

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

Appeal No. 2006AP000662

BEAVER DAM AREA DEVELOPMENT
CORPORATION, ERIC BECKER,
JEFF KITCHEN, AL SCHWAB, LES FRINAK, JR.,
JOHN LANDDECK, DOUG MATHISON,
TOM OLSON, GREG STEIL, RON THOMPSON,
STEVEN BALDWIN, NANCY ZIEMAN,
GINA STASKAL, BRIAN BUSLER and
JACK HANKES,

Defendants-Respondents

and

MYRTLE CLIFTON, LAINE MEYER,
DUANE FOULKES AND PHILIP FRITSCHKE,

Defendants.

**BRIEF AND SUPPLEMENTAL APPENDIX OF
DEFENDANTS-RESPONDENTS**

**Appeal From the Circuit Court Of Dodge County
The Honorable Richard O. Wright, Presiding
Circuit Court Case No. 2004-CV-000341**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iv
ISSUE PRESENTED	vi
STATEMENT ON ORAL ARGUMENT AND PUBLICATION	vii
STATEMENT OF THE CASE	1
A. Nature Of The Case	1
B. Procedural Statute Of The Case And Disposition In The Trial Court	1
C. Statement of Facts	4
1. The BDADC was Incorporated by a Private Citizen	4
2. All Officers and Ten of the Twelve Voting Board Members of the BDADC are Private Citizens	5
3. The Only Paid Employee of the BDADC is Also a Private Citizen Employed by the Board of Directors	6
4. The BDADC Does Not Meet in City Facilities	7
5. The City and the BDADC Entered into Cooperative Agreements in 1997 and in 2004	8

6. The BDADC Has No Authority to Bind the City to Any Contract or Obligation	10
7. Response to Appellant's Statement of Facts	11
ARGUMENT	12
I. INTRODUCTION	12
II. THE STANDARD OF REVIEW BY THIS COURT IS <i>DE NOVO</i>	13
III. NEITHER THE LEGISLATURE NOR ANY WISCONSIN COURT HAS DEFINED "QUASI-GOVERNMENTAL CORPORATION"	15
A. The Only Criteria For Determining Whether An Entity Is A Quasi-Governmental Corporation Appears In Attorney General Opinions	16
B. The Factors Relied On In The 1991 Opinion Showed Significant City Involvement And City Control Over The Two Entities In Issue	20
IV. THE BDADC IS A PRIVATELY OPERATED, NON-PROFIT CORPORATION THAT IS INDEPENDENT FROM THE CITY OF BEAVER DAM	24
A. All Of The Officers Of The BDADC Are Private Individuals, Including A Majority Of The Board Of Directors	24

B. The Former Executive Vice President Of The BDADC Was Not A City Employee During His Tenure	27
C. The Monthly Meetings Of The BDADC Have Never Taken Place At Any Municipal Facility	29
D. The Agreement Between The City of Beaver Dam And The BDADC Reveals A Cooperative, Not A City Controlled Relationship	30
E. The Dodge County District Attorney Concluded That The BDADC Is Not Subject To The Open Meetings Law	35
V. IF THE COURT ADDRESSES THE STATE'S AGENCY ARGUMENT THAT WAS RAISED FOR THE FIRST TIME ON APPEAL, THEN IT LACKS THE NECESSARY FACTUAL AND LEGAL FOUNDATION	36
A. Arguments Raised For The First Time On Appeal Should Not Be Considered	36
B. No Records Were Shifted To The BDADC By The City For Concealment From The Public	37
CONCLUSION	41
CERTIFICATION	42
SUPPLEMENTAL APPENDIX	
APPENDIX CERTIFICATION	

TABLE OF AUTHORITIES

<u>Wisconsin Cases</u>	<u>Page</u>
<i>Arents v. ANR Pipeline Co.</i> , 2005 WI App 61, 281 Wis. 2d 173, 696 N.W.2d 194	11
<i>Coalition For A Clean Government v. Larsen</i> , 166 Wis. 2d 159, 479 N.W.2d 576 (Ct. App. 1991)	13
<i>Fox v. Bock</i> , 149 Wis. 2d 403, 438 N.W.2d 589 (1989)	39, 40
<i>Journal/Sentinel, Inc. v. School District of Shorewood</i> , 186 Wis. 2d 443, 521 N.W.2d 165 (Ct. App. 1994)	37, 38
<i>Kaye v. Board of Regents</i> , 158 Wis. 2d 664, 463 N.W.2d 398 (Ct. App. 1990)	19
<i>Linzmeier v. Forcey</i> , 2002 WI 84, 254 Wis. 2d 306, 646 N.W.2d 811	39
<i>Machotka v. West Salem</i> , 2000 WI App 43, 233 Wis. 2d 106, 607 N.W.2d 319	37
<i>Orion Flight Services, Inc. v. Basler Flight Service</i> , 2006 WI 51	12
<i>Pinczkowski v. Milwaukee County</i> , 2005 WI 161, 286 Wis. 2d 339, 706 N.W.2d 642	13, 36
<i>Rocker v. USAA Casualty Insurance Co.</i> , 2006 WI 26, 711 N.W.2d 634	13

<i>State v. Holt</i> , 128 Wis. 2d 110, 382 N.W.2d 679 (Ct. App. 1985)	15, 20
<i>State v. Karpinski</i> , 92 Wis. 2d 599, 285 N.W.2d 729 (1979)	18
<i>State v. Longcore</i> , 2001 WI App 15, 240 Wis. 2d 429, 623 N.W.2d 201	16
<i>State ex rel. Hodge v. Turtle Lake</i> , 180 Wis. 2d 62, 508 N.W.2d 603 (1993)	14, 33
<i>Wirth v. Ehly</i> , 93 Wis. 2d 433, 287 N.W.2d 140 (1980)	37
 <u>Wisconsin Statutes</u>	
§ 19.31(1), Stats.....	12
§ 19.82(1), Stats.....	12
 <u>Other Authorities</u>	
66 Op. Att'y Gen. 113 (1977)	16, 34
73 Op. Att'y Gen. 54 (1984)	17
74 Op. Att'y Gen. 38 (1985)	17
80 Op. Att'y Gen. 129, (1991)	14, 19, 21, 22, 23

ISSUE PRESENTED

Is the Beaver Dam Area Development Corporation, a (1) non-stock, non-profit private corporation; (2) made up of local community and business leaders; (3) who meet once a month over the lunch hour; (3) whose general goal is to promote economic development and business growth in the City of Beaver Dam; and (4) which has no binding authority for the City, but merely makes proposals or recommendations to the City which then are acted upon by the City of Beaver Dam consistent with the public records and open meetings laws, a quasi-governmental corporation subject to the public records and open meetings law?

The trial court accepted the factual submissions of both parties then utilized a fact-based, analytical framework that considered all relevant factors in determining that the Beaver Dam Area Development Corporation is not a quasi-governmental organization and is not subject to the public records or open meetings law.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The respondents believe that this case is appropriate for both oral argument and publication.

In addition to clarifying the terminology used by the legislature to describe entities that are subject to the public records and open meetings law, the decision in this case will have a tremendous impact on individuals who serve on private boards and organizations such as the Beaver Dam Area Development Corporation. It is also anticipated that the Court's decision will develop guidelines that may be applied to other entities that are associated or affiliated with any level of government. Publication of the court's decision will provide needed and authoritative guidance for the bench and the bar in the State of Wisconsin.

STATEMENT OF THE CASE

A. Nature Of The Case

This action was commenced by the State of Wisconsin against the Beaver Dam Area Development Corporation (BDADC) seeking a declaration that the BDADC was subject to both the public records law, § 19.31 *et seq.*, and the open meetings law § 19.81 *et seq.*, Wis. Stats. In an amended complaint, the State also asserted claims against the individual members of the board of directors for the BDADC, seeking forfeitures for alleged violations of the open meetings law.

After briefing and oral argument, the trial court ruled that the BDADC was neither a governmental nor a quasi-governmental corporation and was not subject to either the public records law or the open meetings law.

B. Procedural Status Of The Case And Disposition In The Trial Court.

In its amended complaint, the State sought a declaration that the BDADC was a quasi-governmental corporation and a governmental body within the meaning of § 19.82(1) of the open records law. (R. 18:9-10; A. App. 130-131). The State also sought a declaration that the BDADC was an "authority" under the public

records law, § 19.32(1). (R. 18:11; A. App. 132). Finally, the State requested forfeitures of between \$25.00 and \$300.00 from the members of the BDADC for each violation, that the BDADC be ordered to comply with § 19.83 and § 19.35, Stats. (R. 18:11-16; A. App. 132-137).

The State initially sought a declaration that the BDADC was an "authority" under § 19.32(1) of the of the public records law as allegedly being a quasi-governmental corporation and because it received more than 50% of its funding from a county or municipality. (R. 41:4-5). The State later dropped the claim based upon the funding component after the BDADC pointed out that it did not satisfy the second prong of the test which required that it also provide services to the City relating to public health and safety. (R. 44:2-4; R. 48:5, fn. 2).

After considering the parties briefs, evidentiary submissions and hearing oral argument, the court ruled from the bench that the BDADC is not a quasi-governmental organization subject to either the public records or the open meetings law. (R. 51; A. App. 101-115). The court acknowledged that it must liberally construe whether or not events and proceedings of governmental bodies

should be open, but discerned that the real issue was whether the BDADC is subject to the laws as a governmental or quasi-governmental body. (R. 51:6; A. App. 107).

The court found instructive the 1991 opinion of then-Attorney General James E. Doyle, which suggested a fact-based analytical framework relating to the function, funding and purpose of the entity compared to the governmental concerns addressed in the open records and open meetings law. (R. 51:6-7; A. App. 107-108). The court assessed the undisputed facts, including the fact that the City of Beaver Dam did not delegate its power to the BDADC and the City actually makes all of the decisions, as reflected in the agreement between the City and the BDADC. (R. 51:8; A. App. 109). The court determined that the BDADC is not a quasi-governmental organization. (R. 51:10; A. App. 111).

At the oral argument hearing, the parties agreed to prepare a joint stipulated set of facts for the record. (R. 51:13; R. App. 114). The Findings of Fact, Conclusions of Law and the Order for Judgment was signed by the court on January 30, 2006. (R. 52; A. App. 116-121). The order provides for the dismissal of the BDADC with prejudice, but the dismissal of the individual defendants-

respondents¹ is without prejudice so that the State can refile in the event that the trial court is reversed. (R. 52:11-12; A. App. 112-113; R. 52:6; A. App. 121).

C. Statement Of Facts.

The basic facts in this action are undisputed and are reflected, in part, in the jointly-submitted findings of fact submitted by the parties. (R. 52:1-5; A. App. 116-120).

1. The BDADC was Incorporated by a Private Citizen.

The Beaver Dam Area Development Corporation is a private, not for profit corporation organized and existing pursuant to Chapter 181 of the Wisconsin Statutes. (R. 52:1, ¶ 1; A. App. 116). The State of Wisconsin issued a Certificate of Incorporation to the BDADC on January 31, 1997. (R. 18:21; A. App. 21).

The BDADC was not created by any constitution, statute or ordinance. (R. 52:2, ¶ 4; A. App. 117). No officers, employees or officials of the City of Beaver Dam were involved in the incorporation of the BDADC. (R. 52:2, ¶ 3; A. App. 117). Eric L. Becker, a Beaver Dam attorney in private practice, was the

¹ Four of the individual defendants were dismissed from this action by court order dated July 12, 2005. (R. 33).

incorporator and author of the Articles of Incorporation for the BDADC. (R. 18:17-22; A. App. 138-140).

Pursuant to the by-laws, the purpose of the corporation is to engage in economic development and business retention within the corporate limits and lands which could become part of the corporate limits, and to exercise all powers not incompatible with such purposes granted under the Wisconsin Nonstock Corporation law. (R. 45:4; R. App. 104; R. 52:2, ¶ 7; A. App. 117).

**2. All Officers and Ten of the Twelve
Voting Board Members of the BDADC
are Private Citizens.**

The BDADC is governed by a Board of Directors. Pursuant to the bylaws, ten of the twelve board members who have voting rights are private citizens who reside in the City of Beaver Dam. (R. 45:18, Article VI; R. App. 118). The board members serve without compensation. (R. 45:21, Article VI, Section 18; R. App. 121).

The president of the Beaver Dam Chamber of Commerce, Philip Fritsche, sits on the BDADC Board of Directors as a non-voting member. Jack Hankes, the mayor of Beaver Dam, and Michael Wissell, the chairperson of the City Community

Development Committee, serve as *ex officio* members on the Board of Directors of the BDADC. (R. 52:2-3, ¶ 11; A. App. 117-118).

When the term of a director expires, the Board of Directors elects a replacement. The City of Beaver Dam does not nominate, appoint or elect members of the Board of Directors with the exception, noted above, that the sitting mayor and the chairperson of the City Community Development Committee serve on the Board of Directors *ex officio*. (R. 52: 4, ¶ 18; A. App. 119).

All of the officers of the BDADC are private individuals who are elected by the Board of Directors of the BDADC. The current president of the BDADC Board of Directors is John Landdeck. Mr. Landdeck is also the president of the Beaver Dam Community Hospital. (R. 52:2, ¶ 9 - ¶ 10; A. App. 117).

**3. The Only Paid Employee of the BDADC
is Also a Private Citizen Employed
by the Board of Directors.**

Since its incorporation, the executive vice-president is the only compensated and full-time employee of the BDADC. He manages the day-to-day operations of the BDADC and is appointed by the majority vote of the Board of Directors. The executive vice-president

is controlled solely by the Board of Directors. He is not a City of Beaver Dam employee. (R. 52: 4, ¶ 17; A. App. 119).

Trent Campbell was the executive vice-president from approximately April 1, 1997 until his resignation effective January 1, 2005. Prior to becoming executive vice-president of the BDADC, Mr. Campbell worked for the City of Beaver Dam as the Economic Development Director. Mr. Campbell was eventually replaced with a new executive vice-president in July of 2005. Neither Trent Campbell nor the new executive vice-president are or were City of Beaver Dam employees during the period of time that they served as the BDADC executive vice-president. (R. 52:3, ¶ 13; A. App. 118).

4. The BDADC Does Not Meet in City Facilities.

The Board of Directors for the BDADC generally meets once a month over the lunch hour at private places of employment of various board members, including the Beaver Dam Community Hospital boardroom and offices at the Apache Stainless Equipment Corporation. (R. 52:3, ¶ 12; A. App. 118). The meetings are usually on the second Thursday of the month and run from noon until 1:00 p.m. (R. 47:2, ¶ 6; R. App. 175).

The BDADC currently leases an office from a private individual in a private (non-municipal) office building and has done so since May 19, 2005. Prior to that date, from the date of its inception, the BDADC leased one office from the City of Beaver Dam on the lower level of the municipal building. However, no meetings of the BDADC were ever conducted in municipal facilities. (R. 52:3, ¶ 14; A. App. 118).

**5. The City and the BDADC
Entered into Cooperative Agreements
in 1997 and in 2004.**

On March 3, 1997, the City of Beaver Dam passed Resolution No. 36-97 which authorized the City to contract for services with the BDADC. (R. 45:3; R. App. 103). Shortly after that, the first Cooperative Agreement was entered into between the two entities on April 1, 1997 and signed by the parties' representatives. (R. 45: 4-Ex. A-A ; R. App. 110-116).

On or about January 1, 2004, the BDADC entered into a second Cooperation Agreement with the City of Beaver Dam. (R. 42:2, ¶ 4; A. App. 151, 153-158).

The Cooperation Agreements between the City of Beaver Dam and the BDADC allow the BDADC to request office space, clerical

support, copy and fax machine use, telephone usage and postage from the City; permit authorized City representatives to examine the BDADC's accounting records and finances; and allow the City to appropriate or make available to the BDADC funds that the City deems necessary for economic development, programs and costs. (R. 52:3-4, ¶ 15; A. App. 118-119).

Pursuant to the original 1997 Cooperation Agreement between the City of Beaver Dam and the BDADC, the City agreed to an annual contribution to the BDADC and to allocate a percentage of all proceeds collected through its room tax to the BDADC. (R. 52: 4-5, ¶ 19; A. App. 119-120; R. 45:10-11; R. App. 110-111).

The current Cooperation Agreement, effective January 1, 2004, also provides for a disbursement of 90% of the room tax proceeds to the BDADC for operational expenses, but with no annual contribution by the City. (R. 52:5, ¶ 19; A. App. 120; R. 42:2, ¶ 4; A. App. 153-154). From January through July 2005, the room tax contribution allocated to BDADC by the City of Beaver Dam accounted for approximately 83.6% of the corporation's income. (R. 52:5, ¶ 19; A. App. 120).

Both the original 1997 Agreement and the current 2004 Agreement expressly and unequivocally state that the BDADC is an independent, private corporation that was not created by the City of Beaver Dam or by any other governmental entity. (R. 45:13, Article VI b.; R. App. 113; R. 18:25, Article VII b.; A. App. 146). Under both Agreements, the BDADC is required to indemnify and hold the City harmless, as well as maintaining liability insurance with stated limits. (R. 45:13-14, Article IX and Article X; R. App. 113-114; R. 18:26, Article X and Article XI; A. App. 147).

**6. The BDADC Has No Authority to
Bind the City to Any Contract or Obligation.**

As noted by the trial court, the BDADC cannot bind the City of Beaver Dam to any contract or obligation. Recommendations or proposals brought to the City of Beaver Dam by the BDADC are considered and acted upon by the City pursuant to the open records and open meeting laws of the State of Wisconsin. (R. 52:5, ¶ 20; A. App. 120).

The City of Beaver Dam's decisions and the actions that it takes in response to proposals or recommendations from the BDADC are not *pro forma*; that is, the City still acts under its own

authority and has never delegated that authority to the BDADC. (R. 52:5, ¶ 21; A. App. 120).

Further pertinent facts will be set forth below.

7. Response to Appellant's Statement of Facts.

While the State refers at length to the Memorandum of Understanding between the City of Beaver Dam and Wal-Mart in its "Statement of Facts" while advocating its position in this matter (Appellant's Brief, p. 7), it is a fact that (a) the Memorandum is only between the City of Beaver Dam and Wal-Mart; (b) it is expressly stated in the Memorandum that, "This Agreement has been negotiated by separate legal counsel for the City and for the Company . . . "; and (c) there is nothing in that Memorandum stating that it obligated the city "to make numerous controversial and costly site improvements." (Appellant's Brief, p. 7; R. 42 and R. 43, tab no. 4). These "statements of fact," as well as the remainder of this paragraph, are clearly argumentative should be disregarded by the Court. *See Arents v. ANR Pipeline Co.*, 2005 WI App 61, ¶ 4, n.2, 281 Wis. 2d 173, 696 N.W.2d 194 (the fact section of a brief is no place for argument).

ARGUMENT

I. INTRODUCTION

The State of Wisconsin seeks a judicial definition of a "quasi-governmental corporation" as that term is used in the definition of "authority" in the public records law, § 19.31(1), Stats., and as used in the definition of "governmental body" in the open meetings law, § 19.82(1), Stats. The purpose of statutory interpretation is to determine what a statute means in order to give the statute its full, proper and intended effect. *Orion Flight Services, Inc. v. Basler Flight Service*, 2006 WI 51, ¶ 16.

The State also seeks a determination by this Court that the Beaver Dam Area Development Corporation is a "quasi-governmental corporation" under both the public records law and the open meetings law.

It is submitted that, as demonstrated by the undisputed facts in this record and as argued below, the BDADC is not a quasi-governmental corporation subject to either the public records law or the open meetings law.

Alternatively, the State argues that even if the BDADC is not a quasi-governmental corporation, the records of the BDADC, as an

agent of the City, should nevertheless be open to public scrutiny under the public records law. (Appellant's Brief, pp. 19-21).

The State never raised this last argument in the trial court. It was not briefed by the parties, nor was it brought up in oral argument before the trial court. (R. 41; R. 48 and R. 51). Therefore, it should not be considered by this Court. See *Pinczkowski v. Milwaukee County*, 2005 WI 161, ¶ 53, fn. 8, 286 Wis. 2d 339, 706 N.W.2d 642.

II. THE STANDARD OF REVIEW BY THIS COURT IS *DE NOVO*.

This case involves the application of the public records law and the open meetings law to undisputed facts. Statutory interpretation is a question of law that is reviewed *de novo*. *Rocker v. USAA Casualty Insurance Co.*, 2006 WI 26, ¶ 23, 711 N.W.2d 634. The application of the public records law to undisputed facts presents a question of law which is reviewed *de novo*. *Coalition For A Clean Government v. Larsen*, 166 Wis. 2d 159, 163, 479 N.W.2d 576 (Ct. App. 1991).

