

STATE OF WISCONSIN

CIRCUIT COURT

CALUMET COUNTY

CITY OF MENASHA
140 Main Street
Menasha, Wisconsin 54952,

PLAINTIFF

v.

COMPLAINT FOR DECLARATORY JUDGMENT

WAVERLY SANITARY DISTRICT
N8722 County Road LP
Menasha, Wisconsin 54952,

CASE NO.
Case Code: 30701

DEFENDANT

And

CITY OF APPLETON
100 N. Appleton Street
Appleton, Wisconsin 54911,

DEFENDANT

And

TOWN OF HARRISON
W5298 Hwy. 114
Menasha, Wisconsin 54952,

DEFENDANT

And

VILLAGE OF HARRISON
W5298 Hwy. 114
Menasha, Wisconsin 54952,

DEFENDANT

AUTHENTICATED COPY
Case # 13-CO-189

OCT 16 2013

Calumet County Clerk of Courts
Barbara VanAkkeren

CITY OF MENASHA, by its' City Attorney, Pamela A. Captain, for its COMPLAINT
FOR DECLARATORY JUDGMENT states:

NATURE OF THE CASE

1. This action seeks a declaratory judgment under §806.04, Wis. Stats., in which the City of Menasha's rights of ownership and operation of Waverly Sanitary District pursuant to §60.79(2), Wis. Stats., are sought to be declared by court order. Alternatively, City of Menasha seeks a declaration of the legal status of Waverly Sanitary District pursuant to §60.79(2), Wis. Stats. and the process for the selection of new commissioners pursuant to §60.74, Wis. Stats.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to §§753.03, 801.02, 806.04, Wis. Stats.
3. Venue in this action lies in Calumet County pursuant to §801.50(2)(b), Wis. Stats., in the county where the real or tangible personal property, or some part thereof, which is the subject of the claim, is situated.
4. The City of Menasha is a Wisconsin municipal corporation with its primary offices located at 140 Main Street, in the City of Menasha, Wisconsin, 54952.
5. Waverly Sanitary District created as a town sanitary district by the Town of Harrison, Wisconsin has its primary offices located at N8722 County Road LP, Menasha, Wisconsin, 54952.
6. The City of Appleton is a Wisconsin municipal corporation with its primary offices located at 100 N. Appleton Street, Appleton, Wisconsin, 54911.
7. The Town of Harrison is a Wisconsin town with its primary offices located at W5298 Hwy. 114, Menasha, Wisconsin, 54952.

8. The Village of Harrison is a Wisconsin municipal corporation with its primary offices located at W5298 Hwy. 114, Menasha, Wisconsin, 54952.
9. Waverly Sanitary District provides sanitary sewer and water to patrons in the Town of Harrison, City of Appleton, City of Menasha and Village of Harrison.
10. Effective March 8, 2013, part of the Town of Harrison incorporated to become the Village of Harrison.
11. The Town of Harrison incorporation detached a portion of the Waverly Sanitary District, a town sanitary district.
12. Wisconsin Statute §60.79(2) provides that upon the incorporation or annexation of a part of a town sanitary district, the ownership and operational control of the district's water or sewerage system shall be transferred to the city or village in which the major portion of the district's patrons reside on the date of annexation or incorporation, unless other provision is made by agreement.
13. Under Wisconsin Statute §60.79(2)(dm), a town sanitary district continues operations, except in the case there is a written agreement, "until the proportion of users changes so that a majority of the patrons reside in the city or village, at which time the property and the responsibility shall shift to the city or village."
14. There is no written agreement by and among Waverly Sanitary District, Town of Harrison, City of Appleton, City of Menasha and Village of Harrison relating to the ownership and operational control of Waverly Sanitary District as affected by the March 8, 2013, incorporation of the Village of Harrison.
15. Prior to March 8, 2013, Waverly Sanitary District served: 1003 Town of Harrison patrons, 898 City of Menasha patrons and 67 City of Appleton patrons.

