

State Ex Rel.

SUMMONS

Michael L. Bollinger
2830 Solem Lane
Eau Claire, WI 54701

Case No: 14 CV ***

Code: 30704

Classification: Injunction

And

State Ex Rel.

Leah Anderson
2016 E Lexington Blvd
Eau Claire, WI 54701

And

State Ex Rel.

J Peter Bartl
3014 Irene Dr
Eau Claire WI 54701

And

State Ex Rel.

Cynthia Burton
3242 May St
Eau Claire, WI 54701

And

State Ex Rel.

Corinne T Charlson
1028 E Lexington Blvd
Eau Claire, WI 54701

And

State Ex Rel.

Marriage Cohen
1759 Drummond St
Eau Claire, WI 54701

And

State Ex Rel.

Kenneth G Foote
606 4th Ave
Eau Claire, WI 54703

And

**State Ex Rel.
Sandee Kosmo
3214 Caseate Ln
Eau Claire, WI 54701
And**

**State Ex Rel.
Rachel Mantic
4650 Woodridge Dr
Eau Claire, WI 54701
And**

**State Ex Rel.
Janeway Riley
311 Garfield Ave
Eau Claire, WI 54701
And**

**State Ex Rel.
Nicole M Steinmetz
3690 Tamara Dr
Eau Claire, WI 54701
And**

**State Ex Rel.
Ryan M Steinmetz
3690 Tamara Dr
Eau Claire, WI 54701
And**

**State Ex Rel.
Christine K Webster
1401 Emory St
Eau Claire, WI 54701
And**

**State Ex Rel.
Dorothy Westermann
941 Violet Ave
Eau Claire, WI 54701
And**

**State Ex Rel.
Janice M Wnukowski
3208 Garner St
Eau Claire, WI 54701
And**

**State Ex Rel.
David R Wood
3648 Gold Ridge Rd
Eau Claire, WI 54701**

vs

**City of Eau Claire and
Common Council of the City of Eau Claire
203 S. Farwell St.
Eau Claire, WI 54701**

THE STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this Summons you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Clerk of Courts, Eau Claire County Courthouse, 721 Oxford Avenue, Eau Claire, WI 54703-5481, and to John D. Hibbard, Plaintiffs' attorney, whose address is 712 South Barstow Street, Eau Claire, WI 54701. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as

provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 15th day of September, 2014.

A handwritten signature in black ink, appearing to read "John D. Hibbard", written over a horizontal line.

John D. Hibbard
Attorney for the Plaintiffs
712 South Barstow Street
Eau Claire, WI 54701
(715) 835-8448
State Bar No. 1011258

State Ex Rel.
Michael L. Bollinger, Leah
Anderson, J. Peter Bartl, Cynthia
Burton, Corinne T Charlson,
Maryjo Cohen, Kenneth G Foote,
Santee Kosmo, Rachel Mantik,
Janeway Riley, Nicole M
Steinmetz, Ryan M Steinmetz,
Christine K Webster, Dorothy
Westermann, Janice M
Wnukowski, and David R Wood

COMPLAINT

Case No: 14 CV ***

Code: 30704

Classification: Injunction

vs

City of Eau Claire and
Common Council of the City of
Eau Claire
203 S. Farwell St.
Eau Claire, WI 54701

NOW COME the Relators, above named, and on their relation in the name, and on behalf, of the State of Wisconsin, and complain of the Defendants concerning past and future violations of §§ 19.83, et seq, Wisconsin Statutes.

1. Relators are all adults who reside at the addresses appearing on the Summons in this action.

2. Defendant City of Eau Claire is a body corporate and politic, located in the counties of Chippewa and Eau Claire, State of Wisconsin, and is called the "City" herein; Defendant Common Council of the City of Eau Claire is the governing legislative body of the City and is called the "Council" herein.

3. On April 21, 2014, the Council convened pursuant to the agenda, a copy of which is attached hereto marked Exhibit 1, and is incorporated herein. No minutes of that meeting have been approved or published.

