

April 6, 2007

Milwaukee City Clerk  
200 E. Wells St., Room 205  
Milwaukee, WI 53202

CITY OF MILWAUKEE  
2007 APR -9 PM 2:31  
RONALD J. LEONHARDT  
CITY CLERK

**RE: C.I. File 07-S-7**

To Whom It May Concern:

This letter is in response to a letter dated April 2<sup>nd</sup>, 2007 that I received from City Attorney Grant F. Langley and Investigator Adjuster Robert M. Overholt with regard to the subject file. In that letter, Misters Langley and Overholt argue that the "Forestry Section followed standard procedures in this matter" and that "the City cannot accept liability" to pay my claim. The argument is unacceptable. The claim is not about whether or not the Forestry Section followed standard procedures, the claim is about an abuse of authority. I argue that the "standard procedures" that the Forestry Section followed were not authorized. The City Code allows for trimming. *Only* in the cases where trees or shrubs interfere with traffic control devices does the Forestry Section have authorization to remove such trees or shrubs. My trees were not in interference with any traffic control device and, therefore, the Forestry Section had no authority to remove them.

Please respond to this letter stating which part of the Code authorized the Forestry Section to remove my trees. If you are unable to do so, please remit \$1,500 immediately to David L. Barry, 2853 N. Downer Ave., Milwaukee, WI 53211.

Respectfully yours,



David L. Barry

Cc: James T. Barry, Jr., Esq.  
Roland Nehring, Esq.

CITY OF MILWAUKEE  
2007 APR -9 PM 3:32  
OFFICE OF  
CITY ATTORNEY

To Whom It May Concern:

The information contained herein is intended to follow the instructions for filing a claim against the City of Milwaukee.

Enclosed, please find the following:

- ① A document served on the City Clerk stating the circumstances of the claim, which is signed by the claimant and served within 120 days of the event (event date 12/1/06).
- ② A document (this would be the same document referenced in #1 above - i.e. the letter signed by claimant) stating the address of the claimant and a statement of the relief sought.

If the enclosed information is not enough for filing the claim and if more information is required, please call David Barry at 414-272-6733.

**David L. Barry**  
**2853 N. Downer Ave.**  
**Milwaukee, WI 53211**

CITY OF MILWAUKEE

2007 JAN -8 PM 3: 02

RONALD S. LEONHARDT  
CITY CLERK

Via Certified Mail

January 5, 2007

City Clerk – City of Milwaukee  
ATTN: CLAIMS  
200 E. Wells St., Rm. 205  
Milwaukee, WI 53202-3567

To Whom It May Concern::

On Friday, December 1<sup>st</sup>, 2006, I was granted an appeal for charges for removal of brush encroaching an alley behind a duplex that I own and in which I live at 2851-3 N. Downer Ave. This work was done on or around October 5, 2006. Essentially, the Administrative Review Appeals Board determined that “pruning” done by the Department of Public Works – Forestry Division was unauthorized and that I did not have to pay a \$190 fee for work that the Division had done. This decision prompts me to make this claim.

According to a City interpretation (note: this interpretation is not stated in the Code) of section 116-55 of the Code, brush should be cleared to a height of 14’ for alleys. I have enclosed pictures with this claim showing that, even though the work done by the Forestry Division was unauthorized, they did not simply clear this brush to 14’, but chopped the trees in half. Now, the trees are dead and need to be replaced. First, the City was unauthorized to do this work. Second, the work that was done was “chopping” and not “trimming”, which is not authorized under the Code. At a maximum, if the City was authorized to do this work, trimming these trees to a clear height of 14’ could be understood, but not chopping them in half. Therefore, I am making a claim for the City to pay me \$1,500 for removing the dead trees and replacing them with similar trees.

Two estimates for the cost of removal and replacement are enclosed with this claim letter. I am requesting that the City of Milwaukee remit a check for \$1,500 to David L. Barry at 2853 N. Downer Ave., Milwaukee, WI 53202 within 30 days of this claim. My phone during business hours is 414-272-6733.

Respectfully yours,



David L. Barry

Enclosures

2007 JAN -8 PM 3: 10  
OFFICE OF  
CITY ATTORNEY  
CITY OF MILWAUKEE  
RECEIVED

## 116--Use Of Public Ways And Places

city until such tree or shrub and the place where it is to be planted shall have first been approved by the commissioner of public works and a permit granted by said commissioner therefor.

