



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

Human Resources

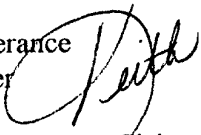
300 Sixth Street
605-394-4136

MEMORANDUM

No. PW012704-01

DATE: January 22, 2004

TO: Public Works Committee Members

FROM: Keith L'Esperance
Risk Manager 

SUBJECT: Elkjer Water Damage Claim

Attached is the claim for water damage from a water service line break at the home of David Elkjer of 3401 Hallmark Court. As Mr. Elkjer has requested the Public Works Committee review his claim and has placed the claim on the Public Works agenda for Tuesday, January 27, you are receiving the information we have in advance for review prior to the Committee meeting.

The attached claim consists of supporting documentation that details what staff has done internally to attempt resolution. At the City's direction, the claim has been denied by the St. Paul as the City's third party claims administrator. I have conducted significant research into the City's liability for this claim and am confident that every possible option has been reviewed and exhausted to determine any liability or negligence on the City's part and to determine whether or not the City could assist Mr. Elkjer.

We are very empathetic to Mr. Elkjer's loss. However, under the guide of city ordinance and policy, we are unable to offer Mr. Elkjer assistance. If you have any questions or require any additional information, please contact me. In the event there are other issues or new information related to this claim that comes before the Committee, I will also attend the Committee meeting along with Public Works management on January 27.

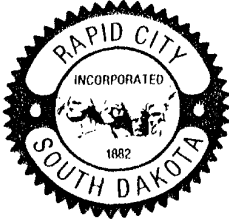
Attachments

cc: Remainder of City Council members



EQUAL OPPORTUNITY EMPLOYER

City Letter to David Elkjer



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

Human Resources

300 Sixth Street
605-394-4136

January 22, 2004

Mr. David Elkjer
3401 Hallmark Court
Rapid City, SD 57702

RE: Water Damage Claim

Dear David:

Since our meeting with you, me, John Wagner and Chip Petrik, I have done extensive research into the history and any related claims that I could find which includes the following:

- The last Poly-B claim to which was referred in the discussion occurred at a residence on Sunny Hill Circle. The \$485 that was paid on that claim was for site assessment by a local claims adjusting company. There was no payment made for any real or personal property damage and the line repairs and concrete/yard damage were repaired by the Street and Water Departments.
- I have researched through the City Attorney Office, Claims Associates in Sioux Falls, claims handler for the SD Public Assurance Alliance Liability Pool, and ARPCO, SDPAA partner, and none can find any record of a lawsuit and/or settlement between the City and Larry Lewis for the Parkridge development under the Parkridge Development or Lewis name.
- City ordinance 13.04.420 - Responsibility of Service Pipes and Fixtures does not allow the City to make payment "for any damage resulting from the breaking of any of the service pipes or apparatus . . ." City management cannot legally deviate from the parameters of the ordinance.
- City policy PW101001-12 places responsibility on the City to "repair and replace all leaky polybutelene service lines from the main to the curb stop on a 100% basis." As well, the policy states that the City "assumes no liability for any other damage caused to real or personal property as a result



EQUAL OPPORTUNITY EMPLOYER

of the breakage of any water line but only for the costs associated with replacement of such line.” Again, City management cannot deviate from the parameters of the policy as written.

- The City’s clean-up reimbursement policy is applicable only to sewer backup claims and does not apply to fresh water line breakage damages.

I am truly sorry that the City is unable to offer you more substantial assistance with your damages but we are bound by City ordinance and policy. Your claim is on the Public Works Committee agenda for Thursday, January 27 at 1:15pm. Your item is the first one on the agenda. I will continue to research as much as I can find and will report back to you anything that may be applicable.