4. The agenda stated that a 'closed session' will be held, and the

motion to hold that closed session stated that the reason for the closed session was:

“ . . . to provide an update and consider the preliminary terms and conditions of a development agreement for the Confluence and performing arts center projects. . . ”

5. The City Manager, with the approval of the City Attorney, provided the Common Council with his justification for holding the closed session in a memorandum dated 4/15/14, a copy of which is attached hereto marked Exhibit 2, and is incorporated herein.

6. The City Manager’s justification for the closed session is:

“Negotiating the terms and conditions of possible development agreements, which for competitive and or bargaining reasons may be discussed in closed sessions within the provisions of Section 19.85(1)(e) of the Wisconsin Statutes.”

7. The agenda and the motion cited its authority for closed session as “for competitive or bargaining reasons pursuant to s. 19.85(1)(e) of the Wisconsin Statutes.”

8. The statute which the City claimed authorized a closed session is:

“ . . . A closed session may be held for any of the following purposes:

. . .

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

9. Under that statute, as interpreted by controlling case law, neither “an update” nor “consider(ing) the preliminary terms and conditions of a development agreement” are sufficient bases for closing a Council session to the public.

10. On July 7, 2014, the Council convened pursuant to the agenda, a copy of which is attached hereto marked Exhibit 3, and is incorporated herein. No minutes of that meeting have been approved or published.

11. The agenda stated that a closed session will be held, and the

motion to hold that closed session stated that the reason for the closed session was:

“. . . to review and provide negotiation direction regarding terms and conditions of a development agreement for the Confluence and performing arts center projects . . .”

12. The City Manager, with the approval of the City Attorney, provided the Council with his justification for holding the closed session in a memorandum dated 7/2/14, a copy of which is attached hereto marked Exhibit 4, and is incorporated herein.

13. The City Manager’s justification for the closed session is:

“Negotiating the terms and conditions of possible development agreements, which for competitive and or bargaining reasons may be discussed in closed sessions within the provisions of Section 19.85(1)(e) of the Wisconsin Statutes.”

14. The agenda and the motion cited its authority for closed session as “for competitive or bargaining reasons pursuant to s. 19.85(1)(e) of the Wisconsin Statutes.”

15. The statute which the City claimed authorized a closed session is the same one reproduced in paragraph 6, above.

16. Under that statute, as interpreted by controlling case law, neither “a review” nor “provid(ing) negotiation direction” are sufficient bases for closing a Common Council session to the public.

17. The City Manager, in each of his memoranda, and the City, in the published agendas, apprised neither members of the common council nor the public of any of the following:

- A. The reason for having “possible development agreements.”
- B. The subject matter of the “possible development agreements.”
- C. With whom the “possible development agreements” might be negotiated.
- D. The reason that his item description referred, in the singular, to “a development agreement” while his justification referred, in the plural, to “development agreements.”
- E. The reason that the Council was required to have a closed session and that it had no other option than to close the meeting.

18. The City Manager, in each of his memoranda, did not mention that Section 19.85(1)(e) of the Wisconsin Statutes permits a closed session only when competitive or bargaining reasons require a closed session; nor did the City Manager, in his memoranda, explain why the alleged competitive or bargaining reasons left no other option than to close meetings.

19. Between July 14 and July 18, 2014, each of the Relators filed with Eau Claire County, for the attention of the District Attorney, verified complaints alleging violations of §§ 19.83, 19.84, and 19.85, Wisconsin Statutes (the "Open Meeting" law) by the Council on April 21, 2014, and July 7, 2014. A copy of the verified complaint filed by Relator Michael Bollinger is attached hereto marked Exhibit 5, and is incorporated herein. Except for the name and address of the complainant, the identity of the notary public, and the date of signature or filing, the verified complaints filed by the other Relators are identical to Exhibit 5, but are not attached in hopes of saving at least one tree.

20. On August 4, 2014, the District Attorney informed Relator Maryjo Cohen, that he declined to prosecute the violations alleged, and a copy of his letter is attached hereto marked Exhibit 6, and is incorporated herein.

21. The District Attorney having declined to prosecute the above described violations of §19.83, et seq, Wisconsin Statutes, the Relators are permitted by §19.97(4) Wisconsin Statutes to bring this action.

