has exhausted all legal remedies to collect this debt and issued a Memorandum to the Finance Department to write-off all remaining outstanding amounts on the Budney Loan as of December 13th, 2006. 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

Washington Mutual Bank, FA
successor in interest to
Washington Mutual Home Loans, Inc
11200 West Parkland Avenue
Milwaukee, WI 53224

Plaintiff,

AMENDED SUMMONS
Case No. 04-CV-009840

v.

The Honorable
Christopher R. Foley
Case Code 30404
(Foreclosure of Mortgage)
The amount claimed exceeds \$5000.00

Kevin Budney a/k/a Kevin G. Budney
2144 South 108th Street
Milwaukee, WI 53227

Defendant(s),

City of West Allis
Department of Development,
Housing Division
7525 West Greenfield Avenue
West Allis, WI 53214

Added Defendant(s).

6/17/05
11:15
RECEIVED
JUN 20 2005
CITY OF WEST ALLIS
CLERK/TREASURER
FILED AND AUTHENTICATED
JUN 17 2005
JUNIA DANHETTI
Clerk of Circuit Court

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

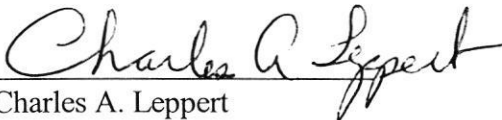
Within 20 days of receiving this summons (45 days if you are the State of Wisconsin; 60 days if you are the United States of America), you must respond with a written answer, as that

term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is set forth below, and to the plaintiff's attorney, at the address set forth below. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated on this 9th day of June, 2005.

GRAY & END, L.L.P.
Attorneys for Plaintiff

By: 
Charles A. Leppert
State Bar No. 1013851
600 North Broadway
Suite 300
Milwaukee, WI 53202
(414) 224-1244

Milwaukee County Courthouse
901 N. Ninth Street
Milwaukee, WI 53233

Pursuant to the Fair Debt Collection Practices Act (15 U.S.C. Section 1692), we are required to state that we are attempting to collect a debt on our client's behalf and any information we obtain will be used for that purpose.

Washington Mutual Bank, FA
successor in interest to
Washington Mutual Home Loans, Inc
11200 West Parkland Avenue
Milwaukee, WI 53224

Plaintiff,

AMENDED COMPLAINT
Case No. 04-CV-009840

v.

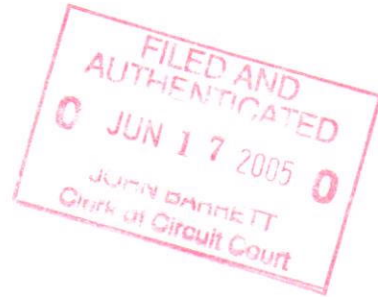
The Honorable
Christopher R. Foley
Case Code 30404
(Foreclosure of Mortgage)
The amount claimed exceeds \$5000.00

Kevin Budney a/k/a Kevin G. Budney
2144 South 108th Street
Milwaukee, WI 53227

Defendant(s),

City of West Allis
Department of Development,
Housing Division
7525 West Greenfield Avenue
West Allis, WI 53214

Added Defendant(s).



Plaintiff, by its attorneys, GRAY & END, L.L.P., pleads as follows:

1. The plaintiff is the current owner and holder of a certain note and recorded mortgage on real estate located in this county, true copies of which are attached hereto as Exhibits A and B and incorporated by reference.
2. The mortgaged real estate is owned of record by Kevin Budney, a/k/a Kevin G. Budney.

3. The defendants have failed to make contractual payments as required, and there is now due and owing to plaintiff the principal sum of \$106,411.39 together with interest from May 1, 2004.

4. The plaintiff has declared the indebtedness immediately due and payable by reason of the default in the payments and has directed that foreclosure proceedings be instituted.