Sincerely,



Keith L'Esperance
Risk Manager
City of Rapid City

cc: Ted Vore, Acting Public Works Director
John Wagner, Water Superintendent
Chip Petrik, Utility Maintenance Supervisor
Jason Green, City Attorney
Public Works Committee Members
Coleen Schmidt, Assistant City Finance Officer
Jim Preston, City Finance Officer
Jeff Johnson, St Paul Insurance Co
Kathy Maguire, Black Hills Agency

David Elkjer claim & cleanup costs filed with the city

Sent to Risk Manager: 1/6/04
Sent to Black Hills Agency: 1-9-04

Claim Form
City of Rapid City
300 Sixth Street
Rapid City, SD 57701
(605) 394-4143

Claimant: David Cindi Elkins Home Phone: 342-1228
Address: 3401 Hallmark Ct S.R.C. SD 57702 Business Phone: 721-1033
Date and Time of Incident: Early morning Dec 26, 2003
Location of Incident: _____
Type of Accident: _____
(Check all that apply): () Injured Person () Property Damage () Automobile Accident

Injured Person

Occupation: _____ Employed by: _____
Did you see a doctor? Yes () No () Doctor's Name: _____
Were you hospitalized? Yes () No () Hospital: _____
Have you returned to work or school? Yes () No () Age: _____
Probably disability period: _____
Why were you on the premises? _____

Describe incident (nature & extent of injury): _____

Name of police officer or governmental authority this was reported to: _____

Property Damage

List property damaged: Water soaked; carpet, walls, cloths, warped trim furniture, personal effects, baseball, wardrobe
Age of damaged property: 2-10 years old - whole basement flooded 2" water
Estimated cost of repair: \$6,000-10,000 just estimate - walls need painting
How was property damaged? broken water line in street just like every other line in Parkridge

Automobile Accident

Driver, if other than owner: _____
Address: _____ Home Phone: _____
Estimated cost of repair: _____ Business Phone: _____
Vehicle: (year, make, model): _____
Name and Department of governmental employee involved in accident: _____
Where did accident take place? _____
Your description of accident and damage: _____

(Attach copy of Police Report)

SOUTH DAKOTA LAW REQUIRES THE FOLLOWING:

SDCL 3-21-2: Notice prerequisite to action for damages -- Time limit. No action for the recovery of damages for personal injury, property damage, error or omission or death caused by a public entity or its employees may be maintained against the public entity or its employees unless written notice of the time, place and cause of the injury is given to the public entity as provided by this chapter within one hundred eighty days after the injury.

SDCL 3-21-3: Persons to whom notice must be given. Notice shall be given to the following officers as applicable: In the case of a county, to the County Auditor; in the case of a municipality, to the Mayor or City Finance Officer. In the case of other public entities, to the chief executive officer or secretary of the governing board.

Date: 12/24/03

[Signature]
City of Rapid City

[Signature]
Claimant

BILLS PAID AFTER THE DUE DATE SHOWN ABOVE ARE
 SUBJECT TO A 1% PER MONTH LATE PAYMENT CHARGE.

UTILITY TYPE	ADJUSTMENTS GAS - PGA ELECTRIC - FCA	AVERAGE DAILY USE	AVERAGE DAILY COST	THE TEMPERATURE THIS BILLING PERIOD AVERAGED	AMOUNT DUE
GAS	\$4.888573/DK	.3	\$2.66	1 DEGREES COOLER THAN THE SAME PERIOD LAST YEAR AND THE SAME AS THE LAST BILLING PERIOD.	\$ 142.97

DIRECT ALL INQUIRIES OR COMMENTS TO MDU, PO BOX 1060
 TELEPHONE 1(800) 638-3278
 IF NOT SATISFIED, CONTACT THE SOUTH DAKOTA PUBLIC UTILITIES
 COMMISSION, PIERRE, SOUTH DAKOTA 57501 OR CALL 1-605-773-3201.