Wherefore, Relators demand judgement as follows:

A. Determining that the Council's closed sessions held April 22 and July 7, 2014, were unlawfully closed to the public; and

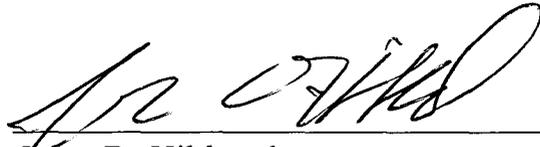
B. Ordering that the City and the Council provide to the Relators, and any other members of the public requesting the same, all documents provided to the Council during said closed sessions, all video or sound recordings of all or any part of said closed sessions, and all notes or other records, handwritten on any medium or recorded electronically, made during or about or because of either of said closed sessions, by all employees of the City who attended any of those closed sessions and by all members of the Council who attended any of those closed sessions; and

C. Ordering the City and the Council, under penalty of Contempt, to restrict all future closed sessions of the Council so as to be in strict compliance with the law and in a manner consistent with the stated purpose of the "Open Meetings" law; and

D. Awarding the relators their actual and necessary costs of prosecution, including reasonable attorney fees, as provided in §19.97(4) Wisconsin Statutes.; and

E. For such other relief as the Court deem just, reasonable, and consistent with the stated purpose of the "Open Meetings" law.

Dated this 15th day of September, 2014.



John D. Hibbard
Attorney for the Relators
712 South Barstow Street
Eau Claire, WI 54701
(715) 835-8448
State Bar No. 1011258

EAU CLAIRE CITY COUNCIL AGENDA

MONDAY, APRIL 21, 2014

CITY HALL COUNCIL CHAMBER

7:00 P.M.

PLEDGE OF ALLEGIANCE AND ROLL CALL

PRESENTATION

ALL-AMERICA CITY

1. Presentation by the 2013-14 Leadership Eau Claire team regarding the National Civic League All-America Cities application and presentation process.
(Russell Van Gompel) (Page 5)
-

PUBLIC HEARINGS

CDBG & HOME FUNDING

2. Public Hearing on Community Development Block Grant (CDBG) and HOME Programs 2014 Grant Funding.
(Keith Johnathan) (Page 7)

SITE PLAN – RIVER OVERLOOK

3. Public Hearing on a site plan in a P-Public District for an overlook/deck with trail to be located along the Chippewa River at Fifth Avenue and Menomonie Street as shown on Planning File #PZ-1401.
(Darryl Tufte) (Page 98)
-

CLOSED SESSION

Upon a motion duly made and carried, the City Council may go into closed session to provide an update 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.

CITY OF EAU CLAIRE VISION STATEMENT
EAU CLAIRE WILL BE A HEALTHY, VIBRANT, AND PRODUCTIVE COMMUNITY OF EXCEPTIONAL NATURAL BEAUTY.

EXHIBIT 1 p 1

ADJOURNMENT

PLEASE TAKE NOTICE that an open public regular meeting of the City Council of the City of Eau Claire will be held at **4:00 p.m. on Tuesday, April 22, 2014**, in the City Hall Council Chambers, 203 S. Farwell Street, Eau Claire, Wisconsin, to consider all matters which may properly be considered at a meeting of the City Council.

NOTICE TO CITIZENS

Due to requirements contained in the Wisconsin Open Meetings Law, only those matters placed on this agenda may be considered by the City Council at this meeting. If any member of the public desires that the City Council consider a matter not included on this agenda, he or she should contact a City Council Member or the City Manager to have the matter considered for placement on a future City Council agenda.

<p>CITY OF EAU CLAIRE VISION STATEMENT EAU CLAIRE WILL BE A HEALTHY, VIBRANT, AND PRODUCTIVE COMMUNITY OF EXCEPTIONAL NATURAL BEAUTY.</p>

EXHIBIT 1 P. 2



MEMORANDUM

OFFICE OF CITY MANAGER

TO: Stephen Nick, City Attorney
FROM: Russell Van Gompel, City Manager
DATE: April 14, 2014
SUBJECT: Closed Session Item – April 22, 2014

A handwritten signature in black ink, appearing to read "R. Van Gompel".

