



CITY OF EAU CLAIRE

Office of the City Attorney

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April 9, 2015

Clerk of Court
Eau Claire County Courthouse
721 Oxford Avenue
Eau Claire WI 54703

**Re: Voters with Facts et al. v City of Eau Claire and City of Eau Claire Joint Review Board
Case No. 2015 CV 175**

Dear Clerk:

Please find enclosed the Defendant's Answer and the Affidavit of Mailing regarding the above captioned matter. Please file accordingly.

By copy of this letter, I am providing a copy of the documents to the Plaintiffs' counsel.

Thank you for your attention to this matter. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

Stephen C. Nick
City Attorney

SCN:jw

Encl.

cc: Michael Fischer, WI Institute for Law and Liberty, by Email and US Mail w/attachments
Remzy D. Bitar, Crivello Carlson, by Email w/attachments

STATE OF WISCONSIN

**CIRCUIT COURT
Branch 5**

EAU CLAIRE COUNTY

**VOTERS WITH FACTS,
PURE SAVAGE ENTERPRISES, LLC,
WISCONSIN THREE, LLC,
215 FARWELL LLC,
DEWLOC, LLC,
LEAH ANDERSON,
J. PETER BARTL, LEAH ANDERSON,
CYNTHIA BURTON, CORINNE CHARLSON,
MARYJO COHEN, JO ANN HOEPPNER CRUZ,
RACHEL MANTIK, JUDY OLSON,
JANEWAY RILEY, CHRISTINE WEBSTER,
DOROTHY WESTERMANN, JANICE
WNUKOWSKI, DAVID WOOD, AND PAUL ZANK**

Case No. 15CV175

Case Code: 30701

Plaintiffs,

vs.

**CITY OF EAU CLAIRE and
CITY OF EAU CLAIRE JOINT REVIEW BOARD**

Defendants.

ANSWER

Defendant, City of Eau Claire, by its attorneys, City Attorney, Stephen C. Nick and Assistant City Attorney, Douglas Hoffer, and by Crivello Carlson, S.C., by special appearance and reserving all jurisdictional objections, to support the validity of the action of the City of Eau Claire (the "City") and the City of Eau Claire Joint Review Board (the "JRB") to amend and expand an existing tax incremental district, Eau Claire TID #8 and to create the overlay tax incremental district, Eau Claire TID #10, and to defend against and seek the dismissal of the unfounded allegations and claims of the Plaintiffs, submits the following answer and affirmative defenses to the Plaintiffs' complaint:

1. Paragraph 1 of the Plaintiffs' Complaint contains a summary of the nature of this action for which no answer is required; to the extent any factual assertions are made, the Defendants deny each and every assertion and put the Plaintiffs specifically to their proof thereon.

2. Lacks information and therefore denies those allegations asserted in paragraph 2 of Plaintiffs' Complaint.

3. Lacks information and therefore denies those allegations asserted in paragraph 3 of Plaintiffs' Complaint.

4. Lacks information and therefore denies those allegations asserted in paragraph 4 of Plaintiffs' Complaint.

5. Lacks information and therefore denies those allegations asserted in paragraph 5 of Plaintiffs' Complaint.

6. Lacks information and therefore denies those allegations asserted in paragraph 6 of Plaintiffs' Complaint.

7. Lacks information and therefore denies those allegations asserted in paragraph 7 of Plaintiffs' Complaint.

8. Lacks information and therefore denies those allegations asserted in paragraph 8 of Plaintiffs' Complaint.

9. Lacks information and therefore denies those allegations asserted in paragraph 9 of Plaintiffs' Complaint.

10. Lacks information and therefore denies those allegations asserted in paragraph 10 of Plaintiffs' Complaint.

11. Lacks information and therefore denies those allegations asserted in paragraph 11 of Plaintiffs' Complaint.

12. Lacks information and therefore denies those allegations asserted in paragraph 12 of Plaintiffs' Complaint.

13. Lacks information and therefore denies those allegations asserted in paragraph 13 of Plaintiffs' Complaint.

14. Lacks information and therefore denies those allegations asserted in paragraph 14 of Plaintiffs' Complaint.

15. Lacks information and therefore denies those allegations asserted in paragraph 15 of Plaintiffs' Complaint.

16. Lacks information and therefore denies those allegations asserted in paragraph 16 of Plaintiffs' Complaint.

17. Lacks information and therefore denies those allegations asserted in paragraph 17 of Plaintiffs' Complaint.

18. Lacks information and therefore denies those allegations asserted in paragraph 18 of Plaintiffs' Complaint.

19. Lacks information and therefore denies those allegations asserted in paragraph 19 of Plaintiffs' Complaint.

20. Lacks information and therefore denies those allegations asserted in paragraph 20 of Plaintiffs' Complaint.

21. Denies City of Eau Claire Zip Code is 54702. Admits the other allegations asserted in paragraph 21 of Plaintiffs' Complaint.