5. The mortgaged premises is a parcel of land which is 20 acres or less; with a one to four family residence thereon which is occupied as the homestead of the defendants; said premises cannot be sold in parcels without injury to the interests of the parties.

6. The mortgagors expressly agreed to the reduced redemption period provisions contained in Chapter 846 of the Wisconsin Statutes; the plaintiff hereby elects to proceed under Section 846.101 with a six month period of redemption, thereby waiving judgment for any deficiency against every party who is personally liable for the debt, and to consent that the mortgagor, unless he or she abandons the property, may remain in possession and be entitled to all rents and profits therefrom to the date of confirmation of the sale by the court.

7. No proceedings have been had at law or otherwise for the recovery of the sums secured by said note and mortgage except for the present action, and all conditions precedent to the commencement of this action are satisfied.

8. That City of West Allis Department of Development, Housing Division has or may claim to have an interest in the mortgaged premises by virtue of an affidavit of interest claimed in Real Estate from Kevin G. Budney to City of West Allis Department of Development, Housing Division recorded November 20, 2002 in the office of the Register of Deeds for Milwaukee

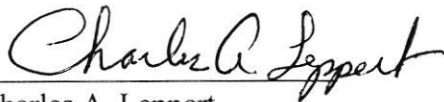
County, WI as Document No. 8391626; however, said interest was subordinated to the plaintiff's mortgage by a Subordination Agreement that was recorded in the office of the Register of Deeds for Milwaukee County, Wisconsin on April 28, 2005 as Document No. 9002139.

WHEREFORE, the plaintiff demands:

1. Judgment of foreclosure and sale of the mortgaged premises in accordance with the provisions of Section 846.101 of the Wisconsin Statutes.
2. That the amounts due the plaintiff from the mortgagor defendants for principal, interest, taxes, insurance, costs of suit and attorney fees be determined.
3. That the defendants, and all persons claiming under them be barred from all claim and right of equity of redemption in said premises, except that right to redeem the same before sale in the manner provided by law.
4. That the premises be sold for payment of the amount due to the plaintiff, together with interest thereon from the date of judgment and costs of sale, that any real property tax liens now existing or which may accrue prior to sale be paid.
5. That the defendants and all persons claiming under them be enjoined from committing waste or doing any act that may impair the value of the mortgaged premises from the date of judgment until sale; and

That the plaintiff have such other and further judgment order or relief as may be just and equitable.

GRAY & END, L.L.P.
Attorneys for Plaintiff

By: 

Charles A. Leppert
State Bar No. 1013851
600 North Broadway
Suite 300
Milwaukee, Wisconsin 53202
(414) 224-1244

NOTE

FHA Case No. -----

Multistate
Lender #: 0066166380

October 21, 2002
[Date]

2144 South 108TH STREET
Milwaukee, WI 53227
[Property Address]

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means **Washington Mutual Bank, FA**

and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of **One Hundred Eight Thousand Three Hundred and 00/100**-----

Dollars (U.S. \$ **108,300.00**-----), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of **Six and one half** percent (**6.500** %) per year until the full amount of principal has been paid.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

(A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on **December 1**, 2002. Any principal and interest remaining on the first day of **November**, 2032, will be due on that date, which is called the "Maturity Date."

(B) Place

Payment shall be made at **9451 Corbin Ave., Northridge, California 91324**

or at such place as Lender may designate in writing by notice to Borrower.

(C) Amount

Each monthly payment of principal and interest will be in the amount of U.S. \$ **684.53**. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

(D) Allonge to this Note for payment adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box]

Graduated Payment Allonge Growing Equity Allonge Other [specify]

5. BORROWER'S RIGHT TO PREPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that Borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

FHA Multistate Fixed Rate Note - 10/95

P1R (9601) 03

VMP MORTGAGE FORMS - (800)521-7291

Page 1 of 2

Initials: KB

EXHIBIT A

6. BORROWER'S FAILURE TO PAY

(A) Late Charge for Overdue Payments

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4(C) of this Note, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of **Four** percent (**4.000** %) of the overdue amount of each payment.

