

## Paula Vandehey

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**From:** Kent, Rebecca <rkent@McCarty-Law.com>  
**Sent:** Monday, August 13, 2018 4:20 PM  
**To:** Paula Vandehey  
**Cc:** jim@contourinc.com  
**Subject:** 303 S. Victoria Street Appleton WI

Ms. Vandehey,

Please put us on the agenda for the Utilities Commission's August 21<sup>st</sup> hearing. Please confirm your receipt of this email. Thank you.

Rebecca Kent  
Attorney

## McCarty | Law LLP

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"...meeting community needs...enhancing quality of life."

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DEPARTMENT OF PUBLIC WORKS

Engineering Division  
100 North Appleton Street  
Appleton, WI 54911  
Phone (920) 832-6474

August 7, 2018

Ms. Rebecca L. Kent  
303 S. Victoria Street  
Appleton, WI 54914

Dear Ms. Rebecca L. Kent:

This letter is in response to your letter dated August 3, 2018 regarding the reimbursement for a billing error for the property at 303 S. Victoria Street. As stated in my letter dated June 26, 2018, the Utilities Committee and City Council recently acted upon a similar situation and approved reimbursement for a 6 year period based on the Stormwater Utility Rate in place each year and the updated impervious area for the property. The 6 year period adopted by the Utilities Committee and City Council is consistent with the maximum lookback period permitted by the Public Service Commission for correcting Water Utility billing errors.

City staff does not have the authority to administratively reimburse any amount beyond what Utilities Committee and Council have previously authorized through their legislative action. Therefore, if you wish to appeal the amount of reimbursement issued to you for the 303 S. Victoria Street property you may appeal to the Utilities Committee. Their next meeting is Tuesday, August 21, 2018 at 5:00 pm. Please notify me no later than August 15, 2018 at 832-6482 if you wish to be placed on the agenda.

Sincerely,

Paula Vandehey, P.E.  
Director of Public Works

**James J. Abendroth & Rebecca L. Kent  
303 S. Victoria Street  
Appleton, WI 54914**

August 3, 2018

**VIA EMAIL AND U.S. MAIL  
(Paula.vandehey@appleton.org)**

Paula Vandehey, P.E.  
Director of Public Works  
City of Appleton  
100 N. Appleton Street  
Appleton, WI 54911

Dear Ms. Vandehey:

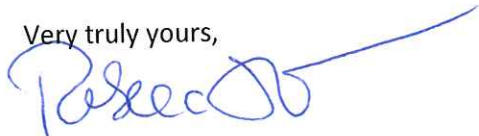
RE: Notice of Circumstances and Notice of Claim  
303 S. Victoria Street  
Tax Key 31-3-0004-00  
Utility Account Number: 303-492-200

We are in receipt of the City of Appleton's ("City") partial reimbursement for the gross error made in calculating the impervious surface square footage over a period of 14 years with regard to our property located at 303 S. Victoria Street, Appleton, Wisconsin. The reimbursement made to date covers the time period of 6/1/12 through 5/24/18. However, as you know, our demand for repayment dates back to January 2004, as we have been overcharged since that time.

The legal authority on which the Utilities Committee and the City Council are relying to limit the City's liability for reimbursement to a 6-year period is not clear. Please provide us with the legal citation supporting such a limitation. Both the City's gross error and our overpayment are without question. The City's charges were based on a grossly inaccurate impervious surface square footage which we very recently discovered in connection with the City's project to update commercial accounts. We are not responsible for the City's error and were grossly overcharged for the storm water utility services on this property.

Therefore, please remit payment of the remaining \$1,906.85 of our repayment demand within the next seven (7) days. We truly hope that litigation is not necessary to rectify this situation. If you have questions, please call me. Thank you very much.

Very truly yours,



Rebecca L. Kent  
Attorney at Law



"...meeting community needs...enhancing quality of life."

DEPARTMENT OF PUBLIC WORKS

Engineering Division  
100 North Appleton Street  
Appleton, WI 54911  
Phone (920) 832-6474

June 26, 2018

Mr. James J. Abendroth & Ms. Rebecca L. Kent  
303 S. Victoria Street  
Appleton, WI 54914

Dear Mr. James J. Abendroth & Ms. Rebecca L. Kent:

This letter is in response to your letter dated June 7, 2018 requesting reimbursement for a billing error for the property at 303 S. Victoria Street. The Utilities Committee and City Council recently acted upon a similar situation and approved reimbursement for a 6 year period based on the Stormwater Utility Rate in place each year and the updated impervious area for the property. The 6 year period is consistent with what the Public Service Commission allows for reimbursements for Water Utility billing errors. Therefore, enclosed is the reimbursement check for \$1,883.02 (back to June 1, 2012).