PAST DUE	PREVIOUS BALANCE	REVOLVING CHARGE PLAN (RCP)			NEW BALANCE	INSTALLMENT DUE
		PYMT/CR	FINANCE CHG	PURCHASES		
	MERCH-SERVICE - 30 DAY					47.00
	CURRENT PURCHASES					.00
	LATE PAY CHARGE - 1.50% ON PREV BAL AMT (18.00% APR)					---
	TOTAL DUE FOR OTHER SERVICES					47.00

Service Charge to Check out furnace
 when it quit & for the basement was flooded

David Eltger
 3401 Hallmark Ct
 RC SD 57402

Lloyd's Incorporated
2911 W Omaha St
Rapid City, SD 57702

Invoice
Invoice Number:
 9053

Invoice Date:
 Jan 7, 2004

Page:
 1

Voice: 605-343-5694
Fax: 605-343-9485

Sold To:
 ELKTER, DAVE
 3401 HALLMARK CT
 RAPID CITY, SD 57702

Customer Phone :
 605-342-1228

Customer ID	Customer PO	Payment Terms	
ELK02		Net 15 Days	
Sales Rep ID	Shipping Method	Ship Date	Due Date
	UPS		1/22/04

Description	Amount
WATER DAMAGE: EXTRACTION	454.50
INSTALL EQUIPMENT	80.00
OPEN CORNERS	45.00
6 DRYERS 4 DAYS	600.00
2 PHOENIX DEHUMIDIFIERS 4 DAYS	800.00
PULL QUARTER ROUND AND DRILL HOLES 4 HRS @ 26.50	106.00
INSTALL INJECT A DRY WALL DRYER	79.50
3 DRYERS 4 DAYS	300.00
1 PHOENIX DEHUMIDIFIER 4 DAYS	400.00
1 INJECT A DRY WALL DRYER UNIT 4 DAYS	520.00
REMOVE EQUIPMENT	50.00
CLEAN CARPET DOWNSTAIRS, STAIRS AND TRAFFIC AREAS UPSTAIRS	295.00

this has not been done yet

Subtotal 3,730.00
 Sales Tax 217.83
Total Invoice Amount 3,947.83
 Payment Received
TOTAL 3,947.83

Check No:

City ordinance related to water line breaks

Title 13 PUBLIC UTILITIES AND SERVICES

Chapter 13.04 WATER SERVICE SYSTEM

13.04.420 Responsibility of service pipes and fixtures.

A. The water and sewer department will not be responsible for service pipes and fixtures. All service pipes and fixtures on the premises and up to the tap of the city main shall be installed and kept in good working order, and properly protected from frost and other danger, at the expense of the owner or person in possession of the premises served. If such owner or person shall fail to properly repair any leaky service pipe or other apparatus promptly upon receipt of due notice from the director of utilities, his assistants or any person authorized by him, the water may immediately be shut off from the premises and remain shut off until the necessary repairs have been made and a fee as established by the common council for turning the water off and on has been paid. The city shall not be liable for any damage resulting from the breaking of any of the service pipes or apparatus, or for any other damage that may result from shutting off water for repairing or for any other purpose, or for any variation in pressure. No reduction will be made from the regular water rates because of leaking fixtures.

B. If a service line develops a leak between the main and the curb box on any service pipe and is not immediately repaired, the director of utilities may cause such service pipe to be repaired and assess the actual cost of the repair, plus ten percent, to the property. (Prior code § 30-54)

City policy related to
replacement of polybutelene
service line breaks

ATTEST:
s/ James F. Preston
Finance Officer
(SEAL)

s/ Jerry Munson, Mayor

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No. PW092601-09 – Direct staff to revise the Policy on Exceptions to Residential City-Conducted Water Line Repair date April 1, 1991 to reimburse at 100% the expenses incurred for the replacement of polybutelene service lines.

26. No. 01VE004 – Approve with stipulations a Vacation of Drainage Easement for petitioner City of Rapid City, located at 120 North LaCrosse Street.

