

Stormwater Dispute Note Pad

Date Received: 7/29 Processed 8/4 By Rug

Address 1720 MARSHALL ST NE Name CUSTODY PLASTIC LAMINATES

Account Number 113 0552 300 Phone No. 612 781 8191 EXT 11

Gross Lot Area per Statement 89485 Actual Gross Lot Area 75584

Impervious Area per enQuesta 80536.5 Actual Area per Review 64581

ESU's per enQuesta 52.6318 458.93 ESU's per Review 42.21 18 368.67

Land Use Code per enQuesta 1WFW Land Use Code per Review 1WFW

Engineering Data Base 8/5 Appeal

Comments ESTIMATED IMPERVIOUS AREA REVIEWED & ADJUSTED
To REFLECT Actual.

PID 15 029 24 11 0001

MAD
7/29

SIEGEL, BRILL, GREUPNER, DUFFY & FOSTER, P.A.

1300 WASHINGTON SQUARE

100 WASHINGTON AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55401

TELEPHONE (612) 337-6100

FACSIMILE (612) 339-6591

JimYarosh@sbgdf.com

October 25, 2005

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JAMES A. YAROSH

24,280-JY

Ms. Klara Fabry
Public Works Department
City Hall, Room 203
350 South 5th Street
Minneapolis, MN 55415

VIA MESSENGER

Ms. Lois Eberhart
Public Works Department
City Hall, Room 203
350 South 5th Street
Minneapolis, MN 55415

VIA MESSENGER

**Re: Notice of Appeal of Stormwater Utility Fee
Custom Plastic Laminates, Inc., 1720 Marshall Street NE**

Dear Mmes. Fabry and Eberhart:

We represent Custom Plastic Laminates, Inc. ("Custom Plastic") with respect to the above-described matter. This letter serves as Custom Plastic's Notice of Appeal of its stormwater utility charge as permitted under Minneapolis Code of Ordinances Chapter 510.70. Although not expressly articulated in the relevant ordinance, we understand from Ms. Eberhart that this is the appropriate method to perfect our client's appeal.

The City recently raised Custom Plastic's stormwater charge to \$368.07 per month—more than double the amount of its previous stormwater charge. Enclosed is a copy of Custom Plastic's most recent utility bill, dated October 14, 2005, showing the current charge. The basis of this appeal is twofold:

- Custom Plastic's property (the "Property") receives minimal benefit from the stormwater utility; and
- the charge was calculated incorrectly.

EXHIBIT 5, Page 1 of 4

The Minneapolis Code of Ordinances recognizes that the amount of a stormwater utility charge must be based on the particular parcel's use of the City's stormwater facilities. Specifically, Chapter 510.70(a)(3) of the Code states that owners of non-residential developed property may appeal the amount of their stormwater charge if it disputes "whether their property is benefited by the stormwater utility." Minnesota Statutes also recognize that the amount of the stormwater charge must be based on actual, direct use. Minn. Stat. 444.075, Subd. 3(b) states that "[c]harges made for service rendered shall be as nearly as possible proportionate to the cost of furnishing the service."

The enclosed Land Plot shows that the vast majority of the Property does not use, and thus, is not benefited by, the stormwater infrastructure. Most of the Property's impervious surface slopes downward toward the Mississippi River, so most of the runoff from the Property flows directly into the River. The only impervious surface on the Property that may not slope toward the River is the front portion of the Custom Plastic building's roof. Drainage for that 13,500-square-foot area is facilitated by four downspouts attached to the front of the building.

The City has classified Custom Plastic's use as "Ind. Warehouse, Factory." The City's most recent stormwater resolution, Res. of the City of Minneapolis 2005r-064 T.1, sets the coefficient for Ind. Warehouse, Factory at .90. Applying that coefficient to the stormwater-charge formula set forth at Chapter 510.60(a)(2) of the Code of Ordinances, the calculation is as follows:

$$(13,500 \text{ sq. ft.} \times .90) / 1530 \text{ sq. ft.} = 7.94 \text{ ESU's.}$$

The charge for 7.94 ESU's, at the rate of \$8.72 per ESU, is \$69.24. Thus, Custom Plastic's stormwater charge should not exceed \$69.24.

