



MEMORANDUM

Date: May 15, 2014

To: Common Council

From: Pamela A. Captain, City Attorney

RE: City of Menasha v. Waverly Sanitary District et al.
Calumet County Case No. 2013CV189

The parties agreed to stage briefing in this matter limiting initial briefing to a few dispositive issues and depending on how the court ruled, move into subsequent briefing as needed.

The City of Menasha and Waverly Sanitary District submitted briefs for the court's consideration with the primary initial issue brought up by Waverly Sanitary District being whether the parties' 1999 Intermunicipal Agreement among the Town of Harrison, Waverly Sanitary District and City of Menasha prevented the City of Menasha from filing this declaratory judgment action. After hearing last week, Judge Peter L. Grimm (Fond du Lac County), the presiding judge, dismissed the case that the City of Menasha filed. A written order was prepared by Waverly Sanitary District's attorney and filed with the court for its signature.

When a circuit court makes a decision with which a party disagrees, if there are legal grounds to do so, the decision can be appealed to a higher court. In this case, an appeal would be made to the Wisconsin Court of Appeals. Beyond that an appeal is made to the Wisconsin Supreme Court. Upon entry of the order, the City of Menasha will have 30 days within which to appeal the decision.

It is my opinion that there are grounds for an appeal. If desired, further discussion with respect to an appeal is recommended to occur in closed session.

Keep in mind that throughout any litigation process, including an appeal, the parties can continue talking in an effort to reach an amicable resolution to the dispute and end the litigation.

RECOMMENDATION: Motion authorizing the city attorney to proceed with an appeal of the court's decision in Calumet County Case No. 2013CV 189, City of Menasha v. Waverly Sanitary District et al.