

August 25, 2022

Timothy Asplund
Monitoring Section Chief
Bureau of Water Quality
Division of Environmental Management
101 S. Webster Street
PO Box 7921
Madison, WI 53707

Subject: Oshkosh 2030 Sewer Service Area Plan Amendment Re-Submittal of Additional Materials

Track No. 173

Dear Mr. Asplund:

This is a response to your letter dated June 27, 2022. In that letter the WDNR determined that the East Central Wisconsin Regional Planning Commission's (ECWRPC) original request for a Sewer Service Area Amendment to the Oshkosh 2030 SSA Plan lacked sufficient detail for the DNR to issue an administrative decision.

Enclosed, please find a staff memo responding to the DNR's request for more information. As outlined in the first element of the DNR's letter, the first section includes details regarding the amendment request's congruence with ECWRPC policies and procedures published in the Plan and a detailed presentation of the commission's receipt and evaluation of all comments and submittals from affected parties including the public comments at the June 8th Committee meeting.

The second section in the staff memo is in response to the DNR's second request for ECWRPC's cost-effectiveness review of the proposed project. A full description of ECWRPC's consideration of all materials and direct communication with affected parties is included. In addition, the memo contains ECWRPC's evaluation and conclusion of the cost-effectiveness proposals. ECWRPC, at the request of the DNR, submitted the information and revised analysis to the Community Facilities Committee (CFC) on August 23, 2022, to reconsider the June 8th, 2022 determination. The staff memo was presented along with the cost-effective analyses.

Please find the cost-effectiveness analyses from both the City of Oshkosh and the Town of Algoma Sanitary District No. 1 attached for your review and consideration.

The draft meeting minutes from the Community Facilities Committee is attached to this letter which includes the public comments. ECWRPC did not have any further communication with either party in the time period following the meeting on August 23rd, 2022 and prior to the issuance of this letter dated August 25th, 2022. The Oshkosh 2030 SSA Plan amendment request (ECWRPC Track No. 173) was approved by the ECWRPC Community Facility Committee on August 23, 2022.

Please note, all materials associated with the original amendment request which proposes to modify the DMA boundaries in the Oshkosh 2030 SSA Plan were submitted to the DNR on June 9, 2022.

The materials attached for your consideration at this time include the staff evaluation and recommendation, the City of Oshkosh's cost-effectiveness analysis, the Town of Algoma Sanitary District's cost-effectiveness analysis, and the CFC Meeting Agenda and Draft Meeting Minutes. This information will also be uploaded to SWIMS.

Thank you for your consultation regarding the DNR's request and support during this data collection and re-evaluation process.

If you require any additional information or have any questions, please contact me at wpaustian@ecwrpc.org or at 920-886-6832.

Sincerely,



Wilhelmina Paustian
Senior Planner

att: Staff Memo
Cost-Effective Analysis from City of Oshkosh
Cost-Effective Analysis from the Town of Algoma Sanitary District No. 1
Community Facilities Committee Agenda August 23, 2022
Community Facilities Draft Meeting Minutes

cc: Kevin Englebert, Deputy Director, ECWRPC
Melissa Kraemer Badtke, Executive Director, ECWRPC
Gunilla Goulding, Plan Review Engineer, WDNR
Alixandra Burke, Staff Attorney, WDNR

TO: Community Facilities Committee
FROM: Wilhelmina Paustian, Senior Planner
DATE: August 11, 2022
RE: Oshkosh SSA Plan Amendment Request (Track No. 173): Staff's Amendment Review Timeline and Final Evaluation

In a letter dated June 27th, 2022, the Wisconsin Department of Natural Resources (DNR) requested additional information from the East Central Wisconsin Regional Planning Commission (ECWRPC) regarding the Oshkosh SSA Amendment submittal packet delivered on June 9th, 2022. The first item that DNR requests is a summary of all facets of the Oshkosh SSA Amendment request including the Commission's receipt and evaluation of all comments and submittals from affected parties relevant to the amendment request. The second item that DNR requests is an evaluation of the cost-effective analyses from the Algoma Sanitary District and the City of Oshkosh. This memo responds to the DNR letter issued on June 9th, 2022 by providing a response to the two elements requested.

1. Timeline of events and ECWRPC correspondence.

Section 208 Letter Review to the City of Oshkosh

On March 2, 2022, the Commission received a request for a Section 208 Conformance Letter from the City of Oshkosh. On April 4th, the DNR and Commission Staff held a meeting to discuss the City of Oshkosh's Section 208 Water Quality Management conformance review request of the sanitary sewer extension along Witzel Avenue. The extension requested by Oshkosh proposed to serve a new development called "The Wit."

The DNR provided edits to the Commission's draft 208 Letter, which was sent to the City of Oshkosh on April 6th. The Algoma Sanitary District was copied on that email. The letter stated that prior to ECWRPC issuing a conformance letter for the project as requested, the City would need to follow one of two options:

- 1. Change the scope of the project so that the sanitary sewer extension lies entirely within the City of Oshkosh's Designated Management Agency (DMA) boundary.*
- 2. Submit an amendment request to change the DMA boundaries in the Oshkosh SSA Plan.*

Events Following the 208 Conformance Review Letter

On April 6th, Commission Staff had a phone call with Jonathan Smies, Godfrey & Kahn, representing the City of Oshkosh, to discuss the 208 Conformance Review Letter. Mr. Smies sent a follow-up email with his reference to Map 9 in the Oshkosh SSA Plan, which he felt was overlooked during the consideration of the 208 Letter request. Mr. Smies also sent a letter from ECWRPC dated January 6, 2004, stating that no major concerns were found with the cooperative plan between the city of Oshkosh and the Town of Algoma as it relates to the SSA

Plan. This plan did not include the Algoma Sanitary District and was written prior to adoption of the current the Oshkosh SSA Plan, which was adopted in 2007.

On April 12th, Commission Staff replied to Mr. Smies' email providing additional background regarding the 208 Conformance Review Letter. The Commission received no immediate response.

Hi Jon,

Thank you for the phone call last week and for sharing the additional information. As the 208 letter details, during our conformance review we check for the designated management agency (DMA) status at the proposed project location. We reference Map 5 from the Plan in the conformance review because that map shows the DMA boundaries listed on page 60 and approved by the WDNR in 2007. As the letter states, "the proposed project, as submitted, is not in conformance with the Oshkosh SSA Plan because it proposed to collect wastewater from outside the City's DMA boundary."

Conditions and boundaries may change for a variety of reasons after the approval of an SSA Plan, which is why amendments to the Plan may be made. If there is a change in Plan conditions, the Plan needs to be amended to reflect that change prior to issuing a letter of conformance. Number "2" in the letter states that "an amendment request to change the DMA boundaries in the Oshkosh SSA Plan" may be submitted for consideration. However, due to the known pending litigation regarding the proposed project, we will require resolution of the litigation prior to reviewing any request to amend the Oshkosh 2030 Sewer Service Area Plan related to this project. Given different interpretations of the SSA Plan and sewer service legal requirements/responsibilities by the parties involved, we believe it is prudent to wait for legal resolution of this matter before proceeding.

I hope this helps provide some additional background information on the conformance review process and subsequent 208 letter issued.

On April 26th, Skylar Yaktus, Strand Associates, submitted a revised plan set for the City of Oshkosh's Witzel Ave Sanitary Sewer Project with no formal review requested.

On May 3rd, Lawrie Kobza, Boardman Clark, representing the Algoma Sanitary District, sent an email with a copy of the Order Granting the Temporary Injunction, which states that the court prohibits the City of Oshkosh from interfering with the Town of Algoma Sanitary District's sewer mains on Wyldwood Drive, Maryden Road, and Witzel Avenue. Ms. Kobza stated that the revised plan set appeared to violate the court order since they indicate that the City intends to disconnect the District's customers along Witzel Ave. Ms. Kobza also disagreed that the project lies entirely within the City's DMA boundary.

On May 4th, Commission Staff spoke with Ms. Kobza on the phone to discuss the ramifications of the temporary injunction. Commission Staff understood that the legal case involving the injunction relates to the City proposing to take over existing Algoma Sanitary District customers and not specifically about DMA status in regards to the Oshkosh SSA Plan or the Wit development.

On May 5th, Commission Staff sent an email to Mr. Yaktus requesting more information on the revised plan set that was emailed on April 26th; specifically, to clarify if they were submitting an amendment or a new 208 Conformance Review request.

On May 10th, Mr. Smies sent an email to Commission Staff requesting the revised plans be reviewed for conformance as soon as possible:

I'm responding to your e-mail on behalf of the City. We are interested in having the revised construction plans reviewed for conformance as soon as possible to allow for work to begin to provide service to The Wit development, which the Sanitary District has, to date, not opposed. To address the Sanitary District's concern regarding the two or three properties off Witzel Avenue, the City will remove those properties from its plan for this work. The City would then seek expedited review of the revised plan.

The City would also like to separately pursue an amendment to the Designated Management Agency ("DMA") boundaries, to the extent the ECWRPC considers the operative DMA boundaries to be those as contained in Map 5 of the Oshkosh 2030 SSA Plan, and not those illustrated on the ECWRPC's own map available online here: [Sanitary District Boundary | Sanitary District Boundary \(arcgis.com\) \(https://data-ecwrpc.opendata.arcgis.com/datasets/ECWRPC::sanitary-district-boundary/explore?location=44.036927%2C-88.611741%2C13.00\)](https://data-ecwrpc.opendata.arcgis.com/datasets/ECWRPC::sanitary-district-boundary/explore?location=44.036927%2C-88.611741%2C13.00). I also attach a PDF file showing the area in question from this map.

Could we arrange for a time to discuss the amendment process?

On May 11th, Mr. Yaktus sent another revised plan set to the Commission with no formal review requested.

On May 11th, Commission Staff sent an email to Tim Asplund, DNR, and Lisa Helmuth, DNR, requesting assistance with preparing a review for a DMA Amendment and asking for examples of DMA Amendments in other WQM programs. The Commission does not have a specific DMA Amendment Policy in the Oshkosh SSA Plan, but has general SSA amendment criteria.

On May 12th, Ms. Helmuth sent Commission Staff an email explaining the complexity of DMA changes:

These types of changes are fairly unique to your area due to the proximity of municipalities and the time sequence involved between updates. For example, CARPC works on an incremental basis to update amendments - updates based on imminent development. SEWRPC went through a series of mega-plan updates in the 1990s that -- for the most part -- are still valid. And finally, Brown County works through the plan update process with a comprehensive update for the whole county, so that the "service areas" reflect solid master plans and have community involvement at the same time.

However, I remember some DMA changes through ECWRPC and will look for those, as well as conduct a larger review - both in Wisconsin and in other states.

On May 12th, Commission Staff reviewed the Commission's internal log of past amendments to find other DMA Amendment examples. Commission Staff sent Ms. Helmuth an email with the one example that was found.

I was able to find one example in our office from back in 1999, where the DMA status changed in an SSA when the Town of Menasha SD No. 4 was officially dissolved by the Town and was replaced by the Town of Menasha Utility District. The DMA status was re-designated because of that change. In that application, I saw that there was a letter of request and a map of the new utility district.

Just thinking through some options on my end... I'm thinking we can move forward in a similar fashion, where the City submits a map to show that the boundaries have changed since 2007, and provide us with the date they were changed. Perhaps it will be more involved than that. I'll wait to hear what you have in mind.

On May 13th, Commission Staff sent an email to the DNR, the City of Oshkosh, and the Algoma Sanitary District inviting all parties to meet together to discuss the amendment process and resolve any issues regarding the 208 Conformance Review Request from the City of Oshkosh.

On May 13th, The DNR sent an email to Commission Staff saying they would send a draft of the AWQMP Handbook to use as a resource in response to the request for assistance with DMA changes. No further explanation or examples were provided.

On May 16th, Mr. Smies, sent an email to Commission staff stating the following:

Through our discussion it appears that the ECWRPC will not issue a letter of conformance for the work without an amendment to the sewer service area plan because a small portion of the project would be outside of the City's designated management area. The City is not postured to go through that process now. Instead, the City's focus is on getting the sewer extension completed as soon as possible given The Wit's need for service for its residents this summer. I want to also stress again that the District agreed in Court that it had no objection to the City serving the Wit and the Court specifically addressed this issue stating that the City could amend its plan to serve The Wit.

On May 17th, Commission Staff forwarded the email from Mr. Smies to Ms. Helmuth and Mr. Asplund, DNR. Since there is no specific DMA Amendment Policy, Staff again requested feedback from the DNR regarding what documentation the City needs to submit for an amendment application to change the DMA boundaries:

Good Morning Lisa and Tim,

I am forwarding an email I received from Jonathan Smies yesterday. He works for the City of Oshkosh. The City is requesting that we issue a conformance letter for the sewer extension to The Wit, prior to amending SSA Plan to reflect the DMA boundaries. Please see the email below for more details.

I would like to get your thoughts on this matter. A few things that I think we need to address:

- 1. We have talked about this before, but I just want to confirm with you one more time: Does the City need to go through the above amendment process first, prior to issuing a conformance letter?*

2. Finalize a list from the DNR with the documents the City needs in order submit a complete amendment application to change the DMA boundaries.
 - a. I started a draft list:
 - i. Cover letter with the amendment request
 - ii. Map of the project location
 - iii. Map reflecting the Algoma Sanitary District/City of Oshkosh boundaries
 - iv. Proof of the boundary change (Resolution? Letter of support from the Algoma Sanitary District? Other?)

Lisa, I know we were emailing yesterday about getting information from the draft handbook regarding DMAs to help me. But would you be able to provide some feedback regarding the questions above as well?

If you prefer to discuss this over the phone, my number is 920-886-6832.

On May 19th, Commission Staff sent a response email to Mr. Smies, stating that the Commission would like to meet with all affected parties together, not individually with the City, to discuss the sewer extension project.

On May 20th, Ms. Helmuth, DNR, sent an email to the Commission Staff stating that the WQ Planning and Facility Planning Programs were conferring on the issue with their legal team and continuing internal discussions. Ms. Helmuth stated that she had some additional questions to ask Commission Staff and would reach out the following Monday, May 23rd. DNR planned to meet on Tuesday, May 24th, with the all affected parties. This meeting was not formally scheduled yet as the City had not yet responded. Ultimately, the meeting was cancelled due to the fact that the City of Oshkosh did not respond to the meeting request.

On May 20th, Commission Staff had a phone call with Mark Rohloff, City of Oshkosh. Mr. Rohloff stated that the sewer extension to the Wit is only 500 feet and there was a court order where the Algoma Sanitary District conceded that 500 feet of service to the City of Oshkosh. The Commission had not received that yet, but Melissa Kraemer Badtke, ECWRPC, requested they send it to us. Mr. Rohloff also stated that the next Community Facilities Committee (CFC) meeting scheduled for June 8th was too late of a date to meet and review the SSA Amendment request because Mr. Rohloff stated the City of Oshkosh will lose their contractor if they wait that long. In addition, Mr. Rohloff said will be out of the office the following week for family matters and did not want to miss the meeting. He was hesitant to get everyone in the room together because there are many separate issues aside from the DMA status issue that that were occurring between the two parties.

On May 20th, Lynn Lorensen, City of Oshkosh, emailed the Commission Staff stating that the City did want to meet with the Commission, but had limited availability and could not meet on Tuesday, May 24th. Ms. Lorensen stated that the City was interested in moving forward with an SSA Amendment request focused on servicing the Wit development:

At this time, we are not ready to move forward with a general overview of the map amendment. It is still our intent to look at the broader issues, but in consideration of the developer's timeline, we are solely focusing on simply extending services to the Wit at this time. The Wit is an important project bringing much needed workforce housing to the City of Oshkosh.

On May 20th, Commission Staff also received an email from Ms. Helmuth stating that the DNR intended to request the City of Oshkosh/Strand Associates to withdraw their plan review request for the sewer project since they had been updating their construction plans.

Gunilla Goulding, DNR, sent a follow-up to Ms. Helmuth's email conferring that they were requesting the City of Oshkosh to withdraw their review request.

On May 23rd, Commission Staff sent an email to all affected parties (DNR, Algoma Sanitary District, and the City of Oshkosh) stating that due to the lack of participation from all, the meeting on May 24th would be cancelled.

On May 23rd Staff emailed Ms. Helmuth requesting times for availability to meet to discuss the project and work together to develop clear next steps for affected parties.