22. Admits the City of Eau Claire Joint Review Board was lawfully convened, as further answer, denies all other allegations asserted in paragraph 22 of Plaintiffs' Complaint.

23. Admits the allegations asserted in paragraph 23 of the Plaintiffs' Complaint.

24. Denies that the Court has jurisdiction over this dispute as Plaintiffs lack standing, the controversy is not ripe, and Plaintiffs for reasons more fully set forth in subsequent

pleadings fails to state a claim upon which the Court can grant relief. Denies all other allegations asserted in paragraph 24 of the Plaintiffs' Complaint.

25. Denies that the Court has jurisdiction to hear a common law certiorari action challenging the final actions of the City Council and the JRB. Denies all other allegations asserted in paragraph 25 of the Plaintiffs' Complaint.

26. Paragraph 26 of the Plaintiffs' Complaint contains narrative and conclusions of law that are neither "short" nor "plain" (s. 802.02 (1) (a), Wis. Stats.), which Defendants may dispute but for which no answer is required due to the objectionable nature of the pleading; to the extent any factual or legal assertions are made, the Defendants deny each and every such allegation and put the Plaintiffs specifically to their proof thereon.

27. Paragraph 27 of the Plaintiffs' Complaint contain narrative and conclusions of law that are neither "short" nor "plain" (s. 802.02 (1) (a), Wis. Stats.), which Defendants may dispute but for which no answer is required due to the objectionable nature of the pleading; to the extent any factual or legal assertions are made, the Defendants deny each and every such allegation and put the Plaintiffs specifically to their proof thereon.

28. Admits the allegations asserted in paragraph 28 of the Plaintiffs' Complaint.

29. Paragraph 29 of the Plaintiffs' Complaint contain narrative and conclusions of law that are neither "short" nor "plain" (s. 802.02 (1) (a), Wis. Stats.), which Defendants may dispute but for which no answer is required due to the objectionable nature of the pleading; to the extent any factual or legal assertions are made, the Defendants deny each and every such allegation and put the Plaintiffs specifically to their proof thereon.

30. As to paragraph 30, admit that the plaintiff has correctly cited to a portion of Wis. Stat. § 66.1105, but deny that the plaintiff's citation is a full complete and correct citation or explanation as to the content or effect of the § 66.1105; as further answer to the remaining allegations, deny.

31. Paragraph 31 of the Plaintiffs' Complaint contains conclusions of law which Defendants may dispute but for which no answer is required; to the extent any factual or legal assertions are made, the Defendants deny each and every such allegation and put the Plaintiffs specifically to their proof thereon.

32. Paragraph 32 of the Plaintiffs' Complaint contains conclusions of law which Defendants may dispute but for which no answer is required; to the extent any factual or legal assertions are made, the Defendants deny each and every such allegation and put the Plaintiffs specifically to their proof thereon.

33. As to Paragraph 33 of the Plaintiffs' Complaint, admit the creation or amendment of a TID must be approved by a joint review board in which all local taxing authorities are represented and their legislative judgment is expressed in regard to TID creation. The remainder of paragraph 33 of the Plaintiffs' Complaint contains conclusions of law which Defendants may dispute but for which no answer is required; to the extent any factual or legal assertions are made, the Defendants deny each and every such allegation and put the Plaintiffs specifically to their proof thereon.

34. As to Paragraph 34 of the Plaintiffs' Complaint, admit the creation or amendment of a TID must be approved by a joint review board in which all local taxing authorities are represented and their legislative judgment is expressed in regard to TID creation. The remainder of paragraph 34 of the Plaintiffs' Complaint contains conclusions of law which Defendants may dispute but for which no answer is required; as further answer, to the extent any factual or legal assertions are made, the Defendants deny each and every such allegation and put the Plaintiffs specifically to their proof thereon.