16. As a result of the Town of Harrison's partial incorporation, effective March 8, 2013, Waverly Sanitary District served: 898 City of Menasha patrons, 763 Town of Harrison patrons, 240 Village of Harrison patrons and 67 City of Appleton patrons.
17. On and after March 8, 2013, the major portion of Waverly Sanitary District patrons reside in the City of Menasha.
18. On August 1, 2013, a resolution, R-10-13, a copy of which is attached and incorporated herein identified as EXHIBIT A, was adopted by the Common Council of the City of Menasha.
19. On August 5, 2013, Menasha City Clerk Galeazzi sent copies of Resolution R-10-13 to the entities listed in the resolution.
20. On August 6, 2013, Waverly Sanitary District sent a letter to City of Menasha Mayor Merkes acknowledging receipt of Menasha's Resolution R-10-13 and indicating that it was securing legal counsel who would be contacting Menasha.
21. On August 22, 2013, at the request of Attorney John St. Peter, representing Waverly Sanitary District, Menasha City Attorney sent a letter to Attorney St. Peter setting forth Menasha's opinion about the impact of the Town of Harrison's incorporation upon Waverly Sanitary District, a copy of which is attached and incorporated herein identified as EXHIBIT B.
22. On September 26, 2013, Waverly Sanitary District held a special meeting listing the following item on its agenda for closed session: . . . matters relating to the impact on the District of the incorporation of the Village of Harrison and the pending litigation challenging actions taken by the Village of Harrison.

23. Other than its initial letter, dated August 6, 2013, the City of Menasha has not received any indication from Waverly Sanitary District that it will work with Menasha to effectuate the transfer according to §60.79(2), Wis. Stats.
24. The parties dispute the statutory effect of the partial Town of Harrison incorporation on Waverly Sanitary District.
25. This matter is of an urgent nature due to an ordinance adopted by the Village of Harrison, on August 6, 2013, which annexed Town of Harrison territory into the Village of Harrison.
26. On August 6, 2013, the Village of Harrison adopted an ordinance which annexed additional Town of Harrison territory into the Village further reducing the number of Town of Harrison patrons of Waverly Sanitary District.
27. Waverly Sanitary District is governed by an elected three-member Board of Commissioners, all of whom must be residents of the town sanitary district in accordance with §60.75(3), Wis. Stats.
28. As a result of the annexation ordinance adopted on August 6, 2013, no Waverly Sanitary District Commissioners reside in Waverly Sanitary District.
29. As a result of the annexation ordinance adopted on August 6, 2013, no Waverly Sanitary District Commissioners reside in the Town of Harrison.
30. As a result of the annexation ordinance adopted on August 6, 2013, the only remaining territory in the Town of Harrison consists of territory proposed to be annexed into the City of Menasha and City of Appleton in the future pursuant to intergovernmental cooperation agreements.

31. The City of Menasha has attempted to work cooperatively with Waverly Sanitary District to reach a resolution in this matter to no avail.
32. The parties also dispute the statutory effect of the August 6, 2013, Village of Harrison annexation on Waverly Sanitary District.
33. The parties also dispute the statutory authority of the Town of Harrison to appoint new sanitary district commissioners to serve on Waverly Sanitary District.

REQUEST FOR RELIEF

34. City of Menasha requests a declaratory judgment declaring its rights to ownership and operational control of Waverly Sanitary District in accordance with §60.79(2), Wis. Stats.
35. Alternatively, City of Menasha requests declaration of the legal status of Waverly Sanitary District as a result of the March 8, 2013, partial incorporation of the Town of Harrison.
36. Alternatively, City of Menasha requests declaration of the legal status of Waverly Sanitary District as a result of the August 6, 2013, annexation of a portion of the Town of Harrison by the Village of Harrison and the process for the selection of commissioners pursuant to §60.74, Wis. Stats.

Dated this 16th day of October, 2013.



CITY OF MENASHA
By Pamela A. Captain,
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CITY OF APPLETON and
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OCT 17 2013

Calumet County Clerk of Courts
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CASE NO. 13-CV-189
Case Code: 30701

NOTICE OF MOTION AND MOTION FOR TEMPORARY INJUNCTIVE RELIEF

NOTICE OF MOTION

Please take notice that the above-referenced MOTION FOR TEMPORARY INJUNCTIVE RELIEF will be heard at a time and place to be scheduled at the convenience of the Court, if the Court determines that a hearing is necessary.

MOTION

The City of Menasha (Menasha) moves the Court for temporary injunctive relief pursuant to §813.02, Wis. Stats., to enjoin Waverly Sanitary District from entering into any contracts with the Village of Harrison, making decisions about the extension of water and sanitary sewer, new lift stations, new debt not associated with the current operations of the system, new projects or cost sharing arrangements outside the district boundaries unless related to a contract entered into prior to March 8, 2013.

