

STATE EX REL.  
Michael L. Bollinger, et al.,

Plaintiffs,

v.

CITY OF EAU CLAIRE,

Defendant.

**ORDER GRANTING MOTION  
FOR SUMMARY JUDGMENT and  
FINAL JUDGMENT**

Case No. 14CV490

*This Judgment is Final for the Purposes of an Appeal.*

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On September 16, 2014, the plaintiffs filed a Summons and Complaint seeking relief for alleged violations of Wisconsin's Open Meeting law. See Subchapter V, of Wis. Stats. Chapter 19 entitled, "Open Meetings of Governmental Bodies." The City of Eau Claire filed an Answer and later filed a Motion for Summary Judgment on February 6, 2015. The parties have briefed the issues and this case is ready for decision. For the reasons that follow, the City's Motion for Summary Judgment is granted and the plaintiffs' Complaint is dismissed, with prejudice and on the merits.

The resolution of this case turns on the issue of whether or not the "closed session" notices in advance of the April 21 and July 7, 2014 City Council meetings were adequate as a matter of law to entitle the Eau Claire City Council to go into closed session to discuss the so-called Confluence Project.

**RELEVANT FACTS**

The relevant facts giving rise to this law suit are neither disputed nor complicated. The Eau Claire City Council met on April 21 and July 7, 2014, to discuss, among other things, the Confluence Project, which had been a subject of intense community interest and discussion for at least 18 to 24 months.

In anticipation of Confluence Project discussions during these two City Council meetings, the advanced public notice and City Council agenda for each of the two meetings contained the following prominent notices:

**Meeting of Monday, April 21, 2014:**

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**CLOSED SESSION**

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Upon a motion duly made and carried, the City Council may go into closed session *to provide and consider the preliminary terms and conditions of a development agreement* for the Confluence mixed-use and performing arts center projects as permitted in closed session *for competitive or bargaining reasons* pursuant to s.19.85(1)(e) of the Wisconsin Statutes.

**Meeting of Monday, July 7, 2014:**

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**CLOSED SESSION**

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Upon a motion duly made and carried, the City Council may go into closed session *to review and provide negotiation direction regarding terms and conditions of a development agreement* for the Confluence mixed-use and performing arts center projects as permitted in closed session *for competitive or bargaining reasons* pursuant to s.19.85(1)(e) of the Wisconsin Statutes.

The notice of intent to convene a closed session of these two City Council meetings, as set forth above, had their origins in the following statutory exemption from the Open Meetings law:

**“19.85 Exemptions. (1)** Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section.....A closed session may be held for any of the following purposes:

(e) Deliberating or negotiation the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons required a closed session.”

As the plaintiffs' complaint alleges, and as the City of Eau Claire concedes, the City Council did go into closed session for a period of time during the April 21 and July 7, 2014 meetings to discuss the Confluence Project. As a result of the Council going into these closed sessions, this lawsuit followed.

### **APPLICABLE LAW AND ANALYSIS**

Wisconsin's Open Meetings law expresses a public policy of ensuring public access to the workings of government and its mandate of liberal construction. In construing exemptions to the Open Meetings law, the burden is on the governmental body to show that competitive or bargaining interests require closed sessions under the exemption subsection. *State ex. rel. Citizens for Responsible Dev. v. City of Milton*, 2007 WI App 114, ¶¶ 8, 10, 300 Wis. 2d 649, 655, 656, 731 N.W. 2d 640.

Since the burden is on the City of Eau Claire to demonstrate that competitive or bargaining interests required closed sessions during the April 21 and July 7, 2014 City Council meetings, the law requires that I apply a strict construction analysis to the exceptions claimed by the City. *State ex. rel. Hodge v. Turtle Lake*, 180 Wis. 2d 62, 71, 508 N.W. 2d 603 (1993). In applying the strict construction analysis, I must determine if the two notices set forth above reasonably apprised members of the public of the subject matter of the meetings as required by §19.84(2), Wis. Stats. The plaintiffs primary complaint is that the two notices set forth above did not set forth specifically detailed reasons qualifying a closed session based upon legitimate competitive or bargaining reasons.

Whether a notice is sufficiently specific depends upon what is reasonable under the circumstances. *State ex rel. Buswell v. Tomah Area School Dist.*, 2007 WI 71, ¶ 22, 301 Wis. 2d 178, 195, 732 N.W. 2d 804. The reasonableness standard requires an analysis of the circumstances of the case as to whether or not the notice was sufficient. Factors that have to be considered include any burden involved in providing more detailed notice, whether the subject is

of a particular public interest, and whether the subject involves non-routine action in which the public would likely not participate. 2007 WI 71, ¶ 28. The Supreme Court in *Buswell* further went on to describe these factors as: 1) The burden of providing more specific information on the body noticing the meeting; 2) Whether the particular public interest in the subject matter of the meeting may require a greater specificity in the hearing notice; 3) The degree of specificity of the notice may depend upon whether the subject of the meeting is routine or novel. 2007 WI 71, ¶¶ 29, 30, 31.

In trying to apply these factors, I returned to the decision of the Court of Appeals in the *City of Milton* case, ¶ 19. The public notice and agenda materials for the April 21, 2014 meeting give the public notice that terms and conditions of a development agreement would be discussed. Such language adequately, albeit barely, satisfies the statutory exemption concerning the investing of public funds that implicate competitive bidding concerns. The public notice and agenda materials for the July 7, 2014 meeting adequately, albeit barely, mention negotiations concerning terms and conditions of a development agreement which again implicate the statutory language of investing public funds in connection with future competitive bidding. As in the *City of Milton* case, considering and negotiating the terms and conditions of a development agreement would have revealed the City of Eau Claire's then-existing, and future, negotiating strategy for such matters as, the terms of the development agreement itself, the strategy of acquiring lands for the Confluence Project, and how these strategies might affect the final cost of the entire project. These concerns properly invoked the §19.85(1)(e) statutory exception to the Open Meetings law.

Despite its minimal, though adequate, compliance with the statute in this instance, the City Council could supply more information for future proposed closed sessions to more fully comply with the spirit of Wisconsin's Open Meetings law.

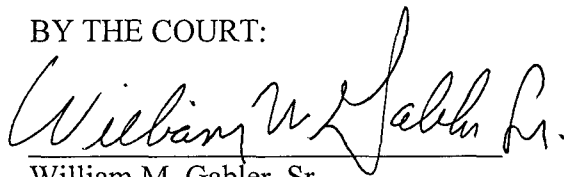
For these reasons,

IT IS HEREBY ORDERED:

1. The City of Eau Claire's Motion for Summary Judgment is granted.
2. The Complaint of the plaintiffs is dismissed, with prejudice, and on the merits.

Dated this 23<sup>rd</sup> day of June, 2015.

BY THE COURT:



William M. Gabler, Sr.  
Circuit Court Judge, Branch 3

Copies:

Attorney Stephen C. Nick  
Attorney John D. Hibbard