On May 23rd Commission Staff, sent the following email to all interested parties:

Based on the guidelines we received from the DNR, ECWRPC cannot issue a 208 WQM Conformance Letter for the City of Oshkosh sanitary sewer extension to service the Wit until the DMA boundary in the current Oshkosh SSA Plan is amended. The following is a list of documents the City of Oshkosh needs to include in the amendment application:

1. *Review Request Form (Project Type = SSA Amendment)*
<https://www.ecwrpc.org/wp-content/uploads/2013/10/SSA-Fee-Payment-Form.pdf>
2. *Cover Letter Requesting a SSA Amendment to Change the DMA Boundary for the Project Location*
3. *Map of the Project Location*
4. *Map Reflecting the Current Algoma Sanitary District and City of Oshkosh Boundaries with Documentation (Including any Annexations or Boundary Agreements)*
5. *Letter of Support from the Algoma Sanitary District*

The DNR was copied on this email, and Commission Staff did not hear or receive any comments from the DNR.

On May 23rd Lynn Lorensen sent an email following up on Mr. Rohloff's discussion with Ms. Kraemer Badtke. The first item sent was a document of the court proceedings which indicated that the sanitary sewer extension and service to 'the Wit' was not in dispute. The second item was a list of projects where the Algoma Sanitary District and the City of Oshkosh had sanitary sewer extending beyond another jurisdiction's DMA without first requiring a SSA Amendment. Commission Staff was not able to confirm when the conformance reviews for the sewer extensions took place for any of the individual projects. Below is an excerpt from Ms. Lorensen's email:

Extension of facilities through a portion of a DMA does not require amendment of the SSA.

In the past projects have been completed which have run through a portion of another jurisdiction's DMA and that those projects have not gone through a full process to amend the DMA and SSA. Just focusing on the City and Algoma Sanitary District the City found the following examples:

Examples of pipes within other DMA areas:

Witzel Ave.

The Algoma SD has pipe extending approximately 335' into the City's DMA

Havenwood Dr.

The Algoma SD has a pipe extending approximately 100' into the City DMA to connect to the City system.

Fox Fire Dr.

The Algoma SD has a pipe extending approximately 25' into the City DMA to connect to the City system.

Oakwood Rd

The Algoma SD has a pipe extending approximately 195' into the City DMA to connect to the City system.

N Washburn St

The City has a pipe extending approximately 640' into the Algoma DMS to connect to the SD system.

In some situations, it may be possible and even preferable to amend the DMA, but boundaries are not always as neat and tidy as we might like and sometimes overlap will happen. The City believes that in other areas there are existing pipes within another party's DMA and multiple pipes in the rights of way – similar to the current project where the City's pipe is planned to run roughly parallel to the District pipe for some short segment. The City is supportive of reviewing all the situations to make a reasonable long term determination of DMA boundaries, however, whether the boundaries change long term or not, the City believes that there will likely continue to be segments where both parties may have facilities within a particular segment of right of way and that it is unreasonable and very frankly unrealistic to completely separate two systems operating side by side in certain areas with boundaries that have no overlapping piping. For example in this case, if the DMA were amended, the District would not be expected to remove facilities that it continues to use to serve other customers from what would now be within the City's DMA.

In this case the City is serving a project being built in the City of Oshkosh in the City's DMA, the fact that the pipes to serve the project need to cross a small portion of the District's DMA should not unreasonably hold up this much need housing project.

On May 24th, Commission Staff spoke with Steve Gohde and Amy VandenHogen from the City of Oshkosh to answer questions from them regarding the documents they need to submit for the Commission to consider an SSA Amendment. The City discussed sending transcripts of the court hearing showing that there is no dispute over serving “the Wit” in court with the Sanitary District as a substitute for a letter of support from the Sanitary District. Commission Staff sent a follow-up email to the City reiterating the phone conversation, and the DNR was copied on this email. Commission Staff did not receive any correspondence from the DNR stating any objection to the path forward.

City of Oshkosh SSA Amendment Submittal

On May 25th, the City of Oshkosh submitted a SSA Amendment request to amend the DMA boundaries. The City of Oshkosh requested dual DMA Status along Witzel Avenue with the Algoma Sanitary District. In addition, the City requested a change in DMA status along the north

200 ft of the lot and the right-of-way abutting the lot on Witzel Avenue. The City plans to extend sanitary sewer in this area to serve a multi-family housing development called “The Wit.”

On May 27th, Ms. Kobza, sent a letter stating that the Algoma Sanitary District objected to the City’s Amendment request.

On May 31st, Commission Staff had a phone call with Kevin Mraz, Algoma Sanitary District, letting the Commission know that the Algoma Sanitary District intended to submit a cost-effective analysis to counter the City’s amendment proposal. Note that the Commission did not request a cost-effective analysis from the City to accompany the original SSA Amendment request.

On June 1st, the Algoma Sanitary District submitted a cost-effective alternative proposal to the City’s SSA Amendment request stating that the District can serve the Wit in a more cost-effective manner.

On June 2nd, Commission Staff had a phone call with Ms. Helmuth, DNR. DNR Staff expressed their interest in learning more about the public outreach process, stated that changes to the Plan will have repercussions, and had a general interest in understanding why the City intends to install the sewer and what the future plans of the City include which would identify their need for the infrastructure.

On June 3rd, Commission Staff had a virtual call with DNR Staff to discuss the amendment and upcoming Community Facilities Committee (CFC) meeting on June 8th. DNR Staff was invited to the CFC meeting. The DNR Staff expressed some concerns over the urgency of service to the Wit and the cost-effectiveness of the project. The DNR and Commission Staff discussed the approach to conducting the CFC meeting including public comment and CFC’s role in the SSA Amendment process.

On June 6th, Commission Staff called the City of Oshkosh and the Algoma Sanitary District to inform them that they would have an opportunity to speak at the CFC with a 10-minute time limit.

Community Facilities Committee

On June 8th, the Commission held the Community Facilities Committee meeting at 10:00AM. During the public comment portion of the meeting, each affected party spoke regarding the proposed SSA Amendment.

CFC Public Comment

Mr. Smies, representing the City of Oshkosh, presented their amendment request to extend sanitary sewer to allow for the expected occupancy “next month” [July 2022] of the 144-unit apartment complex (the Wit), located in the City of Oshkosh. Mr. Smies stated that their request to amend the DMA status along a portion of Witzel Ave. and the north end of the property of the Wit, would reflect the City’s current corporate boundary. Mr. Smies said that there is a dispute between the City of Oshkosh and the Algoma Sanitary District, however, nothing about the service to the Wit is part of the court proceeding, or will affect anything occurring in the court proceeding. He stated that the District did not object to the City serving the Wit in litigation, and referenced the court proceedings submitted in the amendment application. Mr. Smies

suggested that the Sanitary District's current rates are artificially low resulting in an inequitable subsidy by the City customers of the district. That facet is part of a larger dispute between the City and the District. Mr. Smies stated that there is a six-figure connection charge that the District did not include in the cost analysis that they submitted. In addition, there are hundreds of thousands of dollars in invoices that have been issued by the City to the District and those remain unpaid.

Ms. Kobza, representing the Algoma Sanitary District, stated opposition to the amendment for two reasons. The first she relayed is that the amendment was overbroad. The District is concerned that the City will use the dual DMA status to further their attempts to take over existing district customers and referenced the City's original proposal to disconnect the District's existing sanitary mains in Maryden Road and Wyldewood Road and connect to a new City sewer main in Witzel Avenue. Ms. Kobza stated that the City would only need to extend the DMA along Witzel Ave to the east of Maryden Road to be sufficient to serve the Wit, rather than extend the DMA boundary to Wyldewood Drive. She said that the District needed to bring a lawsuit in order to prevent the City from taking over customers in that area and were granted a preliminary injunction from disconnecting the existing mains. Ms. Kobza also said that the City intends to stop providing wastewater treatment service to the District in 2024.

Mr. Mraz, Algoma Sanitary District, discussed a second reason for opposing the amendment, stating that the District believes the amendment is not the most cost-effective result. He referenced Exhibit A and Exhibit F from Algoma Sanitary District's proposal. Mr. Mraz stated that the District already has an existing sanitary sewer main along Witzel Avenue. He relayed that the District would effectively only need to pay for an 85-foot, 8" sewer lateral to connect the Wit to the District's mains.

CFC Staff Report

Wilhelmina Paustian, ECWRPC, presented the Commission's Staff Memo -regarding the Oshkosh SSA Amendment request to the Committee. Staff reviewed the amendment with respect to the SSA Plan's Policies and Procedures for plan amendments. Absent a specific DMA Amendment Policy, staff reviewed the Amendment request with respect to general SSA Amendment policies and procedures. Staff also examined files that provided some limited insight on this type of amendment. One example was from 1999. The Town of Menasha SD No. 4 was officially dissolved by the Town and was replaced by the Town of Menasha Utility District. The DMA status was formally re-designated because of that change. Using that as precedent, Commission Staff weighed the fact that the Wit property was annexed in March 2018 was now within the City corporate limits. The SSA Amendment could be an amendment to the City's corporate boundary originally mapped in the Oshkosh 2030 SSA Plan.

In addition to the City's boundaries, Staff reviewed the area for any Environmentally Sensitive Areas as defined in the SSA Plan. None were mapped in this area.

The City submitted a transcript of court proceedings from April 18th highlighting sections demonstrating that the Algoma Sanitary District's injunction is intended to stop the City from affecting the Sanitary District's current infrastructure and not to prevent the City from extending service to the Wit. This document also concurred with conversations staff had with Mr. Smies and Ms. Kobza. With that information, Commission Staff brought this to the CFC with the understanding that the City of Oshkosh and the Algoma Sanitary District would follow any applicable laws to service sanitary sewer customers and construct sewer lines in this area.

Staff reviewed the Algoma Sanitary District's cost-effective alternative to the City's proposal. However, a cost-effective analysis was not originally requested and was therefore submitted voluntarily by the District only. Mr. Smies, during the public comment section of the meeting stated that the District was missing a six-figure connection charge in their analysis. This detail was not expanded upon at the June 8th meeting. Ultimately, following DNR's guidance, Commission Staff did not make a recommendation regarding the amendment to the Committee.

CFC Committee Discussion

The Committee discussed the proposed SSA Amendment submitted by the City of Oshkosh. Committee member Jeff Nooyen asked the position of the DNR. Kevin Englebert, ECWRPC, stated that the committee will make a recommendation to the DNR. The DNR then reviews all materials including the Committee recommendation to make the final administrative decision. Mr. Asplund, DNR, concurred with Mr. Englebert's statement. Aaron Jenson, Committee member asked if there is an appeal process, and Mr. Englebert provided a brief overview of the process. Brenda Schneider, Committee Chair, suggested a third option to table the item to allow the parties to discuss and negotiate and allow the court to process the legal action. Chair Schneider asked if the Sewer Service Area was addressed in the intergovernmental agreement in 2018, and Commission Staff did not think so as it was an intergovernmental agreement between the City of Oshkosh and the Town of Algoma. Mr. Nooyen mentioned the development was presented as time-sensitive, and made a motion to recommend approval of the SSA Amendment request. Dave Albrecht, seconded the motion. The motion passed 4-1 with Chair Schneider opposing the motion.

SSA Amendment Submittal to the DNR

Following the CFC meeting on June 8th, Commission Staff drafted the meeting minutes, wrote a cover letter, and submitted the Staff Memo and all application materials to the DNR with the CFC's recommendation to approve the request. This occurred on June 9th.

DNR's Response Letter

In a letter dated June 27th, the DNR wrote that the amendment submittal lacked sufficient detail for the DNR to issue an administrative decision. The DNR requested additional information and a review of the cost-effectiveness of the proposed project.

On July 7th, Mr. Englebert and Ms. Paustian met with Ms. Helmuth, Mr. Asplund, Jason Knudson, and Alixandra Burke, DNR, to discuss the DNR's letter in more detail to ensure the Commission understood the DNR's request for more information.

On July 8th, following the call with the DNR, Ms. Paustian sent an email to the City of Oshkosh, informing them that additional information was requested from the DNR and provided them an opportunity to submit a cost-effectiveness analysis. The email was directed to the City of Oshkosh as well as the Algoma Sanitary District. The Commission provided the City and the Sanitary District each an additional opportunity to submit (or resubmit) a cost-effective analysis.

On July 15th, the Commission received analyses from both the City of Oshkosh and the Sanitary District. In accordance with direction from DNR during the Commission's conversation with the DNR on July 7th, the Commission sent the cost-effective analyses to the DNR on July 18th,

requesting that the wastewater facility team conduct a methodology review to make sure the parties fulfill their requirement for a complete submittal, as discussed during the July 7th meeting.

On July 22nd, Mr. Englebert and Ms. Paustian met with Mr. Asplund, Ms. Goulding, and Ms. Burke to discuss the cost-effective analyses and methodologies. The DNR suggested that the Commission request a formal estimate for direct cost for sewer service from the City of Oshkosh to get a better comparison between the two analyses that were submitted. DNR discussion underscored cost-effectiveness is just one component of the full SSA Amendment review.

On July 26th, Ms. Paustian emailed the City of Oshkosh to provide them a final opportunity to submit a direct cost estimate related to extending sanitary sewer to the Wit property.

On July 29th, the City of Oshkosh submitted a letter describing the City's direct cost to serve 'The Wit'.

On August 2nd, Ms. Paustian emailed all parties relaying that the SSA Amendment and final evaluation would be brought back to the CFC for their re-evaluation of the additional information, per the DNR's request. Ms. Paustian received separate phone calls from Mr. Gierach, Mr. Smies, and Mr. Mraz, all communicating they could provide more information if the Commission needed it for the evaluation and asking some questions regarding the CFC meeting details.

2. Evaluation of the City of Oshkosh's and Algoma Sanitary District's cost-effective analyses.

It is important to note that while the Commission does not have a specific DMA Amendment Policy in the Oshkosh SSA Plan, the plan contains general SSA Amendment criteria. Therefore, Commission Staff analyzed the amendment request in accordance with the general SSA Amendment criteria.

A. Comparison of the cost-effectiveness of the proposed amendment to other alternatives.

In the Algoma Sanitary District's cost-effective analysis, the District provided information stating that Davel Engineering & Environmental designed the sanitary infrastructure to connect The Wit's sanitary sewer and water system to the existing District collection system at Manhole 3. The only section of sewer that is not installed is the 85-ft connection between the District's sanitary main and The Wit's private system.

The City of Oshkosh approved The Wit's private sanitary sewer and water system on January 25, 2021. According to Davel Engineering's Project Plan, the Developer installed approximately 2,200 feet of sanitary sewer main and 1,000 feet of sewer laterals in early Spring 2022.

The District stated that in the Summer 2020, the contractor quoted a total project cost of \$10,000 to be paid by the Developer to complete the 85-ft connection at no additional cost or responsibility of the District Ratepayers. They suggested that the total project cost would be \$631,856 for the City of Oshkosh to serve The Wit. They further broke down that cost into two items: \$52,129 of developer fees and \$579,727 which would have to be paid by the City Ratepayers to cover the estimated construction costs.

In the original cost-effective analysis, the District also stated that The Wit would pay annual user fees around \$27,500 as a District customer compared to annual fees of \$39,500 as a City customer.

In the City of Oshkosh's cost effectiveness analysis, they stated that The Wit is just one part of a larger project which intends to service areas already within the City's DMA. Therefore, they suggested that the estimated costs for the entire project are necessary whether the SSA Amendment is approved or not. They are anticipating that the interceptor expansion construction project will serve approximately 72 acres, which includes The Wit property. The City expects to prevent rework of the system in the future by installing the interceptor during this project while also providing a single service for sewer and water. They stated that the Sanitary District failed to take into consideration that the proposed project will serve other areas within the City and that in their estimate of the City's cost, allocated the broad cost of the larger project directly to the Wit project.

Additionally, the City of Oshkosh stated that the project was properly bid, awarded to the low bidder, and that sewer service to the amended SSA results in no additional cost to the project. The total city cost for the sanitary portion of the interceptor expansion construction project in this area is \$711,000. They dispute that the cost for the entire project should be attributed to the segment to directly serve The Wit. The City's construction bid submitted on March 14, 2022 from PTS Contractors, Inc. was approximately \$14,000 to install the lateral to serve The Wit. The City also suggested that the District's quote of \$10,000 from 2020 is out of date.