(B) Default

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

(C) Payment of Costs and Expenses

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorneys' fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

7. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.

<u>Kevin Budney</u> (Seal)	_____ (Seal)
KEVIN BUDNEY -Borrower	-Borrower
_____ (Seal)	_____ (Seal)
-Borrower	-Borrower
_____ (Seal)	_____ (Seal)
-Borrower	-Borrower
_____ (Seal)	_____ (Seal)
-Borrower	PAY TO THE ORDER OF: -Borrower

EXHIBIT A

WELLS FARGO RECOURSE
Wells Fargo Mutual Bank F.A.

Gail E. Wassel
Assistant Vice President
Gail E. Wassel

MORTGAGE

DOCUMENT NUMBER:

DOC. #
8436255

NAME & RETURN ADDRESS:
Washington Mutual Bank, FA
9451 Corbin Ave.
Northridge, CA 91324

REGISTER'S OFFICE 1 SS
Milwaukee County, WI
RECORDED AT 11:06 AM
01-22-2003

PARCEL IDENTIFIER NUMBER:

480 0251

JOHN LA FAVE
REGISTER OF DEEDS

AMOUNT 27.00

[Space Above This Line For Recording Data]

State of Wisconsin

FHA Case No. []

Lender

REEL 5502
IMAGE 3171

THIS MORTGAGE ("Security Instrument") is given on October 21, 2002
The Mortgagor is KEVIN BUDNEY, a married person

("Borrower"). This Security Instrument is given to Washington Mutual Bank, FA

which is organized and existing under the laws of United States of America, and
whose address is 9451 Corbin Ave. Northridge, CA 91324

("Lender"). Borrower owes Lender the principal sum of
One Hundred Eight Thousand Three Hundred and 00/100-----

----- Dollars (U.S. \$ 108,300.00-----).
This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for
monthly payments, with the full debt, if not paid earlier, due and payable on November 1, 2032

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the
Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with
interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of

FHA Wisconsin Mortgage - 496
P4R(WI) (0205)

Page 1 of 8
VMF MORTGAGE FORMS - (800)521-7291

KB

EXHIBIT B

9
POOR QUALITY DOCUMENT RECEIVED FOR RECORDING
through out document

Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to the Lender, with power of sale, the following described property located in Milwaukee County, Wisconsin:

LEGAL DESCRIPTION ATTACHED AND MADE A PART HEREOF

REEL 5502

IMAGE 3172

which has the address of 2144 South 108TH STREET, Milwaukee

[Street, City],

Wisconsin 53227

[Zip Code] ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

EXHIBIT B

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. **Application of Payments.** All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. **Fire, Flood and Other Hazard Insurance.** Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. **Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or

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EXHIBIT B

abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees in writing.

6. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. **Charges to Borrower and Protection of Lender's Rights in the Property.** Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. **Fees.** Lender may collect fees and charges authorized by the Secretary.

9. **Grounds for Acceleration of Debt.**

(a) **Default.** Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

(i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or

(ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) **Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

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IMAGE 3174

(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and

(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) **No Waiver.** If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) **Regulations of HUD Secretary.** In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) **Mortgage Not Insured.** Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. **Reinstatement.** Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

REEL 5502

IMAGE 3175

EXHIBIT B

13. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. **Governing Law; Severability.** This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. **Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

REEL 5502

IMAGE 3176

EXHIBIT 13

18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give notice of sale in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. Lender shall publish the notice of sale, and the Property shall be sold in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the clerk of the circuit court of the county in which the sale is held.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

20. Accelerated Redemption Periods. If (a) the Property is 20 acres or less in size, (b) Lender in an action to foreclose this Security Instrument waives all right to a judgment for deficiency and (c) Lender consents to Borrower's remaining in possession of the Property, then the sale of the Property may be 6 months from the date the judgment is entered if the Property is owner-occupied at the time of the commencement of the foreclosure action. If conditions (b) and (c) above are met and the Property is not owner-occupied at the time of the commencement of the foreclosure action, then the sale of the Property may be 3 months from the date the judgment is entered. In any event, if the Property has been abandoned, then the sale of the Property may be 2 months from the date the judgment is entered.