Grounds for this Motion are as follows:

1. There is a dispute about the legal status of Waverly Sanitary District and its governing body.
2. Waverly Sanitary District, a town sanitary district, provides sanitary sewer and water to patrons in the Town of Harrison, City of Appleton, City of Menasha and since March 8, 2013 to patrons in the Village of Harrison.
3. On March 8, 2013, part of the Town of Harrison incorporated to become the Village of Harrison which upon incorporation detached a portion of the Waverly Sanitary District, effectively changing the town sanitary district boundaries and the number of patrons being served within the district.
4. As a result of the Town of Harrison's partial incorporation, effective March 8, 2013, Waverly Sanitary District served: 898 City of Menasha patrons, 763 Town of Harrison patrons, 240 Village of Harrison patrons and 67 City of Appleton patrons.
5. City of Menasha patrons constitute the major portion of the sanitary district users.
6. City of Menasha, in its underlying complaint, seeks a declaratory judgment that the legal status of Waverly Sanitary District changed, by statute, such that it is now owned and to be operated by City of Menasha.
7. City of Menasha has made known to Waverly Sanitary District and the Town of Harrison its concerns about the legal status of Waverly Sanitary District and its governing body.
8. Waverly Sanitary District and the Town of Harrison have failed and refused to even discuss Menasha's concerns about the legal status of Waverly Sanitary

District. Such refusal and failure have caused the City of Menasha to file a Complaint for Declaratory Judgment.

9. Recent actions by the Village of Harrison changed the residency of all three of Waverly Sanitary District commissioners from Town of Harrison residents to Village of Harrison residents leaving no commissioners residing within the Town of Harrison as is required by statute. Commissioners on Waverly Sanitary District are elected, not appointed.
10. Yesterday, City of Menasha staff received a telephone call from an unrelated third party informing that the Town of Harrison scheduled a town board meeting to appoint new Waverly Sanitary District commissioners. A copy of the October 16, 2013 Town of Harrison agenda is attached and incorporated herein as EXHIBIT A. An additional item on the agenda includes a closed session and possible action on the closed session of an Intergovernmental Agreement between Waverly Sanitary District, the Town of Harrison and the Village of Harrison.
11. A town sanitary district has statutory authority to do such things as enact ordinances, enter into contracts, incur debt and issue bonds, acquire and dispose of real and personal property.
12. Until the legal status of Waverly Sanitary District is determined it is imperative that it continue to operate in a mode of status quo.
13. Without injunctive relief it is likely that Waverly Sanitary District will enter into agreements and incur expenses and other obligations related to sanitary sewer and water or waste water system design, engineering, inspections,

operation and management that are contrary to the interests of the City of Menasha and other patrons of Waverly Sanitary District.

14. Although City of Menasha has attempted to discuss and work through these disputed issues, Waverly Sanitary District and the Town of Harrison have failed and refused to do so and instead have taken actions contrary to the interests of a town sanitary district in which the remaining patrons will ultimately end up either in the City of Menasha or City of Appleton pursuant to intergovernmental agreements. For example, an item on the most recent Waverly Sanitary District agenda included a cost share agreement with the Village of Harrison for a new lift station. A copy of the most recent Waverly Sanitary District agenda is attached and incorporated herein as EXHIBIT B.

15. Any new borrowing, acquisition and sale of real and personal property, expansion of the system, hiring of new personnel and entering into new contracts will be substantially damaging to the City of Menasha and other non-village patrons of Waverly Sanitary District.

16. There is no accountability to the City of Menasha and no representation by City of Menasha on Waverly Sanitary District Commission and obligating funds or future actions to which City of Menasha is not a party to the decision-making will cause substantial harm.

17. Recent meeting agendas list items indicative of acting contrary to the financial interests of the major portion of patrons of Waverly Sanitary District, those patrons residing in the City of Menasha.

18. City of Menasha, as the holder of the major portion of the patrons of Waverly Sanitary District, suffers substantial damages in not being able to make decisions incident to ownership.

19. This relief is of an urgent nature since budget decisions will need to be made soon and since Waverly Sanitary District has not voluntarily agreed to preserve the status quo pending resolution of its disputed legal status.

Respectfully submitted this 17th day of October, 2013.