Sincerely,

Paula Vandehey, P.E.  
Director of Public Works

Enclosure



**James J. Abendroth & Rebecca L. Kent  
303 S. Victoria Street  
Appleton, WI 54914**

June 7, 2018

**VIA EMAIL AND U.S. MAIL  
(Paula.vandehey@appleton.org)**

Paula Vandehey  
Director of Public Works  
100 N. Appleton Street  
Appleton, WI 54911

Dear Ms. Vandehey:

RE: Notice of Circumstances and Notice of Claim  
303 S. Victoria Street  
Tax Key 31-3-0004-00  
Utility Account Number: 303-492-200

The undersigned own the commercial building located at 303 S. Victoria Street, Appleton, WI 54914. The building is leased to Contour, Inc., which is the business operated by Jim Abendroth. We acquired ownership of the property on January 15, 2004.

We recently received correspondence from the City of Appleton indicating that the storm water utility bills for 303 S. Victoria have been based on an impervious surface square footage of 8,300 for the roof and 2,890 for the concrete, asphalt and gravel, for a total of 11,190 square feet. Through the City's updating of its commercial storm water database, it was discovered that the impervious surface square footage for the property was greatly miscalculated. Effective on June 1, 2018, the impervious surface square footage total was corrected to reflect 3,596 square feet for the roof and 2,507 square feet for the concrete, asphalt and gravel, for a total of 6,103 square feet. This is a difference of 5,087 square feet.

The building at 303 S. Victoria Street is 3,500 square feet in size. The square footage of the impervious surfaces has not changed since we have owned the property. From January 15, 2004 to May 31, 2018, the City has based the storm water billing for this property on 5,087 more square feet of impervious surface than has ever existed on this property.

Until receiving the City's Storm Water Billing Notification, we had no notice or knowledge that the storm water utility billing was based on this gross error in impervious surface square footage. This is a gross error on the part of the City or its agents, which has resulted in us being overcharged for storm water utility services on this property for 14 years. It was a shock to see that even after discovering this gross error, the City continued to base the storm water utility billing for the property on the same incorrect number (11,190 square feet) that it has been using since 2004. It is unclear why the City would not have taken action to correct this error

immediately upon discovering it instead of knowingly overcharging us yet again for storm water utility services.

By this letter, the undersigned demand a cash refund in the amount of **\$3,789.87**, as set forth in the attached Claim. If full refund is approved, we will waive our right to interest on the amount of our overpayment which dates back to 2004. If we are forced to proceed in court to recover the amount that is owed to us, we will seek interest on the amount of the overpayment, plus our legal costs of suit.

The overage in square footage and the resulting miscalculation are clear and it should not be necessary for us to have to take time to appear before the Utilities Committee on this matter. However, if that is necessary in order to receive the refund we are due, we ask for this matter to be placed the Utilities Committee agenda for the meeting scheduled for July 10, 2018.

Thank you.

  
\_\_\_\_\_  
James J. Abendroth, Owner

  
\_\_\_\_\_  
Rebecca L. Kent, Owner

cc: Sue Olson, Project Engineer, City of Appleton Finance Department (via email and U.S.Mail)  
Edward Baranowski, Utilities Committee Chair (via U.S. Mail only)