RESOLUTION OF VACATION OF DRAINAGE EASEMENT

WHEREAS it appears that a portion of the drainage easement located on Lot A of Feigels West Addition, Section 31, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota is not needed for public purposes; and

WHEREAS the owner of said property desires said portion of the drainage easement to be vacated and released

NOW, THEREFORE, BE IT RESOLVED by the City of Rapid City that the portion of the drainage easement heretofore described, and as shown on Exhibit A attached hereto, be and the same is hereby vacated.

BE IT FURTHER RESOLVED that the Mayor and Finance Officer are hereby authorized to execute a release of easement in regard thereto.

Dated this 1st day of October, 2001.

CITY OF RAPID CITY
s/ Jerry Munson, Mayor

ATTEST:
s/ James F. Preston
Finance Officer
(SEAL)

Legal & Finance Committee

- 27. LF092601-01 - Authorize staff to proceed with the annexation proposal for the Deadwood Avenue area.
- 28. Authorize Staff to Advertise for Bids for Bus Benches and Bus Bench Advertising.
- 29. LF091201-06 – Accept the original payment of \$65,000 as payment in full for the CDBG deferred assessment for Frank Simpson.
- 30. LF092601-03 - Approve Resolution Fixing Time and Place for Hearing on Assessment Roll for Property Cleanup.

RESOLUTION FIXING TIME AND PLACE FOR HEARING ON ASSESSMENT ROLL FOR PROPERTY CLEANUP

BE IT RESOLVED by the City Council of the City of Rapid City, South Dakota, as follows:

- 1. The assessment roll for Property Cleanup was filed in the Finance Office on the 1st day of October, 2001. The City Council shall meet at the City/School Administration Center in Rapid City, South Dakota, on Monday, November 5,

PROPOSED EXCEPTIONS TO RESIDENTIAL
CITY-CONDUCTED WATER LINE REPAIR

Reasons for Deviation from Established Repair Policy. It is currently, and shall remain the policy of the City of Rapid City to be responsible for, and repair or replace, only main water lines. The responsibility for the repair and replacement of all other water lines, including service lines from the main to the curb stop, shall remain on the respective homeowner who is serviced by that line. There shall be an exception to this policy for all neighborhoods which have water lines constructed of polybutelene plastic. Polybutelene pipes have, over the past decade, proven to be an inferior product, highly susceptible to imperfect laying techniques and prone to pull away from its end connections. Due to the nationwide failure of these pipes and the involvement of the City of Rapid City in deciding to use these pipes over a decade ago, the City of Rapid City shall implement a good will exception to the established repair and replacement policy.

The City of Rapid City shall repair and replace all leaky polybutelene service lines from the main to the curb stop on a ~~proration~~ 100 PERCENT basis. Any polybutelene water line, which malfunctions, shall be replaced with a new copper water service line. At such time of repair, the City shall install a new copper line only to the curb stop. ~~The existing polybutelene water line has an anticipated design life of 40 years. The cost of installing a new copper water line from the main to the curb stop shall be prorated using the 40 year life expectancy as the base. The respective homeowner of the malfunctioning polybutelene line shall be responsible for the portion of the costs which represents the amount of service the water line has already given, i.e. a homeowner with a 10 year line shall receive a 75 percent reimbursement for the costs of such repair and replacement.~~ Existing polybutelene water line, which runs from the residence to the curb stop, is not addressed under this good faith exception. The portion of existing polybutelene water line from the residence to the curb stop is the responsibility of the homeowner and shall be wholly an expense to that homeowner when and if replacement is required.

All homeowners who have had water service line breakages due to the failure of polybutelene water service lines ~~since January 1, 1987~~ after October 15, 2001, shall be reimbursed ~~on a pro-rata basis~~ at 100 percent for the expense incurred for replacement of the water service lines from the city main to the curb stop. This reimbursement shall include the costs of replacing all cement and roadwork and any other costs which were a direct result of the water service line replacement. The City of Rapid City assumes no liability for any other damage caused to real or personal property as a result of the breakage of any water line but only for the costs associated with replacement of such line. It shall be the responsibility of the homeowners who have previously suffered water service line breakages to submit invoices of all the costs incurred by them. Upon review of these invoices, the City of Rapid City shall, per property authorization, issue reimbursement for such costs.