Item: Provide an update and consider the preliminary terms and conditions of a development agreement for the Confluence mixed-use and performing arts center projects.

Justification: Negotiating the terms and conditions of possible development agreements, which for competitive and bargaining reasons may be discussed in closed session within the provisions of Section 19.85(1)(e), of the Wisconsin Statutes.

Description: The Council will review and provide direction regarding the negotiations of the proposed terms and conditions of possible development agreements.

City Attorney Approval: _____

A handwritten signature in black ink, appearing to read "S. Nick".

Date: _____

4/15/14

EXHIBIT 2

EAU CLAIRE CITY COUNCIL AGENDA

MONDAY, JULY 7, 2014

CITY HALL COUNCIL CHAMBER

7:00 P.M.

PLEDGE OF ALLEGIANCE AND ROLL CALL

PUBLIC HEARINGS

STREET IMPROVEMENTS

1. Public hearing regarding the City's intention to order the repair of sidewalk according to State Statute 66.0907 at 23 locations beginning with 1503 Frederic Street, Parcel No. 03-0776.
(David Solberg) (Page 5)
-

PUBLIC DISCUSSION

E-CIGARETTES

2. Ordinance amending Section 9.38 entitled "Smoking" of the City Code of Ordinances of the City of Eau Claire to prohibit the use of E-Cigarettes on City-owned property.
(This item was requested by Council Members Mitchell and Xiong.)
(Stephen Nick) (Page 10)
-

CARSON PARK BASEBALL STADIUM FEES

3. Presentation on proposed fees for the use of the Carson Park Baseball Stadium.
(Dawn Comte) (Page 14)
-

CLOSED SESSION

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.
(Page 18)

<p>CITY OF EAU CLAIRE VISION STATEMENT EAU CLAIRE WILL BE A HEALTHY, VIBRANT, AND PRODUCTIVE COMMUNITY OF EXCEPTIONAL NATURAL BEAUTY.</p>

EXHIBIT 3 p 1

ADJOURNMENT

PLEASE TAKE NOTICE that an open public regular meeting of the City Council of the City of Eau Claire will be held at **4:00 p.m. on Tuesday, July 8, 2014**, in the City Hall Council Chambers, 203 S. Farwell Street, Eau Claire, Wisconsin, to consider all matters which may properly be considered at a meeting of the City Council.

NOTICE TO CITIZENS

Due to requirements contained in the Wisconsin Open Meetings Law, only those matters placed on this agenda may be considered by the City Council at this meeting. If any member of the public desires that the City Council consider a matter not included on this agenda, he or she should contact a City Council Member or the City Manager to have the matter considered for placement on a future City Council agenda.

CITY OF EAU CLAIRE VISION STATEMENT

EAU CLAIRE WILL BE A HEALTHY, VIBRANT, AND PRODUCTIVE COMMUNITY OF EXCEPTIONAL NATURAL BEAUTY.

EXHIBIT

3

p.2



MEMORANDUM

OFFICE OF CITY MANAGER

TO: Stephen Nick, City Attorney
FROM: Russell Van Gompel, City Manager
DATE: July 2, 2014
SUBJECT: Closed Session Item – July 7, 2014

Item: Provide direction regarding terms and conditions of a development agreement for the Confluence mixed-use and performing arts center projects.

Justification: Negotiating the terms and conditions of possible development agreements, which for competitive and bargaining reasons may be discussed in closed session within the provisions of Section 19.85(1)(e), of the Wisconsin Statutes.

Description: The Council will review and provide negotiation direction regarding the proposed terms and conditions of possible development agreements.

City Attorney Approval:  Date: 7/2/14

EXHIBIT 4

VERIFIED OPEN MEETING LAW COMPLAINT
April 21 And July 7, 2014 Eau Claire City Council Meetings

Now comes the complainant, Mike Bally and as and for a verified complaint pursuant to Wis. Stat. Sections 19.96 and 19.97, alleges and complains as follows:

1) Complainant is a citizen of the City of Eau Claire Wisconsin and that his or her Post Office Address is 2837 Solon Lane

2) That the following individuals were the President and/or members of the Eau Claire City Council on the 21st day of April, 2014 and the 7th day of July, 2014, and that such council is a governmental body within the meaning of Wis. Stat. Section 19.82(1).