The City is planning to levy special assessments for the installation of public sewer main per its Assessment Policy. This means the developer of The Wit will be charged \$33,129.44 for the installation of the new service main. With that fee and the construction bid cost of \$14,000. The City stated the total cost for them to serve The Wit is \$47,129.44.

The City of Oshkosh also submitted a copy of a letter from the Algoma Sanitary District to the Developer dated October 16, 2020. This letter indicated the District would charge additional fees to the developer. Specifically, it suggests a Contribution-in-Aid-of Construction (CAC) fee of \$8,264 for each 12-unit building connection and \$2,504 for the Clubhouse connection fee for a total of \$101,672. The \$150 Permit Fee for each connection was listed separately. The City suggests that by including the CAC charge alongside the original \$10,000 cost estimate for the sewer installation, the total cost for the District to serve The Wit is \$111,672.

It is not entirely clear what portion of the CAC charge is related directly to serving The Wit and what is necessary for the developer to pay. A connection fee may also be included if the City of Oshkosh were to serve the development. Further specifics as to the eligibility and reasonable fee for the developer in the CAC charge were not provided.

Commission Staff also evaluated non-monetary costs in accordance with the definition of a cost-effectiveness analysis in the Wisconsin Administrative Code NR 121.03(5). The District stated that the sanitary connection to its sanitary main on Witzel Avenue would be installed in less than one working day, not causing any traffic, detour, or local business disruptions in the area. The City did not directly comment on this, however the connection to The Wit is part of a larger expansion project and is therefore presumed to have a longer installation period. Other non-monetary factors include the fact that the anticipated residents of The Wit will be residents of the City of Oshkosh. If the City serves The Wit, those City residents would have a single service

provider for sewer and water services. This could represent a more efficient means of public services provision to the Wit. However, the District stated that they own sewers up to Westhaven Drive. It is presumed therefore, that the City of Oshkosh would be duplicating a sewer main for a portion along Witzel Avenue, west of Westhaven Drive.

Environmental costs were evaluated as part B of the Amendment Criteria below.

B. Assessment of the environmental impacts of the proposed amendment and evaluation of the ability of the existing sewerage facility to transport and treat the projected flows.

A sewer service area amendment review considers the environmental impacts of the proposed amendment. This Amendment is specifically for a DMA boundary change, allowing dual status for both the City of Oshkosh and the Sanitary District. With that, the environmental impact is the same. The connection does not appear to impact any mapped environmentally sensitive areas, regardless of the entity which serves the property if the connection is from Witzel Avenue to The Wit private sewerage system.

The review also considers the ability for the Wastewater Treatment Plant (WWTP) to treat the projected flows. Regardless of who serves The Wit property, the Oshkosh WWTP treating the sewerage is the same, and as the City of Oshkosh outlined, they have had numerous capital projects at the wastewater treatment plant (WWTP) totaling nearly \$10 million. In addition, they continue to have work done at the WWTP for a new tertiary treatment system at an estimated cost of over \$21 million. In fact, they budget \$1 million or more for annual flow monitoring of sanitary sewers. Therefore, the alternative means for meeting state water quality standards, effluent limitations, or other treatment standards are the same.

The Sanitary District stated that the sanitary sewer main on Witzel Avenue was televised, inspected, and remains in excellent condition with a remaining life of greater than the 20-year facilities planning period. The City would have to construct new infrastructure along Witzel Avenue including the lateral connection to The Wit. It is assumed that new construction would be sound infrastructure. The 85-foot lateral from The Wit to any sewer main on Witzel Avenue would have the same quality.

C. Amendments in Urbanized Area SSA's should be consistent with Policy 1.3 of ECWRPC's Long-Range Transportation/Land Use Plan Addendum.

An Amendment is encouraged to have a development proposal that meets the density requirements the community's local land use plan. In this case, the City stated that The Wit development conforms with the City's 2040 Comprehensive Land Use Plan, as a medium- and high-density Residential area.

As stated previously, a dual DMA status amendment is not outlined in a Policy. Criteria D through G relate to specific Policies and are therefore not applicable to this amendment. However, for the sake of a detailed amendment review and elimination of any questions about the validity of the amendment to other policies, they are addressed below.

D. Criteria for Amendments under Policy A & D

This states that the amendments under Policy A & D have a common boundary with the SSA. This amendment is already within the Oshkosh SSA.

E. Criteria for Amendment under Policy B

This states that the amendment under Policy B must be contained within an approved SSA Planning Area. This amendment is already within the Oshkosh SSA.

F. Criteria for Amendments under Policy A & B

This states that amendments under Policy A & B involving a swap of land acreage shall, to the extent possible, utilize consistent land use areas. This amendment does not involve a swap of acreage.

G. Criteria for Amendments under Policy C

This states that amendments under Policy C for unique facilities must fit the definition with appropriate documentation. This amendment does not involve a unique facility.

Summary

The Wit is located on an 18.5-acre parcel entirely within the City of Oshkosh corporate boundary as annexed with a larger surrounding area, effective March 2018. The north end of the Wit property is within the Sanitary District's DMA, approximately 3.14 acres. The southern 15.3 acres of the property is within the City's DMA. The proposed amendment is for a "dual" DMA status along Witzel Avenue, and the transfer of DMA status from the Algoma Sanitary District to the City of Oshkosh on the northern portion of the property where The Wit is located.

Both entities provided additional information in the cost-effective analyses disputing the correctness and reasonableness of the City of Oshkosh's invoices to the Sanitary District, the Sanitary District's unpaid invoices, and the status of the current contract between the City and the District for wastewater treatment. While important issues, the disputes between the two entities for issues outside of ECWRPC's role are encouraged to be worked out externally of this amendment process.

The issue of the injunction and the potential disconnection of sewers by the City is also not directly related to this amendment. A more detailed engineering review of the proposed connection and sewer extension takes place with the DNR during the wastewater facility review process.

As discussed in detail above, both entities would have the ability to serve the property with sound infrastructure, and the WWTP capacity is the same. The water quality and environmentally sensitive areas will not be different if one entity services the property versus another entity and neither factor is significant in relation to this proposed amendment.

The direct cost of the new construction is not obvious. Each entity provided different costs for either the City or the District to serve The Wit. It appears that the direct cost to install the approximately 85-feet of sanitary lateral to a sewer main on Witzel Avenue is comparable

between the City or Sanitary District. The City's larger interceptor expansion project is much higher than the direct connection. However, the City presented that the project serves a larger area within the City as described in the previous section. The service fees for the developer, the user fees for the customer, and connection fee vary across the two cost-effective analyses. It appears that the cost to serve The Wit are slightly higher for the City of Oshkosh than the cost for the Algoma Sanitary District.

Residents of The Wit are residents of the City of Oshkosh. They will be served by the City in every other aspect of public service provision: police, fire, water, and all other municipal services. In that sense, it is more efficient for a single entity, namely the City of Oshkosh, to serve their residents in all aspects.

Staff Recommendation:

Commission Staff conducted an evaluation of the proposed SSA Amendment with respect to the Policies and Criteria outlined in the Oshkosh SSA Plan, and NR 121, Wisconsin Administrative Code definition of a cost-effective analysis. ECWRPC is recommending that the Community Facilities Committee approve the City of Oshkosh's SSA Amendment (Track 173) request.

July 15, 2022

VIA EMAIL

Ms. Wilhelmina Paustian
Senior Planner
East Central Wisconsin Regional
Planning Commission

RE: City of Oshkosh's Cost-Effective Analysis

Dear Ms. Paustian:

On July 8, 2022, the East Central Wisconsin Regional Planning Commission ("Commission") sent correspondence to the City of Oshkosh ("City") providing an opportunity to supplement the City's Sewer Service Area ("SSA") Amendment request. A month prior, the Commission's Community Facilities Committee ("Committee") voted to approve the City's requested SSA Amendment in a public hearing held on June 8, 2022. The purpose of this correspondence is to share the City's cost-effectiveness analysis for Commission and Wisconsin Department of Natural Resources ("DNR") consideration.

Procedural Background

The City interprets this request of the Commission as an opportunity to provide the Commission and DNR a clear picture of the cost effectiveness of the Committee-approved SSA Amendment for a dual Designated Management Area ("DMA") within the Witzel Avenue right-of-way and a change in the DMA status to the City for a segment of The Wit parcel and to address issues raised by the Town of Algoma Sanitary District No. 1 ("the District") in its objection to the City's proposed plan. To provide an effective analysis, the following procedural context is helpful.

On April 8, 2022, representatives of the City met with DNR program staff, namely, Lisa Helmuth, Gunilla Goulding and Tim Asplund, regarding the necessary administrative procedures for the City to provide sewer service to The Wit residential development project along Witzel Avenue. DNR staff recommended the City follow the suggested path of the Commission to submit a SSA Amendment.

In May 2022, the City proposed the substance of the current SSA Amendment after receiving input from Commission staff who suggested an amendment to the current SSA making all of The Wit development part of the City DMA and a "dual DMA" in areas within the Witzel Avenue right-of-way to avoid the concern of removing areas from the District, in which the

District currently has infrastructure. The “dual DMA” concept suggested by Commission staff is included in the SSA Amendment approved by the Committee on June 8.

On June 8, 2022, the Committee heard public comments from representatives of the government entities with DMA status in the nearby area: the City and the District. Despite representing to a court that it had no objections to the proposed city service of The Wit, the District by letter from its attorney dated June 1, 2022, raised objections to the SSA Amendment as drafted. The District claimed that “[a] DMA amendment is not needed to order [sic] to ensure The Wit has timely access to wastewater service.”

The District’s attorney further offered for the District to “provide wastewater service to The Wit on a temporary basis until the City is able to obtain the necessary approvals needed for the City to extend sewer service to The Wit.” This claim however was not accurate since the greater portion of The Wit property was not in the District DMA and the District therefore had no right or jurisdiction to service the property. The claim also ignored attempts by the City to work with the District early in the planning processes for The Wit development where the parties were not able to reach an agreement for service to the property through the existing District facilities.

In a contradiction of the above comments from its counsel, the District then raised a second series of public comments by its Utility Director suggesting that the Committee consider an alternative SSA Amendment to:

“...increase the District’s DMA by the 15.3 acres that is currently in the City’s DMA and have the District serve ‘The Wit.’”

The alternative SSA Amendment proposed by the District was at odds with the proposal raised by the District’s attorney. The alternative SSA Amendment did not persuade the Committee. However, the District presented information with its alternative SSA Amendment proposal suggesting it would cost less for City residents living at The Wit if the Commission were to approve a separate, distinct SSA Amendment not before the Commission, that would modify the District DMA by transferring 15.3 acres of service area *from* the City *to* the District. The information shared by the District was not a cost-effectiveness analysis as defined by Wis. Admin. Code § NR 121.03(5), but it did claim monetary benefits of the District servicing “The Wit” instead of the City.

The City now welcomes this opportunity to present a cost-effectiveness analysis and thanks the Commission and the DNR for their expedited review of this SSA Plan to primarily facilitate and support the development of The Wit within the City limits.

The Wit development represents cost effective and sustainable growth of City sanitary sewer infrastructure consistent with the Commission’s 2030 Growth Maps agreed to by all DMAs, including the District and the City.

Applicable Definition

Wis. Admin. Code § NR 121.03(5) defines “cost-effectiveness analysis” as:

A systematic comparison of alternative means of meeting state water quality standards, effluent limitations or other treatment standards in order to identify the alternative which will minimize the total resources costs over the planning period. These resources costs include monetary costs and environmental as well as other non-monetary costs.

Applicable Commission SSA Amendment Guidance Documents

The Commission Sewer Service Area Amendment & Update Process dated August 2004 discusses the SSA Amendment processes. The City highlights the following provisions that guide this response (emphasis added):

Page 75 (Online Page 72 of 157) “WDNR Review and Approval”

The Wisconsin Department of Natural Resources will review the East Central recommendations for the service area amendment. **If the service area amendment does not involve an area greater than 1,000 acres or greater than 5 percent of the total service area the Department should approve the amendment and certify the applicable Water Quality Management Plan** within approximately 45 days after submittal. If the proposal is over 1,000 acres or 5 percent of the total service area, and/or if the project involves the development of an Environmentally Sensitive Area the Department may require the preparation of an environmental assessment statement under NR-150 with public comment period on Type 2 Actions. This may lengthen the approval period to three months or greater. Once WDNR decision is made, and if approved, East Central can review sewer extensions and submit comments to the WDNR for sewer extension plan approval.

The City highlights that the SSA does not involve an area greater than 1,000 acres or greater than 5 percent of the total service area for either affected DMA. According to applicable Commission guidance documents regarding SSA Amendment procedure, the DNR should approve this amendment and certify the applicable Water Quality Management Plan.

Page 78 (Online Page 75) of 157 “Section II: Amendment Criteria”

Any proposed amendment shall be reviewed according to the following criteria:

A. The cost-effectiveness of the proposed amendment will be compared to other alternatives. East Central may require this determination from the applicant. Amendments submitted under Policy B [inapplicable SSA acre-swaps between DMAs) shall require such a determination from the applicant.

The City notes that the Commission has not required a cost-effectiveness determination by the City regarding the SSA Amendment but rather is seeking a cost-effectiveness review of the comments provided by the District to be provided within a short timeframe. While not a requirement for this SSA Amendment, the City welcomes the opportunity to provide a clear picture regarding why the Commission and DNR should, for additional reasons based on the following cost-effectiveness analysis, approve this amendment and certify the applicable Water Quality Management Plan.

City Cost-Effectiveness Analysis

The City-proposed SSA Amendment provides for a dual DMA within the Witzel Avenue right-of-way to allow the City to service the entirety of “The Wit” residential development through the extension of sanitary sewer lines within public right-of-way and the transfer of 3.14 acres from the District’s DMA to the City. This cost-effectiveness analysis is comprised of three components: (1) Overview of relevant events since the last SSA Plan update pertaining to sanitary sewer services in this area; (2) Discussion of Monetary Resources Costs; and (3) Discussion of Non-Monetary Resources Costs.

The proposed SSA Amendment is an extension of City service that was forecasted and agreed to in the 2030 Oshkosh Sewer Service Area Plan in which the Commission, City, and all other DMAs, including the District, have identified future sewer growth areas based on cost-effective service provision, water quality, and regional cooperation and coordination. The City’s proposal is in conformance with Map 9 of the Plan showing the 2030 Oshkosh Sewer Service Area Update Growth and Service Area Agreements. The City is adhering to the Commission’s purpose to react and update plans as conditions change.

The City is committed to the goals objectives and policies that the Commission exists to forecast and ensure. The City has acted responsibly with respect to the environment and its facilities. The City has worked with its neighboring communities and the Commission to develop plans for responsible community growth. The City has assisted and reached agreements with neighboring sanitary districts entering into agreements with neighboring districts to convey their sewerage to the City’s treatment plant for treatment. The City has committed significant time, money and other resources to the development and maintenance of its wastewater treatment system in reliance on the community and area plans which include the area contained in this proposed SSA amendment within the City’s DMA by 2030.

I. Overview of Relevant Events since Last SSA Plan Update Pertaining to Sanitary Sewer Services

A. Major WWTP improvements or changes.

Since 2016, the City has undertaken numerous capital projects at the wastewater treatment plant (“WWTP”) totaling nearly \$10 million. The non-exhaustive list provides projects with capital costs over \$200,000 and the details the approximate cost of each project.

Project	Approx. Cost
Recondition Two Primary Clarifiers	\$340,000
Anaerobic Digester Mixing Upgrade	\$1,860,000
HVAC Equipment Replacement	\$225,000
Influent Gate Valve Replacement	\$330,000
Clean Water Fund Loan Project - WWTP Control System, Influent Pumping and Aeration	\$5,560,000
Centrifuge Reconditioning and Upgrade	\$570,000

In addition to the above completed projects, the City finalized its Phosphorus Final Compliance Alternatives Plan in December of 2021. The plan lays out how the City can meet the Upper Fox and Wolf Rivers' total maximum daily load included in the City's WPDES permit effective January 2022. The plan calls for the City to utilize Multi-Discharger Variance ("MDV") Annual Payments for two years while the City completes construction of a new tertiary treatment system at an estimated cost of over \$21 million.