**116-53. Hazardous Trees and Storage of Cut Elm Wood Prohibited.** The planting, preserving and maintaining of trees which are injurious and detrimental to the community, and all such trees as may be liable to fall upon any sidewalk, street or building, or which are hazardous or may result in injury to person or property because of a defective or diseased condition, or contagiously diseased trees, or the storage of cut elm wood, unless debarked or treated with a proper insecticide, shall be deemed a public nuisance and are prohibited.

### 116-55. Overhanging Branches.

1. INTERFERENCE WITH TRAFFIC OR STREET LIGHTS. Branches of trees or shrubs shall not be permitted to overhang streets, sidewalks and alleys at such a height as to interfere with vehicle or pedestrian traffic, or with the proper radiation of light from the Milwaukee municipal street lighting system. It shall be the duty of property owners to trim trees and shrubs to conform with this section upon due notice from the commissioner of public works.

2. INTERFERENCE WITH TRAFFIC CONTROL DEVICES. Branches of trees or shrubs shall not be permitted to overhang streets, sidewalks and alleys at such a height or in such a manner as to interfere with the visibility of official traffic control devices. Whenever trees or shrubs or the branches of trees or shrubs or other obstructions are found to block or interfere with the visibility of an official traffic control device, the provisions of s. 116-56 shall not apply. The commissioner of public works may take immediate action after he has received notification of such interference, to remove, trim or cause to have removed or trimmed the branches of such tree or shrub, or to remove or to cause to have removed other obstructions irrespective of the ownership of the tree, shrub or other obstruction.

**116-56. Special Assessment for Trimming.** In the event of the failure of the owner of any property or premises in front of or on which

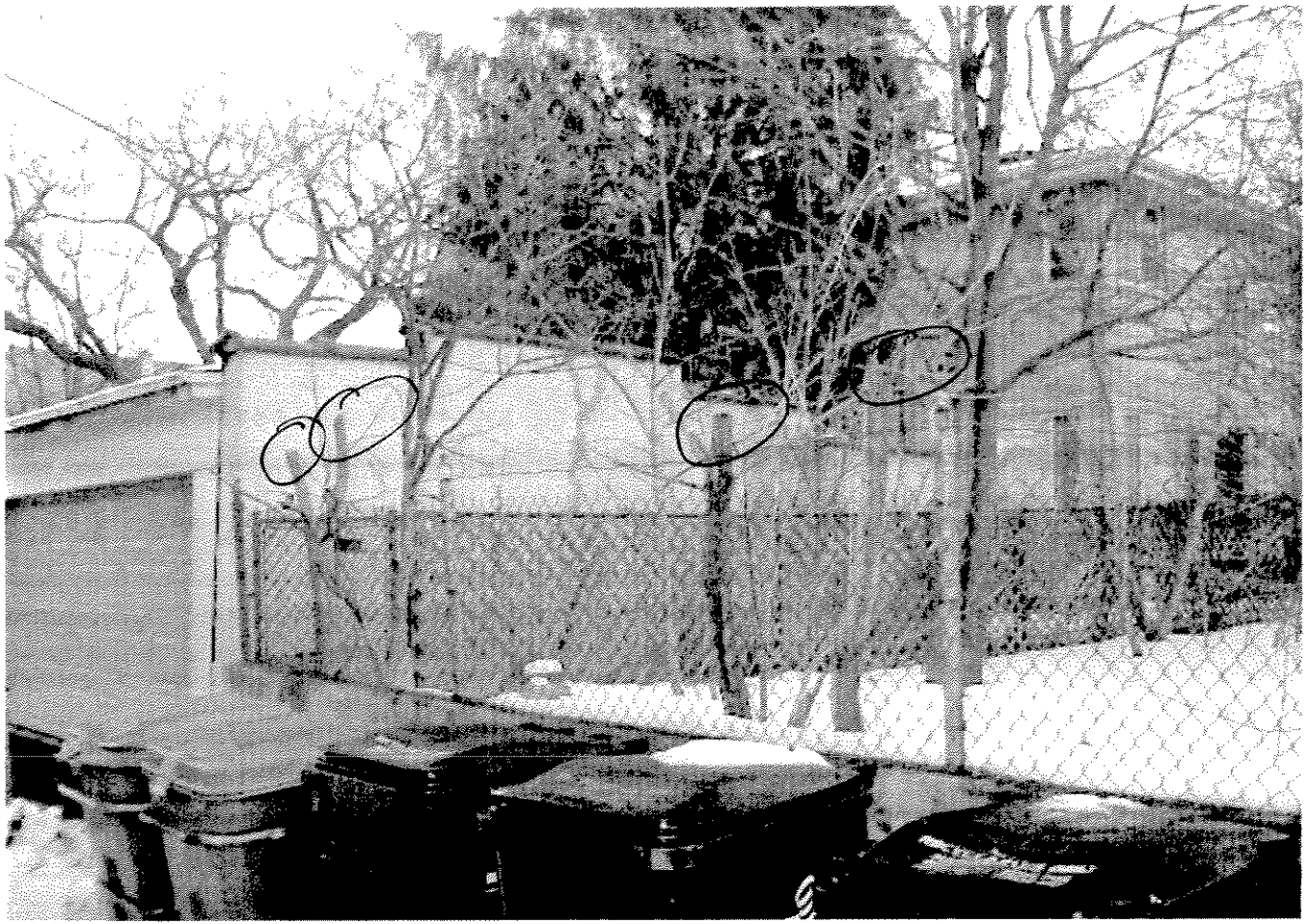
trees or shrubs grow with branches hanging over the sidewalk, streets or alleys, and with a level less than that provided under s. 116-55 to trim his trees or shrubs in conformity thereto for a period of not less than 30 days after being notified, then the commissioner of public works may cause the branches of such trees or shrubs to be trimmed, as provided for in s. 116-55 and charge the cost of such work against the lots, parts of lots or parcels of land on or in front of which such trees or shrubs may grow, in the manner and following the procedures set forth in s. 11.28, city charter.

