

VOTERS WITH FACTS PRESS RELEASE

WISCONSIN INSTITUTE FOR LAW AND LIBERTY FILES SUIT AGAINST CITY

March 12, 2015 - Today, the Wisconsin Institute for Law & Liberty (WILL) on behalf of 19 clients, filed suit against the City of Eau Claire and the City Joint Review Board in Eau Claire County Circuit Court. The lawsuit seeks to invalidate the City's actions in creating and amending two tax incremental financing ("TIF") districts to fund certain projects and to pay the expenses of a real estate developer to build the student residence hall/mixed use facility shown below.



WILL's 19 clients include Voters with Facts, four corporations that own allegedly blighted property in the expanded TIF district and fourteen individual taxpayers.

The Complaint asserts that the Wisconsin laws that govern the creation of TIF districts are narrowly drawn. A city must satisfy specific requirements before it can create such districts. In this instance, the districts were supposedly created to address the problem of urban "blight." The plaintiffs contend that the properties labeled as blighted do not meet the statutory definition of blight. Examples of properties the City has identified as blighted in the districts include in expanded TIF #8 the railroad parking lot and the Green Tree Inn; in TIF #10 the former Ramada Hotel, the Kresge Building, and the stretch of Graham Avenue between Eau Claire and Gibson Street. Photographs of each are shown below. There is also a rendition of Graham Avenue as it is expected to appear this spring when, as required by ordinance, it is seeded.



Railroad parking Lot – TIF # 8



Green Tree Inn



Ramada Inn



Kresge Building



Graham Ave – Eau Claire to Gibson St.



Graham Ave – As it will appear once seeded

The City's actions were therefore invalid and the creation of the districts was unlawful. The Complaint also challenges the action of the Eau Claire Joint Review Board, which failed to comply with its statutory duty to first ensure that development within the proposed districts would not occur in the absence of tax

incremental financing. The Complaint further asserts that the use of TIF funding to demolish historic structures is a violation of Wisconsin law. Finally, the suit contends that the use of tax incremental financing to provide payments to the developer violates the uniformity clause of the Wisconsin Constitution.

WILL had advised the City and the Joint Review Board that the creation of the TIFs was unlawful in its October 14, 2014 letter to the City Attorney. The City elected to proceed, disregarding the legal issues. WILL then filed a formal notice of claim on behalf of its clients on November 10, 2014, giving the City 120 days to respond as required by Wisconsin law. The 120 days have now run without any response from the City, making the lawsuit inevitable.

Rick Esenberg, President and General Counsel of WILL, said: "WILL is pleased to have the opportunity to represent Eau Claire taxpayers in their suit. We believe that Eau Claire government is using the Tax Increment Law to favor private development in a way that the legislature never intended. The statute is not a general authorization to hand taxpayer dollars to private developers."

Michael Fischer, Senior Counsel at WILL, said: "We gave the City Council an opportunity to address our serious legal concerns before they acted and they decided to go ahead with their tax increment plans. All of the subsequent actions the City has or may take in reliance on the legal validity of these TIF Districts – including the payment of City taxpayer funds to a private developer – are now being challenged. We hope the court will decide the matter promptly. In the meantime, we urge the City to proceed with caution."

Several Voters with Facts volunteers commented on the suit.

Cyndi Burton stated, "This is an important suit that has ramifications beyond Eau Claire. Hopefully, it will end the abuses of the Tax Incremental Financing laws that take property tax dollars away from our city, our county and our schools for a twenty-seven to thirty-year period and place them in projects that should be and typically, but for the TIF, would be funded by the private parties that stand to profit from them.

Maryjo Cohen, expressed concern about the failure of the City and City Council to abide by state laws stating, "The rule of law is critical in our society. If our own City officials are not abiding by the law, who will? Despite the specificity of the Wisconsin statute on blight, there was no City Council determination that the designated properties were in fact blighted. Instead the Council members were told that blight was something they get to decide and were assured that courts only overturn such blight decisions when there are clear abuses, like designating a new subdivision as blighted."

Janice Wnukowski, President of the Eau Claire Historic Preservation Foundation, commented, "I am pleased that WILL has brought this suit challenging the actions of the City with respect to the destruction of historic buildings. The city did indirectly that which Wisconsin State Law forbids it doing directly. It used a private developer to purchase and destroy historical buildings, effectively reimbursing the developer with TIF funds after the deed was done. Although the suit cannot bring back the buildings that have been destroyed, a favorable decision will preserve other historical structures from a similar fate, in particular, the buildings on the eastern side of the Confluence block that are in the TIF #10 district."

Leah Anderson echoed Michael Fischer's concern that the City proceed with care, adding, "At a minimum, I hope the City will advise the public of the ramifications of proceeding with the projects if the TIFS are found to be invalid. To date, there has been no information supplied. The question was raised at the November 11, 2014 City Council Meeting. Instead of providing an answer, the Council voted seven to four to keep the information from the public. It then voted to appropriate the funds for the TIF projects."

The complaint can be found at

http://voterswithfacts.com/Signed_Summons_and_Complaint.pdf

Will's press release can be found at http://voterswithfacts.com/2015-03-12-WILL-Press-Release_Lawsuit_Challenging_Eau_Claire_TIF_Districts.pdf

For additional comments, please contact Rick Esenberg, Tel. 414-727-6367,
Email: rick@will-law.org