L'Esperance Keith

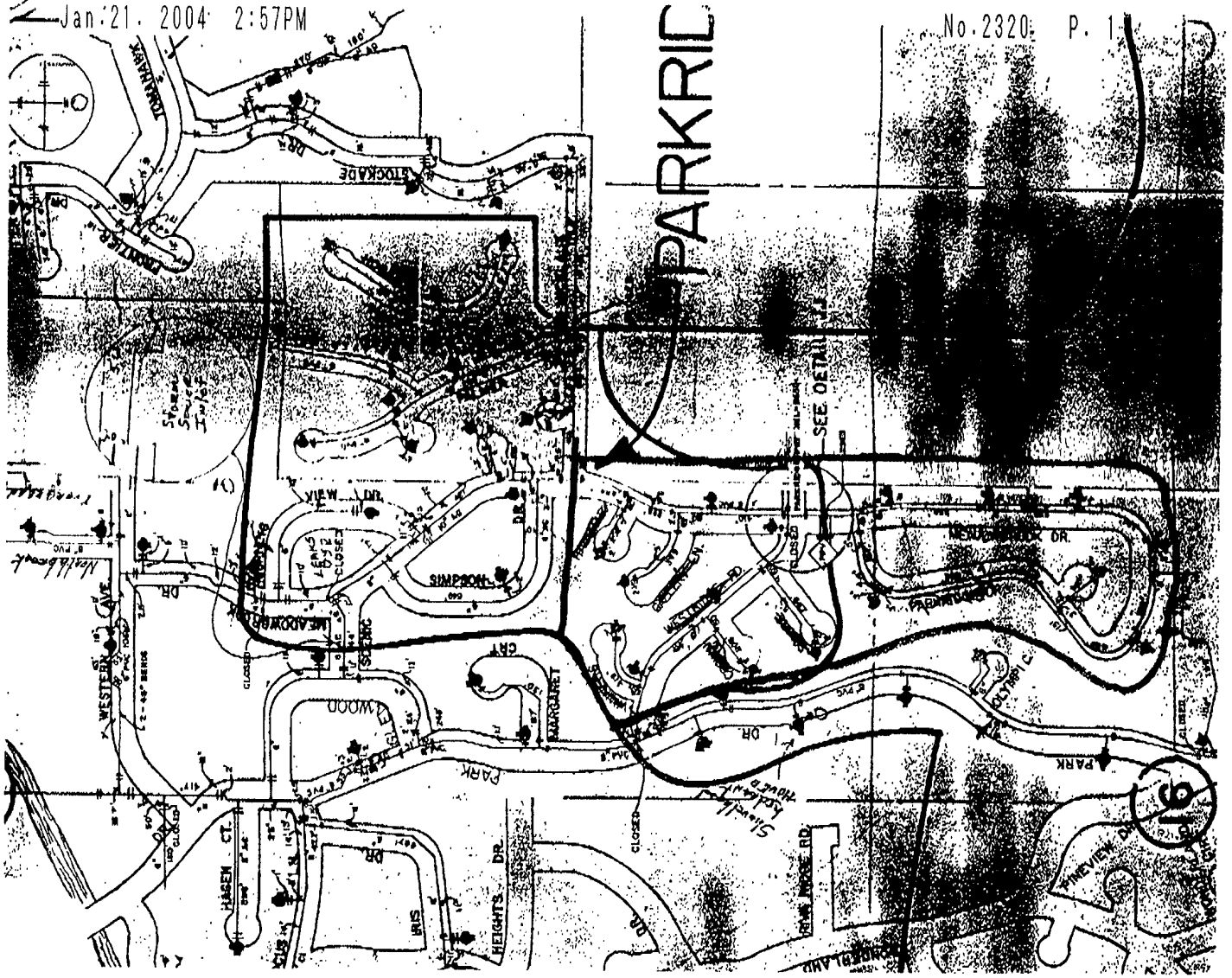
From: Wagner John
Sent: Monday, January 19, 2004 11:39 AM
To: Vore Ted
Cc: Petrik Stan "Chip"; L'Esperance Keith
Subject: Poly-B History & Breaks