**116-60. Fastening Horses to Shade Trees, Lamp Posts, etc.** No person shall fasten any horse or any other animal to any ornamental or shade tree or lamp post in any street or other public place within the limits of said city, nor to any box or case around such tree, nor shall he cause or permit a horse or other animal to stand so that said horse or other animal can injure a tree in any such street or other public place, under a penalty of not less than \$5 nor exceeding \$25 for each and every offense.

**116-63. Electric Devices Near Trees.** No person, corporation or association shall attach any electric insulators, or any device for the holding of electric wires, to any tree growing or planted upon any public highway of the city. Every person, corporation or association having any wire or wires charged with electricity running through a public highway shall securely fasten such wire or wires to a post or other structure so that they shall not come in contact with any tree thereon. Every such person, corporation or association shall, when and if the commissioner of public works determines it to be necessary in order to prune or cut down any trees growing in a public highway in the city, temporarily remove any such wire or wires, or cut off the electricity within 24 hours after service upon the owner of said wire or wires, or his or its agents, of a written notice signed by the commissioner of public works to remove said wire or wires, or cut off said electricity.

**116-66. Examination of Trees.** The commissioner of public works shall have the right to examine all trees, alive or dead, standing or fallen, and logwood piles for the

→ Note: 14' clear height is not stated.



Trees cut down by City Department of Forestry division.

Note: Only a clear height of 14' is authorized by code, yet these trees were chopped in half.



Department of Public Works

Jeffrey Mantes  
Commissioner of Public Works  
James P. Purko  
Director of Operations

October 05, 2006

DAVID L BARRY  
2851 N DOWNER AV  
MILWAUKEE, WI 53211-

RE: Encroachment No.: 3809

Dear Property Owner:

Section 116-55 and 116-56 of the Milwaukee Code of Ordinances authorizes the Commissioner of Public Works to notify the property owner to remove tree(s) and/or shrub(s) which interfere with vehicular and/or pedestrian traffic or encroach upon the public right-of-way and forward the charges, along with a \$50 administrative fee, to the property owner. You recently received a notice to remove such tree(s) and/or shrub(s) and upon inspection, were found to be in non-compliance. Consequently, the Department of Public Works Forestry staff performed the work at the following property:

<u>Address</u>	<u>Tax Key</u>	<u>Inspected</u>	<u>Charge</u>
2851 N DOWNER AV	316-1419-000	07/12/2006	\$190

This amount is now due. Failure to pay will result in this charge being placed on your property's tax statement for next year. If you choose to pay for this charge prior to it being placed on the tax roll, please make your check payable to 'City of Milwaukee' and mail with the attached coupon. If you have any questions regarding these charges please call (414)286-8282.

