



DEMPSEYLAW

August 19, 2024

VIA E-MAIL

Ms. Natalia K. Taft, Chairperson
Racine Wastewater Commission
Racine City Hall Annex, Room 227
800 Center Street
Racine, WI 53403

**RE: Status Report re: Racine Area Intergovernmental Sanitary
Sewer Service Agreement**

Greetings:

First of all, we appreciate being retained by the Racine Wastewater Utility Commission to provide legal assistance in the Commission's response to the City's June 21, 2024 letter regarding alleged Material Change of Circumstances and the Village of Mount Pleasant's July 11, 2024 Notice of Breach.

After being retained we contacted the lawyers representing the City, Mount Pleasant, Caledonia, Sturtevant, Wind Point, and Somers for the purpose of discussing the Commission's response to the letters filed by the City and Mount Pleasant. We are pleased to report that the various lawyers agreed to participate in the informal scheduling conference, which the undersigned conducted on Wednesday, August 7. (The law firm representing Wind Point recused itself because of a conflict relating to work it performs for the City. Wind Point has since retained new counsel.) The conference resulted in a civil, productive discussion of next steps. For the reasons described in more detail, below, the parties recommended no action by the Commission for the time being. A follow up conference call among the lawyers is scheduled for Thursday, August 22.

The City's June 21 letter invokes the process set forth in the Agreement that applies to the existence of a Material Change of Circumstances in accordance with Section 2.8.p. The Agreement defines "Material Change of Circumstances" as any change of circumstances resulting from judicial, legislative or administrative actions by federal, state, or local authorities, which occurs after December 31, 2001, which is not otherwise specifically provided for in the Agreement, and which has the effect of materially altering the Cost-Benefit Balance of the Agreement. The "Cost-Benefit Balance" means the carefully structured balance of benefits and costs or burdens, which the Parties extensively negotiated and have accepted in the Agreement.

More specifically, the City's June 21 letter cites numerous legislative changes that have been enacted since the execution of the Agreement that have resulted in significant adverse impacts to the City under the original Cost-Benefit Balance agreed to by the parties. It goes on to cite the enactment and impact of 2017 Wisconsin Act 58, which authorized the creation of an Information and Technology Zone. (The City's letter contains a detailed list of other changes that need not be cited in this report.)

Mount Pleasant's letter constitutes a Notice of Breach pursuant to Section 12.16.b of the Agreement. More specifically it references Section 3.3 of the Agreement that says that sewer service to Mount Pleasant must be provided to the extent that the relevant territory is within the defined Sewer Service Area. According to Mount Pleasant, its Notice of Breach runs "parallel" with the City's notice of a Material Change of Circumstances. Although this is a plausible position, we have not yet clarified the relationship between the two processes.

As the Commission may know, Mount Pleasant contends that the City Council has not approved the June 21 notice of Material Change of Circumstances and, therefore, that the June 21 notice is defective. The City Attorney informed the group that he will recommend that the City Council ratify the June 21 letter in order to remove any potential jurisdictional issues that may interfere with the administration of the process under the Agreement.

As mentioned, the attorneys representing the affected parties will reconvene on August 22 following the City Council's August 20 meeting. It is for this reason that the group, including the undersigned, recommends that at its August 20 meeting the Commission should postpone taking action on all pending development and sewer extension requests by any of the parties. Another reason for the Commission not taking action on August 20 is that the lawyers for both Mount Pleasant and the City informed the undersigned that there are active discussions between the parties. The undersigned anticipates that the Commission will be asked to respond to the City's June 21 letter and Mount Pleasant's July 11 letter at the Commission's September meeting, as well as pending sewer extension requests. Having said this, the Commission should anticipate that it will have an important and active role in administering the pending disputes under the Agreement.

Thank you for your consideration of this recommendation.

Sincerely,

DEMPSEY LAW FIRM, LLP



John A. St. Peter

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cc: Mr. Nate Tillis, Utility Director