



1 **City of Racine, Wisconsin**
2 **Common Council**

3 **AGENDA BRIEFING MEMORANDUM**

4 **COMMITTEE:** Finance and Personnel

LEGISLATION ITEM #: 0016-23

5 **AGENDA DATE:** January 9, 2023

7 **DEPARTMENT:** City Attorney’s Office

8 **Prepared By:** Deputy City Attorney Marisa L. Roubik

10 **SUBJECT:** Communication sponsored by Alder Taft on behalf of the City Attorney’s Office submitting
11 the claim of Grace Lutheran Church for consideration for disallowance.

13 **EXECUTIVE SUMMARY:**

14 Grace Lutheran Church claims reimbursement in the amount of \$50,000.00 for damages allegedly
15 caused by water in its basement arising from a sewer backup that occurred during the record-setting rainfall
16 on September 11-12, 2022. A.W. Oakes & Son, Inc. was performing a road repaving project in the vicinity
17 of the Church, which the City and the Wastewater Utility believe caused a blockage of dirt, gravel, and
18 debris in the sewer main just downstream of the Church’s lateral, in conjunction with this historical storm.
19 The City has notified West Bend Mutual Insurance Co., the insurer for A.W. Oakes & Son, Inc., of this
20 claim, because it is believed that their insured may be liable, in whole or in part, for the alleged damages.

21 The City Attorney’s Office recommends that this Committee disallow the claim of Grace Lutheran
22 Church because the City and the Wastewater Utility cannot be held legally liable for, so-called, “acts of
23 God,” such as unprecedented rainfall events, over which the City and the Utility have no control. The
24 Claimant may contact West Bend Mutual Insurance Co. to file a claim against A.W. Oakes & Son, Inc. for
25 any liability that may exist for the construction project’s contribution to this issue.

27 **BACKGROUND & ANALYSIS:**

28 The Claimant, Grace Lutheran Church of 3700 Washington Avenue, Racine, Wisconsin 53403,
29 filed this claim for reimbursement in the amount of \$50,000.00 for damages allegedly caused by water in
30 its basement arising from a sewer backup that occurred during the 200-year flood on September 11-12,
31 2022. The City and Wastewater Utility deny liability.

32 The record-setting rain event on September 11 and 12, 2022 lasted for over 18 hours and was of
33 historic proportions with recorded rainfall totals ranging from 6.75” to 9.75” in the City of Racine.
34 Statistically, this was considered a 200-year flood with a 0.5% chance of occurrence.

35 The Racine City sanitary sewers are cleaned on a 3-year cycle. The main that services this address
36 was last cleaned on August 19, 2020. The main in question flows into a manhole at the intersection of
37 Lawn Avenue and Washington Avenue. On the date in question, Lawn Avenue was under construction for
38 a repaving project that was being performed by A.W. Oakes & Son, Inc. The City and the Wastewater
39 Utility believe that this construction project, in conjunction with this historical storm, caused a blockage of
40 dirt, gravel, and debris in the sewer main just downstream of the Church’s lateral. Utility staff attempted
41 to flush the line, but ultimately, a contractor was called in to cut and repair the section of the pipe to remove
42 the blockage. After the section of the main had been repaired, Utility staff flushed the line again to remove
43 any debris that remained from the construction.

44 The City has notified West Bend Mutual Insurance Co., the insurer for A.W. Oakes & Son, Inc., of
45 this claim, because it is believed that their insured may be liable, in whole or in part, for the alleged damages.
46 The Claimant may contact West Bend Mutual Insurance Co. to file a claim against A.W. Oakes & Son, Inc.
47 for any liability that may exist for the construction project’s contribution to this issue.

48 The unusual 200-year storm that occurred on September 11-12, 2022 is considered an “act of God,”
49 which is a natural event or disaster that cannot be reasonably foreseen or prevented. The City and the
50 Utility cannot be held legally liable for such “acts of God,” over which the City and the Utility have no
51 control.

52 For the reasons set forth above, the City cannot be held legally liable for the alleged damages and
53 this claim should be disallowed.

54 _____

55 **BUDGETARY IMPACT:**

56 Assuming the recommendation to disallow this claim is adopted, this item would have a \$0.00
57 impact on the City’s budget.

58 _____

59 **RECOMMENDED ACTION:**

60 That the disallowance of this claim be recommended for approval.
61 _____