B. Major collection system improvements or changes.

The City continues to invest large amounts of funding annually into the rehabilitation of existing sewers and inflow and infiltration removal. The City has approximately 267 miles of sanitary sewer mains. In 2022, the City will be replacing over 3 miles of sanitary sewer mains as well as rehabilitating all of the laterals connected to these mains.

Additionally, the City performs annual flow monitoring of sanitary sewers throughout the City to identify areas of significant inflow and infiltration ("I&I"). This information is utilized to help determine what areas are included in future capital projects and where I&I removal efforts should be concentrated. The City has budgeted \$1 million or more for each of the last 5 years to work on I&I in addition to all other sewer main and other projects that this City has done.

C. Local governmental changes (i.e., sanitary district formations, intergovernmental boundary / service agreements, Comprehensive Plan updates, regulations and requirements, etc.).

The City has continually updated its Sewer Use Ordinance to stay in compliance with DNR and EPA requirements. In 2014, the DNR updated its program to reflect updates and changes made by EPA. The DNR provided information on these changes to the program to communities so the communities could have these new requirements included within their local ordinances. Prior to implementing the revision, the City's Wastewater Utility completed a local limits study to determine if any changes were necessary to the treatment requirements for industries regulated by the pre-treatment program. Sampling was completed in 2016 and the final report issued in 2017. The revised program was submitted to the DNR for its review and was approved in February 2018. The updated City Ordinance and adoption of the City of Oshkosh Industrial Wastewater Discharge Program Handbook were approved by the City of

Oshkosh Common Council later in 2018. A review of the District's ordinances from its website indicates no updates have been performed since February 2011.

II. Discussion of Monetary Resources Costs

A. Background - Annexation and Approval of The Wit Project.

The Wit property is an approximately 18.5 acre parcel with frontage of 684 feet along Witzel Avenue entirely within the City of Oshkosh. In October 2017, the City annexed portions of the Town of Algoma in City Ordinance 17-522. Parcels annexed were identified in a Cooperative Plan adopted by the Town of Algoma and the City regarding expected future City expansion in January 2004 in accordance with Wis. Stat. § 66.0307.

The annexed area included the entirety of The Wit parcel. The annexation was effective March 1, 2018. Approximately 200 feet of depth of frontage of The Wit's development along Witzel Avenue is located within the District's DMA (3.14 acres of 18.5 acres in total). This 200 foot deep stretch formerly contained residential lots which have now been purchased by the Developer of The Wit, cleared of all improvements, and comprise the front portion of the much larger Wit development. The DMA area boundaries have not yet been changed or modified after the March 2018 annexation. This SSA Amendment is a limited request to create a dual DMA along Witzel Avenue and transfer 3.14 acres on The Wit parcel from the District to the City.

In October 2018, the City updated its Comprehensive Land Use Plan for 2040. The area including The Wit property is recommended for Medium and High Density Residential. The proposed development is for twelve two-story multi-family buildings with twelve living units each, for a total of 144 two-bedroom units. The site also includes a club house, four detached garage buildings and surface parking. The development retains green space on approximately half of the development.

Due to The Wit project conformance with the Comprehensive Land Use Plan 2040 and applicable zoning requirements, City staff recommended approval of the project for a conditional land use permit in November 2020.

B. The Proposed Design Supports Cost-Effective City Infrastructure Extension.

The proposed City project requiring the current SSA amendment is needed to serve areas already within the City's DMA and so the costs that are estimated for the project are necessary whether the SSA amendment is approved or not. The proposed SSA amendment simply brings the front 200 feet of this parcel into the City's DMA for service and proposes a dual DMA for that portion of the right-of-way which is needed by both the City and the District to extend services to their respective customers in the area. Service to the remaining portion of The Wit project site as well as service to other city development in this area requires the installation of the proposed infrastructure improvements.

The proposed project was designed to provide the most efficient direct connection with the City’s existing facilities for what the City considers a desirable and needed workforce housing project in this area. The City’s project was properly bid, awarded to the low bidder, and will provide new and reliable service to the proposed development as well as other city development in this area. Service to the area in the amended SSA results in no additional cost to the project.

C. The “Cost-Analysis” presented by the District is flawed and should not be considered.

As noted in the Procedural Background section above, despite having indicated no objection to the City’s plans to extend service to The Wit to a Court, just weeks previously, the District appeared through both its attorney and its utility director at the Commission hearing in this matter and objected to the City’s SSA amendment request. The District’s utility director submitted the below cost analysis contending that service through the District would be more cost effective; however, the City believes that this document is flawed and should not be considered or given weight in the determination to grant the City’s requested amendment.

	 DISTRICT CUSTOMER	 CITY CUSTOMER
EXISTING COLLECTION SYSTEM	Yes	No
18" SANITARY SEWER MAIN	0'	1,550' +/-
COST OF 18" SANITARY SEWER MAIN	\$0	\$224,750
9" CONCRETE REMOVAL & REPLACEMENT SQUARE YARDS	0 sq yd	5,023 sq yd
COST FOR 9" CONCRETE	\$0	\$297,110
8" SEWER LATERAL / PIPE SEGMENTS	85'	116'
COST FOR 8" SEWER LATERAL	\$10,000	\$19,000
MANHOLE COSTS	\$0	\$38,075
MOBILIZATION	\$0	\$52,921 ⁱ
SEWER ABANDONMENT	0'	584'
TOTAL ESTIMATED COST	\$10,000	\$631,856ⁱⁱ
PAID FOR BY WHOM	Developer	Developer & City Customers ⁱⁱⁱ
CONSTRUCTION TIMEFRAME	< 1 day	Per Contract No 22-13
TRAFFIC IMPACT	None	Multiple Lane Closures
LOCAL BUSINESS IMPACT	None	Yes
ANNUAL SEWER USER FEE*	\$27,428	\$39,474
CURRENT DMA ACREAGE OF 18.5 TOTAL	3.14	15.36
WWTP FLOW & LOADINGS IMPACT**	Same; regardless of collection system	

Assumptions:

*Anticipated Water Usage: 4.2 MG / Year

**Wastewater Maximum Flow: 6,900,000 gallons/year, BOD Loadings: 250 MG/L

ⁱ Shared cost between water, sewer, & sidewalks.

ⁱⁱ Resolution No 22-115 to award Contract No 22-13 to PTS Contractors, Inc. for \$938,660 on March 22, 2022.

ⁱⁱⁱ Final Resolution No 22-208 for Special Assessments approved on May 24, 2022.

1. The District is Not Under a Current Contract with the City for Treatment of Wastewater and the District's Analysis Contains Flawed Assumptions as to Rates for Service.

On December 15, 1977, the City entered into an Agreement with the District (the "Agreement"), through which the City agreed to treat sewerage collected by the District. The Agreement, which was originally to be effective for an initial term of thirty (30) years, was supplemented and extended. The most recent extension of the Agreement ran through December 31, 2021.

The City has been in communication for several years with all its contracted sanitary districts regarding the need to revise and update these longstanding and outdated sanitary agreements to address changes in practice, laws and regulations, and methods for calculation of rates and payment of expenses, as well as to provide clarity moving forward. The City provided an updated draft agreement in June 2021 but by December 2021, the District had refused requests to meet to discuss the proposed new agreement. The City declined to enter into any further extension of the existing Agreement when it expired. Thus, by its terms as modified, the Agreement terminated as of December 31, 2021.

By letter dated February 4, 2022, the City notified the District that it would cease providing treatment of the District's sewerage effective January 31, 2024.

In its cost-effectiveness argument presented to the Commission and referred to the Department, the District makes assumptions in regard to the cost of service based upon the current rates from the over 40-year old agreement that it had with the City. The City has notified the District that rates will necessarily go up with a new agreement as a review has indicated that the District is not currently paying its fair share under the provisions of the outdated agreement. As to this project and cost analysis, there is no certainty that the District will continue to be able to provide sanitary services at the artificially low rates suggested in its alternative SSA Amendment.

2. The District is Currently in Default to the City for \$240,000 in Past Due Invoices Related to WWTP Upgrade Projects.

Even using current rates, the District has failed to include all charges and costs due in its calculation of cost effectiveness. The District has not paid amounts due to the City for WWTP improvements that have been completed. Therefore, the current District customers rates are not sufficient to pay the costs of service even under the existing rates. While the District is currently not paying its fair share for plant improvements, all other DMAs utilizing the City WWTP, including City customers, are currently paying for these necessary improvements. Upgrades, detailed above, benefit all users of the WWTP, including the District, and all users should share the costs of those improvements.

Algoma has approximately 2,787 households which face uncertain utility costs due to the District not assessing the requisite WWTP fees to its rate payers. The District has not compensated the City for these necessary WWTP infrastructure payments in the amount of \$240,000 and counting, these are costs District rate payers are responsible to pay for that are not included in the District's proposed analysis.

3. The District ignores its own connection fee, in excess of \$100,000.00 in its "reasonable alternative calculation".

In correspondence with the City and the Developer, the District indicated fees in excess of \$100,000 that would be due upon connection to the District's system. Yet, the District conveniently ignores those charges in its calculations.

4. The District's analysis fails to take into consideration that the proposed project will serve other areas within the City and allocates all costs to this proposed project.

5. Modification of the District's DMA through a future SSA Amendment is Necessary for the District to Service The Wit.

The only other DMA that could service this project is the District, however such service would require an alternative, separate SSA Amendment in direct contradiction with this City-proposed SSA Amendment approved by the Committee. Such an alternative SSA Amendment is not currently before the Commission.

The assertion that the District may service The Wit without an SSA Amendment is false. While the District currently has 200 feet of frontage of the development in their DMA, that is less than 17% of The Wit Development's total area. The remainder of the development is within the City of Oshkosh DMA and the entire development is within the City's corporate boundaries and is consistent with the 2030 Sewer Service Areas Plan and with the Boundary Agreement entered into between the City of Oshkosh and the Town of Algoma.

The City remains the most logical entity to provide wastewater sewer services.

III. Discussion and Overview of Non-Monetary Resource Costs

A. City Residents are best served through the City.

The DMA boundary must conform to parcel lines. The fundamental unit of property is the parcel. Jurisdictional, zoning and electoral lines follow parcel lines. City wards need to be separately created for areas of the City existing within sanitary districts. Creation of small pockets of electors creates inefficiencies as well as potentially identifying individual voting. A single parcel cannot be part of two separate governmental units – in this case, the single Wit parcel as it currently exists is a part of the City and the District.

The parcel, now a single combined parcel, needs to be brought within a single boundary and it simply makes the most sense that it be brought entirely within the City of Oshkosh boundaries. The customers to be served along proposed City DMA along Witzel Avenue are all residents of the City of Oshkosh. The Wit will be served by the City in every other aspect: police, fire, water and all other municipal services. These residents will benefit from the consolidation of all services under a single governmental entity. Consolidation provides consistency, clarity and responsiveness from a single governmental provider.

B. The Proposed Project is Water Quality Neutral.

The fundamental purpose of SSA and DMA areas is to protect environmental resources and to preserve water quality. The City is in the best position to effectuate these purposes. While the proposed development is a neutral water quality determination regarding which DMA services the project, one entity, the City is heavily investing in process improvements and maintaining this area for streets, storm water and other purposes.

The other DMA has refused to pay infrastructure improvement invoices yet receives the benefits of (a) reduced rates, (b) deferred payments, (c) realizing the infrastructure improvements paid for by the City and other DMAs utilizing the City WWTP.

C. Future Redevelopment Along Witzel Avenue Adjacent to The Wit will Benefit from the Proposed Infrastructure Improvements.

Any future redevelopment within the City of Oshkosh adjacent The Wit will benefit from the City infrastructure improvements.

Conclusion

The City appreciates the opportunity to provide the above cost-effective analysis, which establishes that the City is the most cost-effective provider of sewer service to The Wit. It is worth recalling that the District is only a middleman in the provision of sewer service, so with respect to the actual cost of providing such service, having the City provide service to The Wit is necessarily more efficient. Finally, the City takes this opportunity to again remind the Commission and DNR that it alone has the legal right to provide sewer service to its residents within its corporate boundaries.

Ms. Wilhelmina Paustian

July 15, 2022

Page 11

Very truly yours,

GODFREY & KAHN, S.C.



Jonathan T. Smies
Attorney

JTS:wjn

cc: Ms. Melissa Kraemer-Badtke (via email)
Mr. Kevin Engelbert (via email)
Mr. Tim Asplund (via email)
Ms. Lisa Helmuth (via email)
Mr. Jason Knutson (via email)
Ms. Gunilla Goulding (via email)
Ms. Alixandra Burke (via email)
Mr. Matthew Yentz (via email)
Mr. Tyler Niemuth (via email)
Mr. Tyler Yaktus (via email)
Ms. Lawrie Kobza (via email)
Mr. Kevin Mraz (via email)
Mr. Ray Edelstein (via email)
Mr. Richard Heath (via email)
Mr. Mark Rohloff (via email)
Mr. James Rabe (via email)
Mr. Steve Gohde (via email)
Mr. Justin Gierach (via email)
Ms. Lynn Lorenson (via email)
Ms. Amy Vanden Hogen (via email)
Mr. Bill Nelson (via email)

27522227.2

July 29, 2022

VIA EMAIL

Ms. Wilhelmina Paustian
Senior Planner
East Central Wisconsin Regional
Planning Commission

RE: City Direct Costs to Serve The Wit

Dear Ms. Paustian:

On July 26, 2022, the East Central Wisconsin Regional Planning Commission (“Commission”) sent correspondence to the City of Oshkosh (“City”) requesting that the City supply the direct cost for the City to serve The Wit.

Based on the City’s construction bid submitted by PTS Contractors, Inc. on March 14, 2022, the cost to install the lateral to serve The Wit is approximately \$14,000. The Town of Algoma Sanitary District No. 1 (“District”) quotation of \$10,000 is based on an out-of-date quotation and inaccurate description of all costs, as discussed further below.

It is important to understand the proposed SSA amendment request before the ECWRPC and WDNR with the overall construction project to be undertaken by the City in its proper context. The proposed interceptor will serve not only the entire parcel of The Wit; it will also eventually serve additional City residents that according to the approved Oshkosh 2030 Sewer Service Area plan, Map 9 (2030 Oshkosh Sewer Service Area Update Growth and Service Area Agreements) will be served by the City of Oshkosh in the future. The City is proactively planning for this change.

The City anticipates the interceptor expansion construction project will serve approximately 72 acres, of which The Wit is only small portion. By installing this pipe now, the City can service The Wit and be prepared to serve the adjacent areas scheduled to be served by the City per the approved 2030 SSA growth plan. This prevents rework of the system in the future and provides a single service provider for sewer and water. The District, however, ignores the fact that only a small segment of the northwest corner of The Wit property is at issue in the proposed SSA Amendment and ignores the potential future plans for this area of the City as depicted in the 2030 Sewer Service Area Plan. Instead, the District is asking ECWRPC and WDNR to look at the current development in a vacuum.

Ms. Wilhelmina Paustian
July 29, 2022
Page 2

The total city cost for the sanitary portion of the interceptor expansion construction project in this area is \$711,000. As noted above, the project will serve areas beyond the proposed SSA Amendment and the City disputes that the entire interceptor expansion project cost should be attributed to this narrow segment of land to service The Wit in the proposed amendment. If one were to attribute a portion of the cost, that portion should be minimal, as the segment of land consists of only 17% of The Wit and approximately 4% of the area that the City infrastructure improvement project is anticipated to serve as a whole.

Regarding the direct costs to The Wit, the City will levy special assessments for the installation of public sewer main per its approved Assessment Policy. The developer of The Wit will be charged \$33,129.44 for the installation of the new main to serve this property. Based on the City's construction bid prices, the cost to install the lateral to serve The Wit is approximately \$14,000.¹ Therefore, **the cost to The Wit under the City's proposed project will be \$47,129.44.**

It should be noted that, according to the enclosed letter from the District to the developer, Moorhead Barr Properties, LLC dated October 16, 2020, the District intends to charge The Wit \$101,672 for the connection to a nearly 50 year old sewer pipe. Assuming the existing sewer system needs no repairs and the \$10,000 quotation to install a lateral is accurate, **the cost to The Wit under the District's proposed project would be \$111,672 or more.**

Thank you for considering this information. Please let me know if you have any questions.

Very truly yours,

GODFREY & KAHN, S.C.