Similarly, the application of the open meetings law is a question of law which is reviewed *ab initio*, with no deference owed

to the lower court's resolution of the issue. *State ex rel. Hodge v. Turtle Lake*, 180 Wis. 2d 62, 70, 508 N.W.2d 603 (1993).

While review by this Court is *de novo*, the BDADC disagrees with the State that the trial court erred by not relying on the standard described in the 1991 Attorney General opinion. (Appellant's Brief, pp. 14-16). The court did not state that the State was required to show that the BDADC was basically a "ruse" to cover the City's decision-making in order to find that it is a quasi-governmental corporation. (Appellant's Brief, p. 15). Instead, the trial court employed the analysis recommended by the Attorney General by considering a totality of the relevant facts:

Whether a particular private corporation resembles a governmental corporation closely enough to be a "quasi-governmental corporation" within the meaning of section 19.82(1) must be determined on a case by case basis, *in light of all the relevant circumstances*. (Emphasis added).

80 Op. Att'y. Gen. 129, 136 (R. 41:16; A. App. 170).

The trial court's consideration of the relevant facts, as directed by the Attorney General in his 1991 opinion, led the court to properly conclude that the BDADC is not a quasi-governmental corporation. However, if the court erred by not relying on the proper criteria (whatever that may be) in determining that the

BDADC is not a quasi-governmental corporation, this Court may still affirm the trial court's decision. See *State v. Holt*, 128 Wis. 2d 110, 124, 382 N.W.2d 679 (Ct. App. 1985) (it is well established that if a trial reaches the proper result for the wrong reason, it will be affirmed).

**III. NEITHER THE LEGISLATURE
NOR ANY WISCONSIN COURT HAS DEFINED
"QUASI-GOVERNMENTAL CORPORATION."**

Although the parties disagree on most of the aspects of this case, the one thing that the parties do agree on is the lack of any statutory or judicial definition of a "quasi-legislative corporation" as that term is used in § 19.32(1) and § 19.82(1), Stats.² Therefore, the parties and the trial court referred to and relied on opinions of various Attorneys General that have addressed whether specific entities are quasi-governmental corporations subject to the open meetings law.

² A "quasi-governmental corporation" is also used in the definition of a governmental body in § 895.52(1)(a), Stats., but with no statutory or judicial definition being located for the use of the term in this statute either.

**A. The Only Criteria For
Determining Whether An Entity Is A
Quasi-Governmental Corporation
Appears In Attorney General Opinions.**

As recognized by the State in its brief, over the years various Attorneys General have addressed specific factual situations and rendered an opinion as to whether or not the particular entity in issue was a governmental or quasi-governmental corporation as that term is used in the open meetings law and the public records law. While not controlling, the opinions may serve as persuasive authority as to the meaning and purposes of statutes. *State v. Longcore*, 2001 WI App 15, ¶ 9, 240 Wis. 2d 429, 623 N.W.2d 201.

In 1977, the Attorney General determined that the Palmyra Volunteer Fire Department, which was also a Chapter 181 non-stock, non-profit corporation, was not a governmental or quasi-governmental corporation under § 19.82(1), Stats. See 66 Op. Att'y Gen. 113 (1977). The fire department received money from the Palmyra Fire Protection District for the purpose of providing fire protection. However, because it was not created directly by the legislature or by another governmental body pursuant to a specific statutory authorization or direction, it was not a quasi-governmental corporation.

The Historic Sites Foundation, a Chapter 181, non-stock, non-profit corporation organized to manage the Circus World Museum, was also determined not to be a quasi-governmental corporation. *See* 73 Op. Att'y Gen. 54 (1984). Factors that were considered in arriving at this conclusion included (1) that members of the board of curators for the State Historical Society served as directors for the Historic Sites Foundation, but they held their positions with the Foundation as private citizens, not as state officials; (2) that the Foundation had no sovereign power; (3) that the Foundation was not controlled by the legislature; and (4) that it had no other governmental attributes. The opinion also cited the definition of "quasi" from Webster's New Collegiate Dictionary (7th ed. 1977) as "having some resemblance . . . by possession of certain attributes."

Similarly, nonprofit or charitable "Friends" corporations providing financial and other support to public television and radio stations licensed to governmental units are not subject to the open meetings or public records law. *See* 74 Op. Att'y Gen. 38 (1985). The "Friends" organizations were non-stock, non-profit corporations created by private citizens that were neither governmental nor quasi-governmental corporations.

In an informal opinion, the Attorney General concluded that the Grant County Economic Development Corporation (GCEDC) was not a quasi-governmental corporation and was not subject to open meetings or public records law. (R. 45:28, Exhibit C; R. App. 128). Identical to the BDADC, the GCEDC is a Chapter 181, non-stock, non-profit corporation that receives more than 50% of its funding from Grant County and the municipalities in the County. Citing 74 Op. Att'y Gen. at 41, then-Attorney General Hanaway stated:

It should be remembered that independent private associations or non-profit corporations are not subject to the open meetings and public records law just because they have a public purpose.

(R. 45:30; R. App. 130).

The State argued in the court below that an informal attorney general opinion "is not considered to be entitled to be treated as authority for court rulings, . . . because such letters are not subject to the same level of internal review and vetting process that a formal, published opinion undergoes before being distributed." (R. 48:4). However, the State has, on occasion, referred to informal attorney general opinions in briefs. *See, e.g., State v. Karpinski*, 92 Wis. 2d 599, 603, 285 N.W.2d 729 (1979). Courts have also, on occasion,

addressed the attorney general's reasoning appearing in an informal opinion. See *Kaye v. Board of Regents*, 158 Wis. 2d 664, 670, 463 N.W.2d 398 (Ct. App. 1990). Nothing precludes the Court from considering the informal opinion and giving it whatever weight that it sees fit.

Finally, in 1991, Attorney General James E. Doyle opined that a quasi-governmental corporation was not limited to corporations created directly by a governmental body, but also include private corporations which closely resemble a governmental corporation in function, effect or status. See 80 Op. Att'y Gen. 129, 135 (1991). (R. 41:12-16; A. App. 166-170). Then-Attorney General Doyle advocated employing a fact-based approach to determine if an entity is quasi-governmental:

Whether a particular private corporation resembles a governmental corporation closely enough to be a "quasi-governmental corporation" within the meaning of section 19.82(1) must be determined on a case by case basis, in light of all the relevant circumstances.

Id. at 136. (R. 41:16; A. App. 170).

The State encourages the adoption of the standards in this 1991 opinion as the methodology to be employed in determining

what constitutes a quasi-governmental corporation. (Appellant's Brief, pp. 16-18).

The trial court also believed that the 1991 opinion developed the appropriate analytical, fact-based framework. (R. 51:6; A. App. 107). However, the trial court concluded that the BDADC did not fulfill that criteria and was not a quasi-governmental corporation. The BDADC believes that the court properly applied the fact-based analysis, which included consideration "of all relevant circumstances," and correctly concluded that the BDADC is not a quasi-governmental corporation. If the trial court erred by not considering all of the necessary criteria, as claimed by the State, then as pointed out above, the court's decision can still be affirmed because it reached the right result. *State v. Holt*, 128 Wis. 2d at 124.

**B. The Factors Relied On In The 1991 Opinion
Showed Significant City Involvement And
City Control Over The Two Entities In Issue.**

In the 1991 opinion, the Attorney General examined the facts surrounding the Milwaukee Economic Development Corporation (MEDC) which was set up to provide economic development loans to citizens with City funds obtained under the Federal Model Cities Program, and the Metropolitan Milwaukee Enterprise Corporation

(MMEC) which was created in 1985 to provide economic development loans with funds the City of Milwaukee obtains under the Federal Small Business Administration loan program.

The MEDC was incorporated in 1971 by private citizens, as well as by the Assistant Director of the Department of City Development for the City of Milwaukee under "Milwaukee Model Cities Development Corporation."

The Attorney General concluded that both the MEDC and the MMEC were quasi-governmental corporations. In reaching this conclusion, the Attorney General made it clear that neither the promotion of economic development in the City, nor the funding by the government, were alone sufficient to make the corporations quasi-governmental:

The fact that MEDC and MMEC serve a public purpose by promoting economic development in the City of Milwaukee is not, in itself, sufficient to make the corporations "quasi-governmental." . . . Nor is the fact that MEDC and MMEC receive most of their funding from public sources. (Citations omitted).

Id. at 136. (R. 41:16; A. App. 170).

Facts there were relied on by the Attorney General in finding that MEDC was quasi-governmental and therefore subject to the open meetings law included:

1. All of MEDC's offices were located in city-owned buildings.
2. Pursuant to MEDC's contract with the City, a city official (Commissioner of the Department of City Development) selected the president, vice-president, secretary and treasurer of the corporation.
3. All of the officers were city employees.
4. Some of MEDC's staff members were also city employees.
5. Officers and staff were permitted to conduct MEDC business during the hours for which they were paid a city salary, but MEDC was required to reimburse the city for this time.
6. The City provided MEDC with all of their office space, equipment and supplies needed by the corporation. While MEDC was required to reimburse the City, that obligation was offset against grants MEDC received from the city.
7. Four of MEDC's nine directors were City of Milwaukee officials.

Id. at. 131-132. (R. 41:13-14; A. App. 167-168).

In finding that MMEC was also a quasi-governmental corporation, the Attorney General pointed out and relied on the following factors:

1. The corporation provided economic development loans with funds the city obtained under the federal Small Business Administration loan program.
2. Two of MMEC's current directors were city council members and one was a city employe.
3. The principal office for MMEC was the Department of City Development.

4. All of MMEC's offices were located in city-owned buildings.
5. The City selected the officers for MMEC, and a city official selected all of MMECs' current officers.
6. All of MMEC's officers and some of its staff members were city employees.
7. The city provided all office space, equipment and supplies needed by MMEC.
8. The cost the city incurred in supplying staff and other resources to MMEC was offset against grants MMEC received from the city.

Id. at 131-132. (R. 41:13-14; A. App. 167-168).

In determining that both entities were quasi-governmental corporations, the Attorney General also emphasized that the day-to-day operations of both MEDC and MMEC were subject to the control of city employees. Additionally, the corporate officers and some staff were included on the city payroll and in the City of Milwaukee's employee benefit plan. *Id.* at 136. (R. 41:16; A. App. 170). None of these factors are present in this case.

In finding that MEDC and MMEC were quasi-governmental corporations subject to the open meetings law, the Attorney General concluded:

The city has obtained authority to appoint the president, vice president, secretary and treasurer of MEDC and MMEC. All of the officers the city appointed are city employees. Further, the city has agreed to house, staff and provide equipment and supplies to the corporations. In

making all these arrangements, the city has transformed MEDC's and MMEC's business into governmental business, about which the public has a right to be informed.

Id. at 137. (R. 41:16; A. App. 170).

As demonstrated below, critical factors distinguish the BDADC from entities such as MEDC and MMEC that were found to be quasi-governmental corporations.

**IV. THE BDADC IS A PRIVATELY OPERATED,
NON-PROFIT CORPORATION THAT IS
INDEPENDENT FROM THE CITY OF BEAVER DAM.**

Just as the Milwaukee Economic Development Corporation and the Metropolitan Milwaukee Enterprise Corporation receive most of their funding from public sources, so too does the BDADC receive most of its funding from the City of Beaver Dam. However, the similarities between these entities ends there. This factor is not sufficient to find that the BDADC is a quasi-governmental corporation.

**A. All Of The Officers Of The BDADC
Are Private Individuals, Including A
Majority Of The Board Of Directors.**

Pursuant to the Bylaws of the BDADC, the corporation is managed and controlled by its Board of Directors. (Cieslewicz Affidavit, Exhibit B, Article V and VI, Section 1, p. 2). The Board

manages and controls the assets and property of the BDADC; elects the officers; can employ outside individuals to assist in the administration; and has the authority to hire and compensate advisors to help determine policies and formulate programs. (R. 45:18; R. App. 118).

Only two of the twelve voting directors serve *ex officio*: the Mayor of the City of Beaver Dam and the Chairperson of the Beaver Dam Community Development Committee. The remaining ten directors are private citizens and residents of Beaver Dam. (R.47:2, ¶ 5; R. App. 175). The Board is comprised of representatives from various types of professions including industrialists, educational leaders, bankers, business leaders and attorneys. (R. 45:34, p. 23; R. App. 134).

When a director's term expires, the Board of Directors elects a replacement, and not the City. Nominations are made by a nominating committee appointed by the President of the BDADC. (R. 45:18-19, Article VI, Sections 3 and 5; R. App. 118-119).

Officers, except for the executive vice president, are elected from among the Board of Directors. (R. 47:1, ¶ 3; R. App. 174). The executive vice president, the only compensated, full-time employee,

manages the day-to-day operations of the Corporation and is appointed by majority vote of the Board. That individual is controlled solely by the Board of Directors, not by the City of Beaver Dam. (R. 45:22-23, Articles VII and VIII, Section 3; R. App. 122-123). Neither Trent Campbell, the executive vice-president from April 1, 1997 until January 1, 2005, nor the new executive vice-president are or were employees of the City of Beaver Dam during the time they serve(d) as executive vice-president of the BDADC. (R. 52:3, ¶ 13; A. App. 118).

These undisputed facts are in stark contrast to the officers of MEDC and MMEC, all of whom were City employees, and all of whom were selected by the City. *See* 80 Op. Att'y Gen. 136-37. (R. 41:16; A. App. 170). Additionally, almost half of the directors of MEDC were city officials (4 out of 9) compared to the BDADC (2 out of 12 serve *ex officio*). The organizational control of the BDADC is thus vested in the private Board of Directors, which selects the officers and appoints the executive vice-president. None of the officers are city officials or employees, nor is the executive vice-president a city employee.

**B. The Former Executive Vice President
Of The BDADC Was Not A
City Employee During His Tenure.**

The first executive vice-president of the BDADC was Trent Campbell, who resigned from that position at the end of 2004. (R. 46: Ex. A). Prior to his employment with the BDADC in April of 1997, Mr. Campbell previously served for thirteen months as the economic development director for the City of Beaver Dam. He then worked for three months as an independent contractor before being hired by the BDADC. (R. 45:33, pp. 10-11; R. App. 133). When Mr. Campbell was hired, the first president of the corporation was Jeff Kitchen, owner of the Century 21 Real Estate firm in Beaver Dam. (R. 45:35, p. 28; R. App. 135).

Trent Campbell resigned from his position with the BDADC after seven years in order to join his father in a health care industry venture. (R. 46: Ex. A). John Landdeck, as President of the BDADC, was authorized by the Board to extend a transition employment offer to Mr. Campbell to serve as a consultant to the corporation. (R. 46; Ex. B; R. 45:44-45; R. App. 144-145).

At no time during Trent Campbell's tenure as executive vice president for the BDADC was he an employee of the City, nor was

he subject to control by the City or City officials. To the contrary, the evidence reveals both the BDADC and Mr. Campbell, were controlled by its Board of Directors. Mr. Campbell's day-to-day activities as executive vice president and sole employee of the corporation were not controlled by the City, but instead by his employer, the BDADC. (R. 45:32-33, pp. 8-9; R. App. 132-133). Mr. Campbell served at the pleasure of the Board. (R. 45:36, p. 29; R. App. 136). His compensation after being hired in 1997 was solely from the BDADC. (R. 45:37, p. 33; R. App. 137). While Mr. Campbell had authority from the Board of the BDADC to make small expenditures for the day-to-day business operations, larger project expenditures were dictated and controlled by the Board. (R. 45:38, pp. 41-43; R. App. 138). The Board of Directors, not the City of Beaver Dam, had the sole authority for the BDADC to enter into its own contracts or agreements. (R. 45:38 and 42, pp. 42, 62-63; R. App. 138 and 142).

Mr. Campbell's former employment by the City of Beaver Dam, prior to being hired by the BDADC, is simply not relevant to the issues before this court. At no time during his tenure as

executive vice president of the BDADC was he employed by, or subject to control of, the City of Beaver Dam.

**C. The Monthly Meetings Of The BDADC
Have Never Taken Place At
Any Municipal Facility.**

At this time, the Board of Directors of the BDADC generally meets on the third Wednesday of each month over the lunch hour. The meetings are not held at any municipal facility, but rather take place at the various directors' business establishments or places of employment, including the Beaver Dam Community Hospital Board Room and Apache Stainless Equipment Corporation. (R. 47:2, ¶¶ 6-7; R. App. 175; R. 52:3, ¶ 12; A. App. 118). At one point when a local attorney, Eric Becker, was president of the Board, the Board of Directors met in Attorney Becker's law firm's conference room. (R. 45:39, p. 52; R. App. 139). Trent Campbell confirmed that the BDADC Board of Directors never met in any City building, stating, "I think the City Building is primarily for public meetings, and we're a private group, . . ." (R. 45:41, p. 60; R. App. 141).

While the State refers to the BDADC "offices" in the City's municipal building, the fact is that the BDADC leased one office from the City on the lower level of the Municipal Building until the

most recent Cooperation Agreement commencing January 1, 2004. (R. 45:39-40, pp. 52-53; R. App. 139-140).³ No meetings were conducted in city facilities.

Additionally, Mr. Campbell did virtually all of his own typing, faxing, and emailing. While clerical assistance was available from the City, Mr. Campbell testified that 98% to 99% of the time, he did all of his own work. Mr. Campbell had his own computer; he was not on a network with the City; he never consulted with the city attorney for legal advice for the BDADC; and if an attorney needed to be hired or consulted, the Board of Directors made that decision. (R. 45:40-41, pp. 53-57; R. App. 140-141).

**D. The Agreement Between The
City Of Beaver Dam And The BDADC
Reveals A Cooperative, Not A
City Controlled Relationship.**

Unlike MEDC and MMEC, where all of the officers of the corporations were selected by the City and the day-to-day operations of both entities were controlled by the City, the BDADC was not created by the City of Beaver Dam, nor was the Board of

³ Since May of 2005, the BDADC has leased a private office. (Landdeck Affidavit, Ex. C).

Directors or officers appointed by the City. No city official or employee was an incorporator of BDADC. (R. 52:2, ¶¶ 3-5; A. App. 117).

Both the original, 1997 Cooperation Agreement between the City of Beaver Dam and the BDADC, and the 2004 Cooperation Agreement identify, from the outset, the parties to the Agreement:

THIS Cooperation Agreement is entered into as of April 1, 1997 by and between the City of Beaver Dam, Wisconsin, a political subdivision of the State of Wisconsin (the "City") and the Beaver Dam Area Development Corporation, a non-stock, non-profit corporation of the State of Wisconsin created pursuant to Chapter 181 of the Wisconsin Statutes (the "Development Corporation").

(R.45:10; R. App. 110). Except for the date, this language remains unchanged in the 2004 Cooperation Agreement.

Both agreements explicitly define the independent roles and separate identities of the two entities:

- b. Not Considered Governmental Body. Nothing contained herein shall be construed or implied as granting to the Development Corporation status as a governmental body or agency of the City. The Development Corporation is, at all times and for all purposes under this Cooperation Agreement, an independent private corporation. The Development Corporation has not been created or its Board of Directors appointed by the City or any other governmental entity.

(R. 45:13, Article VI b.; R. App. 113) and (R. 18:25, Article VII b.; A App. 146).

Even though the City has the ability to inspect the BDADC's accounting records pursuant to the Cooperation Agreement, the City has never done so during BDADC's its seven year existence. (R. 45:59, Response to Interrogatory No. 18; R. App. 159).

Noticeably absent are other factors showing control over the BDADC by the City of Beaver Dam. The Bylaws, Articles of Incorporation, and the Cooperation Agreement clearly establish that while the BDADC and the City shared many of the same objectives for economic development and that both work toward the achievement of those goals, the BDADC functioned independently from the City and was not under the City's control. The means, method and manner of achievement by the BDADC of mutual goals were in the hands of the local business and community leaders who volunteered their time to be a part of this organization. The City merely provided funding and other minimal assistance in consideration of BDADC's undertaking to assist in economic development, including the retention and the creation of jobs for City residents.

The BDADC has absolutely no authority to bind the City of Beaver Dam or contract on behalf of the City. (R. 52:5, ¶ 20; A. App.

120). No municipal action whatsoever can be taken by the BDADC. Anything that the BDADC suggests is simply that: a suggestion, or perhaps a recommendation. (R. 52:5, ¶ 21; A. App. 120). If the City of Beaver Dam acts on that recommendation, then certainly the legislative process undertaken by its common council is subject to the public records and open meetings law. Therefore, the statutory intent of the public's right to know and participate is exercised and preserved at the City level. *See State ex rel. Hodge v. Turtle Lake*, 180 Wis. 2d 62, 75-76, 508 N.W.2d 603 (1993) (the Open Meetings Law functions to ensure that . . . difficult matters are decided without bias or regard for issues such as race, gender, or economic status . . .). (Emphasis added).