**CLAIM FOR REFUND OF OVERPAYMENT FROM CITY OF APPLETON**

Incorrect ERU used by City 2004 - May 31, 2018: 11,990 sq. ft./2368 = 4.73

Correct ERU: 6,103 sq. ft./2368 = 2.58

YEAR	SERVICE MONTHS	RATE PER ERU	AMOUNT PAID	CORRECT AMOUNT DUE	OVERPAYMENT
2004	January - December	71.00	335.83	183.18	152.65
2005	January - December	71.00	335.83	183.18	152.65
2006	January & February	71.00	55.97	30.53	25.44
2006	March - December	108.88	429.17	234.09	195.08
2007	January - December	108.88	515.00	280.91	234.09
2008	January - December	108.88	515.00	280.91	234.09
2009	January - December	108.88	515.00	280.91	234.09
2010	January - June	108.88	257.50	140.46	117.05
2010	July - December	125.00	295.63	161.25	134.38
2011	January - December	125.00	591.25	322.50	268.75
2012	January - December	125.00	591.25	322.50	268.75
2013	January - June	125.00	295.63	161.25	134.38
2013	July - December	155.00	366.58	199.95	166.63
2014	January - December	155.00	733.15	399.90	333.25
2015	January - December	155.00	733.15	399.90	333.25
2016	January - December	155.00	733.15	399.90	333.25
2017	January - December	155.00	733.15	399.90	333.25
2018	January - May 31, 2018	155.00	305.48	166.63	138.85
<b>TOTALS</b>			<b>\$8,337.71</b>	<b>\$4,547.84</b>	<b>\$3,789.87</b>



APPLETON CODE

ERUs imposed		
Classification	Public Road	Private Road
Mobile Homes	.5/unit	1/unit
Bed & Breakfast (fewer than 5 units)	1	1
Bed & Breakfast (5 units or more)	.5/unit	1/unit
Multifamily rental	Actual impervious area of the property using aerial photography	
Non-Residential and Multi-Use	One (1) ERU, multiplied by the numerical factor obtained by dividing the total impervious area of a non-residential property by the square footage of one (1) ERU, rounded down to the nearest one-tenth (0.1), i.e.:  ERU rate x <u>impervious area</u> ERU	One (1) ERU, multiplied by the numerical factor obtained by dividing the total impervious area of a non-residential property by the square footage of one (1) ERU, rounded down to the nearest one-tenth (0.1), i.e.:  ERU rate x <u>impervious area</u> ERU
Undeveloped	One (1) ERU multiplied by a factor established by resolution then divided by the square footage for one (1) ERU established by resolution	One (1) ERU multiplied by a factor established by resolution then divided by the square footage for one (1) ERU established by resolution

(b) The Director shall prepare a list of lots and parcels within the City of Appleton and assign a classification to each lot or parcel.

(c) The average square footage of impervious area of ERU is established to be equivalent to 2,368 square feet.

(d) The Director shall be responsible for determining the impervious area based on the best available information, including, but not limited to, data supplied by the City Assessor, aerial photography, the property owner, tenant or developer. The Director may require additional information as necessary to make the determination. The billing amount shall be updated by the Director based on the building permit process and/or best available information.

(e) All unoccupied developed lots and parcels shall be subject to the stormwater utility charges.

(f) The minimum charges for any parcel shall be equal to the rate of four-tenths (0.4) of one (1) ERU. (Ord 123-07, §1, 8-7-07; Ord 136-08, §1, 10-7-08; Ord 23-

11, §1, 1-11-11, Ord 100-13, §1, 1-1-15, Ord 51-15, §1, 6-9-15; Ord 43-16, §1, 5-1-16)

**Sec. 20-238. New construction.**

(a) The property owner shall be responsible for completing the stormwater utility service application form any time a building permit is issued, exclusive of those issued to existing single family residences, or a site plan review is conducted. The form shall be provided by the Division of Inspections with each application for a building permit (exclusive of building permits for single family residences) or application for site plan review. Failure to submit a completed stormwater utility service application form or providing false information on said form, shall result in the penalty as provided in §1-18 of the Municipal Code. (Ord 129-95, §1, 12-9-95; Ord 132-96, §1, 12-18-96)

(b) The owner shall also be liable for stormwater charges, under this ordinance, for the improvement from the date construction of the improvement began.

**Sec. 20-239. Method of appeal.**

(a) The Stormwater Utility charge may be appealed as follows:

- (1) A written appeal shall be filed with the City Clerk prior to the utility charge due date; or
- (2) Within thirty (30) days of payment, a written challenge to the stormwater charge must be filed with the City Clerk on behalf of the customer, specifying all bases for the challenge and the amount of the stormwater charge the customer asserts is appropriate. Failure to file a challenge within thirty (30) days of payment waives all rights to later challenge the charge.

(b) The committee of jurisdiction will determine whether the stormwater charge is fair and reasonable, or whether a refund is due the customer. The committee may act with or without a hearing, and will inform the customer in writing of its decision.

(c) The customer has thirty (30) days from the decision of the committee to file a written appeal to the Common Council.

(d) If the Council or the committee determine that a refund is due the customer, the refund will be applied as a credit on the customer's next quarterly stormwater billing, if the refund will not exceed the customer's next quarterly stormwater billing, or will be refunded at the discretion of the Director of Finance.