Please detach and return this portion with payment for  
City of Milwaukee - DPW Encroachment Charge

Bill To: **DAVID L BARRY**

Encroachment No.: **3809**

Make check payable to: **City of Milwaukee**

Amount Due: **\$190.00**

Mail to: **DPW Environmental Services**  
**Forestry Section**  
**841 N. Broadway, Room 619**  
**Milwaukee, WI 53202**



# City of Milwaukee Meeting Minutes

200 E. Wells Street  
Milwaukee, Wisconsin  
53202

## ADMINISTRATIVE REVIEW APPEALS BOARD

**ROY EVANS, CHAIR**

*Donald Fraker, Jennifer Havas, Harry A. Stein, Ald. Terry Witkowski*

*Staff Assistant, Diana Morgan, (414)-286-2231*

*Fax: 286-3456, E-mail: dmorga@milwaukee.gov*

*File Specialist, Charlotte Rodriguez, 286-8797, E-mail: crodri@milwaukee.gov*

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Friday, December 1, 2006

9:00 AM

301-B, City Hall

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7.      **06201**      Appeal of David Barry for charges for brush encroaching in the alley. (2851-53 N. Downer Ave.)  
*Grant the appeal of David Barry relative a \$190 fee for brush encroaching in the alley.*
- A motion was made by Donald Fraker, seconded by Jennifer Havas, that this APPEAL be GRANTED. The motion PREVAILED by the following vote:**
- Aye:** 4 - Evans, Witkowski, Havas, and Fraker
- No:** 0
- Excused:** 1 - Stein

# Estimate I

**David L. Barry**

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**From:** Jessi Schelske [princessjess1@sbcglobal.net]  
**Sent:** Friday, December 22, 2006 4:19 PM  
**To:** dbarry@colliers-barry.com  
**Subject:** Re: FW:

Hi David,

Well, I actually don't know what to say. Usually the city will forewarn the homeowners before they go in and rip things up. Replacing the trees against the fence is going to be a large task for a few reasons:

- The trunks of the existing trees will need to be removed, because the city did a hack-and-slash job
- The roots from the other trees will be intertwined with those trees, so replanting that far back in your yard will be a huge challenge for anyone

You may want to consider planting evergreens, specifically arborvitaes or junipers, because they will not get too large, but they will still screen the alley

I do, however, think that project is out of my league, so I want to give you the names of a few places that will deal with something of that caliber. Hopefully they are open this time of year.

Trees On The Move, 262-679-5200 - they probably work in the winter  
David J Frank Landscaping, 262-255-4888 - they MIGHT work in the winter, but I'm not sure

So start with them. I'm thinking it will be in the \$1500-\$2000 range for the removal and replacement.

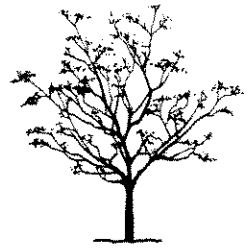
If you would like the names of additional reputable companies, feel free to contact me.

Thanks



January 3, 2007

# Estimate 2



David Barry  
2851 N. Downer Avenue  
Milwaukee, WI 53211

David J. Frank Landscape  
Contracting, Inc.

Dear David:

I am pleased to provide you with the following proposal for landscape services per your request based on my site visit on Tuesday January 2<sup>nd</sup>.

### Labor, equipment and materials necessary to:

- Renovate the rear yard planting bed. Duties to include:
  - Acquisition of materials.
  - Load and travel to site.
  - Removal of (2) multi-stem Lilac shrubs in the rear yard by hand and usage of a mini-excavator.
  - Installation of (2) 4' Sensation Lilac to replace those that are removed.
  - Installation of soil and amendments to the new planting areas.
  - Clean Up.
  - Disposal of waste material off site.

Total: \$1,002

Cost.....\$810.00

- Installation of an additional (2) 4' Sensation Lilac to add more screening from the alley.

Cost.....\$192.00

OR

- Same description as the first item but install (2) 4' Techny Arborvitae instead of (2) Lilac.

Cost.....\$1,184.00

Total: \$1,664

- Installation of an additional (2) 4' Techny Arborvitae to add more screening from the alley.

Cost.....\$480.00

**Note:** Sales tax will be added to total as required by state and federal tax laws.

Please indicate the work you would like scheduled by marking the appropriate box and sign and return one copy of the quote and one copy of the Terms and Conditions in the enclosed envelope along with a check for 1/2 down. Retain the other copy for your records. The balance will be due as completed.

If you have any questions or comments, please contact me at [jerry.stoffield@davidjfrank.com](mailto:jerry.stoffield@davidjfrank.com) or 262-255-4888 x 263.

Sincerely,

Jerry Stoffield  
Senior Client Representative

\_\_\_\_\_  
Client Acceptance

\_\_\_\_\_  
Date