Kerry Kincaid, President, 4441 S. Lowes Creek Road, Eau Claire, WI 54701
Catherine Emmanuelle, Member, 130 Hudson Street. Eau Claire, WI 54703
David Klinkhammer, Member, 3903 House Rd, Eau Claire, WI 54701
Eric Larsen, Member, 128 E. Grant Avenue, Eau Claire, WI 54701
Monica Lewis, Member, 2030 Welsh Drive, Eau Claire, WI 54703
Kathy Mitchell, Member, 414 Summit Avenue, Eau Claire, WI 54701
Bob Von Haden, Member, 908 Park Ridge Dr., Eau Claire, WI 54703
Andrew Werthmann, Member, 616 Wisconsin St., Apt. #1, Eau Claire, WI 54703
Michael Xiong, Member, 913 E. Tyler Avenue, Eau Claire, WI 54701

3) That on the 21st day of April, 2014, Kerry Kincaid, Catherine Emmanuelle, David Klinkhammer, Eric Larsen, Kathy Mitchell, and Michael Xiong knowingly attended a meeting of said governmental body held in violation of Wisconsin Statute Sections 19.96, Section 19.81, Section 19.83(1), and 19.85(1) at City Hall, 203 South Farwell St., Eau Claire, WI, County of Wisconsin. Subsequently, on the 7th day of July, 2014, Kerry Kincaid, Catherine Emmanuelle, David Klinkhammer, Eric Larsen, Monica Lewis, Kathy Mitchell, Bob Von Haden, Andrew Werthmann and Michael Xiong on July 7, 2014 knowingly attended a meeting of said governmental body held in violation of Wisconsin Statute Section 19.96 and 19.81 at City Hall, 203 South Farwell St., Eau Claire, WI, County of Wisconsin. Specific details of each meeting and violation follow:

a) On the 21st day of April, 2014, the Council conducted a closed session contrary to the requirements of the Wisconsin Statute Sections 19.81 Section 19.83(1), and 19.85(1) per the April 14, 2014 memo from the City Manager to the City attorney to:

Provide an update and consider the preliminary terms and conditions of a development agreement for the Confluence mixed-use and performing arts center projects.

The City Manager in his memo to the City attorney justified the closed meeting based on Wisconsin Statute Section 19.85(1)(e), however, failed to indicate how that section applied. The following aspects are outside of the Section 19.85(1)(e) exemption, which is applicable only when competitive or bargaining reasons **require** a closed session

- i) The planned update on the status of the project;
- ii) Failure to describe the transaction upon which preliminary terms and conditions were being determined as required in Section 19.85(1);
- iii) Failure to state whether bargaining or negotiating was required as required under Section 19.85(1)(e). One of the open items under the category of Confluence Mixed Use or Performing Arts Center Development is a public subsidy of \$5.9 million to a private partnership. That is a gift. No

EXHIBIT 5 p 1

bargaining is needed to make a donation and the decision to provide a gift to certain taxpayers at the expense of others should not be discussed behind closed doors.

During the discussion of the motion to close the meeting to the public, four Council Members (David Duax, Monica Lewis, David Strobel, and Bob Von Haden) asked that the update be provided in the public's presence, recommending that only those portions of the update that dealt specifically with bargaining or competition be discussed behind closed doors. Those four members were outvoted by six members - Kerry Kincaid, Catherine Emmanuelle, David Klinkhammer, Eric Larsen, Kathy Mitchell, and Michael Xiong. The 11th member, Andrew Werthmann, was absent.

The closed session directly contravenes the holding of the case, State ex rel. Citizens for responsible Dev. v. City of Milton, 2007 WI App 114, in which the court makes it clear that the 19.85(1)(e) exemption is a very narrow one and that the meeting can be closed only for competitive or bargaining reasons which **require** (defined by the court as "leave no other option" [Milton at Paragraph 14]) **a closed meeting**.