35. To the extent Plaintiffs correctly cite portions of current state law in Paragraph 35 of the Plaintiffs' Complaint admit, however to the extent these paragraphs contain conclusions of law which Defendants may dispute no answer is required; to the extent any factual assertions are

made, the Defendants deny each and every such allegation and put the Plaintiffs specifically to their proof thereon.

36. To the extent Plaintiffs correctly cite portions of current state law in Paragraph 36 of the Plaintiffs' Complaint admit, however to the extent these paragraphs contain conclusions of law which Defendants may dispute no answer is required; to the extent any factual assertions are made, the Defendants deny each and every such allegation and put the Plaintiffs specifically to their proof thereon.

37. To the extent Plaintiffs correctly cite portions of current state law in Paragraph 37 of the Plaintiffs' Complaint admit, however to the extent these paragraphs contain conclusions of law which Defendants may dispute no answer is required; to the extent any factual assertions are made, the Defendants deny each and every such allegation and put the Plaintiffs specifically to their proof thereon.

38. To the extent Plaintiffs correctly cite portions of current state law in Paragraph 38 of the Plaintiffs' Complaint admit, however to the extent these paragraphs contain conclusions of law which Defendants may dispute no answer is required; to the extent any factual assertions are made, the Defendants deny each and every such allegation and put the Plaintiffs specifically to their proof thereon.

39. Paragraph 39 of the Plaintiffs' Complaint contains conclusions of law for which no answer is required; to the extent any factual assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

40. Paragraph 40 of the Plaintiffs' Complaint contains conclusions of law for which no answer is required; to the extent any factual assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

41. Lacks information and therefore denies those allegations asserted in paragraph 41 of Plaintiffs' Complaint.

42. Paragraph 42 of the Plaintiffs' Complaint contains narrative and conclusions of law that are neither "short" nor "plain" (s. 802.02 (1) (a), Wis. Stats.), which Defendants may dispute but for which no answer is required due to the objectionable nature of the pleading; to the extent any factual or legal assertions are made, the Defendants deny each and every such allegation and put the Plaintiffs specifically to their proof thereon.

43. Denies the allegations asserted in paragraph 43 of the Plaintiffs' Complaint.

44. Paragraph 44 of the Plaintiffs' Complaint contain narrative and conclusions of law that are neither "short" nor "plain" (s. 802.02 (1) (a), Wis. Stats.), which Defendants may dispute but for which no answer is required due to the objectionable nature of the pleading; to the extent any factual or legal assertions are made, the Defendants deny each and every such allegation and puts the Plaintiffs specifically to their proof thereon.

45. Denies the allegations asserted in paragraph 45 of the Plaintiffs' Complaint.

46. Paragraph 46 of the Plaintiffs' Complaint contain narrative and conclusions of law that are neither "short" nor "plain" (s. 802.02 (1) (a), Wis. Stats.), which Defendants may dispute but for which no answer is required due to the objectionable nature of the pleading; to the extent any factual or legal assertions are made, the Defendants deny each and every such allegation and put the Plaintiffs specifically to their proof thereon.

47. Admits Amendment #3 to TID 8 adds a project cost related to the proposed Confluence Arts Center, as further answer, denies all other allegations asserted in paragraph 47 of the Plaintiffs' Complaint.

48. Admits the allegations asserted in paragraph 48 of the Plaintiffs' Complaint.

49. Admits that the City Plan Commission heard public comment prior to making legislative decisions to approve the project plans, as further answer, denies all other allegations asserted in paragraph 49 of the Plaintiffs' Complaint.

50. Admits City Council heard public comment prior to making legislative decisions to approve the project plans, as further answer, denies all other allegations asserted in paragraph 50 of the Plaintiffs' Complaint.

51. Admits the allegations asserted in paragraph 51 of the Plaintiffs' Complaint.

52. Denies the allegations asserted in paragraph 52 of the Plaintiffs' Complaint.

53. Admits the allegations asserted in paragraph 53 of the Plaintiffs' Complaint.

54. Denies the allegations asserted in paragraph 54 of the Plaintiffs' Complaint.

55. Admits the public was given robust opportunity to provide input at public hearings and that several of the same Plaintiffs availed themselves of these opportunities prior to the legislative decision, as further answer, denies all other allegations asserted in paragraph 55 of the Plaintiffs' Complaint.

56. Admits the allegations asserted in paragraph 56 of the Plaintiffs' Complaint.

57. The document speaks for itself, therefore denies and puts Plaintiffs to its proof on the allegations asserted in paragraph 57 of the Plaintiffs' Complaint.