While the BDADC agreed to submit a Management Plan to the City of Beaver Dam outlining the activities the BDADC intends to undertake during the calendar year, the City is afforded no input, control, veto or approval rights of that Plan. Only with respect to funds derived from Tax Increment Financing Districts that may be appropriated to the BDADC may the City impose program conditions. (R. 18:24, Article III, b.; A. App. 154). The Management Plan prepared and developed by the Board of Directors for the

BDADC is a thumbnail sketch of activities that the organization proposes to undertake in an effort to improve the economic climate of the City.

The fact that local community business leaders organized to reach out to other businesses in the community, including potential new businesses, does not make the BDADC a quasi-governmental corporation. *See* 66 Op. Att'y Gen 113, 115 (1977) (the fact that a corporation serves a public purpose is not, in itself, sufficient to make a corporation quasi-governmental).

While both the City and the BDADC cooperatively attempt to improve the economic climate and promote business development, the record establishes that they function independently of one another in their efforts.

The evidence does not suggest nor support the State's contention that the BDADC is a quasi-governmental corporation, nor does the evidence show that the BDADC is a "spin-off" of the City. The BDADC does not have taxing power; cannot formulate governmental policy; cannot promulgate rules or laws that govern or otherwise affect the citizens of the City; and has no power to enter into contracts or incur other obligations on behalf of the City.

Sharing common goals with the City and working toward the achievement of those goals in cooperation with the City does not make the BDADC a quasi-governmental entity.

**E. The Dodge County District Attorney
Concluded That The BDADC Is Not
Subject To The Open Meetings Law.**

In response to an open meetings complaint filed against the Beaver Dam City Council and the Mayor, the Dodge County District Attorney's office, along with law enforcement investigators, investigated the allegations. (R. 45:67-73; R. App. 167-173). As part of its report following that investigation, the Dodge County District Attorney noted:

The Beaver Dam Area Development Corporation (BDADC) board is comprised of 15 (sic) directors including the Mayor of Beaver Dam and the chairperson of the council's community development committee. The sole employee of the BDADC is not a city employee. The BDADC rents office space from the city. The city has provided partial funding of the BDADC. The City has no control over the appointment of directors or officers. Although no allegations have been made that the BDADC is subject to the open meetings law, I find that it is not, based upon the above facts. See Op. Atty. Gen. 130 (1991).

(R. 45:70, fn. 2; R. App. 170).

While the District Attorney's opinion is admittedly not controlling legal precedent, it nevertheless addresses the issue being considered by this Court. While it, too, was discounted by the State

in the court below⁴ (R. 48:4-5), it is nevertheless one more tool that may be considered in the court's discretion, especially given the lack of legal precedent in this area of the law.

**V. IF THE COURT ADDRESSES THE
STATE'S AGENCY ARGUMENT THAT WAS RAISED
FOR THE FIRST TIME ON APPEAL,
THEN IT LACKS THE NECESSARY FACTUAL
AND LEGAL FOUNDATION.**

**A. Arguments Raised For The First Time
On Appeal Should Not Be Considered.**

The State raises a new argument on appeal, claiming that even if the BDADC is not a quasi-governmental corporation, then it should still be subject to the open records law as an agent of the City of Beaver Dam. (Appellant's Brief, pp. 19-21).

The State made no allegation in the amended complaint of any agency relationship with the City that would warrant application of the public records law to the BDADC. (R. 18:11; A. App. 132). The agency argument was never raised, briefed or argued in the court below, and it should not be considered by this Court now. *Pinczkowski v. Milwaukee County*, 2005 WI 161, ¶ 53, fn. 8, 286 Wis. 2d 339, 706 N.W.2d 642. However, recognizing that the rule is

⁴ The State urged the trial court not to give any weight at all to the letter. (R. 48:4-5).

not absolute and the Court may choose to address this issue, *Wirth v. Ehly*, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980), then the evidence in the record does not support the State's argument that the records of the BDADC are "public" records.

**B. No Records Were Shifted To The BDADC
By The City For Concealment From The Public.**

The State relies on *Journal/Sentinel, Inc. v. School District of Shorewood*, 186 Wis. 2d 443, 521 N.W.2d 165 (Ct. App. 1994) to support its argument that the BDADC documents were generated pursuant to its contract with the City of Beaver Dam. The State claims that because they would be public records in the City's possession, they are still public records even though they are held by an independent contractor (the BDADC). (Brief, 19-21).

The BDADC is not an agency to whom the City has "shifted" a record's creation or custody to in order to evade its responsibilities under the open records law. See *Machotka v. West Salem*, 2000 WI App 43, ¶ 8, 233 Wis. 2d 106, 607 N.W.2d 319, citing *Journal/Sentinel, Inc. v. Shorewood School Board*, 186 Wis. 2d at 453.

The issue in *Journal/Sentinel* was whether a public body may *avoid* the public access mandated by the public-records law by

delegating both the record's creation and custody to an agent, in this case, to the school board's attorneys. *Id.* at 452-453. The court in *Journal/Sentinel* emphasized the need for officers and employees of government to be responsible to the citizens, and the citizens have a right to hold their employees accountable for the job they do. *Id.* at 459. The court also quoted a 1985 attorney general opinion explaining that the main purpose of the public records law "is to enable the citizenry to monitor and evaluate the performance of public officials and employes [sic]." *Id.* at 459, citing 74 Op. Att'y Gen. 14, 16 (1985).

The BDADC is not governmental or a quasi-governmental entity. It does not employ government workers or officers. The rationale underlying the public records law and the reasoning underlying the court's decision in *Journal/Sentinel* does not apply to the facts of this case. Unlike the situation in *Journal/Sentinel*, documents are not being kept secret so that the citizens of Beaver Dam cannot "monitor and evaluate the performance of public officials and employe[e]s." *Id.* at 459.

Additionally, it is undisputed that the BDADC cannot contract for the City or bind the City to any obligation. Before the

City actually acts on any proposals or recommendations from the BDADC, the City of Beaver Dam must comply with the public records law, as well as the open meetings law. (R. 52:5, ¶ 20; A. App. 120).

The citizens of Beaver Dam are not being deprived of any rights afforded under the public records law. Any memorandums or proposals from the BDADC to the City or its officials will be subject to inspection under the public records law. The public officials of Beaver Dam, who ultimately make the decisions, are still held accountable for the job they do. *Linzmeier v. Forcey*, 2002 WI 84, ¶ 28, 254 Wis. 2d 306, 646 N.W.2d 811.

The State, without explanation, purports to rely on the reasoning in *Fox v. Bock*, 149 Wis. 2d 403, 438 N.W.2d 589 (1989) to support its newly developed agency theory. (Appellant's Brief, p. 20). In *Fox*, the sole document in issue was a study conducted by the Institute for Liability Management that was commissioned by and prepared for the Racine Corporation Counsel's office that cost \$24,000.00. *Id.* at 405-408. The corporation county's office received two written copies of the study, with "draft" stamped on each written page. While the study was not released by the corporation

counsel, it was reviewed by at least two members of the sheriff's department and portions were reviewed by members of the department's command staff. *Id.* at 406-407. In addition to the written report, a representative from the Institute was sent to conduct briefing and training seminars, which included recommendations for changing policies and procedures in the sheriff's department. *Id.* When a Racine County newspaper editor attempted to open a copy of the report under the public records law, the corporation counsel claimed that it was a "draft" that was excluded from public access under § 19.32(2), Stats. The court held that regardless of who the originator was of the document, it was used for more than just the personal use of the corporation counsel or the Institute, and the exclusionary language of § 19.32 (2) did not apply. *Id.* at 417.

The reasoning in *Journal/Sentinel* and *Fox* has no application to this case. The State's request for a blanket, all-encompassing order that all documents "created and/or maintained" by the BDADC be produced even though it is not a quasi-governmental corporation should be rejected. The State's proposition is not legally supported by the authorities relied on by the State.

CONCLUSION

It is respectfully requested that the Court determine the criteria that will be used in this State to evaluate whether or not an entity is truly a quasi-governmental corporation and is therefore subject to the public records law and the open meetings law.

It is also respectfully requested that, based upon the facts of this case, the Court affirm the decision of the trial court and hold that the Beaver Dam Area Development Corporation is not a quasi-governmental corporation and is accordingly not subject to the public records law and open meetings law.

Dated this 13th day of June, 2006.

KASDORF, LEWIS & SWIETLIK, S.C.
Attorneys for Defendants-Respondents

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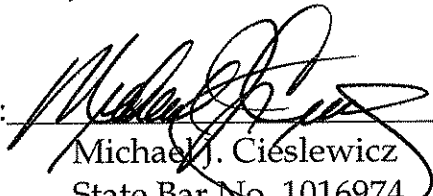
CERTIFICATION

I certify that this brief meets the form requirements of Rule 809.19(8)(b) and (c), Stats., in that it is:

Proportional serif font: Min. printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of min. 2 points, maximum of 60 characters per full line of body text. The length of this brief is 8,101 words.

Dated this 13th day of June, 2006.

KASDORF, LEWIS & SWIETLIK, S.C.
Attorneys for Defendants-Respondents

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**SUPPLEMENTAL APPENDIX
TABLE OF CONTENTS**

<u>Document</u>	<u>Record No.</u>	<u>Page</u>
Affidavit of Michael J. Cieslewicz dated November 10, 2005 including Exhibits A-G	45:1-73	101-173
Affidavit of John Landdeck dated November 14, 2005	47:1-3	174-176

STATE OF WISCONSIN : CIRCUIT COURT : DODGE COUNTY

STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 04-CV-0341
Case Code 30703

BEAVER DAM AREA DEVELOPMENT
CORPORATION, et al.,

Defendants.

AFFIDAVIT OF MICHAEL J. CIESLEWICZ

STATE OF WISCONSIN)
) §
MILWAUKEE COUNTY)

MICHAEL J. CIESLEWICZ, being first duly sworn on oath, deposes and states:

1. Affiant is a shareholder in the law firm of Kasdorf, Lewis & Swietlik, S.C., attorneys for Defendants Beaver Dam Area Development Corporation et al., in the above-entitled action, and I am authorized to make this affidavit on defendants' behalf.

2. Attached as Exhibit A is a copy of Resolution Number 36-97, A Resolution Authorizing Contracting With The Beaver Dam Area Development Corporation For Economic Development Services, adopted March 3, 1997, with attached Exhibit A, Cooperation Agreement, which was marked as an exhibit at the deposition of Trent Campbell on July 7, 2004.

3. Attached as Exhibit A-A is a signed copy of the Cooperation Agreement.

4. Attached as Exhibit B is a copy of the Bylaws of the Beaver Dam Area Development Corporation which were produced in response to discovery.

5. Attached as Exhibit C is a copy of a February 26, 1987 informal opinion letter from Attorney General Donald J. Hanaway to Thomas H. Geyer of the Grant County Economic Development Corporation.

6. Attached as Exhibit D are excerpts from the deposition testimony of Trent Campbell that was conducted on July 7, 2004 and which were produced in response to discovery including pages 8, 9, 10, 11, 23, 28, 29, 33, 34, 36, 41, 42, 43, 52, 53, 54, 55, 56, 57, 60, 62 and 63.

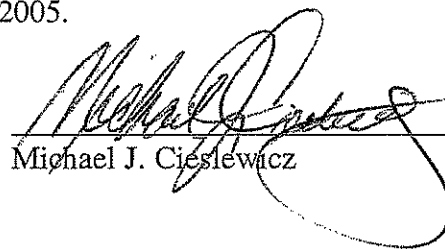
7. Attached as Exhibit E is a copy of Defendants' Response to Plaintiff's Second Set of Interrogatories and Second Request for Production of Documents, without attachments.

8. Attached as Exhibit F is a copy of Defendants' Response to Plaintiff's Interrogatories and First Request for Production of Documents, without attachments.

9. Attached as Exhibit G is a copy of a February 1, 2004 letter to Charles A. Sena from Steven G. Bauer, Dodge County District Attorney, regarding Mr. Sena's open meetings complaint against the Beaver Dam City Council and the Mayor of Beaver Dam.

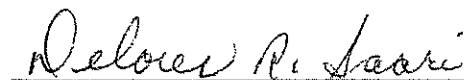
10. This affidavit is made in opposition to plaintiff's motion for declaratory relief, and for judgment in favor of defendants, declaring that the Beaver Dam Area Development Corporation has not been subject to the open meetings law or public records law at any time since its inception.

Dated this 10th day of November, 2005.



Michael J. Cieslewicz

Subscribed and sworn to before me
this 10 day of November, 2005.



Notary Public, State of Wisconsin
My Commission: 4/29/07

RESOLUTION - NUMBER 35-97

A RESOLUTION AUTHORIZING CONTRACTING WITH THE
BEAVER DAM AREA DEVELOPMENT CORPORATION FOR
ECONOMIC DEVELOPMENT SERVICES

WHEREAS, the City has negotiated with the Beaver Dam Area
Development Corporation, a Wisconsin non-profit corporation, whose
charitable windup beneficiary is the City of Beaver Dam; and

WHEREAS, the result of said negotiations is the contract
attached hereto as "Exhibit A";

NOW, THEREFORE, BE IT RESOLVED that said contract be
executed on behalf of the City of Beaver Dam by the appropriate
city officials.

Presented by the following alderpersons, members of the
Community Development Corporation.

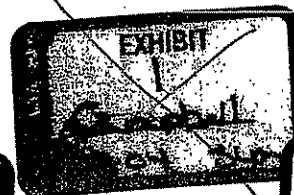
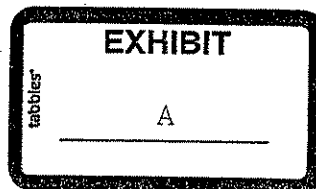
ADOPTED this 3RD day of March,
1997.

Gary H. Dummer
Gary H. Dummer, City Clerk

APPROVED:

Thomas D. Olson
Thomas D. Olson, Mayor

Ray Pearson
Wm. Sull
Michael W. Sull
Stanley J. Beck



COOPERATION AGREEMENT

THIS Cooperation Agreement is entered into as of April 1, 1997 by and between the City of Beaver Dam, Wisconsin, a political subdivision of the State of Wisconsin (the "City") and the Beaver Dam Area Development Corporation, a non-stock, non-profit corporation of the State of Wisconsin created pursuant to Chapter 181 of the Wisconsin Statutes (the "Development Corporation").

ARTICLE I INTRODUCTION

The Development Corporation has been created for the purpose of encouraging and stimulating economic development within the City and lands which could become part of the corporate limits of the City. Such economic development is intended to expand the tax base of the city and to create jobs for City residents, all in furtherance of a public purpose. In order to encourage such economic development and to assist the activities of the Development Corporation, the City intends, pursuant to this Cooperation Agreement, to provide funding and other forms of assistance to the Development Corporation in consideration for the Development Corporation's undertaking and assisting economic development within the City pursuant to annual management plans to be developed hereunder.

ARTICLE II ACTIVITIES OF DEVELOPMENT CORPORATION

In consideration for the annual contribution from the City as set forth in Article III hereinafter, the Development Corporation shall annually undertake programs and initiatives intended to stimulate additional economic development within the City, thereby expanding the City tax base and creating jobs for City residents. The Development Corporation shall retain the services of an executive officer who shall be charged with the day-to-day operation and management of the Development Corporation program. The Development Corporation shall annually prepare a management plan and budget regarding its activities as required in Article V hereinafter.

ARTICLE III CONTRIBUTION OF FUNDS TO DEVELOPMENT CORPORATION

The City shall annually contribute, or otherwise set aside, the following funds for the Development Corporation to stimulate economic development within the City.

a. Annual Contribution. The City shall annually contribute to the Development Corporation the following:

1997	\$61,500
1998	64,460
1999	86,994
2000	-89,604
2001	92,293

Such Annual Contribution shall be included in the City's annual budget. It is the intent of the parties that, unless the City finds that the activities proposed in the Management Plan for the succeeding year do not serve a public purpose, the City shall include and approve the above payment in its annual budget for the designated calendar year. Such contribution shall be paid to the Development Corporation in quarterly installments and shall be made on or before January 1, April 1, July 1 and October 1 of each year.

b. Allocation of Room Tax. Pursuant to Subsection 11 of Section 3.08 of the Beaver Dam General Ordinances, the City shall allocate 90% of all proceeds collected through the room tax to a non-lapsing economic development fund maintained by the City. Seventy-five percent (75%) of the existing uncommitted proceeds within such fund and seventy-five percent (75%) of future room tax collections shall be allocated and disbursed quarterly to the Development Corporation to be used to provide economic incentives (including related expenses) to encourage businesses to locate and/or expand within the City. Upon expending, loaning or otherwise using funds from the allocated room tax revenues, the Development Corporation shall, from time to time, submit a formal written report to the City regarding the use of such funds and the intended development and benefits therefrom. Such report shall be reviewed by the City Community Development Committee which shall report to the Common Council regarding the proposed project and the Development Corporation's use of such funds.

For purposes of this subparagraph and subparagraph c. below, until the Development Corporation is qualified as a non-profit organization pursuant to Sec. 501 of the IRC, the funds shall be held by the Municipality and disbursed on request of Development Corporation to the City's finance director to avoid income tax consequences to the Development Corporation. All use of funds shall be consistent with the use of room tax revenues authorized under Section 66.75, Wisconsin Statutes, where applicable.

c. Other Appropriations. The City may, from time to time, appropriate or otherwise make available to the Development Corporation such funds as the City deems necessary to further economic development within the City. Such funds may be derived from appropriate Tax Increment Financing Districts and may be used for such programs and costs as the City may designate within the specific Tax Increment Financing Project Plan. Such programs may include public improvements, land assembly and/or funding for the programs and initiatives of the Development Corporation necessary

voting members of the Board of Directors of the Development Corporation. All other members of the self-sustaining Board of Directors shall be appointed as authorized by the Development Corporation's Articles of Incorporation.

b. Not Considered Governmental Body. Nothing contained herein shall be construed or implied as granting to the Development Corporation status as a governmental body or agency of the City. The Development Corporation is, at all times and for all purposes under this Cooperation Agreement, an independent private corporation. The Development Corporation has not been created or its Board of Directors appointed by the City or any other governmental entity.

ARTICLE VII
BUDGET AND BUDGET RECONCILIATION

The Development Corporation agrees to maintain records such that its actual expenditures may be ascertained and reconciled against such budget. The Development Corporation shall also keep and maintain proper accounting records of its financial condition of its economic development activities. From time to time, upon ten (10) days prior written notice from the City, authorized representatives of the City shall be entitled to examine such records at the Development Corporation's offices.

ARTICLE VIII
RIGHT OF TERMINATION

Either party hereto may terminate this Cooperation Agreement upon the gross misconduct of either party, or the City may terminate this Cooperation Agreement upon structural change of the Development Corporation by amendment of its Articles of Incorporation. A party wishing to terminate this Agreement for gross misconduct shall be required to advise the other party of the alleged misconduct and the steps necessary to cure the offending conduct, if correctable, and the offending party shall have ninety (90) days to correct same. If not corrected or correctable, upon expiration of the ninety (90) day period, this Agreement shall terminate upon written thirty (30) day notice to the other party and, upon such termination, neither party hereto shall have any further obligation hereunder.

ARTICLE IX
INDEMNITY

The Development Corporation shall indemnify and hold City harmless from and against any claims, demands, actions, causes of action, proceedings, actions and liabilities, together with all costs, expenses and disbursements (including reasonable attorneys fees and costs) incurred by the City as a result of the Development Corporation's acts or omissions hereunder.

**ARTICLE X
INSURANCE REQUIREMENTS**

Consistent with City Resolution No. 56-95, the Development Corporation shall obtain:

- a. Public liability insurance with general liability limits of at least \$500,000 per occurrence and with an annual aggregate of \$500,000;
- b. Automobile liability insurance with liability limits of not less than \$500,000 per occurrence; and
- c. Employer's liability insurance with limits of at least \$100,000 for each accident, \$100,000 for each employee disease and \$500,000 policy limit disease.

The Development Corporation shall, in conjunction with the Management Plan, provide evidence satisfactory to the City that it has secured the above required insurance policies.

**ARTICLE XI
NON-DISCRIMINATION LANGUAGE**

The Development Corporation agrees that neither the Development Corporation nor any project in which it is involved shall act or be used in any manner to permit discrimination or restriction on the basis of race, creed, ethnic origin or identity, color, gender, religion, marital status, age, handicap or national origin. The Development Corporation shall include a similar covenant in any agreement to which it is a party.

