

CITY OF WAUKESHA

Administration

201 Delafield Street, Waukesha, WI 53188
 Tel: 262.524.3701 fax: 262.524.3899
 www.waukesha-wi.gov

Committee: None	Date:
Common Council Item Number: 20-0340	Date: 3/3/2020
Submitted By: Brian Running	City Administrator Approval: Kevin Lahner, City Administrator
Finance Department Review: Rich Abbott, Finance Director Click here to enter text.	City Attorney's Office Review: Brian Running, City Attorney BER
Subject: Disallowance of claim for damages to car, filed by Carol Williams.	

Details:

Carol Williams was driving her car southbound on White Rock Avenue, i.e., going from the Moreland Boulevard intersection towards downtown. Perkins Avenue intersects White Rock just before the railroad crossing, and Ms. Williams made a left turn from White Rock onto Perkins. There are median barriers on White Rock and Perkins at the intersection, and Ms. Williams drove over the median barrier on Perkins, damaging the exhaust system on her car. She claims \$1010.19 in total damages.

Ms. Williams believes the city is liable because she feels that the median is not visible and is an unreasonable hazard in the roadway. She points out that there are many, many marks on the median that indicate that it is run over frequently.

Her claim and some photos she took accompany this cover sheet.

I made an investigation and took some photos, too, and they also accompany this cover sheet.

The median barriers are essentially a curb in the middle of the street. They are about 6 inches in height. The barriers are required to be in both Perkins and White Rock in order for the city to qualify for a railroad "quiet zone." The purpose of the barriers is to prevent drivers from swerving out of their lanes to get around railroad crossing gates. If the barriers were not there, then trains would be required to sound their horns at crossings. They have to be there.

Perkins Avenue is adjacent to the Renaissance Manufacturing Group factory, the former International Harvester foundry. The main truck entrance to the factory is off Perkins, so there's a lot of semi truck traffic turning from White Rock onto Perkins, the same turn that Ms. Williams made. Because of the configuration of the intersection, it's impossible for trucks to make that turn without crossing the median barrier, it's physically impossible. That accounts for the marks that Ms. Williams mentions in her claim. The trucks also swing wide making that turn, and there are tire tracks on the far side of the street where the trucks go up over the curb to make the turn. It's a tight spot, and because the railroad tracks are right there, there's not a lot of room for changing the configuration. Take a look at the photos and you'll see all of this.

Ms. Williams states that there is no street lighting at the intersection, however, my inspection shows that there is. In fact, there is a light almost directly over the median barrier.

It looks like Ms. Williams simply cut the corner short and just didn't see the barrier. I don't find that the median barrier is hard to see. It's not something you expect to see, but I've personally not had any trouble seeing it when making that turn. In spite of the marks that show it is run over frequently, I'm not aware that any other complaints about it or claims have been made.

Because there are definitely issues about Ms. Williams's failure to see the barrier, I recommend that the claim be disallowed. Ms. Williams (or her insurance company) can file suit, and all of the legal issues can be sorted out.

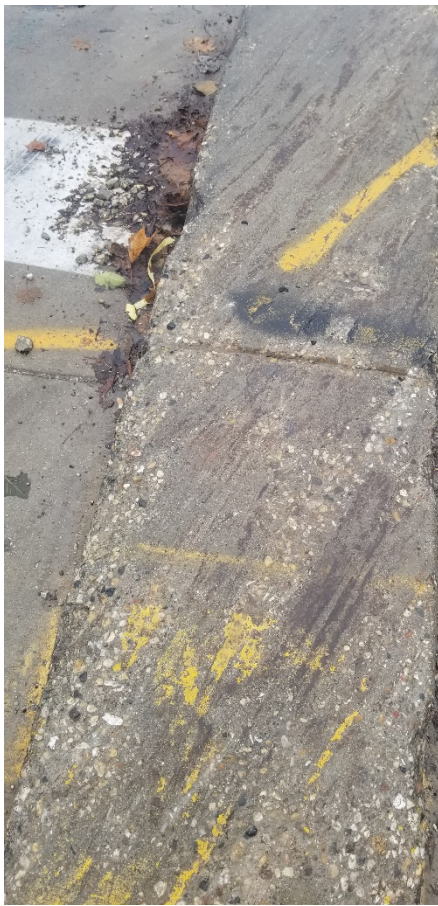


Options & Alternatives:
The alternative is to allow the claim and to pay Ms. Williams the amount she demands. This is not recommended.

Financial Remarks:
There is no financial impact from a disallowance.