58. Admits the City Council exercised its legislative discretion within the scope of existing state law and approved the resolution regarding TID #10, as further answer, deny any and all other allegations or inferences asserted in paragraph 58 of the Plaintiffs' Complaint.

59. Denies the allegations asserted in paragraph 59 of the Plaintiffs' Complaint.

60. Admits the allegations asserted in paragraph 60 of the Plaintiffs' Complaint.

61. Denies the allegations asserted in paragraph 61 of the Plaintiffs' Complaint.

62. Admits the allegations asserted in paragraph 62 of the Plaintiffs' Complaint.

63. Admits the allegations asserted in paragraph 63 of the Plaintiffs' Complaint.

64. Admits that the claimants address was included, as further answer, denies Plaintiffs provided itemized statement of relief, the document otherwise speaks for itself, denies all other allegations asserted in paragraph 64 of the Plaintiffs' Complaint.

65. Admits the City Council made lawful discretionary legislative decisions to appropriate the identified funds in its 2015 budget or Program of Services including 2015 Capital Improvements, as further answer, deny any and all other allegations asserted in paragraph 65 of the Plaintiffs' Complaint.

66. Admits the allegations asserted in paragraph 66 of the Plaintiffs' Complaint.

67. Admits the City Council made lawful discretionary legislative decisions to express an intent to issue bonds for certain 2015 capital improvements, as further answer, deny any and all other allegations asserted in paragraph 67 of the Plaintiffs' Complaint.

68. Admits the allegations asserted in paragraph 68 of the Plaintiffs' Complaint.

69. Paragraph 69 of the Plaintiffs' Complaint contains no factual assertions requiring an answer, to the extent Plaintiffs allegations are reasserted Defendants reassert its prior answers as stated above.

70. Paragraph 70 of the Plaintiffs' Complaint contains conclusions of law for which no answer is required; to the extent any factual assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

71. Paragraph 71 of the Plaintiffs' Complaint contains conclusions of law for which no answer is required; to the extent any factual or legal assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

72. Paragraph 72 of the Plaintiffs' Complaint contains conclusions of law for which no answer is required; to the extent any factual or legal assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

73. Denies the allegations asserted in paragraph 73 of the Plaintiffs' Complaint.

74. Denies the allegations asserted in paragraph 74 of the Plaintiffs' Complaint.

75. Paragraph 75 of the Plaintiffs' Complaint contains conclusions of law for which no answer is required; to the extent any factual or legal assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

76. Denies the allegations asserted in paragraph 76 of the Plaintiffs' Complaint.

77. Paragraph 77 of the Plaintiffs' Complaint contains conclusions of law for which no answer is required; to the extent any factual or legal assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

78. Denies the allegations asserted in paragraph 78 of the Plaintiffs' Complaint.

79. Denies the allegations asserted in paragraph 79 of the Plaintiffs' Complaint.

80. Denies the allegations asserted in paragraph 80 of the Plaintiffs' Complaint.

81. Paragraph 81 of the Plaintiffs' Complaint contains no factual assertions requiring an answer; to the extent any factual or legal assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

82. Paragraph 82 of the Plaintiffs' Complaint contains conclusions of law for which no answer is required; to the extent any factual or legal assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

83. Paragraph 83 of the Plaintiffs' Complaint contains conclusions of law for which no answer is required; to the extent any factual or legal assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

84. Denies the allegations asserted in paragraph 84 of the Plaintiffs' Complaint.

85. Denies the allegations asserted in paragraph 85 of the Plaintiffs' Complaint.

86. Paragraph 86 of the Plaintiffs' Complaint contains conclusions of law for which no answer is required; to the extent any factual or legal assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

87. Denies the allegations asserted in paragraph 87 of the Plaintiffs' Complaint.

88. Denies the allegations asserted in paragraph 88 of the Plaintiffs' Complaint.

89. Paragraph 89 of the Plaintiffs' Complaint contains conclusions of law for which no answer is required; to the extent any factual or legal assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

90. Denies the allegations asserted in paragraph 90 of the Plaintiffs' Complaint.

91. Denies the allegations asserted in paragraph 91 of the Plaintiffs' Complaint.

92. Denies the allegations asserted in paragraph 92 of the Plaintiffs' Complaint.

93. Paragraph 93 of the Plaintiffs' Complaint contains no factual assertions requiring an answer; to the extent any factual or legal assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