Jonathan T. Smies
Attorney

JTS:wjn
Encl

¹ The District in its analysis identified the City's cost as \$19,000 which was the initial estimate prior to bidding the project. The District similarly identified a \$10,000 estimate that the District states a contractor provided. The \$14,000 is a final number based on bid prices and fully includes all work necessary to connect. It is unclear of what the \$10,000 estimate the District provided includes.

Ms. Wilhelmina Paustian

July 29, 2022

Page 3

cc: Ms. Melissa Kraemer-Badtke (via email)
Mr. Kevin Engelbert (via email)
Mr. Tim Asplund (via email)
Ms. Lisa Helmuth (via email)
Mr. Jason Knutson (via email)
Ms. Gunilla Goulding (via email)
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Mr. Kevin Mraz (via email)
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Mr. Mark Rohloff (via email)
Mr. James Rabe (via email)
Mr. Steve Gohde (via email)
Mr. Justin Gierach (via email)
Ms. Lynn Lorenson (via email)
Ms. Amy Vanden Hogen (via email)
Mr. Bill Nelson (via email)

27595753.4



Town of Algoma
3477 Miller Drive
Oshkosh, WI 54904
Phone (920) 426-0335
Fax (920) 426-1181
district.office@algomasd.org

October 16, 2020

Moorhead Barr Properties, LLC
1423 Planeview Dr
Oshkosh, WI 54904

Dear Developer:

We appreciate your interest in developing a parcel(s) in the Town of Algoma Sanitary District. One of the costs associated with your development will be the installation of public sanitary sewer infrastructure. The sanitary sewer main will be a public sewer main located within a utility easement.

To begin this process, the District requires:

- A sketch or preliminary plat
- A completed District Developer Application
- The \$1,000 deposit

Once the application is submitted to the District office, there are three stages of the District's Developer's Agreement that will need to be signed:

- Authorization to Design
- Authorization to Let Bids
- Authorization to Proceed with Construction

The District will complete all design work required for utility construction, including applying for the WDNR permit approval for sewermain extension and for bidding the project. The developer is responsible for 100% of the cost incurred to design and install the sanitary sewer infrastructure necessary to serve their development, including all engineering and legal expenses.

Once the sewer infrastructure is installed, the 2021 costs due upon permit application to connect each 12-unit building in your development are as follows:

- Contribution-in-Aid-of-Construction (CAC) charge per connection: \$8,264
- Permit Fee: \$150 per connection

The 2021 costs due upon permit application to connect the Clubhouse in your development are as follows:

- Contribution-in-Aid-of-Construction (CAC) charge: \$2,504
- Permit Fee: \$150

We look forward to working with you in developing a parcel(s) within our Sanitary District. If you have any further questions, please feel free to contact me.

Thank you,

Kevin Mraz

Kevin Mraz
Director of Public Utilities

**The Wit
Sanitary Sewer Connection Charges
Due upon Permit Application**

Contribution In Aid of Construction (CAC)	2021
Unit 1	\$8,264.00
Unit 2	\$8,264.00
Unit 3	\$8,264.00
Unit 4	\$8,264.00
Unit 5	\$8,264.00
Unit 6	\$8,264.00
Unit 7	\$8,264.00
Unit 8	\$8,264.00
Unit 9	\$8,264.00
Unit 10	\$8,264.00
Unit 11	\$8,264.00
Unit 12	\$8,264.00
Clubhouse	\$2,504.00
	<hr/>
	\$101,672.00



Town of Algoma
3477 Miller Drive
Oshkosh, WI 54904
Phone (920) 426-0335
Fax (920) 426-1181
district.office@algomasd.org

July 15, 2022

Wilhelmina Paustian
Senior Planner
400 Ahnaip Street, Suite 100
Menasha, WI 54952

RE: Oshkosh SSA Amendment Cost-Effectiveness Analysis

Dear Ms. Paustian:

Thank you for allowing the Algoma Sanitary District (District) the opportunity to submit additional information for the WDNR to include in the cost-effective analysis review of providing sanitary sewer service to The Wit.

Using the District's existing collection system to serve The Wit would result in no additional cost to the District average user of the system per NR110.09(1)8, (see [CEA Exhibit B](#)) while the City alternative will require the average user of the City system to cover the estimated construction cost of \$579,727 plus bond interest expense.

The following is the timeline related to The Wit Development project:

- **Summer of 2020:** Davel Engineering & Environmental (Davel) designed the sanitary infrastructure needed to serve "The Wit" (previously called Lux Life) in the attached project plan (See [Exhibit J](#)); The Davel Project plan designed the sanitary sewer system to connect into the existing District collection system at MH 3. This MH 3 is the same District manhole numbered 249 as referenced on [CEA Exhibit E1](#).
- **August 6, 2020:** East Central Wisconsin Regional Planning (ECWRPC) reviewed and approved (see [Exhibit K](#)) (East Central Review No. 2020-031) the Davel Project plan to be served by the District's collection system. ECWRPC determined the Davel Project for The Wit development is within the 2030 Oshkosh Sewer Service Area and is consistent with the Sewer Service Areawide Water Quality Management Plan elements.
- **November 12, 2020:** Davel sent a sanitary sewer extension request to the WDNR, which confirmed receipt and assigned it as DNR Project Number S-2020-0862 (see [Exhibit L](#)). This project calls out the District as the DMA collection system to serve The Wit development.
- **January 25, 2021:** The City of Oshkosh approved The Wit sanitary sewer and water system as private.
- **Early Spring of 2022:** The Wit Developer installed approximately 2,200 feet of sanitary sewer main and 1,000 feet of sewer laterals according to the Davel Project plan set to connect into the District sanitary sewer main. The only section of sanitary sewer not installed is the 85 feet of sanitary sewer between Manholes S-1 (developer manhole) and MH 3 (District manhole), (see [CEA Exhibit F](#)) of the Davel Project plan.
- **Spring of 2022:** Developer started construction of the apartment buildings and club house.

The Davel Project (see [Exhibit J](#)) illustrates the District sanitary sewer as the only existing and cost-effective option to serve The Wit compared to the extension being proposed by the City of Oshkosh that duplicates

existing infrastructure and proves the City alternative is unnecessary according to NR 110.09(1)(a) and NR 110.09(2)(a); there is no need for a parallel sewer main to be installed.

The contractor quoted a price of \$10,000 to be paid by the Developer to complete the final 85' connection from Manhole S-1 to MH 3 of the Davel Project (Exhibit J) that would be served by the District collection system, this is the same plan that was submitted to the WDNR in 2020.

On Exhibit J the labeled manhole MH 3 is the same manhole labeled 249 (see CEA Exhibit E1). The District owns the sanitary sewer main along Witzel Avenue east all the way to Westbrook Drive. The City alternative plan (see CEA Exhibit C) depicts the City connecting into the District sanitary sewer main near manhole 245 without permission and in violation of the declaratory judgment.

The District's 18" sanitary sewer main has been televised, inspected, and remains in excellent condition with a remaining life of greater than the 20-year facilities planning period. The sanitary sewer main is sized to adequately handle the requirements per 110.10(2) 20-year staging period.

The fact is The Wit development is entirely in the Oshkosh 2030 SSA and the wastewater will be treated at the Regional WWTP. The only decision remaining is to determine which DMA amendment change is the cost-effective alternative. The most cost-effective option to provide municipal sanitary sewer service to The Wit is using the existing District sewer main per Davel Project plan (see Exhibit J). The SSA plan amendment should be modified (if required) to allow the District to be the sanitary sewer service provider for the entire parcel. Based on the fact that the developer already installed private mains, the SSA plan DMA boundary may not need to be modified if this development connects into the existing District mains and is served by the District.

The entire northern portion of The Wit parcel fronting Witzel Avenue is currently in the District DMA where the connection to public sewer main will be made. The District previously served houses on this parcel and has existing laterals stubbed to this parcel.

The District cost-effective alternative connection would be installed in less than one working day and, upon review of NR110.10(2)(b)2a, would not cause any traffic disruptions, detours, or disrupt the many local businesses in the area.

Our District continues to do what is best for the region as a whole including willingness to serve The Wit parcel at a massive cost savings and lower use of resources to the customers of the District and the City. We appreciate your time to review this alternative and our staff is willing to meet with WDNR staff onsite to walk through and discuss any specifics as needed.

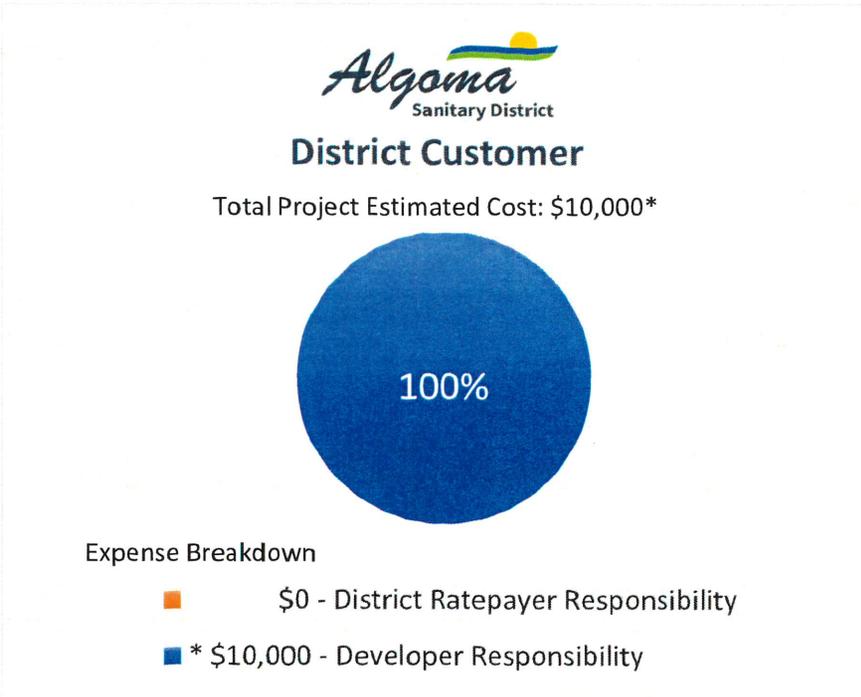
Thank you,

A handwritten signature in black ink that reads "Kevin Mraz". The signature is written in a cursive, flowing style.

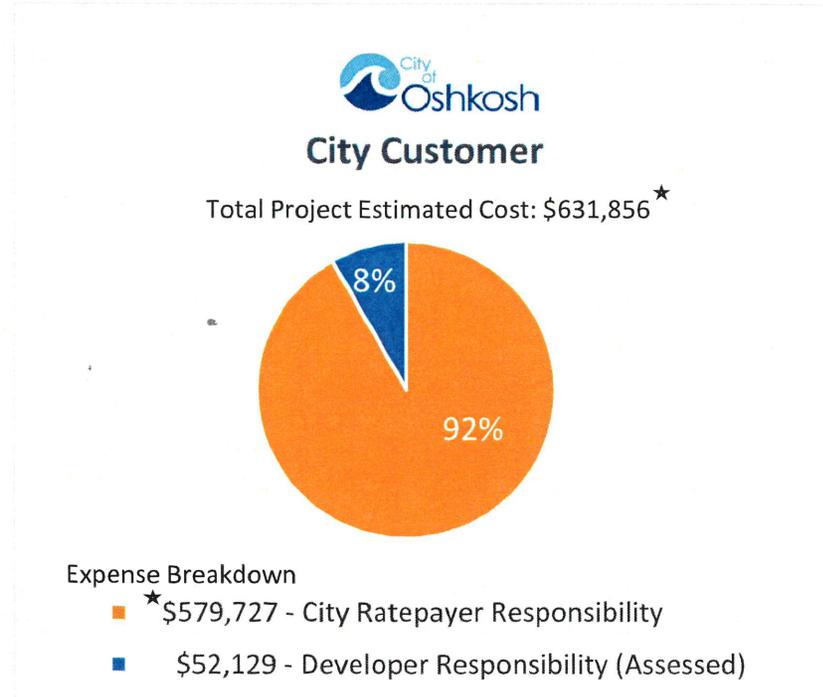
Kevin Mraz
Utility Director

Exhibit B

Sanitary Sewer to: **The WIT**
Construction Cost Comparisons



* Per Quote from Parker Construction (same contractor that installed sewer main & manholes on the Wit parcel)



* Estimated Cost: includes concrete road removal & replacement, sewermain & manholes per Contract No 22-13 to PTS Contractors

Exhibit E1

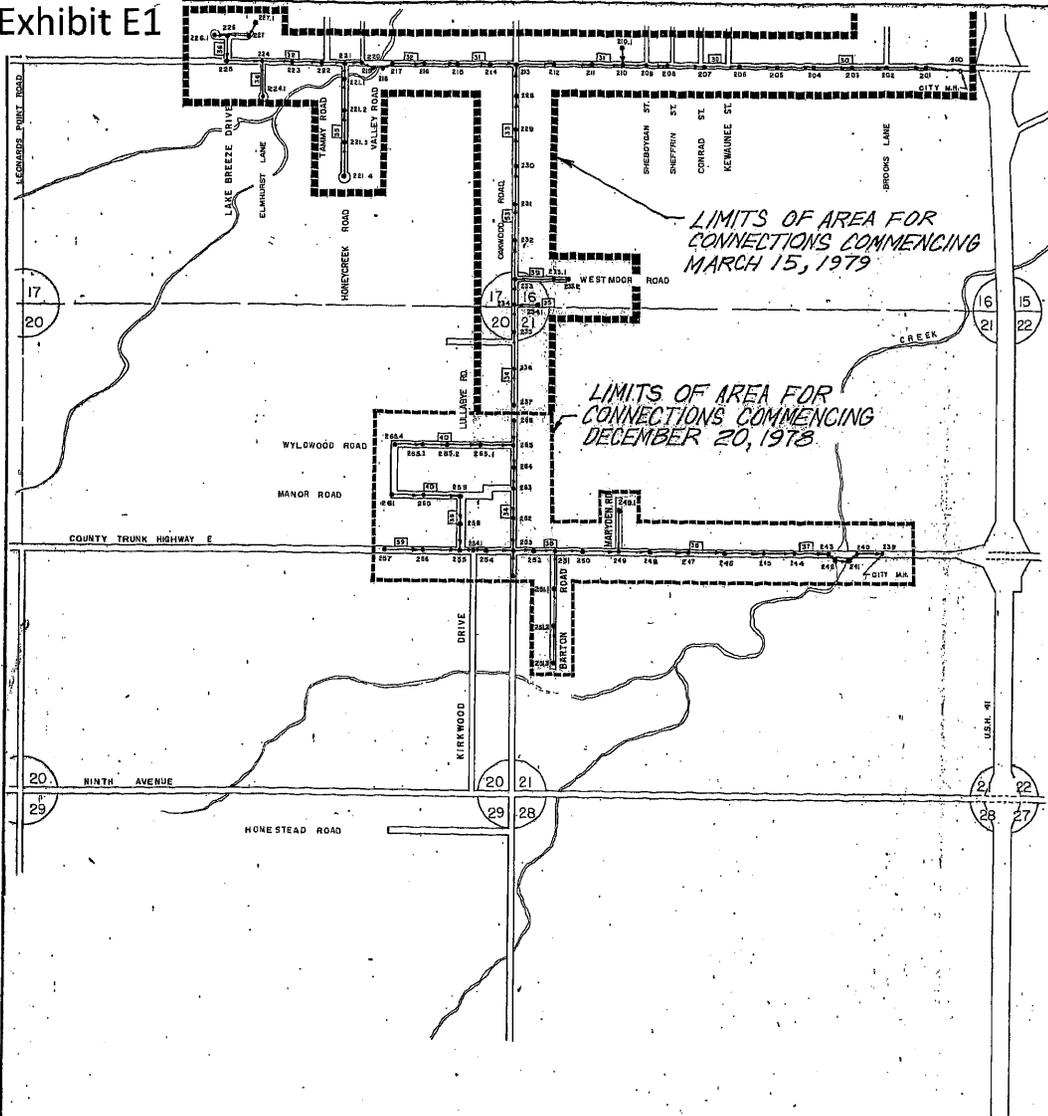


Exhibit K



August 6, 2020

Mitchell Bauer, P.E.
Davel Engineering & Environmental, Inc.
1164 Province Terrace
Menasha, WI 54952

Dear Mr. Baurer:

East Central Review No. 2020-031

Subject: East Central Comments – Lux Life Apartments project.