Executive Recommendation:
Disallow the claim and authorize the Clerk to issue a formal notice of disallowance.

Williams photos:



Running photos:

This is the approach to the left turn from White Rock to Perkins, as seen from southbound White Rock.



This is the view from White Rock onto Perkins, right at the point where the left turn would begin. The median barriers in both White Rock and Perkins are visible. Note the semi tire tracks going around the corner and leading to the median barrier.



This is the median barrier in Perkins Avenue, where Ms. Williams would have driven over it. Semi tire tracks are visible. You can also see the tire ruts in the snow at the far curb where truck drivers had to swing wide to make the turn.



This is the view up Perkins Avenue. Note the tracks over the barrier extend for 20 to 25 feet up the barrier.



This is the view up Perkins Avenue, showing the RMG truck lot in the background and tire ruts in the foreground.

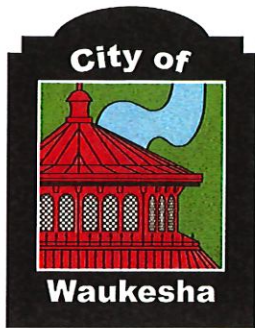


This view is from Perkins towards White Rock, with the railroad tracks and Frame Park in the background. Note the street light on the utility pole, just below the crossarms and directly above the barrier.



This is the view up Perkins Avenue, with the railroad crossing gate lowered. This view shows why the median barrier is needed, to deter vehicles from trying to go around the lowered gate.





OFFICE OF THE CLERK-TREASURER

201 DELAFIELD STREET
WAUKESHA, WISCONSIN 53188-3692
TELEPHONE CLERK - 262/524-3550
TELEPHONE TREASURER - 262/524-3850
FAX 262/524-3888

Gina Kozlik, Clerk-Treasurer
gkozlik@ci.waukesha.wi.us

February 25, 2020

TO: Finance Department -
Attention: Paul Labonte or Laura Szecsy

CLAIM OF: Carol Williams
N26 W27147 Prospect Ave.
Pewaukee, WI 53072

DATE CITY SERVED: February 12, 2020

The enclosed is being sent to you for your information and consideration. Please direct any further inquiries to Paul Labonte at (262) 524-3851.

Sincerely,

Sandee Policello
Deputy Clerk/Treasurer

cc: Clerk (Original) /Attorney/Engineering



February 12, 2020

Clerk Treasurer, City of Waukesha

Attn: CLAIMS

201 Delafield St., Room 104

Waukesha, WI 53188

To whom it may concern,

On the evening of Wednesday October 23, 2019 at approximately 8 pm I was driving west on White Rock Ave in Waukesha and made a left turn onto Perkins Ave and drove onto and over a cement traffic island that was not visible. The traffic island is not marked sufficiently with reflective paint, and there is no street light to illuminate the area so that drivers can actually drive safely around it. There was significant damage to the under side of my car. I have included the estimates for the damage and also included a flash drive with photos of the said traffic island. It is clear in the photos this traffic island has been run over by multitudes of drivers.

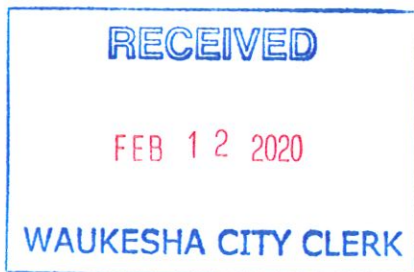
Please contact me with any further questions.

Carol Williams

262-271-6670

N26 W27147 Prospect Ave

Pewaukee, WI 53072



APAR AUTOMOTIVE
 111 S. WEST AVENUE
 WAUKESHA, WI 53186
 -542-4910

NAME <i>Jonny Williams</i>	PHONE
ADDRESS	
CITY, STATE, ZIP	
2ND AUTHORIZED NAME	PHONE <i>517 7178</i>

MATERIAL: ALL PARTS NEW UNLESS SPECIFIED: U-USED, R-REBUILT, RC-RECONDITIONED

QTY.	PART NO.	NAME OF PART	PRICE	WARRANTY Y/N
1	3837417	gasket	6.89	
1		nut, washer + bolt	3.00	
TOTAL PARTS				
MECHANICS RECOMMENDATIONS				
<i>Catalytic Converter 2 Pipes, gaskets</i>				
<i>Sub for abs Top 607.184</i>				
Estimated cost \$	Estimate Charge	Basis for Charge		