94. Denies the allegations asserted in paragraph 94 of the Plaintiffs' Complaint.

95. Denies the allegations asserted in paragraph 95 of the Plaintiffs' Complaint.

96. Paragraph 96 of the Plaintiffs' Complaint contains conclusions of law for which no answer is required; to the extent any factual or legal assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

97. Denies the allegations asserted in paragraph 97 of the Plaintiffs' Complaint.

98. Paragraph 98 of the Plaintiffs' Complaint contains no factual assertions requiring an answer; to the extent any factual or legal assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

99. Admits the allegations asserted in paragraph 99 of the Plaintiffs' Complaint.

100. Paragraph 100 of the Plaintiffs' Complaint contains conclusions of law for which no answer is required; to the extent any factual or legal assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

101. Paragraph 101 of the Plaintiffs' Complaint contains conclusions of law for which no answer is required; to the extent any factual or legal assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

102. Paragraph 102 of the Plaintiffs' Complaint contains conclusions of law for which no answer is required; to the extent any factual or legal assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

103. Paragraph 103 of the Plaintiffs' Complaint contains conclusions of law for which no answer is required; to the extent any factual or legal assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

104. Paragraph 104 of the Plaintiffs' Complaint contains conclusions of law for which no answer is required; to the extent any factual or legal assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

105. Paragraph 105 of the Plaintiffs' Complaint contains conclusions of law for which no answer is required; to the extent any factual or legal assertions are made, the Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

106. Denies the allegations asserted in paragraph 106 of the Plaintiffs' Complaint.

107. Denies the allegations asserted in paragraph 107 of the Plaintiffs' Complaint.

108. Paragraph 98 of the Plaintiffs' Complaint contains no factual assertions requiring an answer.

109. Denies the allegations asserted in paragraph 108 of the Plaintiffs' Complaint.

AFFIRMATIVE DEFENSES

1. As and for affirmative defenses to the Plaintiffs' complaint, the answering defendants submit the following:

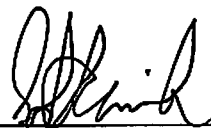
a. Plaintiffs' complaint contains claims which may fail to state a claim upon which relief may be granted;

- b. Lack of personal jurisdiction;
- c. Lack of court subject matter jurisdiction or competency to proceed;
- d. One or more plaintiffs may lack capacity to sue or standing and one or more of the claims may be unripe or moot or barred by statutes of limitations;
- e. Plaintiffs may have failed to join all necessary parties; and
- f. The Plaintiffs may not be entitled to equitable or declaratory relief because there is no substantial and immediate irreparable injury nor a justifiable controversy and Plaintiff's claims are otherwise subject to all the limitations and requirements contained in Wis. Stat. § 806.04 and related common law.

WHEREFORE, Defendants City of Eau Claire and City of Eau Claire Joint Review Board seeks judgment as follows:

- A. For dismissal of the Complaint.
- B. For fees, costs, disbursements, and such other relief as the Court deems equitable and just.

Dated: April 9, 2015



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STATE OF WISCONSIN

EAU CLAIRE COUNTY

VOTERS WITH FACTS et al.

Plaintiffs,

AFFIDAVIT OF MAILING

vs.

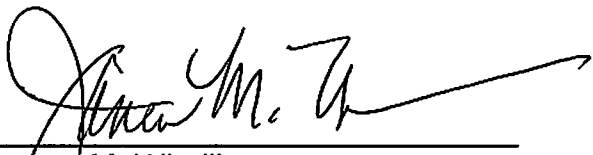
Case No. 2015CV175

CITY OF EAU CLAIRE and
CITY OF EAU CLAIRE JOINT REVIEW BOARD,

Defendants.

I hereby certify that on the 9th day of April, 2015, I duly placed in the US Mail, pickup at City Hall, City of Eau Claire, Eau Claire County, Wisconsin, a true and correct copy of the Answer to the Plaintiffs' Summons and Complaint for delivery to the Clerk of Courts, 721 Oxford Avenue, Eau Claire, Wisconsin and Attorneys Michael Fischer, Richard M. Esenberg, Thomas C. Kamenick and Brian W. McGrath at Wisconsin Institute for Law and Liberty, at 1139 E. Knapp St, Milwaukee, Wisconsin

Dated at Eau Claire, Wisconsin, this 9th day of April, 2015.

Name: 
Janeen M. Whelihan
Paralegal, City Attorney's Office
City of Eau Claire, Wisconsin