Custom Plastic's second ground for its appeal is based upon the City's miscalculation of the stormwater charge. Chapter 510.70(a)(2) of the Minneapolis Code of Ordinance states that owners of non-residential developed property may appeal the amount of their stormwater charge if they dispute "the calculation of the stormwater charge." The City has estimated the Property's impervious surface area to be 64,581 square feet. Even if one assumes that the Property's entire impervious surface uses the stormwater utility, Custom Plastic's stormwater charge is still at least \$36.80 too high. The calculation is as follows:

$$(64,581 \text{ sq. ft.} \times .90) / 1530 \text{ sq. ft.} = 37.99 \text{ ESU's.}$$

The fee for 37.99 ESU's, at the rate of \$8.72 per ESU, is \$331.27. This rate, while lower than the Custom Plastic's current assessed rate, would still be impermissibly excessive, because at most, only 13,500 square feet of the Property's 64,581 square-foot impervious area drains into the stormwater system.

Under Minnesota Statutes and the Minneapolis Code of Ordinances, Custom Plastic's stormwater charge should be reassessed and all excess amounts that Custom Plastics has remitted in the past under the new stormwater-utility ordinance should be refunded. I anticipate receiving

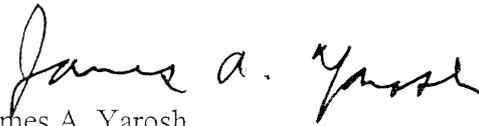
EXHIBIT 5, Page 2 of 4

October 24, 2005

Page 3

written notice from your office regarding the time and place for the review of Custom Plastic's appeal pursuant to Chapter 510.70(a). In the meantime, please do not hesitate to contact me if you have any questions regarding this Notice of Appeal.

Sincerely,

A handwritten signature in cursive script that reads "James A. Yarosh".

James A. Yarosh

JAY/gls

Enclosure

cc: Wayne Resemius (w/o enc.)

EXHIBIT 5, Page 3 of 4



City of Minneapolis
Utility Billing Office

Account Information	
Customer:	CUSTOM PLASTIC
Service:	1720 MARSHALL ST NE
Account:	113-0552.300
Bill Date:	10/14/2005
Status:	ACTIVE

Billing Questions / Preguntas Sobre Su Cobro
8:00 AM - 4:30 PM Mon - Fri

Water & Sewer 612-673-1114
TTY 612-673-2663
Solid Waste & Recycling 612-673-2917
Linea en Español 612-673-2700
Khatka af Soomaaliga 612 673-3500
Tus xov tooj hu Hmoob 612 673-2800
E-mail ub.finance@ci.minneapolis.mn.us
Utility Billing www.ci.minneapolis.mn.us/utility-billing
Solid Waste www.ci.minneapolis.mn.us/solid-waste

Water Emergency (24 Hour Hotline) 612-673-5600

METER NUMBER(S)	SERVICE PERIOD		PREVIOUS	METER READINGS			UNITS USED	METER DESCRIPTION
	FROM	TO		READ CODE	PRESENT	READ CODE		
48273167	9/05/05	10/05/05	995	PRO	1002	ACT	7	Water 3/4" General
48273168	9/05/05	10/05/05	0	ACT	0	ACT	0	Water 4" Fireline

Account Activity

Previous Balance 6.72CR
Adjustments to Usage 116.87CR

Balance Forward \$123.59CR

Current Charges

Water Usage Charge 7 units @ \$2.50 each or \$2.40 minimum 17.50
Sewer 7 units @ \$2.00 each or \$2.00 minimum 14.00
Stormwater Fee 42.21 ESU @ \$8.72 per ESU 368.07
Minnesota Water Testing Fee .43
Minnesota Sales Tax 1.40
Minneapolis Sales Tax .11
FIRELINE 4" MONTHLY 4.00

Total Current Charges \$405.51

Total Amount Now Due \$281.92

Payment Due By 11/04/05	\$281.92
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Micro-perforated: Fold, detach and return this portion with payment.