**ARTICLE XII
MISCELLANEOUS PROVISIONS**

a. No Personal Liability. Under no circumstances shall any alderperson, officer, official, director, member or employee of the City or the Development Corporation have any personal liability arising out of this Cooperation Agreement, and no party shall seek or claim any such personal liability.

b. Notices. All notices, demands, certificates or other communications under this Cooperation Agreement shall be sufficiently given and shall be deemed given when hand delivered or mailed by first class mail, postage prepaid with proper address as indicated below:

To the City:

The City of Beaver Dam
Attn: Mayor
205 South Lincoln Avenue
Beaver Dam, WI 53916

With a Copy to:

Herman D. Schacht, Esq.
City Attorney
City of Beaver Dam
c/o Schacht & Schacht
222 South Spring Street
Beaver Dam, WI 53916

To the Development Corporation:

Beaver Dam Area Development Corporation

Attn: _____

Any party may, by written notice to the other party, designate a change of address for the purposes aforesaid.

c. Amendment of Agreement. No modification, alteration or amendment to this Cooperation Agreement shall be binding upon either party hereto until such modification, alteration or amendment is reduced to writing and executed by both parties hereto.

d. Governing Law. The laws of the State of Wisconsin shall govern this Cooperation Agreement.

e. Severability. If any provisions of this Cooperation Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

IN WITNESS WHEREOF, the parties have duly executed this Cooperation Agreement, or caused it to be executed, as of the date first above written.

THE CITY OF BEAVER DAM

By: THOMAS D. OLSON, Mayor

By: GARY H. DUMMER, Clerk

BEAVER DAM AREA DEVELOPMENT CORPORATION

By: Printed Name: _____
Its President

By: Printed Name: _____
Its Secretary

COOPERATION AGREEMENT

THIS Cooperation Agreement is entered into as of April 1, 1997 by and between the City of Beaver Dam, Wisconsin, a political subdivision of the State of Wisconsin (the "City") and the Beaver Dam Area Development Corporation, a non-stock, non-profit corporation of the State of Wisconsin created pursuant to Chapter 181 of the Wisconsin Statutes (the "Development Corporation").

ARTICLE I INTRODUCTION

The Development Corporation has been created for the purpose of encouraging and stimulating economic development within the City and lands which could become part of the corporate limits of the City. Such economic development is intended to expand the tax base of the City and to create jobs for City residents, all in furtherance of a public purpose. In order to encourage such economic development and to assist the activities of the Development Corporation, the City intends, pursuant to this Cooperation Agreement, to Provide funding and other forms of assistance to the Development Corporation in consideration for the Development Corporation's undertaking and assisting economic development within the City pursuant to annual management plans to be developed hereunder.

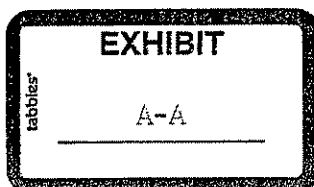
ARTICLE II ACTIVITIES OF DEVELOPMENT CORPORATION

In consideration for the annual contribution from the City as set forth in Article III hereinafter, the Development Corporation shall annually undertake programs and initiatives intended to stimulate additional economic development within the City, thereby expanding the City tax base and creating jobs for City residents. The Development Corporation shall retain the services of an executive officer who shall be charged with the day-to-day operation and management of the Development Corporation program. The Development Corporation shall annually prepare a management plan and budget regarding its activities as required in Article V hereinafter.

ARTICLE III CONTRIBUTION OF FUNDS TO DEVELOPMENT CORPORATION

The City shall annually contribute, or otherwise set aside, the following funds for the Development Corporation to stimulate economic development within the City.

a. Annual Contribution. The City shall annually contribute to the Development Corporation the following:



0110

1997	\$61,500
1998	84,460
1999	86,994
2000	89,604
2001	92,293

Such Annual Contribution shall be included in the City's annual budget. It is the intent of the parties that, unless the City finds that the activities proposed in the Management Plan for the succeeding year do not serve a public purpose, the City shall include and approve the above payment in its annual budget for the designated calendar year. Such contribution shall be paid to the Development Corporation in quarterly installments and shall be made on or before January 1, April 1, July 1 and October 1 of each year.

b. Allocation of Room Tax. Pursuant to Subsection 11 of Section 3.08 of the Beaver Dam General Ordinances, the City shall allocate 90% of all proceeds collected through the room tax to a non-lapsing economic development fund maintained by the City. Seventy-five percent (75%) of the existing uncommitted proceeds within such fund and seventy-five percent (75%) of future room tax collections shall be allocated and disbursed quarterly to the Development Corporation to be used to provide economic incentives (including related expenses) to encourage businesses to locate and/or expand within the City. Upon expending, loaning or otherwise using funds from the allocated room tax revenues, the Development Corporation shall, from time to time, submit a formal written report to the City regarding the use of such funds and the intended development and benefits therefrom. Such report shall be reviewed by the City Community Development Committee which shall report to the Common Council regarding the proposed project and the Development Corporation's use of such funds.

For purposes of this subparagraph and subparagraph c. below, until the Development Corporation is qualified as a non-profit organization pursuant to Sec. 501 of the IRC, the funds shall be held by the Municipality and disbursed on request of Development Corporation to the City's finance director to avoid income tax consequences to the Development Corporation. All use of funds shall be consistent with the use of room tax revenues authorized under Section 66.75, Wisconsin Statutes, where applicable.

c. Other Appropriations. The City may, from time to time, appropriate or otherwise make available to the Development Corporation such funds as the City deems necessary to further economic development within the City. Such funds may be derived from appropriate Tax Increment Financing Districts and may be used for such programs and costs as the City may designate within the specific Tax Increment Financing Project Plan. Such programs may include public improvements, land assembly and/or funding for the programs and initiatives of the Development Corporation necessary

to encourage economic development within the City. Such funds may be subject to program conditions as may be established and approved by the City at the time of approval of the Project Plan or at the time of contribution of such funds to the Development Corporation.

ARTICLE IV
TERM

The initial term of this Cooperation Agreement shall be four (4) years, nine (9) months beginning April 1, 1997 and ending December 31, 2001. This Agreement shall be automatically renewed for a five (5) year term, unless either party hereto provides written notice to the other party no later than June 30, 2001 of its intent to terminate this Cooperation Agreement at the end of the term. Upon renewal of this Cooperation Agreement, the parties shall, no later than October 30, 2001, mutually agree as to the amount of annual contribution from the City to the Development Corporation for the year 2002 and thereafter. In the event that the parties are unable to agree as to the amount of annual contributions during the renewal term, such renewal shall be null and void and this Cooperation Agreement shall terminate at the end of the initial term.

ARTICLE V
MANAGEMENT PLAN AND PERIODIC REPORTS

a. Management Plan. No later than October 1st of each year, the Development Corporation shall prepare and submit to the City an annual Management Plan and budget for the succeeding calendar year. The Management Plan shall include a description of the programs and activities the Development Corporation intends to undertake during the calendar year. The Management Plan shall be accompanied by a proposed budget reflecting the revenues and expenditures for the calendar year.

b. Periodic Reporting. The Development Corporation shall provide quarterly reports of its activities to the City for review by the City Community Development Committee. The periodic reports shall be submitted by March 31st, June 30th, September 30th and December 31st of each year and shall include a status of all programs and activities of the Development Corporation throughout the year. The report shall also include the status of the annual budget.

ARTICLE VI
DEVELOPMENT CORPORATION BOARD MEMBERSHIP;
NOT A GOVERNMENTAL BODY

a. Membership on Development Corporation Board. Throughout the term of this Cooperation Agreement, including any renewal period, the Mayor of the City and Chairperson of the City Community Development Committee shall be and serve as ex officio

voting members of the Board of Directors of the Development Corporation. All other members of the self-sustaining Board of Directors shall be appointed as authorized by the Development Corporation's Articles of Incorporation.

b. Not Considered Governmental Body. Nothing contained herein shall be construed or implied as granting to the Development Corporation status as a governmental body or agency of the City. The Development Corporation is, at all times and for all purposes under this Cooperation Agreement, an independent private corporation. The Development Corporation has not been created or its Board of Directors appointed by the City or any other governmental entity.

ARTICLE VII BUDGET AND BUDGET RECONCILIATION

The Development Corporation agrees to maintain records such that its actual expenditures may be ascertained and reconciled against such budget. The Development Corporation shall also keep and maintain proper accounting records of its financial condition of its economic development activities. From time to time, upon ten (10) days prior written notice from the City, authorized representatives of the City shall be entitled to examine such records at the Development Corporation's offices.

ARTICLE VIII RIGHT OF TERMINATION

Either party hereto may terminate this Cooperation Agreement upon the gross misconduct of either party, or the City may terminate this Cooperation Agreement upon structural change of the Development Corporation by amendment of its Articles of Incorporation. A party wishing to terminate this Agreement for gross misconduct shall be required to advise the other party of the alleged misconduct and the steps necessary to cure the offending conduct, if correctable, and the offending party shall have ninety (90) days to correct same. If not corrected or correctable, upon expiration of the ninety (90) day period, this Agreement shall terminate upon written thirty (30) day notice to the other party and, upon such termination, neither party hereto shall have any further obligation hereunder.

ARTICLE IX INDEMNITY

The Development Corporation shall indemnify and hold City harmless from and against any claims, demands, actions, causes of action, proceedings, actions and liabilities, together with all costs, expenses and disbursements (including reasonable attorneys fees and costs) incurred by the City as a result of the Development Corporation's acts or omissions hereunder.

ARTICLE X
INSURANCE REQUIREMENTS

Consistent with City Resolution No. 56-95, the Development Corporation shall obtain:

- a. Public liability insurance with general liability limits of at least \$500,000 per occurrence and with an annual aggregate of \$500,000;
- b. Automobile liability insurance with liability limits of not less than \$500,000 per occurrence; and
- c. Employer's liability insurance with limits of at least \$100,000 for each accident, \$100,000 for each employee disease and \$500,000 policy limit disease.

The Development Corporation shall, in conjunction with the Management Plan, provide evidence satisfactory to the City that it has secured the above required insurance policies.

ARTICLE XI
NON-DISCRIMINATION LANGUAGE

The Development Corporation agrees that neither the Development Corporation nor any project in which it is involved shall act or be used in any manner to permit discrimination or restriction on the basis of race, creed, ethnic origin or identity, color, gender, religion, marital status, age, handicap or national origin. The Development Corporation shall include a similar covenant in any agreement to which it is a party.

ARTICLE XII
MISCELLANEOUS PROVISIONS

a. No Personal Liability. Under no circumstances shall any alderperson, officer, official, director, member or employee of the City or the Development Corporation have any personal liability arising out of this Cooperation Agreement, and no party shall seek or claim any such personal liability.

b. Notices. All notices, demands, certificates or other communications under this Cooperation Agreement shall be sufficiently given and shall be deemed given when hand delivered or mailed by first class mail, postage prepaid with proper address as indicated below:

To the City:

The City of Beaver Dam
Attn: Mayor
205 South Lincoln Avenue
Beaver Dam, WI 53916

With a Copy to:

Herman D. Schacht, Esq.
City Attorney
City of Beaver Dam
c/o Schacht & Schacht
222 South Spring Street
Beaver Dam, WI 53916

To the Development Corporation:

Beaver Dam Area Development Corporation
129 Park Avenue
Beaver Dam, WI. 53916
Attn: Attorney Eric Becker

Any party may, by written notice to the other party, designate a change of address for the purposes aforesaid.

c. Amendment of Agreement. No modification, alteration or amendment to this Cooperation Agreement shall be binding upon either party hereto until such modification, alteration or amendment is reduced to writing and executed by both parties hereto.

d. Governing Law. The laws of the State of Wisconsin shall govern this Cooperation Agreement.

e. Severability. If any provisions of this Cooperation Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

IN WITNESS WHEREOF, the parties have duly executed this Cooperation Agreement, or caused it to be executed, as of the date first above written.

THE CITY OF BEAVER DAM

By: Thomas D. Olson
Thomas D. Olson, Mayor

By: Gary H. Dummer
Gary H. Dummer, Clerk

BEAVER DAM AREA DEVELOPMENT CORPORATION

By: Jeffrey C. Kitchen
Printed Name: Jeffrey C. Kitchen
Its President

By: Eric L. Becker
Printed Name: Eric L. Becker
Its Secretary

BYLAWS
OF
BEAVER DAM AREA DEVELOPMENT CORPORATION

ARTICLE I. NAME

The name of the corporation shall be the Beaver Dam Area Development Corporation.

ARTICLE II. OFFICES

Section 1. Principal Office. The temporary office of the Corporation shall be located at 129 Park Avenue in the City of Beaver Dam, County of Dodge, State of Wisconsin until such time as a permanent location is established by the Board of Directors.

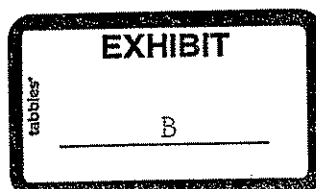
Section 2. Registered Office. The registered office of the Corporation required by the Wisconsin Nonstock Corporation Law to be maintained in the State of Wisconsin may be, but need not be, identical with the principal office in the State of Wisconsin, and the address of the registered office may be changed from time to time by the Board of Directors. The initial registered agent shall be Eric L. Becker, 129 Park Avenue, Beaver Dam, WI 53916.

ARTICLE III. PURPOSE

The exclusive purpose of the Corporation shall be to engage in economic development and business retention within the corporate limits and lands which could become part of the corporate limits of the City of Beaver Dam and for all lawful purposes incident thereto. In fulfillment of such purposes, the Corporation may exercise any and all powers not incompatible with such purposes granted to a corporation under the Wisconsin Nonstock Corporation Law.

ARTICLE IV. POWERS

The Corporation is empowered to invest in and contract for services necessary to raise and receive money and other property and to do all things necessary or desirable to carry out the purpose set forth in Article III of these Bylaws. The Corporation shall have no capital stock. No officer, except the Executive Vice President, shall be entitled to receive compensation from the Corporation. In the event of voluntary or involuntary dissolution or liquidation of the Corporation, any remaining assets of the Corporation, after payment of its liabilities, shall be transferred to the City of Beaver Dam, a municipal corporation of Dodge County, Wisconsin, with the intention the assets be used for economic development and business retention.



ARTICLE V. MEMBERS OF THE CORPORATION

The Corporation shall have no members and shall be managed by its Board of Directors.

ARTICLE VI. BOARD OF DIRECTORS

Section 1. General Powers. The government, business, property and affairs of the Corporation shall be managed and controlled by its Board of Directors. It shall be the duty of the Directors to carry out the aims and purposes of this Corporation and, to this end, to manage and control all of its property and assets. In carrying out its duties, the Board of Directors is authorized to elect officers and to employ or arrange for the services of such persons, including attorneys, agents and assistants, as in its opinion are necessary or desirable for the proper administration of the Corporation, and to pay reasonable compensation for services and expenses thereof. The Board of Directors may also, from time to time, appoint and retain as Advisors persons whose advice, assistance or support may be deemed helpful in determining policies and formulating programs for carrying out the Corporation's purposes and pay the reasonable expenses thereof.

Section 2. Qualification of Directors. Only persons whose principal residence is located in the Beaver Dam Unified School District or bear the Beaver Dam zip code shall be directors of the Corporation. Each member of the Board of Directors is to be selected for knowledge of economic development and business retention, cultural, civic, moral, public and other needs of the Beaver Dam area, and for general representation of varied elements or organizations of the area.

Section 3. Number, Election and Term of Office. As provided in the Articles of Incorporation, the number of Directors shall be 12. Two of the Directors shall be the sitting Mayor of the City of Beaver Dam and the sitting Chairperson of the Beaver Dam Community Development Committee. The remaining 10 initial Directors shall hold office as indicated below.

The initial Directors shall be as follows:

<u>Name</u>	<u>Term Expires</u>
Jeffrey Kitchen	2000
Eric L. Becker	2000
Terry Northwood	2000
John Landdeck	1999
Steve Baldwin	1999
Ron Thompson	1999
John Ralston	1998
Duane Foulkes	1998
Les Frinak, Jr.	1998
Douglas S. Mathison	1998

Thereafter, as the term of office of each Director expires, the vacancy so created shall be filled by the election of a director for a period of three (3) years by the Board of Directors of the Corporation at an annual meeting of the Board of Directors of the Corporation.

Section 4. Non-Voting Board Members. The Executive Vice President of the Beaver Dam Area Chamber of Commerce shall be a non-voting member of the Board of Directors. In addition, the Board of Directors shall be permitted to appoint such other non-voting member as it determines appropriate, provided, such non-voting Board Member shall be elected by majority vote of the directors present at a meeting called for such purpose.

Section 5. Nomination of Directors. Nominations for office of director shall be made by a nominating committee appointed by the President at a meeting of the Board of Directors to be held not more than one hundred twenty (120) days but not less than sixty (60) days prior to the annual meeting of the Board of Directors of the Corporation. At such meeting of the Board of Directors, the nominating committee shall nominate a sufficient number of persons to fill such vacancies on the Board of Directors as will exist as of the next subsequent annual meeting of the Board of Directors of the Corporation. In addition, any number of members of the Board of Directors of the Corporation in good standing and representing not less than ten percent (10%) of such members of the Board of Directors of the Corporation may, by petition, nominate candidates for the Board of Directors. Such nominations must be filed with the Secretary not later than the first day of the week immediately preceding such annual meeting.

Section 6. Ballot. When nominations by members of the Board of Directors of the Corporation are received through petition as permitted by Section 5 of Bylaw VI of these Bylaws, it shall be the duty of the Secretary to prepare a proper ballot for the annual election. The names of candidates nominated by the nominating committee shall be listed separately from those nominated by the Board of Directors. One copy of such ballot shall be mailed to each member of the Board of Directors of the Corporation in good standing at least ten (10) days before such annual meeting.

Section 7. Removal From and Resignation of Office. Except for ex-officio directors, a director may be removed from office by affirmative vote of a majority of the members of the Board of Directors of the Corporation entitled to vote for the election of such director, such vote to be taken at a special meeting of members of the Board of Directors of the Corporation called for that purpose. A director may resign at any time by filing his/her written resignation with the Secretary. Ex-officio directors may only be removed by the electors of the City of Beaver Dam.

Section 8. Annual Meeting. The annual meeting of the Board of Directors of the Corporation shall be held in the month of January of each year, at such time and place as may be designated by the Board of Directors, for the purpose of electing directors and for the transaction of such other business as may come before the meeting; provided, however, that if not so designated, the annual meeting shall be held on the second Thursday of January of each year, except when such day is a legal holiday in the State of Wisconsin, in which case the meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day herein designated for any annual meeting or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting to be scheduled as soon thereafter as may be convenient.

Section 9. Regular Meetings. The Board of Directors may provide by resolution the time and place, within the State of Wisconsin, for the holding of regular meetings of the Board of Directors without notice other than such resolution.

Section 10. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President, Executive Vice President, Secretary or any two directors. The President and Executive Vice President or Secretary calling any special meeting of the Board of Directors may fix any place, either within or without the State of Wisconsin, as the place for holding any special meeting of the Board of Directors called by them, and, if no other place is fixed, the place of meeting shall be the principal business office of the Corporation as stated in Section 1 of Bylaw II of these Bylaws.

Section 11. Notice of Meeting. Notice of any special meeting shall be given at least forty-eight (48) hours previously thereto by written notice delivered personally or mailed or given by telegram or telephone to each director at his/her business address or at such other address as such director shall have designated in writing filed with the Secretary. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage prepaid thereon. If notice be given by telegram or telephone, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company or when the telephone call is received.

Section 12. Waiver of Notice of Meeting. Whenever any notice whatever is required to be given to any director under the Articles of Incorporation or Bylaws or any provision of law, a waiver thereof in writing signed at anytime, whether before or after the time of meeting, by the director entitled to such notice shall be deemed equivalent to the giving of such notice. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends

a meeting and objects thereat to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 13. Quorum. Except as otherwise provided by law or by the Articles of Incorporation or these Bylaws, a majority of the number of directors elected pursuant to Section 3 of Bylaw VI of these Bylaws shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. Though less than a quorum of the directors are present at a meeting of the Board of Directors, a majority of the directors present may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

Section 14. Manner of Acting. If a quorum is present, the affirmative vote of a majority of the number of directors present shall be the act of the Board of Directors, unless the vote of a greater number is required by law or by the Articles of Incorporation or these Bylaws.