RECEIVED (DATE & TIME)	A.M. / P.M.	CUSTOMER'S ORDER NO.	PROMISED (DATE & TIME)	A.M. / P.M.
<i>10-30-19</i>				
YEAR • MAKE • MODEL			SERIAL #/VIN	MOTOR #
<i>2000 Toyota Solara</i>				
LICENSE NO.	ODOMETER	WRITTEN BY		
	<i>1248817</i>			
<input type="checkbox"/> LUBE	<input type="checkbox"/> OIL CHANGE	<input type="checkbox"/> FLUSH TRANS.	<input type="checkbox"/> FLUSH DIFF.	<input type="checkbox"/> WASH
<input type="checkbox"/> POLISH				
CHARGE FOR HAZARDOUS OR OTHER WASTE REMOVAL*				
<i>Replace muffler Flange, Remove</i>				
<i>Bushes, shaft, replace both bolts</i>				<i>85.00</i>
<i>+ nuts replace gasket</i>				
<i>Play Right front Tire (road)</i>				<i>15.00</i>
METHOD OF PAYMENT:		Daily Storage fee after repair work has been completed and customer has been notified. No charges shall accrue or be due and payable for a period of 3 working days from date of notification.		
<input type="checkbox"/> CHECK <input type="checkbox"/> CHARGE <input type="checkbox"/> CASH				
LABOR		GUARANTEED ITEM(S)		
<input type="checkbox"/> FLAT RATE <input type="checkbox"/> HOURLY <input type="checkbox"/> BOTH				
GUARANTEE EFFECTIVE UNTIL:		TIME		
<input type="checkbox"/> RETAIN PARTS <input type="checkbox"/> DESTROY PARTS		MILEAGE		
AUTHORIZED BY		LABOR ONLY <i>109.00</i>		
		PARTS <i>9.89</i>		
		ACCESSORIES		
		GAS, OIL & GREASE		
		MISC. MERCHANDISE		
		SUBLET REPAIRS		
		STORAGE FEE		
		TAX <i>5.60</i>		
		TOTAL ▶ <i>115.49</i>		

PLEASE READ CAREFULLY, CHECK ONE OF THE STATEMENTS BELOW, AND SIGN:
 I UNDERSTAND THAT, UNDER STATE LAW, I AM ENTITLED TO A WRITTEN ESTIMATE,
 INCLUDING A COMPLETION DATE, IF MY FINAL BILL WILL EXCEED \$100. (\$50 in MD)

- I REQUEST A WRITTEN ESTIMATE. THE FINAL BILL MAY NOT EXCEED THIS ESTIMATE WITHOUT MY WRITTEN APPROVAL.
- I DO NOT REQUEST A WRITTEN ESTIMATE, AS LONG AS THE REPAIR COSTS DO NOT EXCEED \$_____. THE SHOP MAY NOT EXCEED THIS AMOUNT WITHOUT MY WRITTEN OR ORAL APPROVAL.
- I DO NOT REQUEST A WRITTEN ESTIMATE.

*Checked lines apply (Preparer must check at least one):

- This charge represents costs and profits to the motor vehicle repair facility for miscellaneous shop supplies or waste disposal.
- This amount includes a charge of \$_____ which is required under _____ law.

You are entitled by law to the return of all parts replaced, except those for which there is a core charge, unless you agree otherwise by initiating the following: _____ I do not desire the return of any of the parts that are replaced during the authorized repairs.

Estimate good for 30 days. Not responsible for damage caused by theft, fire, or acts of nature. I authorize the above repairs, along with any necessary materials. I authorize you and your employees to operate my vehicle for the purpose of testing, inspection, and delivery at my risk. An express mechanic's lien is hereby acknowledged on the above vehicle to secure the amount of the repairs thereto. If I cancel repairs prior to their completion for any reason, a tear-down and reassembly fee of \$_____ will be applied.

SIGNED _____

DATE _____

adams
 GT3870
 09-11

APAR AUTOMOTIVE
 118 DELAFIELD ST
 WAUKESHA WI 53188
 262-542-4910

Terminal ID: ****883 ***x6
 11/1/19 11:27 AM

VISA DEBIT - INSERT
 AID: A0000000031010
 ACCT #: *****9183

CREDIT SALE REF #: 0386
 UID: 930539720249 AUTH #: 866093
 BATCH #: 168
 AMOUNT \$115.49

APPROVED

ARQC - 3E03F98A6A05ECCB

CUSTOMER COPY

APAR AUTOMOTIVE

1111 S.WEST AVENUE
WAUKESHA, WI 53186

542-4910

ESTIMATE

MATERIAL ALL PARTS NEW UNLESS SPECIFIED: D-USED, R-REBUILT, RC-RECONDITIONED

NAME <i>Jerry Williams</i>	PHONE
ADDRESS	
CITY, STATE, ZIP	
2ND AUTHORIZED NAME	PHONE <i>347-2178</i>

