



**Michael S. Windle, City Attorney**

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Richard Hicks  
145 W. 7<sup>th</sup> Street  
Richland Center, WI 53581  
*Via email*  
RE: Response to Demand

Dear Mr. Hicks:

I am in receipt of your Demand for Immediate Remedial Action Regarding the September 24<sup>th</sup> Emergency Meeting and Stori Field Transfer (“Demand”). Please direct all further communication regarding this matter to myself; my contact information is in the header of this correspondence. If you are represented, please provide me with the name and contact information for your attorney at the earliest opportunity and provide them with mine. I have reviewed your Demand and offer the following in response.

First, I suspect that anything less than an absolute promise not to pursue further efforts towards the development of Stori Field will result in you pursuing your stated escalations, so I won’t bury the lede – the City will be moving forward as decided on and under the direction of the Common Council. However, you should understand before doing so that your Demand is full of numerous factual inaccuracies and legal misinterpretations, and you should consult with an attorney prior to taking further action. For what good it may do, I will attempt to address your statements in hopes of reaching a more amicable resolution to the matter.

1. Abuse of Emergency Meeting Procedure. First, there is no such thing as an “emergency meeting procedure.” You cite Wis. Stat. § 19.84, but if you read that statute you will find that the word “emergency” does not appear once therein. While that statute does prescribe a 24-hour notice period prior to any meeting of a governmental body, you may Wis. Stat. § 19.84(3), given your reference to “good cause” later in this section. That subsection provides for an exception to the 24-hour notice requirement when “...for good cause shown such notice is impossible or impractical...” However, as you emphasize in your opening paragraph to this section, notice of this meeting was posted at least 25.5 hours prior to its commencement, and was thus in compliance with statute. Given that there was no “emergency” meeting, there was no obligation to provide any documentation or evidence showing good cause for claiming the exemption.
2. Misleading Public Notice and Procedural Ambush. I am not sure how the agenda has been so misunderstood, but if you review the agendas for Common Council meetings you will see that the phrase “No Council action will be taken on any matter originating under this item...” appears in at least the majority of them, always next to the Public Comment item. What that is meant to convey is that should a member of the public raise an issue during the comment period not otherwise on the agenda, the Council will not take action on that comment. This is actually a necessity for the Council to comply with Wisconsin open meetings law (“OML”), since if the Council were to act on an item raised by a member of the public but not properly on the agenda, it would be a violation of Wis. Stat. § 19.84. The Stori Field Pre-Development Agreement is clearly placed as the sole entry under the “Items for Discussion and Possible Action” section of the agenda. You are correct in that it is not a clerical error – because there was no error. The Council cannot be expected to guarantee each individual’s understanding of its notices – such would be impossible – and your misreading of the agenda does not constitute malfeasance on the part of the

Council.

3. Abuse of Wisconsin Public Purpose Doctrine. This is, perhaps more than anything else in your Demand, the reason I advise you to consult with an attorney on these matters. With permission, I can say that I was consulted regarding the applicability of the public purpose doctrine prior to this matter being brought to Council and found that there was sufficient public purpose for the City to meet its burden. Obviously, the project is intended to provide housing, which has been identified by various bodies and individuals as something crucial for not just the growth, but the survival of this community, but it is also anticipated that it will have a positive impact on the City's economic development prospects as well. That is not only due to the potential for increased spending due to a larger population, but the preservation and possible expansion of the workforces of local employers. That a private entity may benefit as well does not negate the validity of such a transaction under the doctrine. *Hopper v. City of Madison*, 79 Wis.2d 120, 256 N.W.2d 139 (1977).
4. Disregard for Stori Fields [sic] Legacy and Intent. This has no legal bearer and thus I was not asked to advise on this. However, each Council member was aware of, or could have educated themselves on, the legacy and intent issue prior to voting. One statement you make is a subjective opinion, at best: when the City is facing a projected \$400,000 budgetary shortfall, every dollar of new revenue is meaningful. An estimated \$30,000 could save a position or service that would otherwise be lost.
5. Developers [sic] Legal Standing and Contract Validity. Frankly, I do not know what you mean by the phrase "legal authority" in this context. If you have some evidence that Mr. Enke is legally prohibited from entering into this contract, I encourage you to bring it forward as soon as possible. As for his organization's capabilities, the City is putting in place a developer's agreement which will have robust protections and a performance guarantee. Absent a means of reliably predicting the future, that is all that can be done to ensure the developer lives up to his promises or makes the City whole if he fails to do so.

As to your demands:

- As stated, the City has no intention of pausing activity on this project.
- I am in receipt of your request, which I construe as an open records request made pursuant to Wis. Stat. § 19.35, and will fulfill said request as soon as practicable. The request is somewhat vague, but I will provide records I interpret as responsive to your request as they are made available to me and if there are additional requests or clarifications you would like to make you can do so as you review what's provided.
- The Council does not intend to hold a public hearing on this matter. There have been two meetings on this pre-development agreement alone, both with periods of public comment, and no indication that anyone who wished to speak or have someone speak on their behalf was unable to do so. The Council is acutely aware that this decision is unpopular with a segment of their constituency and nevertheless elected unanimously to move forward with this project.
- Given that the City owns the property, the Council decides what the property's public purpose is. In this instance, they have stated that its purpose is no longer an outdoor recreational area, but land suitable for sale and development. Therefore, there is nothing to restore.

As to your intended escalations:

- I encourage you, if you believe there was wrongdoing on the part of any public official, to report such matters to the appropriate authorities. To wit, I would add that if you believe there was a violation of open meetings law (or any subsections of Ch. 19), pursuant to Wis. Stat. § 19.97, you can submit a verified complaint to the District Attorney for investigation and possible enforcement. The people should feel confident in the integrity of those representing them, and if there's an allegation that they have taken an action that isn't simply disagreeable to a citizen, but that truly rises to the standard of malfeasance, it is important that an objective authority review the matter. I can assist you in determining who best to report the matter to, if that would be helpful to you.
- I will not speak to the merits, or lack thereof, of any proposed litigation in a public document. Again, in order to maximize your chances if you elect to move forward with such a petition, I reiterate my recommendation that you consult with an attorney in its preparation.
- The right of the citizenry to recall their officials is ever-present. Certainly, anyone who runs for or holds elective office should understand that any decision they make could be unpopular enough to inspire such an effort. In my opinion, however, any such official who lets that possibility override the courage of their convictions in voting to do what they truly feel is best for their community does not deserve the seat in the first place.

As to your closing, I have stated many times that as an attorney I am unqualified to advise on matters of morality. You are right that the citizens deserve "fairness, respect and transparency..." and I believe (both in my professional capacity and as a citizen) that it has been offered to them. What the citizenry does *not* deserve is to have the decisions of their duly-elected representatives overturned by a vocal minority who threaten them and their positions rather than attempting to work with them to preserve what they can and/or improve on the project by providing constructive input. However, that choice is yours and yours alone.

Sincerely,

/s/

Michael S. Windle  
City Attorney