Section 15. Conduct of Meetings. The President, and in his/her absence, any director chosen by the directors present, shall call meetings of the Board of Directors to order and shall act as chair person of the meeting. The Secretary shall act as secretary of all meetings of the Board of Directors, but, in the Secretary's absence, the chairperson may appoint any other person to act as secretary of the meeting. All questions of parliamentary procedure shall be decided according to Robert's Rules of Order.

Section 16. Voting. Each director shall be entitled to one vote upon each matter submitted to a vote of the Board of Directors.

Section 17. Vacancies. Any vacancy occurring in the Board of Directors through death, resignation, removal, disqualification or other cause, including any vacancy created by an increase in the number of directors, but excluding vacancies occurring through expiration of a director's term, may be filled until the next succeeding annual meeting of the Board of Directors of the Corporation by an affirmative vote of a majority of the directors then in office; provided, however, that a director elected to fill such a vacancy shall be elected for the unexpired term of his/her predecessor in office and until the election of his/her successor.

Section 18. Compensation. The Board of Directors shall serve without compensation.

Section 19. Presumption of Assent. A director who is present at a meeting of the Board of Directors or a committee thereof of which he/she is a member at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his/her dissent shall be entered in the minutes of the meeting or unless he/she shall file his/her written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 20. Unanimous Consent Without Meeting. Any action required or permitted by the Articles of Incorporation or these Bylaws or any provision of law to be taken by the Board of Directors at a meeting or by resolution may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors then in office.

ARTICLE VII. OFFICERS

Number and Title. The officers of the Corporation, except the Executive Vice President, shall be elected from among the Board of Directors and shall consist of a President, a Treasurer, a Secretary, and such other Vice-Presidents as the Board of Directors may choose to elect. An Executive Vice President shall be appointed by majority vote of the Board of Directors and need not be a member of the Board of Directors.

President. The President shall be the chief executive officer, shall preside at all meetings of the members of the Board of Directors, and shall implement Corporation policy as established by the Board of Directors.

Executive Vice-President. The Executive Vice-President shall be the compensated, full-time employee of the Corporation who shall manage the day to day operation of the Corporation. The Executive Vice President shall have such powers and perform such duties as the Board of Directors may determine.

Treasurer. The Treasurer shall be the custodian of all Corporation's funds. At Corporation expense, he/she shall be bonded each year. He/she shall deposit all receipts in a bank or banks designated by the Board of Directors and shall disburse Corporation funds only by checks or other orders for the payment of money.

Secretary. The Secretary shall record and keep minutes of the meetings and all other Corporation records.

Other Officers. The Vice Presidents and such other officers

as the Board of Directors may from time to time elect shall have such powers and perform such duties as the Board of Directors may determine.

ARTICLE VIII. TERMS OF OFFICERS

Section 1. Term of Officers. The term of officers, except the Executive Vice-President, shall be one (1) year unless otherwise removed by majority vote of the Board of Directors. Officers, except the Executive Vice-President, may be re-elected for one additional one (1) year term but may not serve more than 2 consecutive terms in the same office. The term of the Executive Vice-President shall be at the pleasure of the Board of Directors.

Section 2. President. The President shall be the principal, voluntary executive officer of the Corporation and, subject to the control of the Board of Directors, shall, in general, supervise the conduct of the Corporation. The President shall have authority to sign, execute and acknowledge, on behalf of the Corporation, contracts or other instruments necessary or proper to be executed in the course of the Corporation's regular business, or which shall be authorized by resolution of the Board of Directors.

Section 3. Executive Vice President. The Executive Vice President shall be the principal paid executive officer of the Corporation and subject to the control of the Board of Directors, shall supervise and control the daily business and affairs of the Corporation. The Executive Vice President shall have authority, subject to such rules as may be prescribed by the Board of Directors, to appoint such agents and employees of the Corporation as he/she shall deem necessary, to prescribe their powers, duties and compensation and to delegate authority to them. The Executive Vice President shall have authority to sign, execute and acknowledge, on behalf of the Corporation, contracts or other instruments necessary or proper to be executed in the course of the Corporation's regular business, or which shall be authorized by resolution of the Board of Directors. The Executive Vice President shall, in general, perform all duties as may be prescribed by the Board of Directors from time to time.

Section 4. Secretary. The Secretary shall: (a) keep the minutes of the meetings of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records; (d) attest to all official papers; (e) keep or arrange for the keeping of a register of the post office address of each member of the Board of Directors of the Corporation which shall be furnished to the Secretary by such member; (f) sign, as Secretary, documents and instruments authorized by the Board of

Directors, and (g) in general, perform all duties incident to the office of Secretary and have such other duties and exercise such authority as from time to time may be delegated or assigned to him/her by the President or by the Board of Directors.

Section 5. Treasurer. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Corporation; (b) receive and give receipts for moneys due and payable to the Corporation from any source whatsoever and deposit all such moneys in the name of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Bylaw XIII of these Bylaws, and (c) in general, perform all of the duties incident to the office of Treasurer and have such other duties and exercise such other authority as from time to time may be delegated or assigned to him/her by the President or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his/her duties in such sum and with such surety or sureties as the Board of Directors shall determine.

Section 6. Compensation. No officer of the Corporation, except the Executive Vice President, shall receive any salary or anything of pecuniary value from the Corporation for performing services as an officer, but may be reimbursed for actual expenses in connection therewith.

ARTICLE IX. INDEMNIFICATION

Section 1. Indemnification. (a) The Corporation shall indemnify any person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he/she is or was a Director, officer, employee, or agent of the Corporation against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him/her in connection with such action, suit or proceeding if he/she acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his/her conduct was proceeding, had no reasonable cause to believe his/her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he/she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceedings, had reasonable cause to believe that his/her conduct was unlawful.

(b) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he/she is or was a Director, officer, employee or agent of the Corporation against expenses, including attorneys' fees, actually and reasonably incurred by him/her in connection with the defense or settlement of such action or suit if he/she acted in good faith in a manner he/she reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his/her duty to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(c) To the extent that a Director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraph (a) or (b), or in defense of any claim, issue or matter therein, he/she shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him/her in connection therewith.

(d) Any indemnification under Paragraph (a) or (b), unless ordered by a court, shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Director, officer, employee or agent is proper in the circumstances because he/she has met the applicable standard of conduct set forth in Paragraph (a) or (b). Such determination shall be made:

(i) By the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding;

(ii) If such a quorum is not obtainable, or, even if obtainable a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion.

Section 2. Expenses. (a) Expenses, including attorneys' fees, incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in Section 1, Subparagraph (d) upon receipt of an undertaking by or on behalf of the Director, officer, employee or agent to repay such amount unless it shall ultimately

be determined that he/she is entitled to be indemnified by the Corporation as authorized in this section.

(b) The indemnification provided by this Bylaw shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of members or disinterested Directors or otherwise, both as to action in his/her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(c) The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Corporation against any liability asserted against him/her and incurred by him/her in any such capacity or arising out of his/her status as such, whether or not the Corporation would have the power to indemnify him/her against such liability under this section.

ARTICLE X. QUORUM AND VOTES

In addition to other provisions of these Bylaws, and whenever in these Bylaws meetings are required, 50% of the members appointed shall constitute a quorum. If a quorum is present, whenever a vote is required, the affirmative vote of a majority members present, shall be required to constitute approval of the matter considered.

ARTICLE XI. FISCAL YEAR

The fiscal year of the Foundation shall be the 12-month period ending December 31 in each year.

ARTICLE XII. EFFECTIVE DATE OF THESE BYLAWS

These Bylaws shall become effective upon their adoption.

ARTICLE XIII. SEAL

The Board of Directors shall not provide a corporate seal.

ARTICLE XIV. AMENDMENTS

Section 1. By Directors. These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the members of the Board of Directors of the Corporation by an affirmative vote of a majority of the members of the Board of Directors of the Corporation in good standing present in person or represented by proxy at any meeting at which a quorum is in attendance.

Section 2. Implied Amendments. Any action taken or authorized by the Board of Directors which would be inconsistent with the Bylaws then in effect but is taken or authorized by an affirmative vote of at least seven (7) directors so that the Bylaws would be consistent with such action, shall be given the same effect as though the Bylaws had been temporarily altered, amended, repealed or suspended so far, but only so far, as is necessary to permit the specific action so taken or authorized.



The State of Wisconsin
Department of Justice

123 West Washington Avenue
Mailing Address: P.O. Box 7857
Madison, Wisconsin 53707-7857

February 26, 1987

Donald J. Hanaway
Attorney General

Mr. Thomas H. Geyer
Grant County Economic
Development Corporation
Post Office Box 253
Platteville, Wisconsin 53818

Dear Mr. Geyer:

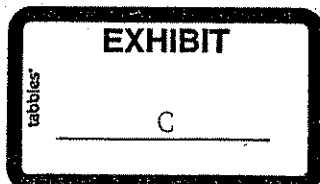
You have asked for my opinion whether the Grant County Economic Development Corporation (GCEDC) is subject to the open meetings and public records laws.

You state that the GCEDC is a chapter 181, Stats., non-stock, non-profit corporation that receives more than fifty percent of its funding from Grant County and the municipalities therein.

The open meetings law is applicable to all state and local governmental bodies. Sec. 19.81(2), Stats. The meaning of the term "governmental body" under the open meetings law is defined in section 19.82(1):

"Governmental body" means a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation created under ch. 232; any public purpose corporation, as defined in s. 181.79(1); or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. IV or V of ch. 111.

I have seen no evidence that the GCEDC was created by constitution, statute, ordinance, rule or order. From the articles of incorporation you sent, it appears the GCEDC was formed by private citizens. The articles state that the corporation's by-laws will specify how members, directors and officers are selected. It is significant that the corporation, rather than a governmental body, will determine how those selections are made.



0128

Mr. Thomas H. Geyer
Page 2

The GCEDC is not a governmental or quasi-governmental corporation. My predecessor concluded that the term quasi-governmental corporation was limited "to nonstock body politic corporations created by the Legislature to perform essentially governmental functions." 74 Op. Att'y Gen. 38, 43 (1985). Quasi-governmental corporations "have delegated powers largely controlled by statute." 74 Op. Att'y Gen. at 42.

The GCEDC is similar to the corporations found not subject to the open meetings law in 74 Op. Att'y Gen. 38 and 73 Op. Att'y Gen. 53 (1984). It does not appear that the GCEDC exercises any sovereign power or that its activity is dependent on or controlled by delegation from the Legislature or any other governmental body. The powers of the GCEDC are derived from the general laws of the state. It appears to be a private corporation. 74 Op. Att'y Gen. at 41-43; and 73 Op. Att'y Gen. at 56. Even though the GCEDC may serve a public purpose in promoting the industrial and economic development of the county, it is not a governmental or quasi-governmental corporation under section 19.82(1) because it is not "created directly by the Legislature or by some governmental body pursuant to specific statutory authorization or direction." See 66 Op. Att'y Gen. 113, 115 (1977).

The GCEDC is not a public purpose corporation as defined in section 181.79(1) because it was not organized to provide for a guaranteed student loan program.

I have also seen no evidence that the GCEDC is a subunit of any other governmental body.

Whether the GCEDC is subject to the public records law depends upon whether it is an "authority" as that term is defined in section 19.32(1):

"Authority" means any of the following having custody of a record: a state or local office, elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation created under ch. 232; any public purpose corporation, as defined in s. 181.79(1); any court of law; the assembly or senate; a nonprofit corporation which receives more than 50% of its funds from a county or a municipality, as defined in s. 59.001(3), and which provides services related to

Mr. Thomas H. Geyer
Page 3

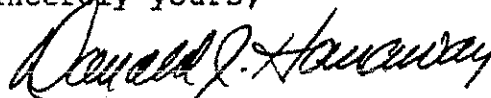
public health or safety to the county or municipality;
or a formally constituted subunit of any of the
foregoing.

The definition of authority is similar to the definition of governmental body in the open meetings law. As a result, because the GCEDC is not a governmental body, it also does not qualify as an "authority" under the first phrases of section 19.32(1).

Because the GCEDC receives more than fifty percent of its funding from the county and municipalities, it is necessary to consider the phrase defining authority as "a nonprofit corporation which receives more than 50% of its funds from a county or a municipality as defined in s. 59.001(3), and which provides services related to public health and safety to the county or municipality." See sec. 19.32(1), Stats. Because there is no evidence that the GCEDC provides services related to health or safety to the county or municipalities that provide the funds, the GCEDC does not qualify as an "authority" under this portion of the statute,

For the reasons that have been discussed, it is my opinion that the GCEDC is not subject to the open meetings and the public records laws. It should be remembered that independent private associations or non-profit corporations are not subject to the open meetings and public records laws just because they have a public purpose. 74 Op. Att'y Gen. at 41.

Sincerely yours,



Donald J. Hanaway
Attorney General

DJH:dah

CONDENSED

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Reporters, LLC



STATE OF WISCONSIN

CIRCUIT COURT

DODGE COUNTY

* * * * *

CITIZENS FOR OPEN GOVERNMENT, INC.,
JACK DOMANN, FREDERICK W. BIRD,
PAUL AND ANN BREUER,
ALBERT YUNDT, SR. AND DARLENE YUNDT,
DANIEL F. EBERHARDT,
NATHAN D. AND TRACY L. CAVES,
EDWARD J. ALVIN, DAVID B. DeVINCENTIS,
TIMOTHY J. WELCH, DAVID AND BARBARA
SCHROEDER, GLEN AND MARGARET LUCK and
SALIM MOHAMMAD;

Plaintiffs,

-vs-

Case No. 04-CV-166

CITY OF BEAVER DAM,
BEAVER DAM CITY COUNCIL, WMFB, INC.,
TOTAL LOGISTIC CONTROL, LLC,
CAROL A. AND ROBERT L. GANSKE and
WAL-MART STORES EAST I, LP,

Defendants.

* * * * *

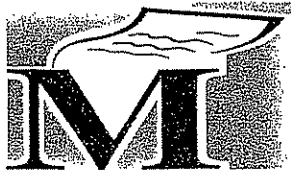
VIDEOTAPED DEPOSITION OF TRENT CAMPBELL

Wednesday, July 7, 2004

10:15 o'clock a.m.

Videotaped by: TODD CAMPBELL

Reported by: SANDRA L. McDONALD



6117 Monona Drive • Madison, Wisconsin 53716

Phone: (608) 255-8100 • Fax: (608) 255-4096 • Toll-Free: 1 (877) 665-5499

nce.com

EXHIBIT

D

BDADC 0014

0131

1	Exhibits: (Continued)	
2	Exhibit Nos.:	Page:
3	18 - 05-13-03 letter to John Peters from Eric Becker	177
4		
5	19 - 06-10-03 e-mail to Colby Tanner from Trent Campbell	186
6		
7	20 - 07-23-03 e-mail to Colby Tanner from Trent Campbell	191
8		
9	21 - 05-11-04 Affidavit of Steve Baldwin	192
10		
11	22 - List of Town of Beaver Dam and Town of Trenton properties	201
12		
13	23 - Property tax bill	207
14		
15	24 - List of property owners	210
16		
17	25 - 2003-2024 tax collection document	218
18		
19	26 - 11-18-03 handwritten notes	219
20		
21	27 - Annexation Review Questionnaire	220
22		
23	28 - 11-26-03 e-mail to Ted from Trent Campbell	222
24		
25	29 - Wal-Mart Distribution Center Proposed Public Meetings Schedule, Annexation & Rezoning	225
	30 - Wal-Mart Memorandum of Understanding, Summary of Important Facts	226
	31 - 05-13-04 Affidavit of Trent Campbell	232

1 THE VIDEOGRAPHER: We are on the
2 record. This is Videotape No. 1 in the
3 deposition of Trent Campbell taken pursuant to
4 notice at the instance of the plaintiffs. The
5 date is July 7, 2004. The time is 10:15 a.m.
6 We are here in the matter of the
7 Citizens for Open Government, Incorporated,
8 et al. versus the City of Beaver Dam, et al. in
9 the Circuit Court of Dodge County, State of
10 Wisconsin, Case No. 04-CV-166.
11 I am Todd Campbell, videographer with
12 Campbell Legal Video Company. The court
13 reporter is Sandy McDonald with Madison
14 Freelance Reporters. We are here at the offices
15 of Garvey & Stoddard, 634 West Main Street in
16 Madison, Wisconsin. Would counsel please first
17 introduce themselves, and then the court
18 reporter will swear in the witness.
19 MR. GARVEY: I'm Ed Garvey on behalf
20 of plaintiffs.
21 MR. MALLOY: Mark Malloy on behalf of
22 the defendants, City of Beaver Dam and Beaver
23 Dam City Council.
24 MR. ARNTSEN: Allen Arntsen on behalf
25 of Wal-Mart.

1 MR. BUELOW: Cliff Buelow on behalf of
2 the witness, Trent Campbell.
3 MR. SCHACHT: Herman Schacht on behalf
4 of the City of Beaver Dam.
5 THE VIDEOGRAPHER: Thank you. Would
6 the - I'm sorry.
7 MS. MILLIGAN: Diane Milligan on
8 behalf of the plaintiffs.
9 MS. WESTERBERG: Christa Westerberg
10 also on behalf of the plaintiffs.
11 THE VIDEOGRAPHER: Thank you. Will
12 the court reporter please swear in the witness?
13
14 TRENT CAMPBELL,
15 having been first duly sworn on oath,
16 was examined and testified as follows:
17
18 DIRECT EXAMINATION
19 BY MR. GARVEY:
20 Q Good morning, Mr. Campbell.
21 A Good morning.
22 Q I'm sure you've probably had your deposition taken
23 before.
24 A Have not, actually.
25 Q Have not?

1 A No.
2 Q Okay. Well, I'm sure your counsel has given you the
3 rules, but essentially I'm not going to argue with
4 you, and if you would answer all questions if you
5 could, rather than nodding your head, that would be
6 helpful.
7 A Okay.
8 Q Okay. Why don't you state your name and address for
9 the record, if you would?
10 A I am Trent Campbell. I reside at North 106
11 West 14892 Buck Farm Drive in Gemantown, Wisconsin.
12 Q Would you tell us how long you've lived at that
13 address?
14 A Rapidly approaching five years, I believe.
15 Q Where are you employed currently?
16 A I'm employed by the Beaver Dam Area Development
17 Corporation.
18 Q And is that a corporate entity under the laws of the
19 State of Wisconsin?
20 A It's a private not-for-profit development
21 corporation, yes.
22 Q Do you have any other employers?
23 A No, I do not.
24 Q Would you describe yourself as being self-employed,
25 or are you a corporate employee?

1 A I'm an employee of the corporation.
 2 Q Prior to coming here today who did you have a chance
 3 to talk to about this deposition other than your
 4 counsel?
 5 A Other than my counsel?
 6 Q Right.
 7 A Any number of people were aware that this was going
 8 to occur, or, you know, the fact that I was going to
 9 be giving a deposition was talked about with any
 10 number of people. In terms of substance, I don't
 11 believe anybody other than Attorney Buelow.
 12 Q Okay. Could you give us your educational background,
 13 just your formal education?
 14 A Formal education?
 15 Q Yeah.
 16 A I have a bachelor's of science degree from the
 17 University of Wisconsin-La Crosse with double majors
 18 of political science and public administration.
 19 Q Any advanced degrees?
 20 A No. That's it for formal education.
 21 Q And what year did you graduate?
 22 A '90, 1990.
 23 Q Share with us your employment history from that point
 24 forward after you graduated from UW-La Crosse.
 25 A My first position, I was the executive director of

1 the Hartford Area Development Corporation, an
 2 economic development group in Hartford, Wisconsin. I
 3 then was in a couple of private sector positions
 4 before I got back into economic development. For
 5 approximately 13 months, I was the economic
 6 development director for the City of Beaver Dam, and
 7 for a brief number of months, three months I believe,
 8 I was an independent contractor working on economic
 9 development matters in the Beaver Dam area, and I
 10 believe on April 1 of '97 my employment would have
 11 begun with the Beaver Dam Area Development
 12 Corporation.
 13 Q How did you learn about the opening in Beaver Dam
 14 when you took that job, the first job?
 15 A I don't have total recall. I believe -- I believe it
 16 was on the basis of advertisement.
 17 Q And did you interview for the job?
 18 A Yes, I did.
 19 Q And at that time were you employed?
 20 A Yes. I was transitioning, but yes.
 21 Q And who were you employed by at that time?
 22 A I was -- Settlement Dynamics, Incorporated was the
 23 name of the company, and I'm struggling to remember
 24 timelines on when I left and when I started with the
 25 City. I may or may not have been formally employed,

1 depending on what part of the process we're talking
 2 about.
 3 Q And who hired you?
 4 A Who hired me for the City?
 5 Q In Beaver Dam, yes.
 6 A Whoever was responsible for City hiring. I was
 7 interviewed by groups or committees. I don't know
 8 the formal process of if there was an individual that
 9 hired me.
 10 Q Did you get a letter or a contract, or what happened?
 11 A I never had a contract that I can recall. I
 12 believe I got a letter in addition to phone
 13 communication, most likely from the then mayor, who
 14 was Steve Sabatke.
 15 Q So that the actual hiring notice came from
 16 Steve Sabatke, the mayor?
 17 A I believe probably informally certainly, and possibly
 18 that was his letter formally as well.
 19 Q And how long did you remain in that position?
 20 A I believe I started December 1 of '95 and through the
 21 entire year of '96, ending on December 31 of '96, I
 22 believe.
 23 Q All right. And what was your salary in that
 24 position, roughly?
 25 A Roughly? I think there was a probationary salary in

1 the -- I don't know -- mid to upper thirties.
 2 Q And did you also have benefits as a City employee?
 3 A Yes.
 4 Q Health insurance?
 5 A Yes.
 6 Q Were you expected to put in a certain number of hours
 7 per week?
 8 A It was a full-time position.
 9 Q Okay. Did you have any provision for bonuses?
 10 A No, not in that position.
 11 Q Or commissions?
 12 A No, not in that position.
 13 Q Did you actually sign a contract as you recall, or
 14 was it --
 15 A You know, I just -- I don't remember that. There
 16 were an awful lot of forms that you signed when you
 17 became a City employee in terms of physicals and
 18 health insurance and things of that nature, but I
 19 don't recall having a formal employment contract.
 20 Q When you applied for that job, were you living in
 21 Beaver Dam or elsewhere?
 22 A I was living in Germantown at another address.
 23 Q Where did you grow up, in the Beaver Dam area or
 24 elsewhere?
 25 A I grew up in Germantown.