QTY.	PART NO.	NAME OF PART	PRICE	WARRANTY Y/N
2	31332	gasket	8.24	
1	31374	gasket	5.40	
1	WA 50468	Catalytic Converter w/ pipes	667.95	
1	234-4137	FD Oxygen Sensor	80.69	
TOTAL PARTS				
MECHANICS RECOMMENDATIONS				
Estimated cost \$ _____ Estimate Charge _____ Basis for Charge _____				

CUSTOMER'S INFORMATION			
RECEIVED (DATE & TIME) A.M. <i>2-3-2020</i>	CUSTOMER'S ORDER NO.	PROMISED (DATE & TIME) A.M.	P.M.
YEAR • MAKE • MODEL <i>2000 Toyota Solara</i>	SERIAL #/VIN	MOTOR #	WRITTEN BY
LICENSE NO.	ODOMETER		
<input type="checkbox"/> LUBE <input type="checkbox"/> OIL CHANGE <input type="checkbox"/> FLUSH TRANS. <input type="checkbox"/> FLUSH DIFF. <input type="checkbox"/> WASH <input type="checkbox"/> POLISH			
CHARGE FOR HAZARDOUS OR OTHER WASTE REMOVAL*			
<i>Replace lower Catalytic Converter with pipes</i>			<i>89.00</i>
METHOD OF PAYMENT:			Daily Storage fee after repair work has been completed and customer has been notified. No charges shall accrue or be due and payable for a period of 3 working days from date of notification.
<input type="checkbox"/> CHECK <input type="checkbox"/> CHARGE <input type="checkbox"/> CASH			LABOR ONLY <i>89.00</i>
LABOR			PARTS <i>762.28</i>
<input type="checkbox"/> FLAT RATE <input type="checkbox"/> HOURLY <input type="checkbox"/> BOTH			ACCESSORIES
<input type="checkbox"/> RETAIN PARTS <input type="checkbox"/> DESTROY PARTS			GAS, OIL & GREASE
AUTHORIZED BY _____ TIME _____ MILEAGE _____			MISC. MERCHANDISE
GUARANTEED ITEM(S) _____ GUARANTEE EFFECTIVE UNTIL: _____			SUBLET REPAIRS
			STORAGE FEE
			TAX <i>48.42</i>
			TOTAL ▶ <i>894.70</i>

PLEASE READ CAREFULLY, CHECK ONE OF THE STATEMENTS BELOW, AND SIGN:
 I UNDERSTAND THAT, UNDER STATE LAW, I AM ENTITLED TO A WRITTEN ESTIMATE, INCLUDING A COMPLETION DATE, IF MY FINAL BILL WILL EXCEED \$100. (\$50 in MD)

I REQUEST A WRITTEN ESTIMATE. THE FINAL BILL MAY NOT EXCEED THIS ESTIMATE WITHOUT MY WRITTEN APPROVAL.

I DO NOT REQUEST A WRITTEN ESTIMATE, AS LONG AS THE REPAIR COSTS DO NOT EXCEED \$_____. THE SHOP MAY NOT EXCEED THIS AMOUNT WITHOUT MY WRITTEN OR ORAL APPROVAL.

I DO NOT REQUEST A WRITTEN ESTIMATE.

You are entitled by law to the return of all parts replaced, except those for which there is a core charge, unless you agree otherwise by initialing the following: _____ I do not desire the return of any of the parts that are replaced during the authorized repairs.

Estimate good for 30 days. Not responsible for damage caused by theft, fire, or acts of nature. I authorize the above repairs, along with any necessary materials. I authorize you and your employees to operate my vehicle for the purpose of testing, inspection, and delivery at my risk. An express mechanic's lien is hereby acknowledged on the above vehicle to secure the amount of the repairs thereto. If I cancel repairs prior to their completion for any reason, a tear-down and reassembly fee of \$_____ will be applied.

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 _____ This charge represents costs and profits to the motor vehicle repair facility for miscellaneous shop supplies or waste disposal.
 _____ This amount includes a charge of \$_____, which is required under _____ law.

SIGNED _____
 DATE _____

adams
 GT3870
 09-11