- b) On the 7th day of July, 2014, the Council conducted a second closed session once again contrary to the requirements of Section 19.81, Section 19.83(1), and 19.85(1). Per the July 2, 2014 memo from the City Manager to the City attorney, the purpose of the session was to:

Provide terms and conditions for the development for the Confluence mixed-use and performing arts center projects.

Like the April session, the justification for July's closed meeting was the bargaining exemption of Section 19.85(1)(e). Once again, the City Council failed to cover the preliminaries in an open setting. Prior to entering into closed session to determine specific negotiation parameters, the following at a minimum should have been and were not covered in an open forum in accordance with Section 19.85(1):

- i) The nature of the development agreement.
- ii) Determination of whether the development agreement contemplated is needed or desired.
- iii) Determination of whether the funding to support the development agreement exists.
- iv) If the subject of the closed meeting was the requested \$5.9 million subsidy, the transaction is a gift and does not fall within the realm of bargaining

An email expressing concern about a second closed meeting was sent on July 7, 2014, to the Council President in advance of the meetings by a constituent. An absent council member sent an email to the City Attorney on that same date requesting a written justification for closing the session. Both emails referenced the Milton case. The City Attorney attempted to distinguish the Milton case from the situation in Eau Claire. His interpretation directly conflicts both the policy behind the open meeting law and the reasoning of the case.

The policy behind the Open Meeting Law is to insure an informed electorate. It is not possible to be informed if meetings are held behind closed door:

In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to

the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business. [Wis Statutes Section 19.81(1)]

Under the attorney's interpretation of the Milton case, the City may close a hearing on any matter (even one as broadly stated as that found in the City manager's April 14 and July 2, 2014 memoranda) that contains any aspect of bargaining as long as the general matter has been the subject of a prior public hearing. That interpretation makes the exemption meaningless and obviates the very points the Milton Court made about the exemption, i.e., that the exemption is very narrow and that it applies only to those portions of a meeting which actually require a closed session to enable the government to bargain.

During the July 7, Public Hearing, the motion to enter a closed session was passed without substantive discussion. The following members voted to discuss the matter in closed session: Kerry Kincaid, Catherine Emmanuelle, David Klinkhammer, Eric Larsen, Monica Lewis, Kathy Mitchell, Bob Von Haden, Andrew Werthmann and Michael Xiong. One member voted, "no" (David Strobel) and one was absent (David Duax).

- 4) That Kerry Kincaid, Catherine Emmanuelle, David Klinkhammer, Eric Larsen, Monica Lewis, Kathy Mitchell, Bob Von Haden, Andrew Werthmann and Michael Xiong are thereby subject to the penalties prescribed in Wis. Stat. 19.96
- 5) That the following witnesses can testify to said acts or omissions:

Those present at the closed session, i.e., the City Council President, the City Council Members that were present, the City manager (Russell Von Gompel); the Assistant City Manager (Dale Peters); the City Attorney (Steve Nick); City Clerk (Donna Austad), the meeting secretary (Kathy Marohl), and any other members of the city staff that were in attendance. Each of the City employees can be reached at 203 South Farwell St., Eau Claire, WI, County of Wisconsin; Phone (715) 839-4912. The phone numbers for the City Council members, as well as the addresses for the two councilmen that were not named (because they voted no to the closed meeting and/or were not present at both meetings) are as follows:

David L. Duax, Phone: 715-835-0905, 2003 Noble Court, Eau Claire, WI 54703
David Strobel, Phone: 715-839-8369, 1210 Barland Street, Eau Claire, WI 54701
Kerry Kincaid, Phone: 715-831-1013
Catherine Emmanuelle, Phone: 715-829-2273
David Klinkhammer, Phone: 715-833-8954
Eric Larsen, Phone: 715-835-8186
Monica Lewis, Phone: 715-579-2610
Kathy Mitchell, Phone: 715-835-0904
Bob Von Haden, Phone: 715-834-2889
Andrew Werthmann, Phone: 715-495-2451
Michael Xiong, Phone: 715-832-5627