Mail to: Minneapolis Finance Department, 350 S. 5th St. Ste 323M Minneapolis, MN 55415-1380

To Pay in Person - See Location on Back

Account Number: 113-0552.300
Service Address: 1720 MARSHALL ST NE

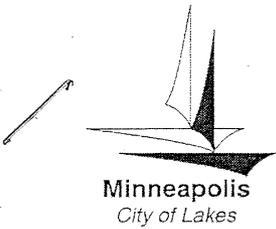
If payment is received after due date, a 5% late fee of current charges will be added to your next bill.

Make check payable to:
Minneapolis Finance Department

CUSTOM PLASTIC
1720 MARSHALL ST
MINNEAPOLIS MN 55413-1046

Payment Due By 11/04/05	\$281.92
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EXHIBIT 5, Page 4 of 4



Minneapolis
City of Lakes

Department of
Public Works
Klara E. Fabry, P.E.
City Engineer
Director

350 South 5th Street - Room 203
Minneapolis MN 55415

Office 612 673-2352
Fax 612 673-3565
TTY 612 673-2157

Date: November 7, 2005
To: James A. Yarosh, for
Custom Plastic Laminates
Fax: 612-339-6591
Subject: Appeal of Stormwater Charge

This is to confirm the date, time and location for review of an Appeal of a Stormwater Utility Fee for the property located at 1720 Marshall Street NE, pursuant to the Appeal Procedure described in Section 510.70 of City of Minneapolis Code of Ordinances, Chapter 510, Stormwater Management System and Operation of a Stormwater Utility ("Ordinance").

Date: **Tuesday November 8, 2005**
Time: **2:30 PM**
Location: **1720 Marshall Street NE**

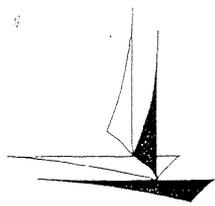
You will be meeting with the following Director's Designees:

Robert Carlson (primary Designee)
Lois Eberhart

You have filed an Appeal to the determination made by the Stormwater Utility Office. The purpose of the Appeal review meeting is for the Director's Designee to listen to why you believe the determination was erroneous, review the photos, maps, drawings or other materials you furnish to support your claim, and ask questions. You do not need to bring copies of materials already submitted, as the Designee will have the materials on hand.

Following the Appeal review meeting, the Designee will consider the information provided by you and by the Stormwater Utility Office, follow up on issues you may raise, and review the Appeal with regards to the Ordinance. Within 15 days of the review meeting, the Designee will send a written copy of the Designee's decision.

EXHIBIT 6



Minneapolis
City of Lakes

Department of Public Works

Klara A. Fabry, P.E.
City Engineer
Director

350 South 5th Street - Room 203
Minneapolis MN 55415

Office 612 673-2352
Fax 612 673-3565
TTY 612 673-2157

Date: November 23, 2005

✓ File copy

To: Mr. James A. Yarosh, for
Custom Plastic Laminates, Inc./Marshall Street Properties
Law Offices of Siegel, Brill, Greupner, Duffy & Foster, P.A.
1300 Washington Avenue South
Minneapolis, MN 55401

Cc: Mr. Wayne Resemius
Custom Plastic Laminates, Inc.
1720 Marshall Street NE
Minneapolis MN 55413

Subject: Appeal of Stormwater Charge
Property ID: 15-029-24-11-0001
Property Address: 1720 Marshall Street NE

This letter is to inform you of the determination by the Director's Designees, resulting from your appeal. Pursuant to the Appeal Procedure described in Section 510.70 of the Minneapolis Code of Ordinances and generally pursuant to Chapter 510 of the Minneapolis Code of Ordinances pertaining to the "Stormwater Management System and Operation of a Stormwater Utility" ("Ordinance"), the Director's Designees examined the property, reviewed the written record, consulted with the office of the City Attorney, and determined that the number of Equivalent Stormwater Units or ESUs calculated for the property by Department of Public Works personnel should not be adjusted.

The basis of the appeal was, first, whether the property benefits from the stormwater utility, and second, that the charge was not calculated correctly.