1 businesses are not completely comfortable dealing
 2 with governmental entities, and dealing with a
 3 private entity and having a semblance of
 4 confidentiality could be a benefit. That was
 5 probably, if I were ranking, maybe third on the
 6 pecking list.
 7 Q When you said financial, your first reason, what do
 8 you mean by that?
 9 A Well, as a way of an example --
 10 Q Did you actually go out and raise money?
 11 A As a way of an example, tax incremental finance
 12 grants, okay? That has been done in Beaver Dam.
 13 We've utilized those grants for the betterment of the
 14 TIF district as is required. When those dollars are
 15 recycled, if there's an independent private third arm
 16 such as us, those funds can be re-utilized for
 17 community good, be it downtown redevelopment or any
 18 project that our board of directors sees fit.
 19 Q But you were the same person who handled it for the
 20 City, and now you handled it for the Area Development
 21 Corporation; is that right?
 22 A Handled what?
 23 Q The same issues of dealing with business and finance
 24 and so on.
 25 MR. MALLOY: Object to the form of the

1 were there any studies that you conducted or
 2 Mayor Olson to determine that businesses preferred
 3 dealing with a private corporation as opposed to a
 4 private entity?
 5 A Studies, no.
 6 Q Any research that you engaged in yourself?
 7 A No, more instinct.
 8 Q Okay. Did you have a background at the University of
 9 Wisconsin-La Crosse in these issues of marketing and
 10 economic development?
 11 A Maybe tangent, but that's not what the public
 12 administration was primarily dealing with, no.
 13 Q Okay. You then mentioned that you would have a
 14 commission of leaders in the community who could be
 15 helpful. What do you mean by that?
 16 A Well, our board of directors is comprised of
 17 industrialists, of educational leaders, of business
 18 leaders, bankers, legal, kind of all walks of
 19 professional life, and we think that we have a very
 20 broad base to be making decisions and setting a
 21 course.
 22 Q Let me just hand you a document, a Resolution
 23 Authorizing Contracting with the Beaver Dam Area
 24 Development Corporation, if you could take a look at
 25 that for me. And we have copies.

1 question. You can answer.
 2 THE WITNESS: Excuse me?
 3 Q Did you understand the question? I mean, you had the
 4 job as economic development director for the City of
 5 Beaver Dam --
 6 A Yes.
 7 Q -- the public sector?
 8 A Right.
 9 Q And then you had essentially the same job, private
 10 sector?
 11 A Similarities certainly.
 12 Q Did -- are you saying that your attitude changed when
 13 you could say you were a private corporation versus a
 14 City employee?
 15 A I guess I don't understand what you mean by my
 16 attitude changing.
 17 Q Well, in other words, you said you could be more
 18 customer friendly dealing with corporations. Did you
 19 find that they were more comfortable with you when
 20 you had a different hat on as a private entity versus
 21 when you were doing this as a City employee?
 22 A I think that's possible. It's not something that we
 23 inquired about when we were dealing with people.
 24 Q All right. So that you're speculating that it would
 25 be better to be privatized as opposed to -- I mean,

1 MS. WESTERBERG: Do you want to mark
 2 that?
 3 MR. GARVEY: Yes, please.
 4 (Discussion off the record)
 5 (Exhibit 1 is marked for identification)
 6 Q Is this the document -- well, look at the document.
 7 Could you identify it for us?
 8 A It appears to be the resolution approving the initial
 9 cooperation agreement between the City and the Beaver
 10 Dam Area Development Corp.
 11 Q And the date on the document is the 3rd day of March,
 12 1997?
 13 A Yes.
 14 Q Is that your recollection as well? That's when the
 15 corporation was created?
 16 A Boy, my recollection isn't quite that specific, but
 17 we're in the general time frame, yeah.
 18 Q And who drafted this document? Were you involved in
 19 the drafting of it?
 20 A Of the original cooperation agreement?
 21 Q Right.
 22 A I certainly had input into things that I thought were
 23 of importance. The drafting of the agreement, if
 24 memory serves, was driven by Attorney Gempeler.
 25 Q And so on Page 4 at the top where it says,

1 "February 25, 1997, 'Foley & Larimer,' would that an
 2 indication that --
 3 A Right, Hank's at Foley.
 4 Q And so Mr. Gempeler was counsel to you or to the City
 5 or --
 6 A The City of Beaver Dam, I believe.
 7 Q All right. And so he was counsel for the City of
 8 Beaver Dam, and he worked with you in developing this
 9 entity?
 10 A Well, he worked -- there was group input so that it
 11 was to the satisfaction of a number of parties.
 12 Q Okay. Not to get your head too big, but basically
 13 this was your creation, was it not?
 14 A I contributed to it, but it was certainly not a sole
 15 creation of mine.
 16 Q Other than Mr. Gempeler and yourself, do you recall
 17 Mayor Olson being involved or anyone else?
 18 A Well, in his mayoral role, I mean, he had, you know,
 19 oversight over virtually everything at some level.
 20 Then-City Attorney Schacht was certainly heavily
 21 involved in coordination with Attorney Gempeler.
 22 Q Mr. Schacht is? Could you identify Mr. Schacht? Who
 23 is he?
 24 A Herman Schacht.
 25 Q Yes.

25

1 A He's now assistant city attorney in the room and at
 2 that time was city attorney of the City of
 3 Beaver Dam. I trust, although I don't have direct
 4 recollection, when you're dealing with pledges of
 5 funding and contributions that the City's finance
 6 director probably had a role, probably a slightly
 7 more minimal role, but a role nonetheless. My
 8 recollection, although it's not completely clear, is
 9 that the mayor was, at minimum, kept abreast of this
 10 and certainly had review when documents were in near
 11 final form.
 12 Q How did you recruit these community leaders to be
 13 part of your board?
 14 A You know, the formation of the corporation itself,
 15 the incorporation and things of that nature, was done
 16 in that interim period when I was neither a City
 17 employee or a Development Corp employee. There was a
 18 community group. I don't know if it was an ad hoc
 19 committee, or I don't recall how the committee was
 20 structured, but they were looking into all of the
 21 things that were beneficial to this process and what
 22 type of leadership would be beneficial in driving it,
 23 and I believe that it evolved out of their
 24 discussions.
 25 Q And you were part of those discussions?

26

1 A No. I think they might have had me in for a portion
 2 of one meeting to, you know, more or less pick my
 3 brain, but no, that was done -- I wasn't even hired.
 4 I reinterviewed for this position, so I was not a
 5 part of that formal process.
 6 Q Did anyone else apply for that position?
 7 A I don't know that. My recollection is is that they
 8 wanted to readdress it with me and see if it was a
 9 fit prior to conducting a search, but I --
 10 Q So who did select the board as far as you know?
 11 A Beyond my recollection of that community-based group
 12 or committee, I don't know.
 13 Q Was it largely made up of labor union leaders, the
 14 board?
 15 A This group that was looking into this whole concept?
 16 Q Right.
 17 A No.
 18 MR. MALLOY: Objection, foundation,
 19 but go ahead and answer.
 20 A I know that there was involvement from the Chamber of
 21 Commerce. My recollection is that it was a
 22 sampling -- kind of a broad-based sampling again of
 23 the business community and so that they had kind of
 24 insight from all directions.
 25 Q When it was formed, did one person become the

27

1 president of the board or the chairman of the board?
 2 A There was an initial slate of officers, yeah.
 3 Q And do you recall who they were?
 4 A The first president of the Development Corporation
 5 was Jeffrey Kitchen.
 6 Q And who is he?
 7 A Jeff owns the Century 21 real estate firm in
 8 Beaver Dam.
 9 Q Okay. And was there a secretary/treasurer?
 10 A Yeah, there was a vice-president and
 11 secretary/treasurer. I believe Eric Becker,
 12 attorney, Beaver Dam, was secretary. I don't recall
 13 vice-president and treasurer. I'm sorry.
 14 Q Okay. So you don't recall any other names of
 15 officers at that time?
 16 A No. I recall original director names, but not
 17 officers.
 18 Q Was Steve Baldwin involved in the original formation
 19 of the corporation?
 20 A Steve was an original director of -- yeah, he was one
 21 of the original directors.
 22 Q Was he an officer, if you recall?
 23 A He was an officer at some point, either originally or
 24 after the fact.
 25 Q Okay. And when you interviewed for this position or

28

1 you applied for it, what salary did they offer to
 2 you?
 3 MR. BUELOW: Objection.
 4 Q You can answer, right?
 5 MR. BUELOW: It's not reasonably
 6 calculated to lead to discoverable information,
 7 and it's confidential.
 8 MR. GARVEY: Well, it is -- it will
 9 lead to information as we develop the
 10 information concerning his employment and his
 11 relationship with corporate interests and so on.
 12 MR. BUELOW: I'll see where you go
 13 later, but I'm instructing him not to answer
 14 that.
 15 Q Were you given any benefits?
 16 MR. BUELOW: Same objection for the
 17 same reasons.
 18 MR. GARVEY: Okay. Well, we'll take
 19 it up with the judge.
 20 Q Did you sign a contract?
 21 A With the Development Corporation?
 22 Q Yes.
 23 A I don't believe so. I think I did and continue to
 24 serve at their pleasure.
 25 Q Let me show you a document, a Facilities Lease

1 Between City of Beaver Dam, et cetera. Let's have
 2 this marked first.
 3 (Exhibit 2 is marked for identification)
 4 Q Could you identify that document for me?
 5 MR. ARNTSEN: Was this marked? Is
 6 this Exhibit 2?
 7 MR. GARVEY: 2, yes.
 8 A Without reading the whole document, I believe it was
 9 the original lease between the Development Corp and
 10 the City relating to office space.
 11 Q And were you a party to drafting this, or had you
 12 been hired at this point?
 13 A 5th day of May, '97, I'm -- I likely was, yes.
 14 Q Okay.
 15 A Probably the City's finance director and myself were
 16 probably significantly involved in it.
 17 Q Do you still have a copy of the original contract you
 18 signed with the Beaver Dam Area Development
 19 Corporation?
 20 A With regard to?
 21 Q Your employment with the BDADC?
 22 A Again, I don't recall a signed contract of employment
 23 with the Development Corporation.
 24 Q Well, we don't have the advantage of seeing it, of
 25 course, so let me just ask you this. Did you -- was

1 there a provision that said you must work exclusively
 2 for the city of -- or the BDADC?
 3 MR. MALLOY: Object to the form of the
 4 question. Are you asking him whether it's the
 5 City or the BDADC?
 6 MR. GARVEY: I'm sorry. You're right.
 7 MR. MALLOY: You said the City or the
 8 BDADC.
 9 MR. GARVEY: I tried to correct myself
 10 midstream.
 11 Q When you signed the contract with the BDADC, did it
 12 require you to work exclusively for that corporate
 13 interest?
 14 MR. ARNTSEN: I'm going to object
 15 because I thought he said he didn't sign a
 16 contract with the BDADC.
 17 A I never signed a contract that I can recall.
 18 Q All right. So you had -- your testimony is you did
 19 not have any contract at all?
 20 A Not that I can recall.
 21 Q So you helped form this corporation, went to work for
 22 it. How did you know what the terms and conditions
 23 of employment were?
 24 A Through board action, through board of director
 25 action, and more directly, the president of the board

1 is who I have the most interaction with.
 2 Q And so if we wanted to find out the terms of that
 3 contract, it would either be your memory or we can
 4 get it from the president of the board of directors?
 5 A I don't believe there's a contract.
 6 Q Okay.
 7 A It's simply the understanding of the terms.
 8 Q Okay. Was one of those terms that you had to give
 9 exclusive -- your time exclusively to the BDADC?
 10 MR. SCHACHT: I object to that because
 11 it's the Beaver Dam Area Development
 12 Corporation, so that doesn't just mean it worked
 13 for the City, it works for the area.
 14 Q Thank you. Mr. Schacht has now attempted to clarify.
 15 Did the BDADC require that 100 percent of your time
 16 be devoted to the BDADC?
 17 A To the betterment of the BDADC? I don't know that
 18 there was ever anything explicit in direction. If
 19 not, I believe it was implied.
 20 Q And have you devoted 100 percent of your time to the
 21 BDADC since you took this position?
 22 A Yes.
 23 Q Have you done any consulting with any other
 24 communities?
 25 A No.

1 Q With Dodge County?
 2 A Well, that's -- with regard to have I consulted with
 3 any other communities or Dodge County, again, the
 4 nature of our work is Beaver Dam area, so there are
 5 times that our projects or our efforts are involving
 6 the Beaver Dam area, which can encompass Town of
 7 Beaver Dam, Town of Trenton, Dodge County, so there
 8 are other entities involved, but I've never entered
 9 into agreement specifically with a community to
 10 represent them or any other organization.
 11 Q Have you received any compensation from these other
 12 entities, Dodge County, Town of Trenton or others?
 13 A No, I have not.
 14 Q So that 100 percent of your compensation since April
 15 of 1997 has come from the BDADC?
 16 A I believe that's the case.
 17 Q Okay. You're paid a salary by the BDADC, without
 18 telling me how much it is at the moment?
 19 A Yes, I am.
 20 Q And do you have any bonus arrangements?
 21 MR. BUELOW: Objection, same
 22 objection.
 23 MR. GARVEY: Can he answer?
 24 MR. BUELOW: I'm directing him not to
 25 answer.

33

1 Q Okay. Is it permissible to have commissions for any
 2 work that you do for the BDADC?
 3 MR. BUELOW: Same objection.
 4 MR. GARVEY: Are you directing him --
 5 MR. BUELOW: I'm directing him not to
 6 answer.
 7 MR. GARVEY: Okay. Maybe you can help
 8 me by just doing that.
 9 MR. BUELOW: I'll try.
 10 MR. GARVEY: All right. I realize --
 11 hold on.
 12 (Discussion off the record)
 13 Q Certainly by the end of the day we'll be asking you
 14 to answer those questions again, but we'll deal with
 15 that during one of the breaks. So you're not going
 16 to answer any questions about your compensation
 17 beyond a salary; is that correct?
 18 A I'm relying on the advice of Attorney Buelow.
 19 Q How would you describe the relationship between the
 20 BDADC and the City of Beaver Dam?
 21 A In general terms?
 22 Q Yeah. I'm not asking for a legal definition, but
 23 however you see it.
 24 A Okay. The Development Corporation in its simplest
 25 form is in existence to improve the economic climate

34

1 of the Beaver Dam area. The City of Beaver Dam
 2 certainly shares in that goal, and it is a
 3 cooperative relationship between the two parties.
 4 MR. GARVEY: Could you mark that
 5 Exhibit 3, please?
 6 (Discussion off the record)
 7 (Exhibit 3 is marked for identification)
 8 Q I've handed you a document marked Plaintiffs' Exhibit
 9 No. 3. Could you look at that and identify it for
 10 us?
 11 A A Cooperation Agreement entered into by the
 12 Development Corp and the City, I believe the second
 13 of three such agreements.
 14 Q And does this document set forth the relationship
 15 between the City of Beaver Dam and the BDADC?
 16 A Primarily, yes.
 17 Q Okay. And did you help draft this document?
 18 A Contributed to the drafting of it.
 19 Q Looking at Article III on Page 1, the annual
 20 contribution, it says, "The City shall annually
 21 contribute to the Development Corporation the
 22 following." Is that correct as far as you know? Did
 23 they make these contributions in the year 2002?
 24 A Contributions were made up until -- this agreement
 25 didn't run out in full, if my memory serves. We

35

1 entered into a different agreement, but yeah, the
 2 original up until that point, yes.
 3 (Exhibit 4 is marked for identification)
 4 Q I'm handing you a document marked as Exhibit No. 4,
 5 Cooperation Agreement. Would you take a look at that
 6 and tell us what that is? Is this the successor
 7 agreement to Exhibit No. 3?
 8 A Yes, I believe it is, yes.
 9 Q Now, in looking at No. 4, I don't see the annual
 10 contribution listed. Could you explain that, or am I
 11 missing it?
 12 A No, the annual contributions that existed in the
 13 prior agreements are not part of this agreement.
 14 Q And how then does the Development Corporation request
 15 funding?
 16 A The Development Corporation had amassed ample
 17 holdings that it felt that it no longer required
 18 pledges or contributions towards our efforts from the
 19 City of Beaver Dam, and I guess in simplest form,
 20 that's it.
 21 Q Would also Article III, Sub A, the obligation of room
 22 tax, be part of the explanation?
 23 A Allocation of room tax was a part of all the
 24 agreements. This one had a modification to it, but
 25 the City of Beaver Dam's room tax ordinance I believe

36

1 requirements.
 2 Q Okay. And do you personally review them before
 3 they're submitted?
 4 A I supply our accountant with the information that he
 5 bases reports off of.
 6 Q And who's your accountant?
 7 A Our accountant is Parent, Dott & Company in
 8 Beaver Dam.
 9 Q Okay. Do you report to the City Council on how much
 10 money has been spent and how it's spent?
 11 A I think there's probably more than one answer to that
 12 depending on -- you've given me a couple of
 13 agreements already, and I think some of those
 14 conditions changed per agreement, so I don't know how
 15 to answer specifically.
 16 Q Well, how do you do it today?
 17 A Today?
 18 Q Yeah.
 19 A What do we report to them based on our expenditures?
 20 Q Right.
 21 A Let me review one clause, okay?
 22 Q Sure.
 23 (Witness examines document)
 24 A To the best of my knowledge, we don't report
 25 expenditures to the city at present time in any form

41

1 regardless of which stream of revenue we're talking
 2 about.
 3 Q So you're accountable to your board of directors for
 4 monies that you spend or commitments you make?
 5 A Me personally?
 6 Q Yes, as an officer of the corporation.
 7 A Yeah, I have quite a modest co-sign, so I mean, I --
 8 there are certainly checks and balances on all
 9 expenditures other than day-to-day business, but in
 10 terms of project expenditures, they are
 11 board-directed.
 12 Q Okay. So that if you wanted to enter into a
 13 contract, you may do so, but it could be reversed by
 14 the board of directors?
 15 A I don't recall ever entering into -- no, I wouldn't
 16 pretend to overstep. My board of directors would
 17 have the ability to commit the Development
 18 Corporation to a contract or an agreement of any
 19 kind.
 20 Q Well, for example, when you incur personal expenses,
 21 say flying to a meeting or a conference, do those
 22 expenditures have to be approved by the board of
 23 directors?
 24 A I have very little in terms of expense. That might
 25 not be the best example. But if they are modest, you

42

1 know, in terms of just -- no, if I think that there
 2 is any gray area whatsoever, I would address it with
 3 the board president. They see a report on every
 4 check that's written by Development Corp in terms of
 5 the monthly financial, and if they had a problem,
 6 they vote to approve the financials, and it would
 7 come up at that time.
 8 Q Do you have any city officials sitting on the board
 9 of directors?
 10 A There are two by position of the 13 positions.
 11 Q And who are they?
 12 A Sitting mayor, sitting chairperson of the Community
 13 Development Committee.
 14 Q And do they have a vote?
 15 A They are two of 12 voting members on the Board.
 16 Q So they can make motions and vote on motions?
 17 A Yes, they can.
 18 Q Okay. And do they also receive the reports that you
 19 submit to the Board in terms of expenses and
 20 commitments?
 21 A Our financials?
 22 Q Yes.
 23 A Yes.
 24 Q And so as public officials, they get that
 25 information?