21. Attorneys' Fees. If this Security Instrument is subject to Chapter 428 of the Wisconsin Statutes, "reasonable attorneys' fees" shall mean only those attorneys' fees allowed by that Chapter.

22. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

- Condominium Rider
- Planned Unit Development Rider
- Growing Equity Rider
- Graduated Payment Rider
- Other [specify]

REEL 5502
IMAGE 3177

EXHIBIT B

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.
Witnesses:

_____	<u>Kevin Budney</u>	(Seal)	_____	(Seal)
	KEVIN BUDNEY	-Borrower		-Borrower
_____		(Seal)	_____	(Seal)
		-Borrower		-Borrower
_____	(Seal)	_____	(Seal)	_____
	Borrower		Borrower	
_____	(Seal)	_____	(Seal)	_____
	Borrower		Borrower	
_____	(Seal)	_____	(Seal)	_____
	Borrower		Borrower	

REEL 5502
IMAGE 3178

STATE OF WISCONSIN,

The foregoing instrument was acknowledged before me this

by

Kevin Budney

Milwaukee County ss:

10/21/02 (date)

My Commission Expires:

10/26/03

(Seal)



(person acknowledging)

Tammy Thomas

Notary Public, State of Wisconsin

This instrument was prepared by:
Tammy Thomas
Downers Grove, IL 60515

Legal Description:

Lots Twenty-one (21) and Twenty-two (22), in Block Two (2), in Lincoln Manor, being a Subdivision in the Southwest One-quarter (1/4) of Section Five (5), in Township Six (6) North, Range Twenty-one (21) East, in the City of West Allis, Milwaukee County, Wisconsin.

REEL 5502

IMAGE 3179

1 B



CITY OF WEST ALLIS

WISCONSIN



City Clerk/Treasurer Office

PAUL M. ZIEHLER
City Administrative Officer
Clerk/Treasurer

ROSEMARY WEST
Treasurer's Office Supervisor
Senior Accountant

MONICA SCHULTZ
Assistant City Clerk

June 21, 2005

Attorney Charles A. Leppert
LAW OFFICES OF GRAY & END
600 N. Broadway, Ste 300
Milwaukee, WI 53202

Dear Mr. Leppert:

This letter acknowledges receipt of the Amended Summons and Complaint in the matter of *Washington Mutual Bank vs. City of West Allis Department of Development, Housing Division, et al.*

The original document will be submitted to the Common Council at its meeting of July 5, 2005.

It is not anticipated that a decision regarding this matter will be made on this date. Generally, all complaints are directed to the City Attorney's office for investigation. Common Council action regarding your complaint 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

/dlm
cc: City Attorney



OFFICE OF THE CITY ATTORNEY

Scott E. Post
City Attorney

Sheryl L. Kuhary
Jeffrey J. Warchol
Cheryl L. Wentland
Assistant City Attorneys

December 20, 2006

Common Council
City of West Allis

RE: City Attorney's Report of Claim/Lawsuit

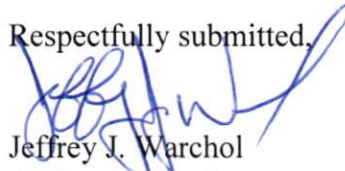
Dear Council Members:

The enclosed claim/lawsuit 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 claim/lawsuit has been placed on file:

Washington Mutual Bank, FA v. Kevin G. Budney and City of West Allis
(Amount: \$2,460.00)

Respectfully submitted,


Jeffrey J. Warchol
Assistant City Attorney

JJW:da
Enclosure

cc: Thomas E. Mann, CVMIC