The East Central Wisconsin Regional Planning Commission, in accordance with Wisconsin NR 110.08(4) and 382.20(4)(b)2.a., has reviewed the proposal for the Lux Life Apartments multi-family development project located along Witzel Avenue within the City of Oshkosh (Winnebago County).

East Central has determined the proposed development is within the **2030 Oshkosh Sewer Service Area**. This project is consistent with the Sewer Service Areawide Water Quality Management Plan elements.

A copy of this letter should be enclosed with the project plans sent to the Wisconsin Department of Natural Resources and other appropriate review agencies for their review. If you have any questions, please contact East Central.

Sincerely,

Todd A. Verboomen
Principal Planner

Exhibit L

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
Box 7921
Madison WI 53707-7921

Tony Evers, Governor
Preston D. Cole, Secretary
Telephone 608-266-2621
Fax 608-267-3579
TTY Access via relay - 711



November 12, 2020

KEVIN MRAZ UTILITY DIRECTOR
ALGOMA SANITARY DISTRICT #1
3477 MILLER DRIVE
OSHKOSH, WI 54904

Acknowledgment of Receipt

The Department has received the following plan submittal and request for Department approval of a sewerage system project in accordance with s. 281.41 Statutes. If you have questions regarding the status of the project review, please contact the listed review engineer.

DATE RECEIVED: November 12, 2020

OWNER: ALGOMA SANITARY DISTRICT NO. 1

ENGINEER: MITCHELL BAUER, P.E.

PROJECT TYPE: PLANS for SEWER

PROJECT DESCRIPTION: Sewer extension of 2,136' on East, West and North Streets for The Wit development in the City of Oshkosh.

DNR PROJECT NUMBER: S-2020-0862

DNR REGION: NORTHEAST (NER)

DNR REVIEWER: ANDREW DUTCHER

(608) 267-7610

FAX: (608) 267-2800

E-MAIL: ANDREW.DUTCHER@WISCONSIN.GOV

Copy To:

MITCHELL BAUER, P.E.
DAVEL ENGINEERING & ENVIRONMENTAL, INC.
1164 PROVINCE TERRACE
MENASHA, WI 54952

July 15, 2022

VIA EMAIL: wpaustian@ecwrpc.org

Wilhelmina Paustian
East Central Wisconsin Regional Planning Commission
400 Ahnaip Street, Suite 100
Menasha, WI 54952

**RE: Algoma Sanitary District No. 1's Submission of Additional
Information on City of Oshkosh's Request for DMA Amendment**

Dear Ms. Paustian:

Enclosed is additional information Algoma Sanitary District No. 1 (District) asks ECWRPC and the Wisconsin Department of Natural Resources (DNR) to consider when evaluating the City of Oshkosh's request for a DMA amendment.

Status of Litigation and Its Impact on Service to The Wit

The City submitted with its amendment application a transcript from an April 7, 2022 court hearing on the District's motion to enjoin the City's effort to use its construction project to take over existing District customers. This court proceeding did not directly relate to service to The Wit because The Wit is not a current District customer. The District's comments at the hearing indicate nothing more than that.

The Court issued its decision on the motion on April 25, 2022 finding in favor of the District and enjoining the City from interfering with the District's existing facilities and customers. A copy of the court transcript reflecting the Court's decision is provided as Attachment A and a copy of the Court's Order is provided as Attachment B. The Court's Order prohibits the City from "interfering in any way with the Sanitary District's sewer mains located in Wyldeewood Drive, Maryden Raod and Witzel Avenue."

Court Order and Its Impact on the City's Alternative

The District's sewer main on Witzel Avenue extends eastward to Westbrook Drive. (See District's Cost Effective Analysis (CEA), Exhibit E1.)

The City's alternative would affect the District's Witzel Avenue main in two ways. First, the City's alternative proposes to abandon approximately 700 feet of the District's

Witzel Avenue Main. (See City's Plan Sheets 14, 15, and 17; District's CEA Ex. C.)
Second, the City's alternative would use the eastern portion of the District's Witzel Avenue main that extends to Westbrook Drive. The City's alternative does not propose building a City-owned main all the way to Westbrook Drive but rather anticipates using the District's main until its connection into the City's main at Westbrook Drive.

Without the District's consent (which has not been requested or received), both of these actions would violate the Court's Order not to interfere in any way with the District's main in Witzel Avenue.

City's Alternative and Use of District's Witzel Avenue Main

The City's alternative must take into account that the City has no right to abandon or use the District's sewer main in Witzel Avenue. The City's alternative is not feasible without the District's consent.

The City claims a 1977 Wastewater Agreement between the City and the District as amended and supplemented by a 1979 Memorandum of Understanding and a 1994 Amendment, have expired and will not be renewed by the City. It is that Agreement, along with the associated MOU and Amendment, which would permit the City to connect into the Sanitary District's Witzel Avenue sewer main. If, as the City claims, this Agreement along with the associated MOU and Amendment have expired, the City has no right to use the District's sewer main to serve The Wit.

The City has not discussed with the District terms under which the District would consent to the City's use of the District's Witzel Avenue main.

Continued Treatment from Oshkosh Regional WWTP

The wastewater collected by the District is treated at the regional WWTP located in Oshkosh. On February 4, 2022, the City sent the District a notice stating that the City would no longer provide wastewater treatment services to the District after January 31, 2024. (See Attachment C.) The District informed the City it does not believe that the City can legally terminate treatment service to the District. (See Attachment D.)

The City appears to be using this threat of termination to support its effort to take over the District's existing customers in the City and to deny the District's request to serve future customers like The Wit.

The DNR should make it clear to the City that the regional WWTP is required to continue serving all sewer areas and DMAs within its SSA.

The City's Capital Cost Invoices to the District

The City has claimed that the District is failing to pay for its share of capital costs related to the regional WWTP. (See Attachment C.) The City is charging the District for 10.4% of the debt service on the City's outstanding Clean Water Fund Loans even though the District's flow to the WWTP is only 6% of the total flow to the plant. The District disputes the correctness and reasonableness of the City's invoices. (See Attachment E.)

In the past, with respect to two prior loans, there was an agreement between the City and District that the District's proportionate share of the *design* capacity of the projects funded by those loans was 10.4%, that the District would be entitled to 10.4% of the WWTP capacity, and that the District would pay 10.4% of the debt payments for these loans. The District did pay 10.4% of these two prior loans which were paid off in 2012 and 2014 respectively. No similar agreement exists regarding the City's two current Clean Water Fund Loans.

According to the 1977 Wastewater Agreement, if new capital investment is required, "the engineers charged with responsibility for design of such new investment shall calculate the proportion thereof which is intended to service sewage emanating from the various areas to be serviced by said investment. District's proportionate share shall be then calculated and District shall pay to City its allocable share of such investment either in cash or pursuant to whatever terms may be agreed upon between the parties." Despite this requirement, however, the City has not provided the District with any information that shows the capital investments funded by these two new loans were designed and built to serve the District, or what the proportionate share of those projects intended to serve the District would be.

The District does not believe that a 10.4% allocation of capital costs to the District for these new improvements is reasonable. The District's flow to the WWTP is only 6% of the total flow to the plant. The District's need for future wastewater treatment plant capacity was significantly reduced when the City and Town of Algoma (not the District) entered into a 2004 Cooperative Agreement which limited the District's prospective growth area in the Town. And, the City has not been willing to support an expansion of the District's sewer service area for the regional WWTP that would allow the District to use up to 10.4% of the plant's capacity in the future. The City has also refused to enter into a new long-term wastewater agreement with the District which would ensure that the District would continue to have the right to use the WWTP capacity that it would be paying for.

MS WILHELMINA PAUSTIAN
JULY 15, 2022
PAGE 4

As the District has told the City, it is more than willing and able to pay for its fair share of capital costs for the regional WWTP. However, these invoices issued by the City do not represent the District's fair share of capital costs.

Thank you for this opportunity to submit this additional information. If you have any questions, please do not hesitate to contact me.

Sincerely,

BOARDMAN & CLARK LLP



Lawrie J. Kobza

Enclosures

cc: Kevin Mraz
Michael Claffey
Attorney Raymond Edelstein
(all via email)

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FILED
05-25-2022
Clerk of Circuit Court
Winnebago County, WI
2022CV000197

ATTACHMENT A

1 STATE OF WISCONSIN WINNEBAGO COUNTY CIRCUIT COURT
2 -----
3

4 **Town of Algoma Sanitary District No. 1**

5 PLAINTIFF,

6 VS.

7 **CASE NO. 2022CV000197**

8 **City of Oshkosh**

9 DEFENDANT.

10 -----
11 **ORAL RULING**
12 -----

13 Before the HONORABLE TERESA BASILIERE
14 Circuit Court Judge presiding

15 Winnebago County Courthouse -- Oshkosh, Wisconsin
16 April 25, 2022

17 APPEARANCES:

18 **Attorney James E. Bartzen**
19 Appearing by Zoom audio on behalf of the Plaintiff

20 **Attorney Lawrie Kobza**
21 Appearing by Zoom audio on behalf of the Plaintiff

22 **Attorney Jonathan Thomas Smies**
23 Appearing in person on behalf of the Defendant

24 **Attorney Amy Marie Vanden Hogen**
25 Appearing in person on behalf of the Defendant

Stenographically reported by:
Greta Pedersen, RPR
Official Court Reporter

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TRANSCRIPT OF PROCEEDINGS

THE CLERK: Town of Algoma Sanitary District
No. 1 versus City of Oshkosh, 22CV197.

THE COURT: State the appearances.

ATTORNEY BARTZEN: Good morning, your Honor.
The plaintiff, the Sanitary District, appears by
James Bartzen and Lawrie Kobza. I believe that
Kevin Mraz from the District is also on the line.

ATTORNEY SMIES: Morning, your Honor.
Jon Smies from Godfrey & Kahn appears on behalf of the
defendant, the City of Oshkosh. I'm also joined by
Amy Vanden Hogen from the City Attorney's Office, and
Steve Gohde from the City as well.

THE COURT: All right. And as the Court had
indicated previously, the Court will not be taking any
further argument today, but will be rendering a decision.
The Court is going to lay out the facts of the case,
because the Court is fairly convinced that no matter how
this goes today, that it is pretty ripe for an appeal.
So the Court --

THE CLERK: Judge, there are other people out
here. So I don't know if you wanted them to all state
who's here.

THE COURT: Well, we have Attorney Bartzen.
Who else is with you, Attorney Bartzen? You said

1 Attorney Kobza is with you; is that correct?

2 ATTORNEY BARTZEN: Yes. And I believe
3 Kevin Mraz, M-R-A-Z, of the District is also on the line.

4 ATTORNEY EDELSTEIN: And Attorney Edelstein as
5 well.

6 THE COURT: All right. The plaintiff has filed
7 a motion for a temporary injunction request for
8 declaratory judgment, regarding requesting to bar the
9 City from interfering with the Plaintiff
10 Sanitary District sewer mains, cutting or disconnecting
11 those mains. It is apparent to the Court that the area
12 known as The Wit is not disputed, and the City may
13 proceed as it can in accordance with their plan.
14 Furthermore, the Plaintiff District is requesting
15 restraining the City from serving or providing wastewater
16 collection services to locations that presently receive
17 them from the District, specifically the area annexed
18 involving Wyldewood Drive and Maryden Road with a portion
19 of Witzel.

20 For the facts, in the year 2000 the City
21 annexed a portion of the Town of Algoma
22 Sanitary District, in 2018 the City annexed another small
23 portion. At the time of the annexation the City agreed
24 that the Town of Algoma Sanitary District would serve
25 that area. In 2007 the East Central Wisconsin Regional

1 Planning Commission, which was designated by the
2 Wisconsin DNR, made a reference to a map on the plan, the
3 2030 Plan, and made a reference on the SSA Plan, Map 5,
4 that referenced the area in dispute that would be served
5 by the Town of Algoma Sanitary District. The City also
6 argues that Map 9 was also part of the plan, which
7 conflicts and shows the area in dispute outside of the
8 plan boundaries. The Sanitary District in response
9 explained that the Map 9 was indicative of hold status,
10 and was clearly explained in the plan.

11 Both the City and the Town of Algoma
12 Sanitary District were involved in the 2030 Sewer Service
13 Plan. And the Court does not feel like there would be
14 significant need to necessarily resolve those maps, but
15 it is clear to the Court that the Commission -- the
16 Regional Planning Commission utilizes the Map 5 in
17 referencing the providing of services by the
18 Sanitary District.

19 In year 2001 the Town of Algoma
20 Sanitary District got approval from the City to extend
21 sewer sites -- sorry -- sewer system to the area. The
22 Wisconsin DNR approved the Sanitary District's
23 construction of sewer extending into the Maryden Road,
24 Havenwood, and Wyldewood area. Exhibit E, Document 12,
25 it includes a May 18th, 2001, letter from the City

1 acknowledging the District would continue to provide
2 services in that annexed area. The Sanitary District
3 today serves 360 individual living units located on
4 Maryden Road. The Sanitary District obtained easements
5 for the District territory to install infrastructure.
6 The mains in the Maryden Road and Witzel Avenue and
7 Wyldewood belong to the Sanitary District. Currently the
8 District is providing wastewater collection within the
9 boundaries of the City of Oshkosh, since 350 residents --
10 residential connections, sorry -- and 400 -- sorry -- 42
11 commercial connections. The area in dispute, the
12 Sanitary District has 72 connections. The District
13 currently has in the sanitary district approximately
14 3,250 wastewater connections in the total district.

15 Both parties agree on the applicability of the
16 Wisconsin Statute 60.79(dm), but, of course, they
17 disagree on how -- the applicability of the language.

18 For the record, the statute in question,
19 60.79(2)(dm), provides the following language: If the
20 responsibility for continuing the operation is vested in
21 the town sanitary district, it shall continue, except by
22 agreement, until the portion of users change so that a
23 majority of the patrons reside in the city or village, at
24 which time the property and the responsibility shall
25 shift to the city or village.

1 The City argues that the Town of Sheboygan case
2 controls, that when the annexation occurred it
3 defaults -- or, sorry -- detaches from the district; so,
4 consequently, they have the responsibility for continuing
5 the operation of the wastewater system. The Town in
6 stark contrast says we have been supplying the annexed
7 territory for over 20 years, and even the ones that it
8 was annexed in 2018, and that they are -- they have the
9 property mains, the easements, and the property should
10 not be allowed to be disconnected, cut into without their
11 agreement or satisfaction of a shift in the amount of
12 patrons. Obviously, both sides differ on the reading of
13 the statute and the definition of patrons.

14 Court is convinced there is no direct case on
15 point here. The cases cited can be distinguished. In
16 fact, the Town of Sheboygan case made reference that the
17 legislature should clear this up, and to the Court's
18 knowledge that has not been done.

19 First, the Town of Sheboygan case dealt with
20 annexation of an area that had no patrons. It had a --
21 if I recollect, it had a pipe or a main that was put in,
22 but there were no patrons receiving water services.
23 However, dicta in the case does suggest that the
24 installation of pipes and other equipment in the
25 territory is not determinative here, but instead is

1 whether patrons are receiving water service in the
2 annexed territory. They are receiving services in the
3 annexed territory.

4 Second, the statute is somewhat ambiguous on
5 the issue of counting the patrons. When do we count
6 them? It's not clear. In the case here, there was an
7 agreement by both parties for the District to serve the
8 residents of the annexed territory. It was relied upon
9 in the District installing their property pursuant to the
10 2030 SSA agreement.

11 Court is not clear on the full legislative
12 intent here. Was it the legislature's being concerned
13 over residents residing in a different area than what a
14 district is serving is in a different political
15 subdivision? However, the Court does believe that in
16 this circumstance the statute did contemplate the -- some
17 residents being in a separate political subdivision than
18 the town that would be providing services. Because,
19 specifically, the statute addresses majority of the
20 residents, so there it had to be some knowledge that
21 minority would at least be being served by a different
22 political subdivision. The Court finds the language,
23 that calling for a majority of the patrons contemplated
24 that there would be patrons that reside potentially in a
25 different political subdivision. The Town of Sheboygan

1 made reference that -- in the case about the legislature
2 providing language defining, perhaps, patrons; but,
3 again, that was not done.

