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January 15, 2009

To the Honorable Common Council
Of the City of Milwaukee
Room 205 – City Hall

Re: Resolution relating to the claim of James Mikecz & Theresa Costello
C.I. File No. 08-L-73

Dear Council Members:

We return the enclosed document which has been filed with the City Clerk and ask that it be introduced and referred to the Committee on Judiciary & Legislation with the following recommendation.

Claimants, James Mikecz and Theresa Costello, 8630 West Burdick Avenue, Milwaukee, WI 53227 allege that on May 21, 2008 their plumbing contractor discovered the sewer lateral servicing their home needed to be replaced due to tree root penetration from a City tree. They also allege the damage was caused by the City and/or their agents using heavy equipment near the area causing undue force and large loads on the facility. They seek damages in the amount of \$8,399.41.

Our investigation reveals that the Underground Operations Section reviewed their records relative to this incident. They had no record of any complaints at this address.

The Milwaukee Water Works also checked their records and found that they had responded to three water main breaks in the time from January 1, 1999 to February 29, 2004 in the subject area. Each of the breaks were handled using standard repair procedures. They also found that a City contractor engaged in a City contract from September 17, 2004 to December 17, 2004 which related to water main re-lay in this area.

The Forestry Section reviewed their records relative to this incident. They report that the tree's roots would not have caused any damage to the pipes, but rather they would have entered the sewer lateral only after the grout between the tiles failed or the tiles themselves had cracked. This type of damage can occur from the soil settling or compacting, or due to the lateral's age. Our office spoke with an engineer within the Infrastructure Services Division. He reviewed the claimants' allegation regarding the

To the Hon. Common Council
January 15, 2009
Page 2

undue force or load causing damage to the facility. He noted that the load actually spreads out the deeper it goes into the ground. Since the City departments followed standard procedures and the sewer lateral is the homeowner's responsibility per §12-15, Milwaukee City Ordinances, we recommend denial of this claim.

Very truly yours,

GRANT F. LANGLEY
City Attorney

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JAS:beg
Enclosure
1068-2008-2527 & 2527.001:141545