43

1 A They're getting it as private board members.
 2 Q And is that defined by your articles of
 3 incorporation?
 4 A That I can't answer. I don't know.
 5 Q Is there anything that the mayor and the City Council
 6 member who sit on your board simply refuse to take
 7 part in, any decision making?
 8 MR. ARNTSEN: Objection. I think you
 9 misstated it. It's the Community Development
 10 Corporation chair rather than City Council
 11 chair, correct? I may have misheard it.
 12 THE WITNESS: I'm sorry. The two
 13 positions?
 14 MR. ARNTSEN: Yeah.
 15 THE WITNESS: By position, it's the
 16 mayor and the chairperson of the Community
 17 Development Committee, which is a committee of
 18 the Council.
 19 MR. ARNTSEN: Okay.
 20 MR. GARVEY: Thank you, counsel.
 21 Q And he's a council member, right?
 22 A Yes, he is an alderperson, but right.
 23 Q But do they recuse themselves from certain decisions
 24 that come up?
 25 MR. SCHACHT: Give an example.

44

1 the finance director, that he just didn't change the
 2 line items from many years ago in terms of how the
 3 City had distributed funds or what they called them
 4 or termed them.
 5 Q So this is like a ghost payroll?
 6 MR. MALLOY: Objection, foundation.
 7 Go ahead.
 8 A No, no.
 9 MR. MALLOY: He doesn't even know what
 10 the document is.
 11 A I mean, I'm not -- I'm looking at the numbers, and I
 12 don't have anything to cross-reference the numbers
 13 with, but I'm seeing -- I would be assuming things,
 14 but what I think it may be is that it -- that the
 15 finance director of the City needs to account for
 16 contributions and pledges that the City makes to the
 17 Development Corporation to aid us in our activities,
 18 and you know, how he's accounting for them or what
 19 line items he has, I have no idea.
 20 Q And the line item Development Corporation \$70,461
 21 would be the Beaver Dam Area Development Corporation?
 22 MR. MALLOY: Objection, foundation.
 23 A Yeah, I can't speak to that formally.
 24 Q So you have no idea what it is?
 25 A Well, it's an internal City document, so I just --

49

1 no, I don't recall seeing these, and I'm assuming
 2 this is a --
 3 Q And that figure doesn't mean anything to you?
 4 MR. MALLOY: Same objection.
 5 A The \$70,000?
 6 Q Right.
 7 A \$70,000 year-end 2002, perhaps that's the room tax
 8 contribution, but that's a guess, just looking at
 9 ballpark numbers.
 10 Q Okay. So at this point do you have a full compliment
 11 of board members?
 12 A As we sit today?
 13 Q How many are there, first off?
 14 A We have 13 board members. One is a non-voting
 15 member, who is the director of the Chamber of
 16 Commerce, and two of them -- two of the seats we've
 17 already talked about are by position, mayor,
 18 Community Development Committee director -- or I'm
 19 sorry, chairperson. And all of the remaining are
 20 those positions that self perpetuate from community
 21 business leaders.
 22 Q And how is confidentiality maintained by this board?
 23 Do you sign something or --
 24 A How is it maintained?
 25 Q Yes.

50

1 A If I'm understanding the question, I guess personal
 2 integrity. I mean, it's -- it is understood and
 3 described from time to time if confidentiality is
 4 important, and they're all honorable people that
 5 honor the request.
 6 Q And why is it important to have confidentiality in
 7 your experience?
 8 A That's a project-by-project kind of question, and
 9 there are projects when confidentiality is not an
 10 issue and has not been -- you know, projects have not
 11 been handled in that way, but again, from a customer
 12 service approach, we understand at times end users or
 13 potential businesses that want to locate or expand in
 14 the area request that, and we try to honor it.
 15 Q And so it's understood that even the City Council
 16 person or the mayor if asked a question at a City
 17 Council meeting that you deem to be confidential,
 18 they may not answer?
 19 MR. MALLOY: Object to the form of
 20 that question, incomplete hypothetical. Go
 21 ahead.
 22 A There are not necessarily etched guidelines about
 23 their conduct, but they certainly understand the
 24 delineation between their role as an alderperson and
 25 their role as a private board member, and I guess

51

1 they have to make that determination on a
 2 case-by-case basis.
 3 Q Does the Board operate under Roberts Rules of Order
 4 or some other --
 5 A Generally, the president presides over the meeting.
 6 I would say in general terms, yeah, that's probably a
 7 pretty good description of it.
 8 Q And where do you meet?
 9 A Where do we meet? That's varied, but in private
 10 offices around the city. Our current board president
 11 happens to be the president of Beaver Dam Community
 12 Hospital, so we've been meeting in the hospital's
 13 board room, you know, since he assumed that role.
 14 Prior to that we had a private attorney in town that
 15 was the president of the corp, and we met in his
 16 conference room at his law office in Beaver Dam,
 17 private offices wherever we can, frankly, get
 18 something together.
 19 Q Where is your office?
 20 A The Development Corporation's office --
 21 Q Yes.
 22 A -- is in the lower level of the Municipal Building of
 23 the City of Beaver Dam.
 24 Q And do you pay rent for that or --
 25 A We had in the past until the last agreement that you

52

1 showed me today.
 2 Q And now you no longer pay rent?
 3 A Now the space is a contribution toward our efforts.
 4 Q Do you have any other employees of the Beaver Dam
 5 Area Development Corporation?
 6 A I'm the sole employee.
 7 Q So who types your documents, sends your e-mails and
 8 faxes?
 9 A Types, faxes, e-mails, virtually always me. I
 10 have -- I'm sorry. I should let you ask the
 11 question. Go ahead.
 12 Q No, that's all right. Go ahead.
 13 A No.
 14 Q So you do all your own typing, your own faxes and
 15 e-mails and --
 16 A Yeah, the exception would be I get -- as part of our
 17 agreements in the past and now, as a contribution
 18 from this point forward, there is a minor clerical
 19 assistance that is allowed to us, again as a
 20 contribution toward our efforts, but I make very
 21 minimal use of it. We'll have, you know, mailing
 22 labels printed so that they're ready for board
 23 mailings or mailings of any sort. You know, if I'm
 24 in mid meeting and something needs to go out, on rare
 25 occasion that individual might do something, but

53

1 yeah, you know, 98, 99 percent of the activities that
 2 you're talking about, I would say that they're
 3 self-contained.
 4 Q Okay. And when you say a contribution, do you mean
 5 that individual board members would contribute or the
 6 City?
 7 A Contributions of that clerical assistance?
 8 Q Yes.
 9 A That is a contribution that the City is making toward
 10 our efforts.
 11 (Discussion off the record)
 12 Q In terms of fax machines and computers, does the
 13 BDADC have their own, or do they use the City's?
 14 A We have our own computer. Fax machine, again, the
 15 City allows us to use that as a contribution to our
 16 efforts.
 17 Q And who has access to your office and to your
 18 equipment?
 19 A Who has access to the office?
 20 Q Yes.
 21 A Access in what form?
 22 Q Well, to use the computer, to use your fax or
 23 whatever?
 24 A No fax in office. There's kind of a community fax
 25 set up in that building that I'm allowed to

54

1 participate in.
 2 Q Okay.
 3 A With regard to my computer, nobody has access to
 4 that. Just being linked into that building system,
 5 the network administrator probably has some forms of
 6 access, you know, if there's a downage or something
 7 goes down in the system or whatever, but on a
 8 day-to-day basis, nobody.
 9 Q Are you on a network with the City?
 10 A No.
 11 Q How about with the board members?
 12 A No.
 13 Q So that you get e-mails, but it would be from an
 14 individual member of the board, and you would have to
 15 answer that individual?
 16 A An e-mail from our own director?
 17 Q Yes.
 18 A I'm sorry. I --
 19 Q Well, so there's no discrete network for the
 20 Beaver Dam Area Development Corporation?
 21 A With all my board members?
 22 Q Yes.
 23 A No. If I would want to e-mail them, I would just
 24 have to do it in a standard fashion.
 25 Q So if something came from your computer, you're the

55

1 only one who would have sent that?
 2 A If something came from my computer?
 3 Q Right. I mean, no one else --
 4 A To the best of my recollection, yes, yes.
 5 Q Okay. Who is the counsel for the Board of the BDADC?
 6 A I would say that that's more of a project-by-project
 7 decision.
 8 Q Well, who is -- I mean, you don't have one person or
 9 one law firm that's your --
 10 A Well, for instance, in these matters that we're
 11 dealing with Davis & Kuelthau led by Attorney Buelow
 12 are the corporation's counsel, but there have been --
 13 I can think of at least, just offhand, one other.
 14 Attorney Becker has represented the corporation in
 15 business matters in the past.
 16 Q Do you ever call in the city attorney for legal
 17 advice?
 18 A For legal advice --
 19 Q Yeah.
 20 A -- for the corporation? No.
 21 Q Any other lawyers that you can think of other than
 22 Mr. Becker?
 23 A Corporation? No, and I wouldn't pretend that
 24 couldn't have escaped me on a project-by-project
 25 basis, but recollection, no.

56

1 Q Well, for example, earlier you testified about
 2 Mr. Gempeler's role with the creation of the BDADC.
 3 Does that refresh your memory?
 4 A Well, back to the formation of the Development -- I
 5 don't know who was technically hiring Hank or Foley
 6 in that particular case, and I don't know where I was
 7 in the stream of the formation, again, in that
 8 interim period, so I don't have a recollection of how
 9 that was handled.
 10 Q When you need an attorney for a project, do you put
 11 out a request for proposal, or do you just go with
 12 the attorney who's on your board, Mr. Becker?
 13 A We try to go whatever route we think is best, most
 14 efficient on a case-by-case basis.
 15 Q When you say we, what do you mean, we?
 16 A We or they, as my board of directors, but the Board
 17 decides what they think is the best course of action
 18 for them to take in a given instance.
 19 Q And Mr. Becker is on the Board?
 20 A Eric is on the Board, yes.
 21 Q Okay. And when he does work for the corporation,
 22 does he do this on a pro bono basis, or is he
 23 compensated by the Board?
 24 A He has been -- his firm has been compensated. His
 25 private attorney work for the Development Corporation

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1 has been minimal. I'm thinking in terms of one
 2 situation that I can recall. You know, knowing
 3 Attorney Becker, I'm sure he is quite charitable in
 4 how those fees are being put out, but yes, I mean,
 5 the corporation has written checks to the firm.
 6 Q Are you aware of the investigation by the Dodge
 7 County district attorney with respect to open
 8 meetings involving the BDADC?
 9 A Yes and no. I'm aware of a district attorney
 10 investigation. I'm not aware of an investigation
 11 about the Development Corporation and open meetings.
 12 I'm aware of -- my recollection was is that he looked
 13 into the how the City of Beaver Dam was conducting
 14 meetings.
 15 Q And Did Mr. Gempeler advise you on that matter?
 16 A Advise the Development Corporation?
 17 Q You personally or the corporation?
 18 A I don't believe so, no.
 19 Q So in your recollection with Steve Bauer's
 20 investigation, Mr. Gempeler was not involved?
 21 A From the Development Corporation's perspective?
 22 Q Yes.
 23 A I don't have a recollection of Attorney Gempeler
 24 being involved with us.
 25 Q Okay. Any other attorneys that you can think of who

5 8

1 have been involved or retained?
 2 A In that process?
 3 Q In any process.
 4 A In DA Bauer's case, I don't think there was any legal
 5 counsel. I think he just simply conducted a couple
 6 of interviews of us with regard to that.
 7 Q Okay.
 8 A And I, frankly, can't even remember when Davis &
 9 Kuelthau came on board with the Development Corp.
 10 They may or may not have been a part in that process.
 11 Q And how did that occur?
 12 A The hiring of David & Kuelthau?
 13 Q Right.
 14 A Again, a board-directed decision.
 15 Q And who suggested that retention?
 16 A I think that Attorney Buelow has had dealings with
 17 one or more of the board members in the past and had
 18 a real good standing and reputation with them.
 19 Q I assume they're doing it pro bono?
 20 A Davis & Kuelthau? No comment, no.
 21 Q All right.
 22 MR. MALLOY: Excuse me. Can we just
 23 take a two-minute break?
 24 MR. GARVEY: Sure.
 25 MR. BUELOW: Can I leave the room for

5 9

1 a couple minutes?
 2 MR. GARVEY: Sure.
 3 THE VIDEOGRAPHER: Off the record.
 4 (A recess is taken)
 5 THE VIDEOGRAPHER: We are on the
 6 record at 11:34.
 7 Q Mr. Campbell, you said that you meet at different
 8 locations. Do you ever meet in the City Building as
 9 a board of directors?
 10 A I don't believe we ever have, no.
 11 Q Okay. Any reason for that or just --
 12 A I think the City Building is primarily for public
 13 meetings, and we're a private group, so it just --
 14 no.
 15 Q Do you ever meet with the mayor when you're in the
 16 same building?
 17 A On a personal basis?
 18 Q Sure.
 19 A Sure.
 20 Q And since he's a member of your board, do you talk to
 21 the mayor about BDADC business when you're in the
 22 City Building?
 23 A My conversations with the mayor are primarily with
 24 regard to his City role. Whether or not there has
 25 ever been any overlap, it's possible.

6 0

1 Q Okay. Is there anything in the bylaws of the BDADC
 2 that restricts what you as -- and what is your title?
 3 A Executive vice-president.
 4 Q Is there anything in the bylaws that restricts what
 5 the executive vice-president can do on behalf of the
 6 BDADC?
 7 A There certainly is a section of the bylaws with
 8 regard to the position. I do not have that committed
 9 to memory, though.
 10 Q Well, give us some indication of what the
 11 restrictions would be in that description or if there
 12 are none.
 13 A I'm certainly reined in by my board of directors, but
 14 I just don't have recollection of that. I can't
 15 recall the section in the bylaws that refers to it,
 16 so I can't speak to it.
 17 Q So it's your testimony that on a case-by-case basis
 18 the Board could rein you in, as you say?
 19 A I don't think it's a case-by-case basis. Whether it
 20 is that section or is a matter of general practice, I
 21 mean, there are things that I do and don't do.
 22 Q Well, and you don't recall anything in the bylaws or
 23 any resolutions that would restrict your activities
 24 on behalf of the BDADC?
 25 A There may very well be. I just -- I can't recall

61

1 them. I can't speak intelligently about it because I
 2 can't recall that section. I haven't looked at the
 3 bylaws in quite some time.
 4 Q But you've been working there for how long now?
 5 A '97.
 6 Q And so you can't recall any instance where the Board
 7 said you've violated the bylaws by taking action on
 8 behalf of the BDADC?
 9 A Has my board ever addressed me in that fashion?
 10 Q Yes.
 11 A I don't believe so.
 12 Q Okay. Do you have authority to enter into contracts
 13 on behalf of the BDADC, and do you?
 14 A I don't want to be parsing words with you, but can
 15 you define --
 16 Q Well, for example --
 17 A If we needed, you know, routine maintenance work on
 18 something, I certainly sign off on a minimal service
 19 order or purchase order. If it's dealing with an
 20 incentive contract or anything relating to policy,
 21 no, I do not have the ability to sign off on
 22 something like that, just day-to-day business.
 23 Q You say you don't have the ability, or do you mean
 24 authority?
 25 A I guess, yeah, technically, I don't have the

62

1 authority to do it. I don't do it.
 2 Q You don't do it, but there's nothing that you can
 3 recall that would restrict you, it's just that as a
 4 matter of personal preference you don't enter into
 5 contracts of significance?
 6 A I can't recall if the bylaws spells it out. I think
 7 I would be pretty short in my position if I was
 8 executing things without board approval. I don't
 9 remember where or how it's spelled out or how it was
 10 conveyed to me, but it's clear.
 11 Q If you decide you need legal advice or you need
 12 accounting advice or engineering advice, could you
 13 retain the appropriate firms to do that, or would you
 14 submit that to the Board as well?
 15 A Again, I think that's probably a matter of
 16 circumstance, degree, level, cost. At minimum, any
 17 discussion of substance like that at minimum would be
 18 dealt with with the board president if there was a
 19 timeliness issue to it, and if timeliness wasn't an
 20 issue with something, then I would assume we would go
 21 to the full board.
 22 Q Okay. In my experience, 13-member boards would be
 23 kind of difficult to deal with. Do you have a
 24 working committee within the Board that you rely on?
 25 Is there an Executive Committee?

63

1 A There's not. There is -- there's not.
 2 Q Do the officers speak for the -- in other words, if
 3 you wanted to hire Davis & Kuelthau, would you get
 4 the permission of the president, or would you get a
 5 vote of the entire board?
 6 A Typically, we would get the entire board to vote on
 7 that, and again, if timeliness was an issue and that
 8 wasn't practical, the board president could, you
 9 know, make some decisions and relay it to the Board
 10 and look for board action at the next possible
 11 available time.
 12 Q Okay. When did you first learn of Wal-Mart's
 13 interest in Beaver Dam for a Super Center?
 14 A For the Super Center or Distribution Center?
 15 Q Super Center.
 16 A Oh, boy, I don't recall. It was a very long process
 17 with multiple renewals on land options. Their
 18 approximate 12-month construction process is going to
 19 end now, so that takes us back to August of '03, but
 20 in terms of closing and all of the option agreements,
 21 I don't have a good recollection of that.
 22 Q Would it be fair to say that the original Wal-Mart
 23 preceded your tenure as the executive vice-president
 24 of the BDADC, the original Wal-Mart?
 25 A The Super Center project?

64

STATE OF WISCONSIN : CIRCUIT COURT : DODGE COUNTY

STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 04-CV-0341

Case Code 30703

BEAVER DAM AREA DEVELOPMENT
CORPORATION, et al.,

Defendants.

**DEFENDANT'S RESPONSE TO PLAINTIFF'S SECOND SET OF
INTERROGATORIES AND SECOND REQUEST FOR
PRODUCTION OF DOCUMENTS**

TO: Monica A. Burkert-Brist, Esq.
Assistant Attorney General
Wisconsin Department of Justice
P. O. Box 7857
Madison, WI 53707-7857

GENERAL OBJECTIONS

The defendants restate the general objections and reservations set forth in the defendant's response dated September 24, 2004 to the plaintiff's Interrogatories and First Request for Production of Documents. Subject to said objections and reservations, the defendants answer as follows:

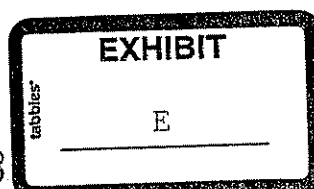
INTERROGATORY NO. 1: Please identify all corporate officers in the BDADC and all members of the BDADC's Board of Directors from August 6, 2004, to present.

ANSWER NO. 1:

(A) BDADC officers are as follows:

John Landdeck, President (January 2004 to present)
Duane Foulkes, Vice-President (January 2004 to present)
Al Schwab, Secretary/Treasurer (March 2003 to present)

0143



(B) BDADC Board of Directors:

The following individuals have served as BDADC Directors from no later than August 6, 2004, to present:

Eric Becker
Jeff Kitchen
John Landdeck
Duane Foulkes
Les Frinak, Jr.
Doug Mathison
Al Schwab
Brian Busler
Greg Steil
Philip Fritsche (chamber/non-voting member)
Jack Hanks (ex-officio/mayor)
Michael Wissell (ex-officio/CDC chair from approximately July 1, 2005)

In addition, Ron Thompson served as a director until his term expired on December 31, 2004. He was replaced in January 2005 by Darrell Armbruster.

INTERROGATORY NO. 2: Please identify and describe the manner of appointment and terms of any employment of Trent Campbell by or with the BDADC for the period of August 6, 2004 to the present.

ANSWER NO. 2: Please see defendant's prior Interrogatory Answer No. 3 dated September 24, 2004; Trent Campbell resigned his position as executive vice-president of the BDADC effective January 1, 2005.

INTERROGATORY NO. 3: Please describe job title, duties and compensation terms, as well as the nature of Trent Campbell's employment or contractual relationships with the BDADC from August 6, 2004, to present.