First, as to benefit: The appeal letter made reference to Minnesota Statutes, Section 444.075, Subd. 3.(b) as one of the cumulative authorities for establishment of the separate stormwater fee and claimed that as a result of the present slope of the parcel, much of the drainage was being directed to the Mississippi River and away from City sewers located in the street adjacent to the parcel and that therefore the charges made for the service were not proportionate to the use of the system by the parcel. Minnesota Statutes, Section 444.075, Subd. 3 (a), however, provides that a governing body of a municipality may impose "...just and equitable charges for the use and **for the availability** of the facilities..." (emphasis added)(cf. Laws of Minnesota for 1994, Ch. 587, Art. 9, Sec. 4). The extensive stormwater facilities of the City, including those in the adjoining street, are available for the use of the parcel, whether all of the parcel presently uses them or not. Additionally, your submission concedes that part of the parcel does currently drain to the City's system and shows that access to your parcel is through a street drained by the system. As a result, it is clear that the parcel benefits from both the use and the availability of the City's system.

Second, as to calculation: The appeal letter suggested the following calculation:

$$(64,581 \text{ sq. ft.} \times .90) / 1,530 \text{ sq. ft.} = 37.99 \text{ ESUs}$$

This is not correct. The factor of .90 would only be used in conjunction with the Gross Lot Area (75,584) to derive estimated impervious area.

According to current information, the Gross Lot Area is 75,584, and the actual impervious area is 64,581. A review of the calculation in August, 2005 showed that the original Gross Lot Area per the billing statement was incorrect, at 89,485 square feet. The records were changed to adjust the Gross Lot Areas to 75,584 square feet, matching Hennepin County tax records. For estimating impervious area, the Runoff Coefficient of 0.90 would then be applied to the adjusted Gross Lot Area (75,584) to determine the estimated impervious area, as follows:

$$(75,584 \text{ sq. ft.} \times .90) / 1,530 \text{ sq. ft.} = 44.46 \text{ ESUs}$$

However, also in August, instead of using the 0.90 Runoff Coefficient to estimate impervious surface area, a review of the site was made, and the actual impervious area was determined to be 64,581 sq. ft., slightly less than the estimated impervious area, resulting in a monthly charge of \$368.07, using the following calculation:

$$64,581 \text{ sq. ft.} / 1,530 \text{ sq. ft.} = 42.21 \text{ ESUs}$$

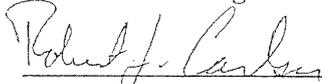
As a result of the August changes described above, the monthly charge was changed from \$458.93 to \$368.07 effective with the August statement, and in addition a credit of \$454.30 was issued to the account, in order to make the change retroactive to March 2005.

In order to reduce the fee further, you would need to apply for and be granted a credit. The Stormwater Ordinance primarily determines fees according to a property's impervious surface, however there is credit available if (a) a site can be demonstrated to have capability for retention of considerable rainfall on-site ("quantity" credits), or (b) if measures are taken to cleanse the runoff of any contaminants it picks up as it runs across impervious areas ("quality" credits). You may apply for credits as provided in Chapter 510 of the Minneapolis Code of Ordinances. Information about applying for credits can be found on the City's website, at the following location:

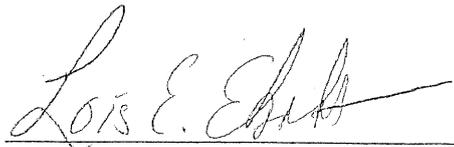
<http://www.ci.minneapolis.mn.us/stormwater/what-we-do/StormwaterRate.asp>

Please feel free to contact either of us if you have questions.

Director's Designees:



Robert J. Carlson (primary Designee)
(612) 673-3614



Lois Eberhart
(612) 673-3260

EXHIBIT 7, Page 2 of 2

LAW OFFICES

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FACSIMILE (612) 339-6591

JimYarosh@SBGDF.com

January 9, 2006

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BREANNA L. YOUNG

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JORDAN M. LEWIS*
BRIAN E. WEISBERG
STEVEN J. WEINTRAUT
M. GREGORY SIMPSON
JAMES A. YAROSH

24,280-JY

City Clerk
Clerk's Office
City Hall, Room 304
350 South 5th Street
Minneapolis, MN 55415-1315

**Re: Notice of Appeal of Stormwater-Utility Fee
Custom Plastic Laminates, Inc., 1720 Marshall Street NE**

Dear City Clerk:

We represent Custom Plastic Laminates, Inc. ("Custom Plastic") with respect to the above-described matter. This letter serves as Custom Plastic's Notice of Appeal of its stormwater-utility charge as permitted under Minneapolis Code of Ordinances Chapter 510.70(f).

