

From: Stephen Nick
Sent: Monday, July 07, 2014 1:49 PM
To: Russell VanGompel; Kerry Kincaid
Cc: Kathy Mitchell; Dave Duax; David Strobel; David Klinkhammer; Bob VonHaden; Catherine Emmanuelle; Eric Larsen; Monica Lewis; Michael Xiong; Andrew Werthmann; Cathy Marohl; Donna Austad; Janeen Whelihan
Subject: RE: Please Recognize that Tonight's Planned Closed Hearing is a Violation of the Wisconsin Open Hearing Law and Cancel it

It is certainly good to be vigilant about the rationale for going into closed session. The principle of the Open Meeting Law is to conduct as much of the public's business in open session as is consistent with the sound operations of the City. The decision of when that occurs is up to the Council. Establishing and refining bargaining or negotiation positions for the City is such a legal justification as I have discussed several times in the past. The Milton decision is not a new case and its guidance on closed sessions is well known to me and has informed how we notice and conduct closed sessions since its publication in 2007. What is unique is the understandable attention paid to this significant development project not the practice of going into closed session to obtain periodic direction on negotiation strategy.

We go into closed session knowing it is an exception to the general rule of open meetings and do so to seek direction on negotiation strategy not to keep the entire project a secret or its key terms as occurred in Milton. The court in Milton recognized the legitimate use of closed session to avoid revealing negotiation strategy, it however instructed Milton, and all of us thereafter, not to hold "all parts of all meetings" concerning the project in closed session. Milton, 731 N.W.2d 640, 207 WI App 114 (emphasis in the original). Our local situation is considerably and materially different from Milton. Unlike in Milton, the press and public is well aware of the Confluence Project, there have been public hearings and discussions about various aspects of the project, when the Council has gone into closed session it has properly noticed the subject of the closed session to be the Confluence Project and its development agreement terms, its key terms are known at least in summary to the public in terms of the total amount of the ask by developers, there was a public discussion and open session vote to support one of the primary elements of the ask already in regard to the \$5 million PAC support as well as prior to that a public hearing and open session vote on the general development plan, there was a public referendum on the issue and its merits debated in open session, it has been much debated before and among council members in numerous open sessions, of course the press has extensively reported on this major local and even state wide issue, and there will almost certainly be another public discussion prior to any public vote by Council on adoption of the development agreements. All this is in total contrast to the Milton facts in which the development project was not noticed, there was no closed session memo covering the justification and summary issue for closed session, the developer wanted to keep it confidential they were even considering a local ethanol plant and on what property to avoid public attention and presumably opposition, and all portions or all meetings dealing with the proposed ethanol project were closed and unknown to the public. The issue was so closed to the public and confidential with the developers in Milton that the public did not know about it until it was approved, certainly not the situation in Eau Claire in regards to the Confluence Project.

Council may legally discuss with and set and refine its negotiating strategy with its representatives in closed session for complete or bargaining reasons under state law as informed by the Milton decision. There is nothing new to this argument from prior closed

session discussions and unfortunately it is largely based on the misinformed, yet often repeated by some, misstatement, that the public has not had an opportunity to be heard on this issue. Unlike in Milton the Eau Claire public is very aware of the project as the City has not held all meetings on it in closed session and has properly notice the topic of open and closed session to provide full disclosure of the subject of those meetings, voices pro and con are heard both outside formal public meetings as well as before Council, developers, and public officials in various public hearings, discussions, planning sessions, and study issues. The Confluence Project has to be one of the most publically talked about issues, perhaps with the exception of Phoenix Park and RCU development, which also involved a number of closed sessions to negotiate the specifics, in the last 15 -20 years. It is fully consistent with the law to continue that public discourse on a policy level while Council confidentially considers and informs its representatives on negotiating strategy of specific terms knowing that even those specifics will eventually become public and be subject to a public vote of Council.

Steve

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