All,

The original Poly-B policy was approved by Council on April 1, 1991. From our records, we have replaced (through 2003) 370 Poly-B lines at a cost of \$472,168.09. The policy was revised at the October 10, 2001 council meeting to exclude the prorated portion of the old policy. The new policy basically states that the City will pay 100% of the costs from the main to the curb stop for all breaks after October 15, 2001.

John

The lines in the Parkridge area
that have been replaced and
those that are still listed as
remaining polybutelene service
lines



PARKRIC

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1-21-04

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3400	meadowbrook	Poly B Sprinkler	
3401	Meadowbrook	Poly B	
3405	Meadowbrook	1" K copper	6-26-03
3408	Meadowbrook	Poly B	
3412	Meadowbrook	Poly B	
3502	meadow brook	7" K copper	7-22-88
3504	Meadowbrook	1" K copper	7-22-91
3505	Meadowbrook	1" K copper	10-30-03
3506	Meadowbrook	Poly B	
3508	Meadowbrook	Poly B	
3509	Meadowbrook	Poly B	
3510	Meadowbrook	Poly B	
3601	Meadowbrook	1" K copper	8-6-97
3602	Meadowbrook	1" K copper	8-12-97
3606	Meadowbrook	1" K copper	January 1997
3608	Meadowbrook	Poly B	
3609	Meadowbrook	Poly B	
3610	Meadowbrook	Poly B	
3702	Meadowbrook	1" K copper	8-21-97
3703	Meadowbrook	1" K copper	8-12-97
3704	Meadowbrook	1" K copper	8-21-91
3705	Meadowbrook	1" K copper	8-21-91
3706	Meadowbrook	1" K copper	4-6-01
3707	Meadowbrook	1" K copper	4-6-01
3708	Meadowbrook	Poly B	
3709	Meadowbrook	Poly B	
3710	Meadowbrook	1" K copper	May 1999
3711	Meadowbrook	1" K copper	May 1999
3802	Meadowbrook	1" K copper	

Jan. 21, 2004 2:57PM

No. 2320 P. 2

3803	Meadowbrook	Poly B	
3804	Meadowbrook	Poly B	
3805	Meadowbrook	Poly B	
3806	Meadowbrook	Poly B	
3807	Meadowbrook	Poly B	
3808	Meadowbrook	Poly B	
3809	Meadowbrook	Poly B	
3810	Meadowbrook	Poly B	
3811	Meadowbrook	Poly B	
3812	Meadowbrook	1" K copper	10-21-96
3813	Meadowbrook	Poly B	
3902	Meadowbrook	Poly B	
3903	Meadowbrook	Poly B	
3904	Meadowbrook	1" K copper	1998
3915	Meadowbrook	1" K copper	9-16-00
3917	Meadowbrook	Poly B	

3811	Parkridge Circle	1" K copper	6-29-00
3812	Parkridge Circle	1" K copper	6-29-00
3813	Parkridge Circle	1" K copper	6-29-00
3609	Parkridge	1" K copper	11-18-93
3610	Parkridge	1" K copper	11-18-93
3612	Parkridge	Poly B	
3701	Parkridge	Poly B	
3702	Parkridge	1" K copper	7-18-91
3703	Parkridge	1" K copper	7-20-99
3704	Parkridge	1" K copper	8-29-92
3705	Parkridge	Poly B	
3706	Parkridge	Poly B	
3707	Parkridge	Poly B	
3708	Parkridge	Poly B	
3709	Parkridge	1" K copper	10-4-93
3710	Parkridge	1" K copper	8-1-90
3711	Parkridge	1" K copper	9-25-91
3802	Parkridge	Poly B	
3803	Parkridge	Poly B	
3804	Parkridge	1" K copper	5-25-91
3805	Parkridge	Poly B	
3806	Parkridge	Poly B	
3807	Parkridge	Poly B	
3808	Parkridge	1" K copper	11-9-92
3809	Parkridge	1" K copper	10-11-92
3811	Parkridge	Poly B	