As explained in the enclosed letter to the Department of Public Works dated October 25, 2005, the City has raised Custom Plastic's stormwater charge to \$368.07 per month—more than twice the amount of its previous stormwater charge. Custom Plastic appealed the charge, because its use of the stormwater utility is minimal. The agents appointed by Public Works ("Public Works") to handle the appeal denied Custom Plastic's claim in a letter dated November 23, 2005. Public Works erred in denying the appeal for two reasons:

- City ordinance requires that a property must benefit from the stormwater utility. The vast majority of the water on Custom Plastic's property (the "Property") does not use the stormwater utility, and thus Custom Plastic is not benefited by the stormwater utility; and
- Custom Plastic's stormwater charge is disproportionately high, and therefore, does not satisfy the statutory requirement that stormwater charges be equitable.

The Minneapolis Code of Ordinances recognizes that the amount of a stormwater-utility charge must be based on the particular parcel's *use* of the stormwater facilities. Specifically, Chapter 510.70(a)(3) of the Code states that owners of non-residential, developed property may appeal the amount of their stormwater charge if they dispute "whether their property is benefited by the stormwater utility."

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January 9, 2006

Page 2

Public Works, in denying Custom Plastic's appeal, ignores the Ordinance's "benefit" requirement, and instead cites Minn. Stat. § 444.075, Subd. 3a stating that municipalities "may impose just and equitable charges for the use and for the availability of" stormwater facilities. While the Statute may authorize municipalities to charge for mere sewer availability, the City, by enacting the "benefit" provision, has purposefully limited charges to properties that actually benefit from—*i.e.*, use—the utility.

In this case, any benefit the Property receives from the stormwater utility is minimal. It is undisputed that the vast majority of the Property's impervious-surface runoff drains directly into the Mississippi River because of the severe grade; only a small portion of the runoff ever reaches the stormwater infrastructure. As explained in our October 25th letter, the amount of runoff that potentially reaches the stormwater facilities warrants charging Custom Plastic only \$69.24 each month, at most.

The second ground for this appeal is based on Minnesota's statutory mandate that stormwater-utility charges be "just and equitable," as set forth at Minn. Stat. § 444.057, Subd. 3a. The American Heritage Dictionary (4th ed.) defines "equitable" as "just," "impartial," and synonymous with "fair." Custom Plastic's use of the stormwater system is minimal; the \$368.07 monthly charge represents far more than Custom Plastic's "fair" share of system usage. Charging Custom Plastics such a disproportionately high amount defies all reasonable interpretations of the phrase, "just and equitable."

Public Works attempts to justify the charge solely by observing that the Property abuts a public street with stormwater facilities. But the Minnesota Statutes authorize only *minimum* charges for properties that merely abut streets with such facilities. As stated in Minn. Stat. § 444.057, Subd. 3c, "[m]inimum charges for the availability of water or sewer service may be imposed for all premises abutting on streets" with sewer facilities. The \$368.07 charge to Custom Plastic exceeds any amount that could reasonably be considered a "minimum" charge.

In light of the above, Custom Plastic's stormwater charge should be reduced to a just and equitable amount—at most, \$69.07, as calculated in the enclosed letter from October 25th. I anticipate that a committee or subcommittee of the City Council, or a person appointed by the City Council, will perform a review and prepare a report within thirty (30) days, and that the full City Council will act upon the report within an additional thirty (30) days pursuant to Minneapolis Code of Ordinances Chapter 510.70(f). We would certainly be willing to elaborate upon the grounds for our appeal at a hearing, if desired. In the meantime, please do not hesitate to contact me if you have any questions regarding this Notice of Appeal.

Sincerely,


James A. Yarosh

Enclosures (October 25 correspondence)
cc: Director of Public Works (w/enc.)
Wayne Resemius (w/o enc.)

EXHIBIT 8, Page 2 of 2