- 6) That the following documentary evidence of said acts or omissions is available
 - a) Agendas for the April 21 and July 7 Meeting –available on line
April 21: <http://www.eauclairewi.gov/Home/ShowDocument?id=7842>
July 7: <http://www.eauclairewi.gov/Home/ShowDocument?id=8341>
 - b) Packet materials on the closed sessions (April 14 and July 2 memos) – available on line at: <http://voterswithfacts.com/ClosedSessionLetter.pdf> and http://voterswithfacts.com/2014-07-07_ClosedMeeting_Monday_City_Council_Packet.pdf
 - c) State ex rel. Citizens for responsible Dev. v. City of Milton, 2007 WI App 114

From: Dave Duax [duduax@me.com]
Sent: Monday, July 07, 2014 10:55 AM
To: Steve Nick
Cc: Russell VanGompel
Subject: Fwd: Press Release - VotersWithFacts Challenges the Legality of Tonight's Closed City Council Hearing on the Confluence

Dear Steve,

I assume that you have seen a copy of the attached press release dealing with the Milton WI case decided by the Court of Appeals. This is the very issue that I've raised on previous occasions regarding our city negotiations on the various agreement. I was not aware of this case, but having read it, it underscores many of my concerns in the past for tonight's proposed closed session meeting. Although I will not be there, I strongly urge you to present a written opinion on this issue. With this court decision being very close on point, I think it is time for formal opinions rather than informal references to the way we have customarily handled things.

With Kindest Regards,
DAVE DUAX
715.835.0905

Begin forwarded message:

From: info@voterswithfacts.com
Date: July 7, 2014 at 9:36:18 AM EDT
To: Andrew Dowd <andrew.dowd@ccpc.com>, Andrew Fefer <Andrew.Fefer@wau.com>, Mark Halvorson <mah@voterswithfacts.com>, Marty Green <moghe@ccpc.org>, Tom Giffey <giffey@volunteers.org>, Julian Emerson <julian.emerson@ccpc.com>, news.wau.com, newsroom.ccpc.com, news@midwestfamilyec.com, news@wqow.com, John Murphy <jmurphy@ccpc.org>, Rich Kremer <richard.kremer@wpr.org>
Subject: Press Release - VotersWithFacts Challenges the Legality of Tonight's Closed City Council Hearing on the Confluence

Citing State ex rel. Citizens for responsible Dev. v. City of Milton, 2007 WI App 114, Voters With Facts has challenged the legality of the planned closed City Council hearing "to provide direction regarding terms and conditions for the Confluence mixed-use and performing arts center projects." Closed hearings are barred by the State of Wisconsin Open Hearing laws, except where specifically allowed. In the case of this evening's hearing, the City is relying on the negotiating exception which allows a closed hearing "whenever competitive or bargaining reasons require a closed session." In this instance, where the specific subject of the negotiation has not been revealed, where there has been no public hearing on the merits of the specific project or the means to fund it, negotiation is premature and inappropriate. Moreover, the Wisconsin court in the cited case, made it clear that it is a violation of the State Open Hearing Law to handle a transaction like this one behind closed doors in the manner planned by the Fau Claire City Council.

For more details see www.voterswithfacts.com.

EXHIBIT

5

PS



OFFICE OF DISTRICT ATTORNEY
EAU CLAIRE COUNTY COURTHOUSE
721 Oxford Avenue Eau Claire, WI 54703-5493
(715) 839-4828 (715) 831-5818 Fax



GARY KING
DISTRICT ATTORNEY

ASSISTANT DISTRICT ATTORNEYS
Michael J. Steuer Meri C. Larson
Chad Verbeten Ben Webster
Loralee Clark Ellen M. Anderson
Sarra Kiaie

August 4, 2014

Maryjo Cohen
1759 Drummond Street,
Eau Claire, WI 54701

RE: Open Meeting Law Complaint

Dear Ms. Cohen:

Thank you for submitting your complaint with respect to recent meetings of the Eau Claire City Council. I have reviewed the complaint details, as well as relevant Wisconsin Statutes and case law. Based on the totality of that review, I do not find a basis to file an action under Chapter 19 of the Wisconsin Statutes. Thank you for your time, consideration, and attention to this issue.

Sincerely,

Gary M. King

Gary M. King
Eau Claire County District Attorney

GMK #1031590/jrd

cc: City Attorney Stephen Nick

EXHIBIT

6