3810	Parkridge	Poly B	
3812	Parkridge	1" K copper	5-16-92
3813	Parkridge	1" K copper	7-29-91
3901	Parkridge	1" K copper	5-7-01
3902	Parkridge	Poly B	
3903	Parkridge	Poly B	
3905	Parkridge	1" K copper	2-11-03
3907	Parkridge	1" K copper	2-8-02
3908	Parkridge	1" K copper	11-4-02
3909	Parkridge	1" K copper	11-4-02
3910	Parkridge	1" K copper	6-18-93
3911	Parkridge	1" K copper	9-29-00
3912	Parkridge	1" K copper	9-29-00
3913	Parkridge	Poly B	
3914	Parkridge	1" K copper	3-18-99
3915	Parkridge	1" K copper	9-29-00
3917	Parkridge	1" K copper	3-18-99

3602 Crown Crz Poly B
 3603 Crown Crz Poly B
 3604 Crown Crz Poly B
 3605 Crown Crz 1" K copper
 3606 Crown Crz 1" K copper
 3607 Crown Crz 1" K copper
 3601 Crown Crz Poly B

3501 Gallery Ln Poly B
 3502 Gallery Ln Poly B
 3503 Gallery Ln 1" K copper
 3504 Gallery Ln 1" K copper
 3505 Gallery Ln 1" K copper
 3506 Gallery Ln Poly B
 3507 Gallery Ln Poly B
 3509 Gallery Ln Poly B
 3511 Gallery Ln Poly B

7-15-03
 2-18-94
 1998

3401 Hallmark Crz 1" K copper
 3403 Hallmark Crz 1" K copper
 3404 Hallmark Crz Poly B
 3405 Hallmark Crz 1" K copper
 3406 Hallmark Crz 1" K copper
 3407 Hallmark Crz 1" K copper

12-26-03
 9-30-91
 May 99
 May 99
 May 99

3514	Squire	Poly B	
3516	Squire	Poly B	
3601	Squire	Poly B	
3603	Squire	Poly B	
3604	Squire	Poly B	
3605	Squire	Poly B	
3606	Squire	1" K copper	1998
3607	Squire	1" K copper	8-12-99
3608	Squire	1" K copper	8-12-99

3507	Westridge	1" K copper	11-2-99
3509	Westridge	1" K copper	8-7-97
3510	Westridge	1" K copper	4-2-01
3512	Westridge	1" K copper	11-16-00
3513	Westridge	1" K copper	11-16-00
3515	Westridge	1" K copper	5-5-93
3516	Westridge	1" K copper	5-5-93
3518	Westridge	1" K copper	3-20-85
3601	Westridge	Poly B	
3602	Westridge	Poly B	
3604	Westridge	Poly B	
3605	Westridge	1" K copper	7-31-01
3606	Westridge	1" K copper	7-15-99
3607	Westridge	1" K copper	10-10-94
3608	Westridge	1" K copper	10-10-94
3610	Westridge	Poly B	

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3701 Westridge Poly B
3703 Westridge Poly B

3608 Winous Circle Poly B
3610 Winous Circle Poly B
3611 Winous Circle Poly B
3612 Winous Circle 1" K Copper 2-6-93
3613 Winous Circle Poly B
3614 Winous Circle 1" K Copper 10-20-94
3615 Winous Circle 1" K Copper 10-20-94
3702 Winous Circle 1" K Copper 1998
3704 Winous Circle 1" K Copper 6-29-93