4 The Court in looking further at the language of
5 60.79(2)(dm) finds the language states if the
6 responsibility for continuing the operation is vested in
7 the town, focusing on the words responsibility,
8 continuing, and vested, the City is correct that the
9 annexation occurred -- occurred, and the area then
10 annexed is detached from the Town.

11 However, an agreement was made between the Town
12 and the City that the Town would provide wastewater
13 treatment, and they have done so for 20 years. Currently
14 there is no agreement between the City and the
15 Town of Algoma Sanitary District for the City to provide
16 the wastewater serviced for the residents affected in the
17 disputed territory. The Town has the mains and built the
18 infrastructure, relying on that agreement.

19 Court does not find it completely dispositive
20 that there is equipment in the area, because
21 Town of Sheboygan makes it very clear that the issue is
22 one of patrons which are receiving water services. And,
23 again, in the Town of Sheboygan there was only, I
24 believe, one main or one -- I don't know if I'm using the
25 correct word, but the one line that was in

1 Town of Sheboygan case. In this case, there is
2 significant amount of connections. The Town got the
3 easements in order to install their infrastructure. They
4 have mains. And the City, although wanting to pursue
5 providing wastewater services, has not yet received even
6 the DNR approval. It's hard for the Court to see the
7 right to serve responsibility is vested in the City when
8 they did not operate a system that was being serviced
9 there nor have they got approval by the governing body.
10 The language specifically says continuing operation.
11 This is where the Town's argument makes sense. They were
12 vested for many years to provide the services. The Town
13 argues that they have 3,250 wastewater connections in the
14 annexed area, and dispute involves 350 individual and
15 42 commercial.

16 The Court attempted but could not reconcile the
17 interpretation of the word patrons as the City suggests.
18 The reason is, is if annexation by itself would
19 immediately always say the patrons are in the city, so,
20 therefore, it is the City's responsibility, there would
21 never be a need for that statute. Because there wouldn't
22 be a need to designate that the Town would ever have --
23 the Town would never have it. I cannot come up with a
24 scenario where that statute would be operative except in
25 this kind of circumstance. Perhaps the legislature was

1 concerned about residents losing services. It's just
2 simply not clear.

3 And, again, because this is a partial
4 annexation, the Court does find 60.79 to be applicable
5 here. Court is in agreement with the Town of -- the
6 Town -- Town of Algoma Sanitary District's interpretation
7 on patrons. Court, therefore, is granting declaratory
8 judgment, providing that the Town of Algoma
9 Sanitary District is vested and has the responsibility to
10 continue the operation until a majority of patrons reside
11 in the City or upon further agreement between the City
12 and the Town.

13 Regarding the injunction -- and I believe
14 counsel, Attorney Bartzen, in your motion, I believe it
15 stated that to issue an injunction that would stop the
16 City from attempting to provide those services. I'm not
17 comfortable with that language, because attempting can be
18 negotiations of agreements as well.

19 ATTORNEY BARTZEN: May I speak? Or if you want
20 to --

21 THE COURT: When I -- not at this point. Court
22 finds --

23 ATTORNEY BARTZEN: Okay. Sorry.

24 THE COURT: -- the Town District has a
25 reasonable likelihood of success on the merits. Court

1 further finds that the actions that taking up the road,
2 doing the construction, and disconnecting the mains and
3 reconnecting the mains could cause inconvenience to
4 citizens and could be costly as well. So, therefore, the
5 Court does find under the circumstances that irreparable
6 harm would occur if the Court did not issue the
7 injunction. Furthermore, the Court finds that there is
8 no other reasonable remedy available under the law.

9 Therefore, the Court is going to grant the
10 injunction, providing the City is enjoined and barred
11 from interfering with the Town Sanitation District by
12 cutting or disconnecting the mains that service the
13 Wyldewood, Maryden Road that are presently provided
14 services by the Town of Algoma Sanitary District.

15 Now, Attorney Bartzen, any questions on
16 clarification?

17 ATTORNEY BARTZEN: None, your Honor. Thank
18 you. My question is, is the Court going to draft the
19 order or are you going to ask counsel to draft the order?

20 THE COURT: I am going to ask that you draft
21 the order, sir.

22 ATTORNEY BARTZEN: Okay. So I should exclude
23 any reference to attempting to interfere, that language.

24 THE COURT: Correct.

25 ATTORNEY BARTZEN: Got it. Thank you.

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THE COURT: Attorney Smies, any clarification?

ATTORNEY SMIES: No, your Honor. Thank you.

THE COURT: All right. And we're adjourned.

ATTORNEY BARTZEN: Thank you, your Honor.

(Proceedings concluded.)

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REPORTER'S CERTIFICATE

STATE OF WISCONSIN)
)
) SS.
COUNTY OF WINNEBAGO)

I, Greta Pedersen, Registered Professional Court Reporter of Winnebago County Courthouse Branch 1, do hereby certify that the foregoing proceeding were taken down by me in machine shorthand and reduced to transcript form by myself, and these proceedings are true and accurate, all done to the best of my skill and ability.

Dated this 25th of May, 2022.



Greta Pedersen, RPR
Official Court Reporter

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying court reporter.

FILED
05-03-2022
Clerk of Circuit Court
Winnebago County, WI
2022CV000197

ATTACHMENT B

DATE SIGNED: May 2, 2022

Electronically signed by Teresa S. Basiliere
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT WINNEBAGO COUNTY

TOWN OF ALGOMA SANITARY DISTRICT NO. 1,

Plaintiff,

Case No. 22-CV-197

Case Code: 30701

v.

Declaratory Judgment

CITY OF OSHKOSH,

Defendant.

ORDER GRANTING MOTION FOR TEMPORARY INJUNCTION

Plaintiff, the Town of Algoma Sanitary District No. 1 (“Sanitary District”), moved the Court, the Honorable Teresa S. Basiliere presiding, for an order granting a temporary injunction. The Court heard oral argument on April 7, 2022. Plaintiff Sanitary District appeared by James E. Bartzen and Lawrie J. Kobza. Defendant City of Oshkosh (“City”) appeared by Jonathan Smies. The Court considered the affidavits submitted in support of and in opposition to the motion, the briefs submitted in support of and in opposition to the motion, and the arguments of counsel. The Court issued an oral decision on the record on April 25, 2022 at 11:00 a.m., via Zoom. The appearances were the same as on April 7, 2022.

NOW THEREFORE, for the reasons stated by the Court on April 25, 2022, the motion of the Town of Algoma Sanitary District No. 1 is granted. The City is enjoined from interfering in any way with the Sanitary District’s sewer mains located in Wyldewood Drive, Maryden Road and Witzel Avenue.

ATTACHMENT C

GODFREY KAHN S.C.

200 SOUTH WASHINGTON STREET, SUITE 100
GREEN BAY, WISCONSIN 54301-4298

TEL • 920.432.9300 FAX • 920.436.7988

WWW • GK.LAW.COM

Direct: 920-436-7667
jsmies@gklaw.com

February 4, 2022

VIA EMAIL

Mr. Ray Edelstein
Edelstein Law LLC
304 Church Ave
Oshkosh, WI 54901-4748

RE: Notice of Discontinuation of Sewer Service to Algoma Sanitary District No. 1
File No. 007258-0149

Dear Mr. Edelstein:

I represent the City of Oshkosh (the “City”) with respect to its provision of sewer service to Algoma Sanitary District No. 1 (the “District”). Since you have corresponded with the City Attorney, Lynn Lorensen, concerning this in the past on behalf of the District, I am operating under assumption that you still represent the District in this matter. Please correct me if I am mistaken in this regard.

As you know, on December 15, 1977, the City and the District entered into an Agreement Between the City of Oshkosh and the Town of Algoma Sanitary District #1 (the “Agreement”), through which the City agreed to treat sewerage collected by the District. The Agreement, which was originally to be effective for an initial term of thirty (30) years, was supplemented and extended. The most recent extension of the Agreement ran through December 31, 2021. The City declined to enter into any further extension of the Agreement. Thus, by its terms as modified, the Agreement terminated as of December 31, 2021.

As a result, the City is no longer contractually obligated to treat any of the sewerage collected by the District. It is willing to do so for a period of time, however, in recognition of the fact that the District will need to make alternate arrangements for the treatment of the sewerage it collects. Accordingly, the City will continue to treat the District’s sewerage and continue to charge the District in the same manner.

Please note, however, that the City will cease providing treatment of the District’s sewerage effective January 31, 2024. Thus, the District has two years to make alternate arrangements.

The City reserves all of its rights concerning the District’s failure to perform its obligations under the Agreement. I will take this opportunity to call to your attention the fact that the District has failed to pay three invoices issued by the City for the District’s portion of the City’s Clean

Mr. Kevin Mraz
February 4, 2022
Page 2

Water Fund loans pursuant to the Agreement. Specifically, as the enclosed invoices reflect, the District owes the City the invoiced amount, plus interest at a rate of 1% per month on these past due balances, as follows:

Invoice 52963	3/13/2019	\$61,689.45
Invoice 54390	5/28/2020	\$61,675.16
Invoice 57747	7/22/2021	\$61,660.51
Total principal amount:		\$185,025.12

Please ensure that your client makes appropriate arrangements to pay these invoices.

Please let me know if you have any questions concerning this notice.

Very truly yours,

GODFREY & KAHN, S.C.

Jonathan T. Smies

Enclosure

cc: Mark Rohloff
Steven Gohde
James Rabe
Lynn Lorenson, Esq.

26607350.2



City of Oshkosh
 P.O. Box 1128
 Oshkosh, WI 54903-1128
 (920) 236-5019

INVOICE

Invoice Date	Invoice No
03/13/2019	52963
Customer Number	
110729	
Invoice Total Due	
\$61,689.45	
Amount Paid	
Payment Terms	
NET 30 DAYS	

ALGOMA SANITARY DISTRICT
 3477 MILLER DR
 OSHKOSH, WI 54904-7877

00000182018000052963600061689451

City of Oshkosh, Oshkosh, WI 54903-1128 Invoice Date 03/13/2019 Customer Number 110729 Parcel Number

Description	Quantity	Price	UOM	Original Bill	Adjustment	Paid	Amount Due
CLEAN WATER FUND LOAN 4130-05	1.00	\$44,660.01	EACH	\$44,660.01	\$0.00	\$0.00	\$44,660.01
12/31/18 PRINCIPAL							
\$183,555.35 X 10.40% = \$19,089.76							
12/31/18 INTEREST							
\$30,890.32 X 10.40% = \$3,212.59							
CLEAN WATER FUND LOAN 4130-14							
12/31/18 PRINCIPAL							
\$245,867.80 X 10.40% = \$25,570.25							
12/31/18 INTEREST							
\$132,854.33 X 10.40% = \$13,816.85							
INTEREST	1.00	\$17,029.44	EACH	\$17,029.44	\$0.00	\$0.00	\$17,029.44
Please put Invoice Number on your checks. Make Checks Payable to: City of Oshkosh					Invoice Total:	\$61,689.45	

LATE PAYMENT CHARGE OF 1% PER MONTH SHALL BE ADDED TO PAST DUE BALANCES

Invoice No.
52963



City of Oshkosh
 PO Box 1128
 Oshkosh, WI 54903-1128
 www.ci.oshkosh.wi.us

Phone
 (920) 236-5000
 E-Mail
 ap@ci.oshkosh.wi.us

INVOICE
 Customer Copy

CUSTOMER	INVOICE DATE	INVOICE NUMBER	AMOUNT PAID	DUE DATE	INVOICE TOTAL DUE		
ALGOMA SANITARY DISTRICT	05/28/2020	54390	\$0.00	06/27/2020	\$61,675.16		
DESCRIPTION	QUANTITY	PRICE	UOM	ORIGINAL BILL	ADJUSTED	PAID	AMOUNT DUE
CLEAN WATER FUND LOAN 4130-05 12/31/19 PRINCIPAL \$187,953.33 X 10.40% = \$19,547.15 12/31/19 INTEREST \$26,439.64 X 10.40% = \$2,749.72							
CLEAN WATER FUND LOAN 4130-14 12/31/19 PRINCIPAL \$252,321.82 X 10.40% = \$26,241.47 12/31/19 INTEREST \$126,315.60 X 10.40% = \$13,136.82	1	\$45,788.62	EACH	\$45,788.62	\$0.00	\$0.00	\$45,788.62
INTEREST EXPENSE SUBSIDY	1	\$15,886.54	EACH	\$15,886.54	\$0.00	\$0.00	\$15,886.54
Invoice Total:					\$61,675.16		

Property charges that are delinquent as of October 31st will be placed on the property owner's tax bill. A LATE PAYMENT CHARGE OF 1% PER MONTH SHALL BE ADDED TO PAST DUE BALANCES

----- ✂ DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT ✂ -----



Promptly Send Payment To:
 City of Oshkosh
 PO Box 1128
 Oshkosh, WI 54903-1128
 www.ci.oshkosh.wi.us

ALGOMA SANITARY DISTRICT
 3477 MILLER DR
 OSHKOSH, WI 54904-7877

INVOICE

Invoice Date	05/28/2020
Invoice Number	54390
Customer Number	110729
Parcel ID	
Amount Paid	\$0.00
Due Date	08/27/2020
Invoice Total Due	\$61,675.16

Please write your Invoice Number on your check and enclose this portion of the bill with your payment.
 Make checks payable to: City of Oshkosh

00000182020600054390000061675161



City of Oshkosh
 PO Box 1130
 Oshkosh, WI 54903-1130
 www.ci.oshkosh.wi.us

Phone
 (920) 236-5000
 E-Mail
 ar@ci.oshkosh.wi.us

INVOICE
 Customer Copy

CUSTOMER	INVOICE DATE	INVOICE NUMBER	AMOUNT PAID	DUE DATE	INVOICE TOTAL DUE		
ALGOMA SANITARY DISTRICT	07/22/2021	57747	\$0.00	08/21/2021	\$61,660.51		
DESCRIPTION	QUANTITY	PRICE	UOM	ORIGINAL BILL	ADJUSTED	PAID	AMOUNT DUE
CLEAN WATER FUND LOAN 4130-05 12/31/20 PRINCIPAL \$192,456.69 X 10.40% = \$20,015.50 12/31/20 INTEREST \$21,882.93 X 10.40% = \$2,275.76	1	\$46,945.81	EACH	\$46,945.81	\$0.00	\$0.00	\$46,945.81
CLEAN WATER FUND LOAN 4130-14 12/31/20 PRINCIPAL \$258,945.27 X 10.40% = \$26,930.31 12/31/20 INTEREST \$119,605.22 X 10.40% = \$12,438.94	1	\$14,714.70	EACH	\$14,714.70	\$0.00	\$0.00	\$14,714.70
INTEREST EXPENSE SUBSIDY							
Invoice Total:							\$61,660.51

Property charges that are delinquent as of October 31st will be placed on the property owner's tax bill. A LATE PAYMENT CHARGE OF 1% PER MONTH SHALL BE ADDED TO PAST DUE BALANCES.

LOG ONTO WWW.CI.OSHKOSH.WI.US TO MAKE A PAYMENT ONLINE WITH A CREDIT/DEBIT CARD OR ECHECK

✂ DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT ✂

Promptly Send Payment To:



City of Oshkosh
 PO Box 94350
 Palatine, IL 60094-4350

ALGOMA SANITARY DISTRICT
 3477 MILLER DR
 OSHKOSH, WI 54904-7877

INVOICE

Remit Portion

Invoice Date	07/22/2021
Invoice Number	57747
Customer Number	110729
Parcel ID	
Amount Paid	\$0.00
Due Date	08/21/2021
Invoice Total Due	\$61,660.51

Please write your Invoice Number on your check and enclose this portion of the bill with your payment.
 Make checks payable to: City of Oshkosh

March 1, 2022

VIA EMAIL

Mr. Jonathan Smies jsmies@gklaw.com
Godfrey & Kahn
200 South Washington Street, Suite 100
Green Bay, WI 54301-4298

RE: Oshkosh's Notice of Discontinuation of Sewer Service to the Town of Algoma Sanitary District No. 1

Dear Mr. Smies:

I have reviewed your February 4, 2022 letter to Attorney Edelstein in which you indicate that the City of Oshkosh will cease providing treatment services to the Sanitary District effective January 31, 2024.