CITY OF MENASHA

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NOTICE OF TOWN BOARD MEETING
TOWN OF HARRISON, CALUMET COUNTY, WI
MEETING LOCATION: HARRISON FIRE STATION 70 (CORNER OF COUNTY LP AND HWY 114)
WEDNESDAY, OCTOBER 16, 2013 AT 7:00PM

- 1) CALL TO ORDER
- 2) PLEDGE OF ALLEGIANCE
- 3) ROLL CALL
- 4) ITEMS FOR DISCUSSION AND POSSIBLE ACTION
 - a) Nominations and Appointments for Town Board Supervisor
 - b) Nominations and Appointments for Waverly Sanitary District Commission
- 5) ADJOURN

NOTICE OF TOWN BOARD AND VILLAGE BOARD JOINT MEETING
TOWN OF HARRISON, CALUMET COUNTY, WI
VILLAGE OF HARRISON, CALUMET AND OUTAGAMIE COUNTIES, WI
MEETING LOCATION: HARRISON FIRE STATION 70 (CORNER OF COUNTY LP AND HWY 114)
WEDNESDAY, OCTOBER 16, 2013 IMMEDIATELY FOLLOWING THE TOWN BOARD MTG

- 1) CALL TO ORDER- Town Board and Village Board
- 2) ROLL CALL- Town Board and Village Board
- 3) CLOSED SESSION: The Town Board will convene into closed session:
Pursuant to section 19.85(1)(g) of the Wisconsin Statutes to confer with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved and section 19.85(1)(e) to deliberate or negotiate the purchase of public property, investment of public funds, or conduct other specified public business when competitive or bargaining reasons require a closed session.
*Intergovernmental Agreement with Waverly Sanitary District and the Town and Village of Harrison
*Intergovernmental Cooperation Agreement between the Town of Harrison and the Village of Harrison
The Town Board will reconvene into open session pursuant to section 19.85(2) of the Wisconsin Statutes for action on the closed session and possible approval of agreements.

The Village Board will convene into closed session:
Pursuant to section 19.85(1)(g) of the Wisconsin Statutes to confer with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved and section 19.85(1)(e) to deliberate or negotiate the purchase of public property, investment of public funds, or conduct other specified public business when competitive or bargaining reasons require a closed session.
*Intergovernmental Agreement with Waverly Sanitary District and the Town and Village of Harrison
*Intergovernmental Cooperation Agreement between the Town of Harrison and the Village of Harrison
The Village Board will reconvene into open session pursuant to section 19.85(2) of the Wisconsin Statutes for action on the closed session and possible approval of agreements.
- 4) BUDGET
 - a) Joint Budget Meeting between the Town of Harrison & Village of Harrison
- 5) ADJOURN- Town Board and Village Board

EXHIBIT B

Dated: October 3, 2013***** Agenda *******WAVERLY SANITARY DISTRICT**

Regular Meeting – 8:30 a.m. – October 8, 2013

District Office – N8722 County Road LP

1. Meeting Called To Order
2. Approval and Acceptance of 9/10 and 9/26/13 Meeting Minutes
3. Receipt Acknowledgement/Approval of September 2013 Financial & Budget Comparison Reports
4. Communities/Customers/Service Concerns
 - Future Intergovernmental Cooperation Agreement between VOH and WSD – Status report
 - Regional Stormwater Detention Pond – Purchase price for acreage (approximately 2.5 acres required)
 - Access easement status
 - Village of Sherwood 2030 Draft SSA Plan // WSD's opposition letter – Status report
5. Monthly Water Sample Tests' Results – RWK to report safe sample tests' results
6. Old Business
 - None as of 10/08/13 meeting date
7. District's Repair/Main Extension/Modification Projects
 - ** Fire Lanes #5 -- #10 Sewer Lateral Repair Televising Project
 - RWK to report project status
 - Note: The Fire Lanes #5-#10 sewer lateral televising/repair project will be conducted in the same manner as the Fire Lanes #2-#4 project
 - ** Road 'J' and CTH "LP"
 - Road 'J' Sanitary Sewer and Water Main Extensions – 2nd Completion Date Extension (Original Completion Date: 9/13/13) (1st Extension at 9/10/13 meeting: 10/18/13)

Meeting Agenda
10/08/13
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7. District's Repair/Main Extension/Modification Projects -- Continued

**** Lift Station #1 Modification Project**

- Project status discussion
- Change Order #1 (Electric) – SCM to report

8. General Construction Status (Individual Developer Funded Projects)

- Papermaker Ridge-II – SCM to report
- Harrisville Place – SCM to report
- Bud Rusch Subdivision – SCM to report

9. New Business

- Future Lift Station – Joint Study Request from the Village of Harrison
- Establish the November Meeting Date – Tuesday, November 12, 2013 (8:30 a.m.) District office
- Establish selection of available dates for the 2014 Budget Meetings

10. Office Report

11. Field Report

- Faulty Manhole on Jenny Drive – Repair status

12. Other Business To Legally Come Before The Commission

13. Adjournment