You indicate that the Agreement for wastewater treatment services between the City and Sanitary District terminated as of December 31, 2021. Based on my review of the contract documents, it is not evident that your claim is correct.

Nevertheless, even if the Agreement did terminate, Oshkosh's obligation to continue providing wastewater treatment services does not terminate. Oshkosh continues to have an obligation to serve existing customers (i.e., the Sanitary District) even after the contract expires.

Wisconsin law provides that if a contract for sewerage services terminates, the "proper procedure to be followed" is for the sewerage service provider to set rates "subject to appeal to the public service commission by the user." *City of Brookfield v. Milwaukee Metropolitan Sewerage District*, 171 Wis.2d 400, 419, 491 N.W.2d 484 (1992); *Village of Butler v. Renner Mfg. Co.*, 70 Wis. 2d 1, 8, 233 N.W.2d 380 (1975).

Village of Butler (a wastewater contract case) relied heavily upon the Court's reasoning in *City of Milwaukee v. City of West Allis*, 271 Wis. 614, 258 N.W. 851 (1935) (a water contract case) to reach its conclusion. In *Milwaukee v. West Allis*, the Court explained that:

The contract being at an end, the city of Milwaukee could not of course proceed under the terms of the contract to terminate the service. While it

is freed from the contract, it is subject to the law, and under the law it must continue to render service in accordance with the law. The only matter open to investigation will be the charge for the service to be rendered, which shall be determined as already indicated.

We believe that under Wisconsin case law it is clear Oshkosh has an obligation to continue providing wastewater treatment service to the Sanitary District even if the existing Agreement between the parties has expired. Given that, the Sanitary District does not intend to take any steps towards making alternative arrangements for treatment service.

The Sanitary District believes the City's Notice of Discontinuance of Service is null, void, and of no effect. If it becomes necessary, the Sanitary District will take legal action to confirm that its view of the law is correct, that the Notice of Discontinuance is null and void, and that the City must continue to provide it with treatment service.

The Sanitary District would prefer not to pursue this path. The Sanitary District would much prefer working with the City on a new wastewater treatment agreement.

If the parties cannot negotiate a new agreement, the City is able to use its ordinances to establish the terms under which it provides service to all its customers, including the Sanitary District, subject to PSC review under Wis. Stat. § 66.0821(5).

We are hopeful that the City will agree to further negotiations on a new wastewater treatment agreement with the Sanitary District. We look forward to hearing from you soon.

Sincerely,

BOARDMAN & CLARK LLP



Lawrie J. Kobza

cc: Kevin Mraz, Utility Director
Attorney Raymond Edelstein

June 23, 2022

VIA EMAIL ONLY

City of Oshkosh
215 Church Street
P. O. Box 1130
Oshkosh, WI 54903-1130

ar@ci.oshkosh.wi.us

RE: Invoices Related to Oshkosh's Clean Water Fund Loans

Dear Sir or Madam:

Algoma Sanitary District No. 1 has received an Invoice and Statement from the City of Oshkosh dated May 15, 2022. This Invoice and Statement is for a share of the City's debt service for two Clean Water Fund Loans (Loan 4130-05 and Loan 4130-14).¹

The Invoice is for \$61,645.49 and the Statement shows a Total Amount Due of \$287,997.08. According to the Statement, the Total Amount Due includes \$41,326.47 of interest.

The Invoice description includes the following two items:

Clean Water Fund Loan 4130-05
12/31/21 Principal
 $\$197,067.96 \times 10.40\% = \$20,495.07$
12/31/21 Interest
 $\$17,215.83 \times 10.40\% = \$1,790.45$

Clean Water Fund Loan 4130-14
12/31/21 Principal
 $\$265,742.58 \times 10.40\% = \$27,637.23$
12/31/21 Interest
 $\$112,718.68 \times 10.40\% = \$11,722.74$

¹ Clean Water Fund Loan 4130-05 was issued in 2004 in the principal amount of \$3.38 million for emergency generator equipment and SCADA updates at the wastewater treatment plant. Clean Water Fund Loan 4130-14 was issued in 2014 for \$5.6 million for control system, influent pumping and aeration blower upgrades.

The Statement includes this Invoice amount (\$61,645.49), plus past due amounts for 2018, 2019, and 2020 for these two Clean Water Fund Loans (\$185,025.12), plus the City's interest charge (\$41,326.47).

The District disputes this Invoice and the Total Amount Due shown on the May 15, 2022 Statement.

According to Paragraph 22 of the *Agreement Between the City of Oshkosh and the Town of Algoma Sanitary District #1*, dated December 15, 1977:

New capital investment may be required in the future for treatment of sewage emanating from District's collection system. With reference to such new capital investment by City, the engineers charged with responsibility for design of such new investment shall calculate the proportion thereof which is intended to service sewage emanating from the various areas to be serviced by said investment. District's proportionate share shall be then calculated and District shall pay to City its allocable share of such investment either in cash or pursuant to whatever terms may be agreed upon between the parties.

(Emphasis Added.)

The City and its engineers have not complied with Paragraph 22 of the Agreement with respect to Clean Water Fund Loans 4310-05 and 4130-14. The District has not been provided with any documentation that shows the capital investments funded by Clean Water Fund Loans 4130-05 and 4130-14 were designed and built to serve the District, or that the City's engineers calculated the proportionate share of those projects intended to serve the District. If the District is incorrect and the documentation required by Paragraph 22 of the Agreement exists, please provide it.²

In the past, with respect to two *prior* Clean Water Fund Loans 4310-01 and 4130-02, there was an agreement between the City and District that the District's proportionate share of the design capacity of the projects funded by those loans was 10.4%, that the District would be entitled to 10.4% of the WWTP capacity, and that the District would pay 10.4% of the debt payments for these loans. The District did pay 10.4% of these two prior Clean Water Fund Loans which were paid off in 2012 and 2014 respectively.

² This request was previously made in a March 16, 2022 letter to Attorney Jonathan Smies and no relevant documentation has been received to date.

No similar agreement exists regarding Clean Water Fund Loans 4130-05 and 4130-14. Furthermore, an allocation of 10.4% to the District for the debt service for these new improvements would not be reasonable given that:

- the District's flow to the wastewater treatment plant is only 6% of the total flow to the regional wastewater treatment plant;
- the District's need for future wastewater treatment plant capacity was significantly reduced when the City and Town of Algoma entered into a 2004 Cooperative Agreement which limited the District's prospective growth area in the Town;
- the City has not been willing to support an expansion of the sewer service area for the regional wastewater treatment plant that would allow the District to use up to 10.4% of the plant's capacity in the future; and
- the City has refused to enter into a long-term wastewater agreement with the District which would ensure that the District would continue to have the right to use the wastewater treatment plant capacity that it would be paying for.

The District is more than willing and able to pay for its fair share of capital costs for the regional wastewater treatment plant. However, the Invoice and Statement issued by the City for Clean Water Fund Loans 4130-05 and 4130-14 does not represent the District's fair share of capital costs and does not comply with the requirements of Paragraph 22 of the Agreement.

The District asks to meet with City representatives to discuss an acceptable resolution of this capital cost issue. We look forward to hearing from you soon.

Sincerely,

BOARDMAN & CLARK LLP



Lawrie J. Kobza

cc: Attorney Jonathan Smies
City Attorney Lynn Lorensen
Russ Van Gompel, Finance Director
Kevin Mraz, Utility Director
Attorney Raymond Edelstein

jsmies@gklaw.com
llorenson@ci.oshkosh.wi.us
rvangompel@ci.oshkosh.wi.us

MEETING NOTICE
COMMUNITY FACILITIES COMMITTEE MEETING
East Central Wisconsin Regional Planning Commission

COMMITTEE MEMBERS: *David Albrecht (Perm Alt for Tom Egan), Aaron Jenson (Perm Alt for Brian Smith), James Lowey, Jeff Nooyen, Brenda Schneider*

Date: Tuesday – August 23, 2022

Time: 1:00 p.m.

Place: Virtual Only

Meeting Link: <https://meet.goto.com/711112565>

Phone Number: +1 (571) 317-3122

Access Code: 711-112-565

Please contact the East Central office if you are unable to attend and arrange for an alternate to be present.

AGENDA

- 1. Welcome and Introductions**
- 2. Roll Call**
 - A. Introduction of Alternates, Staff and Guests
- 3. Approval of the Agenda/Motion to Deviate**
- 4. Public Comment**
- 5. Approval of the Minutes of the June 8, 2022 Community Facilities Committee Meeting**
- 6. Announcements and Discussion Items**
- 7. New Business/Action Items**
 - A. Re-Evaluate Track 173 – Oshkosh 2030 Sewer Service Area Amendment: Change in DMA Status
 - B. Track 174 – Fox Cities-Heart of the Valley Sewer Service Area Amendment: Acreage Swap
 - C. Track 175 – Stockbridge Sewer Service Area Amendment: Acreage Swap
- 8. Informational / Discussion Items**
 - A. County Roundtable Discussion (*as time permits*)
- 9. Upcoming Commission Meetings**
 - A. *The next **Community Facilities Meeting** will take place Wednesday, September 14, 2022 at 10:00 a.m. Further details will be forthcoming.*
 - B. *The next **Quarterly Commission Meeting** will take place Friday, October 28, 2022. Further details will be forthcoming.*
- 10. Adjourn**

Any person wishing to attend this meeting or hearing, who, because of a disability, requires special accommodations should contact the East Central Wisconsin Regional Planning Commission at (920) 751-4770 at least three business days prior to the meeting or hearing so that arrangements, within reason, can be made.



DRAFT
MEETING MINUTES
COMMUNITY FACILITIES COMMITTEE
 East Central WI Regional Planning Commission

Date: Wednesday, August 23, 2022
Time: 1:00 p.m.
Place: Virtual Meeting

1. Welcome and Introductions

Vice Chairperson Schneider called the meeting to order at 1:00 p.m.

2. Roll Call

Committee Members Present:

Brenda Schneider-Chair Fond du Lac County
 Jeff Nooyen Outagamie County
 James Lowey-Vice Chair Menominee County
 Aaron Jenson (Perm. Alt. for Brian Smith)..... Waupaca County

Committee Members Absent (Excused):

David Albrecht (Perm. Alt. for Tom Egan) Winnebago County

ECWRPC Staff:

Melissa Kraemer Badtke..... Executive Director
 Kevin Englebert Deputy Director
 Wilhelmina Paustian Senior Planner
 Leann Buboltz..... Administrative Coordinator

ECWRPC Guests:

Kevin Mraz Algoma Sanitary District
 Lawrie Kobza..... Boardman & Clark, LLP
 Jonathan Smies..... Godfrey & Kahn, S.C.
 Tim Asplund..... WDNR
 Gunilla Goulding..... WDNR
 Alix Burk WDNR
 John Neumeier City of Kaukauna
 Jeff Bodoh City of Kaukauna
 Steve GohdeCity of Oshkosh Public Works
 James Rabe.....City of Oshkosh Public Works
 Justin Gierach..... City of Oshkosh
 Lynn Lorenson..... City of Oshkosh
 Mark Rohloff City of Oshkosh
 Amy Vanden Hogen..... City of Oshkosh

3. **Approval of the Agenda/Motion to Deviate** - A motion was made by Mr. Lowey and second by Mr. Nooyen to approve of the agenda. Motion carried unanimously.
4. **Public Comment** – Chair Schneider indicated that public comments are limited to 2 minutes for each individual.

Attorney Jonathan Smies – On behalf of the City of Oshkosh. Attorney Smies stated that the City of Oshkosh SSA Amendment will change the DMA status in the City of Oshkosh for the Wit development. He noted that he was in support of the Commission’s recommendation to approve the City’s request and shared that those being served are City residents and would be receiving city services (i.e. police, fire and water) so providing wastewater service would make sense.

Mr. Mark Rohloff – City of Oshkosh Manager indicated that workforce housing is important for the Economic Development in the area and that the City has been working with the Wit development for a couple of years and noted they are in favor of this request.

Attorney Lawrie Kobza – On behalf of the Algoma Sanitary District No. 1. Attorney Kobza shared that they believe that staff’s recommendation includes an error. She stated that this will not conform to the existing Sewer Service Area Plan because the project is being sized to serve areas that are within the Sanitary District DMA and are already receiving service from the Sanitary District. Ms. Kobza also stated that the full cost for the City’s interceptor project must be attributed to the Wit development.

Kevin Mraz – City of Algoma Sanitary District. He presented slides showing a map of the existing District’s sewer main along Witzel Avenue and noted that it is adequate to serve the site and is the same size diameter that is being proposed by the City, therefore it would not be a necessity to install new infrastructure along Witzel Avenue. In addition, Mr. Mraz pointed out that the sewer main extends to Westbrook Drive, not to Westhaven Drive as was incorrectly noted in the Commission staff’s memo. Mr. Mraz emphasized that the City’s DMA request is proposed to allow service to the Wit property only and not connect to any other property. A map of the proposed 72 acres that is included in the City’s broad project cost was not identified by the City. He also stated that spreading the entire project cost across the 72 acres would not be a fair representation of the monetary cost to serve the Wit development.

5. **Approval of the Minutes of the June 8, 2022 Community Facilities Committee Meeting** - A motion was made by Mr. Nooyen and seconded by Mr. Lowey to approve as presented. Hearing of no further discussion, motion carried unanimously.
6. **Announcements** –
 - A. Staff Report –None.

7. New Business/Action Items – presented by Ms. Paustian – Senior Planner

- A. Re-Evaluate Track 173 – Oshkosh 2030 Sewer Service Area Amendment: Change in DMA Status: Ms. Paustian provided an overview of the amendment timeline and final evaluation. Staff conducted an evaluation of the proposed SSA Amendment with respect to the Policies and Criteria outlined in the Oshkosh SSA Plan, and NR 121, Wisconsin Administrative Code definition of a cost-effective analysis, as well as a non-monetary cost analysis which includes environmental impacts. Upon that review, ECWRPC is recommending that the Community Facilities Committee approve the City of Oshkosh's SSA Amendment (Track 173) request.

A motion was made by Mr. Lowey and second by Mr. Nooyen to approve the proposed Track 173-Oshkosh 2030 Sewer Service Area Amendment: Change in DMA Status. Motion carried unanimously

- B. Track 174 – Fox Cities-Heart of the Valley Sewer Service Area Amendment: Acreage Swap. On July 20, 2022 the City of Kaukauna submitted an SSA Amendment application to propose removing 39.41 acres of land in the HOV SSA and add in 29.07 acres of land outside, but adjacent to the HOV SSA. Adding this area would allow for the potential to provide service to the proposed Bluestem Meadows development. Ms. Paustian noted that based on the review of the amendment application, staff determined that the proposed acreage swap follows ECWRPC's swap amendment criteria is consistent with the Fox Cities 2030 SSA Plan. Upon review, staff recommended that the Community Facilities Committee approve the City of Kaukauna's SSA Amendment (Track 174) request.

A motion was made by Mr. Jenson and second by Mr. Lowey to approve the proposed Track 171 SSA Amendment. Motion carried unanimously.

- C. Track 175 – Stockbridge Sewer Service Area Amendment: Acreage Swap. On behalf of the Village of Stockbridge, McMahon Associates, Inc. requested that a total of 31.10 acres be added to the SSA and 29.84 acres be removed, or swapped-out of the SSA. Ms. Paustian noted that based on the review and evaluation of this amendment application, it was determined that the proposed acreage swap in the Stockbridge SSA follows ECWRPC's swap criteria and is consistent with the elements in the Stockbridge SSA Plan and Water Quality Management Program elements. Staff recommended that the Community Facilities Committee approve.

A motion was made by Mr. Lowey and second by Mr. Nooyen to approve the proposed Track 171 SSA Amendment. Motion carried unanimously.

8. Informational/Discussion Items

County Roundtable Discussion – None

9. Establish Time and Place for Next Commission Meeting

- A. *The next **Community Facilities Meeting** will take place Wednesday, September 14, 2022 at 10:00 a.m. Further details will be forthcoming.*

B. The next **Quarterly Commission Meeting** will take place Friday, October 28, 2022. Further details will be forthcoming.

10. Adjourn – A motion was made by Mr. Lowey and second by Mr. Nooyen to adjourn.
Time noted at 1:37 p.m.

Respectfully submitted
Leann Buboltz – ECWRPC Administrative Coordinator