ANSWER NO. 3: Please see the defendant's prior Interrogatory Answer No. 3 for description of Trent Campbell's job title, duties and compensation from August 6, 2004 to December 31, 2004. The job duties are as described by Mr. Campbell in his deposition transcript attached to the prior discovery responses of the defendant. On October 1, 2004, Mr. Campbell

submitted his letter of resignation effective January 1, 2005. Since approximately January 1, 2005 to August 31, 2005, Trent Campbell has served as a consultant to the BDADC during the transition period following his resignation as executive director. His compensation was as set forth in the attached document, bates number BDADC 0614. The transmittal letter from BDADC President John Landdeck to Mr. Campbell enclosing his transition employment agreement is attached as BDADC number 0615. Mr. Campbell's letter of resignation is attached as BDADC number 0616.

INTERROGATORY NO. 4: Please describe any hiring or selection process for Trent Campbell, as identified in response to Interrogatory No. 3.

ANSWER NO. 4: BDADC President John Landdeck was authorized by the Board of Directors to negotiate and execute a transition services agreement with Trent Campbell. See Interrogatory No. 3 above and attached documents.

RESPONSE TO SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Produce all notices to the public of meetings of the BDADC's Board of Directors from August 6, 2004, to present.

RESPONSE NO. 1: Please see response and objection to Request No. 1 to the plaintiff's first request for production of documents dated September 24, 2004. Accordingly, BDADC does not give public notice of its meetings and has no such records in its possession.

REQUEST NO. 2: Produce all notices to the public of meetings between the BDADC and the City, any city agencies, or committees from August 6, 2004, to present.

RESPONSE NO. 2: See Response to Request No. 1 above.

REQUEST NO. 3: Produce all notices or agendas of any kind, whether or not to the public, of meetings of the BDADC's Board of Directors from August 6, 2004, to present.

RESPONSE NO. 3: Subject to the objection stated in defendant's Response dated September 24, 2004 to Request No. 3 of plaintiff's First Request for Production of Documents, see attached documents bearing bates numbers BDADC 617 to BDADC 626. inclusive. The defendant has been unable to locate the agenda for the meetings of September 10, 2004, February 16, 2005, March 17, 2005, May 18, 2005, and June 15, 2005. If they can be located, they will be produced promptly.

REQUEST NO. 4: Produce all notices or agendas of any kind, whether or not to the public, of meetings between the BDADC and the City, city agencies, or committees from August 6, 2004, to present.

RESPONSE NO. 4: See defendant's objection and response dated September 24, 2004 to Request No. 4 to the plaintiff's First Request for Production of Documents.

REQUEST NO. 5: Produce all agendas, as well as the accompanying agenda packages, and minutes of the BDADC's Board of Directors' meetings from August 6, 2004, to present.

RESPONSE NO. 5: Subject to the defendant's objection and response dated September 24, 2004, to Request No. 5 of plaintiff's First Request for Production of Documents, see attached documents in response to Request No. 3 above, as well as meeting minutes attached as documents BDADC 627 to 648, inclusive. Defendant has been unable to locate the Board of Directors meeting minutes for March 17, 2005 and June 15, 2005. If they can be located, they will be promptly produced. The redacted portions of the meeting minutes are privileged and relate solely to discussion of this lawsuit.

REQUEST NO. 6: Produce all employment contracts, cooperation agreements, grant agreements, letters of agreement, and letters of appointment between the BDADC and other persons, consultants, agents, employees, or other entities from August 6, 2004, to present.

RESPONSE NO. 6: See attached documents BDADC 614 and 649-650.

REQUEST NO. 7: Produce all annual reports and management plans of the BDADC from August 6, 2004, to present.

RESPONSE NO. 7: See defendant's objection and response dated September 24, 2004 to Request No. 7 of plaintiff's First Request for Production of Documents, and the attached documents bearing bates numbers BDADC 651 to BDADC 653.

REQUEST NO. 8: Produce all annual budgets and accounting audits or reports of the BDADC from August 6, 2004, to present.

RESPONSE NO. 8: See defendant's objection and response dated September 24, 2004 to Request No. 8 of plaintiff's First Request for Production of Documents, and the attached documents bearing bates numbers BDADC 654 to BDADC 746, inclusive.

REQUEST NO. 9: Produce all proposals and reports documenting the relationship between the BDADC and the City, city agencies, or committees from August 6, 2004, to present.

RESPONSE NO. 9: See the defendant's objection and response dated September 24, 2004 to Request No. 9 of plaintiff's First Request for Production of Documents, and the documents produced in this response to the Second Request for Production of Documents.

REQUEST NO. 10: Produce all documents filed with a governmental entity or public corporation that describe the relationship between the BDADC and the City, city agencies, or committees from August 6, 2004, to present.

RESPONSE NO. 10: See the defendant's objection and response dated September 24, 2004 to Request No. 10 of plaintiff's First Request for Production of Documents, and the documents attached bearing bates numbers BDADC 747-748. The 2005 Wisconsin non-stock corporation annual report to the Secretary of State incorrectly lists the president and vice-president. The correct officeholders are as stated in Interrogatory Answer No. 1 above. Also please see Response No. 13 below for the filings of the defendant with the IRS.

REQUEST NO. 11: Produce a list of all allocations and disbursements and their funding source(s) to the BDADC from August 6, 2004, to present.

RESPONSE NO. 11: See defendant's objection and response dated September 24, 2004 to Request No. 11 of plaintiff's First Request for Production of Documents, as well as response to Request No. 8 above.

REQUEST NO. 12: Produce any written notices from the City requesting permission to examine the accounting records of the BDADC from August 6, 2004, to present.

RESPONSE NO. 12: See defendant's objection and response dated September 24, 2004 to Request No. 12 of plaintiff's First Request for Production of Documents. Defendant has no further documents.

REQUEST NO. 13: Produce a copy of any filings with the IRS from the BDADC from August 6, 2004 to the present.

RESPONSE NO. 13: Please attached documents bearing bates numbers BDADC 749 through BDADC 764. inclusive.

REQUEST NO. 14: Produce all correspondence to Trent Campbell by BDADC from August 6, 2004 to the present.

RESPONSE NO. 14: Please see attached documents bearing bates numbers BDADC 615 and BDADC 765 to BDADC 772, inclusive.

REQUEST NO. 15: Produce all correspondence authored or signed by Trent Campbell representing BDADC or in any capacity for BDADC from 2004 to the present.

RESPONSE NO. 15: Object to the form of the request as overly broad and indefinite and not calculated to lead to admissible evidence at the time of trial; however, subject to the objection, see attached documents bearing bates numbers BDADC 616 and BDADC 773 to BDADC 796, inclusive.

Dated this 13th day of September, 2005.

AS TO OBJECTIONS:

KASDORF, LEWIS & SWIETLIK, S.C.
Attorneys for Defendants

By: 

Michael J. Cieslewicz
State Bar No. 1016974


MAILING ADDRESS:

One Park Plaza, Suite 500
11270 W. Park Place
Milwaukee, WI 53224
(414) 577-4000
(414) 577-4400 (Fax)

VERIFICATION

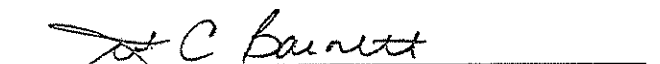
I, David C. Geisthardt, state that I am the Executive Vice-President of the Beaver Dam Area Development Corporation and in that capacity, I am authorized to make this verification.

I have read the defendants' responses to plaintiff's second set of interrogatories and second request for production of documents. The responses stated therein are true and correct to the best of my knowledge and belief.



David C. Geisthardt, Executive Vice-President
Beaver Dam Area Development Corporation

Subscribed and sworn to before me
this 14th day of Sept, 2005.



Notary Public, State of Wisconsin
My Commission expires: Oct 8, 2006

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 2

DODGE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CV-341

BEAVER DAM AREA DEVELOPMENT
CORPORATION,

FILE COPY

Defendant.

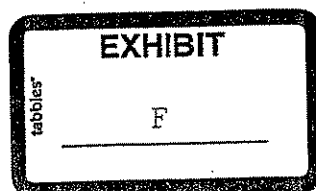
**DEFENDANT'S RESPONSE TO PLAINTIFF'S INTERROGATORIES AND
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

TO: Peggy A. Lautenschlager
Attorney General
Monica Burkert-Brist
Assistant Attorney General
Wisconsin Department of Justice
P. O. Box 7857
Madison, WI 53707-7857

GENERAL OBJECTIONS AND RESERVATIONS

1. The responses are made on the basis of information and writings presently available and located by Defendant upon reasonable investigation of their records. Because discovery remains to be completed, there may be other and further information affecting Defendant's responses / objections. Defendant reserves the right to modify responses / objections with such additional information as it may subsequently be discovered.

2. The responses / objections herein are made solely for the purpose of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety and admissibility and to any and all other objections on the grounds which would require the



0151

exclusion from evidence of any statement herein, if any interrogatory or request were asked of, or any statement contained herein were made by a witness present and testifying in court, all of such objections and grounds are expressly reserved so that these may be made at trial.

3. To the extent that any Interrogatory or Request or part thereof calls for information, legal analysis or reasoning, writing or communications or anything else protected from disclosure by the attorney work product doctrine or the attorney-client privilege, or any other privilege, Defendant hereby objects to each and every such Interrogatory or Request, or part thereof, and will not supply or render documents, information or anything else protected from disclosure by the attorney work product doctrine or the attorney-client privilege, or any other privilege.

4. Defendant objects to each of the Interrogatories to the extent that they seek information regarding communications between the Defendant and its legal counsel on the ground that such communications are privileged and not subject to discovery. No response is intended to waive such privilege, including the inadvertent disclosure of any privileged document which resulted from the Defendant's good faith effort to thoroughly respond to these Interrogatories in the required short period of time. Accordingly, Defendant reserves the right to recall any privileged documents from Plaintiff that were inadvertently disclosed in responding to these Interrogatories.

5. Defendant objects to each of the Interrogatories to the extent that they seek information regarding materials prepared by or for the Defendant or its representatives in anticipation of litigation on the grounds that such information is protected by the work product doctrine and is not subject to discovery. No response is intended to waive this objection, including the inadvertent disclosure of any privileged document which resulted from the

Defendant's good faith effort to thoroughly respond to these Interrogatories in the required short period of time. Accordingly, Defendant reserves the right to recall any privileged documents from Plaintiff that were inadvertently disclosed in responding to these Interrogatories.

6. Defendant objects to the Interrogatories and Requests generally to the extent that they call for disclosure of information which would invade the privacy of Defendant's employees protected by applicable laws.

7. Defendant objects to the Interrogatories and Requests generally to the extent that they are not reasonably limited in time and are overbroad and burdensome.

8. Defendant objects to the Interrogatories and Requests generally to the extent that they are vague, ambiguous, unintelligible, overbroad and/or burdensome or purport to place upon Defendant burdens not imposed by the applicable Rules of Court and other applicable law. Defendant's responses herein shall be in accordance with their obligations under applicable law.

9. Defendant objects to the Interrogatories and Requests generally to the extent that they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

10. Defendant specifically incorporates each and every objection and reservation listed above into each and every response made below, as through set forth in full.

Subject to and without waiving these General Objections and Reservations, the Defendant responds to Plaintiff's Interrogatories and First Request for Production of Documents as follows:

INTERROGATORIES

INTERROGATORY NO. 1: Please identify all corporate officers of the BDADC and all members of the BDADC's Board of Directors from April 1, 1997, to present.

RESPONSE TO INTERROGATORY NO. 1:

See documents bearing bates numbers BDADC 0001 - BDADC 0002 accompanying this document. In document number BDADC 0002, the terms "cdc" refers to the Community Development Committee and "chamber" refers to the Chamber of Commerce.

INTERROGATORY NO. 2: Describe the manner of selection and the terms of office of the BDADC's Directors.

RESPONSE TO INTERROGATORY NO. 2:

See documents bearing bates numbers BDADC 0003 - BDADC 0013 accompanying this document. See also Response to Interrogatory No. 1. In addition to the information in these documents, Defendant states that BDADC's Board of Directors is self-perpetuating and elects members to its board for staggered terms at its annual meeting upon nomination by the Board's Nominating Committee. The ex officio members of BDADC's Board of Directors are selected per the Bylaws.

INTERROGATORY NO. 3: Please identify and describe the manner of appointment and terms of employment of the executive officer in charge of the day-to-day operation and management of the BDADC.

RESPONSE TO INTERROGATORY NO. 3:

Defendant objects to Interrogatory No. 3 on the grounds that it is vague and ambiguous with respect to its use of the term "manner of appointment" and states that it is incapable of certain response. Subject to this objection and the general objections, and without waiving same,

Defendant states that the executive officer in charge of the day-to-day operation and management of the BDADC is Trent Campbell, Executive Vice President. See also Campbell Deposition Transcript (BDADC 0014 - BDADC 0074 at 10:13-18, 27:4; 28:20-24, 29:22-23, 30:17-31:1, 31:14-22, 33:14-19) accompanying this document, and written Supplemental Responses by Campbell (BDADC 0075 - BDADC 0080) which will be forthcoming pending the resolution of the motion for protective order.

INTERROGATORY NO. 4: Please identify by name, job title, and compensation terms, all employees of the BDADC from April 1, 1997, to present.

RESPONSE TO INTERROGATORY NO. 4:

Trent Campbell is the only employee of BDADC. See Campbell Deposition Transcript (BDADC 0014 - BDADC 0074 at 53:4-6) accompanying this document, and written Supplemental Responses by Campbell (BDADC 0075 - BDADC 0080) which will be forthcoming pending the resolution of the motion for protective order.

INTERROGATORY NO. 5: Please describe the hiring and selection process for each employee identified in response to Interrogatory No. 4.

RESPONSE TO INTERROGATORY NO. 5:

See Response to Interrogatory No. 3.

INTERROGATORY NO. 6: Please identify all members of the BDADC's Nomination Committee from April 1, 1997, to present.

RESPONSE TO INTERROGATORY NO. 6:

See document bearing bates number BDADC 0081 accompanying this document.

INTERROGATORY NO. 7: Please identify which corporate officers of the BDADC and/or members of the BDADC's Board of Directors have served as ex officio voting members from April 1, 1997, to present.

RESPONSE TO INTERROGATORY NO. 7:

See Response to Interrogatories No. 1 and 2.

INTERROGATORY NO. 8: Please identify all non-voting members of the BDADC's Board of Directors from April 1, 1997, to present.

RESPONSE TO INTERROGATORY NO. 8:

See Response to Interrogatory No. 1.

INTERROGATORY NO. 9: Describe the procedure for scheduling the time and location of meetings of the BDADC's Board of Directors.

RESPONSE TO INTERROGATORY NO. 9:

The time of the annual meeting of BDADC's Board of Directors is prescribed by BDADC's Bylaws. See documents bearing bates numbers BDADC 0003 - BDADC 0013 accompanying this document. Regular meetings of BDADC's Board of Directors are generally held the second Thursday of the month at noon at the private office of one of the members of the Board of Directors.

INTERROGATORY NO. 10: Describe the procedure for recording the events of the meetings of the BDADC's Board of Directors.

RESPONSE TO INTERROGATORY NO. 10:

Notes are taken by the Executive Vice President (Campbell) during each meeting of actions taken by the Board of Directors. After each meeting, Campbell types the notes into formal minutes for approval at the next meeting of the Board of Directors.

INTERROGATORY NO. 11: Please identify the annual sources of revenue of the BDADC from April 1, 1997, to present.

RESPONSE TO INTERROGATORY NO. 11:

Defendant objects to Interrogatory No. 11 on the grounds that it is vague and ambiguous with respect to its use of the term "annual sources of revenue" and states that it is incapable of certain response. Subject to this objection and the general objections, and without waiving same, Defendant states that the City of Beaver Dam made contributions to BDADC through 2003. See documents bearing bates numbers BDADC 0082 - BDADC 0101 accompanying this document.

INTERROGATORY NO. 12: In addition to annual funding, please identify all other forms of assistance provided by the City to the BDADC from April 1, 1997, to present.

RESPONSE TO INTERROGATORY NO. 12:

Defendant objects to Interrogatory No. 12 on the grounds that it is vague and ambiguous with respect to its use of the term "annual funding" and "all other forms of assistance" and states that it is incapable of certain response. Subject to this objection and the general objections, and without waiving same, Defendant states that the City of Beaver Dam provides BDADC with a percentage of the proceeds of the local room tax, grants from three tax incremental financing districts and other miscellaneous in-kind items. See documents bearing bates numbers BDADC 0082 - BDADC 0114 accompanying this document.

INTERROGATORY NO. 13: Please identify the sources of all appropriations from the City to the BDADC from April 1, 1997, to present.

RESPONSE TO INTERROGATORY NO. 13:

Defendant objects to Interrogatory No. 13 on the grounds that it is vague and ambiguous with respect to its use of the term "sources of all appropriation" and states that it is incapable of

certain response. Subject to this objection and the general objections, and without waiving same, Defendant states: see Responses to Interrogatory Nos. 11 and 12.

INTERROGATORY NO. 14: Please identify all program conditions as established and approved by the City for the contributions of funds, including but not limited to those derived from Tax Increment Financing Districts to the BDADC from April 1, 1997, to present.

RESPONSE TO INTERROGATORY NO. 14:

Defendant objects to Interrogatory No. 14 on the grounds that it is vague and ambiguous with respect to its use of the terms "program conditions" and "contributions of funds" and states that it is incapable of certain response. Subject to this objection and the general objections, and without waiving same, Defendant states: see Responses to Interrogatory Nos. 11 and 12.

INTERROGATORY NO. 15: Please describe any instances where a member of the BDADC's Board of Directors has abstained from a vote from April 1, 1997, to present, including the date of the meeting, the subject matter of the vote, and reason for abstention.

RESPONSE TO INTERROGATORY NO. 15:

See document bearing bates number BDADC 0115 accompanying this document. This list was derived from the meeting minutes of the Board of Directors. No reasons for the abstentions are recorded in the minutes.

INTERROGATORY NO. 16: Please identify all clients or entities with which the BDADC has maintained an ongoing business relationship from April 1, 1997, to present.

RESPONSE TO INTERROGATORY NO. 16:

Defendant objects to Interrogatory No. 16 on the grounds that it is vague and ambiguous with respect to its use of the terms "all clients or entities" and "ongoing business relationship" and states that it is incapable of certain response. Subject to this objection and the general

objections, and without waiving same, Defendant states that it serves to engage in economic development and business retention within the corporate limits and lands which could become part of the corporate limits of the City of Beaver Dam. In this capacity, Defendant has engaged in various relationships with other service providers including, but not limited to, accountants, attorneys, etc.

INTERROGATORY NO. 17: Please identify the sources of all appropriations for the funding of any business relationship with any entity other than the City from April 1, 1997, to present.

RESPONSE TO INTERROGATORY NO. 17:

Defendant objects to Interrogatory No. 17 on the grounds that it is vague and ambiguous with respect to its use of the terms "sources of all appropriations," "business relationship" and "any entity other than the City" and states that it is incapable of certain response. Subject to this objection and the general objections, and without waiving same, Defendant states: see Responses to Interrogatory No. 11 and 12.

INTERROGATORY NO. 18: Please identify by date and requestor any instances where the City has requested permission to examine the accounting records of the BDADC from April 1, 1997, to present.

RESPONSE TO INTERROGATORY NO. 18:

The Executive Vice President of BDADC does not recall any instances where the City has requested permission to examine the accounting records of the BDADC.

INTERROGATORY NO. 19: Please describe the terms under which the BDADC has maintained office space in the Municipal Building of the City from April 1, 1997, to present.

RESPONSE TO INTERROGATORY NO. 19:

See documents bearing bates numbers BDADC 0095 - BDADC 0101 and BDADC 0116 - BDADC 0119 accompanying this document.

FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Produce all notices to the public of meetings of the BDADC's Board of Directors from April 1, 1997, to present.

RESPONSE TO REQUEST NO. 1:

Defendant objects to Request No. 1 on the grounds that it is vague and ambiguous with respect to its use of the term "notices" and states that it is incapable of certain response. Subject to this objection and the general objections, and without waiving same, Defendant states that BDADC is a private, non-profit corporation and in accord with the opinion of the Dodge County District Attorney, is not an entity subject to the Wisconsin Public Records or Open Meetings laws. See documents bearing bates numbers BDADC 0120 - BDADC 0126 accompanying this document. Accordingly, BDADC does not give public notice of its meetings and has no such records in its possession.

REQUEST NO. 2: Produce all notices to the public of meetings between the BDADC and the City, city agencies, or committees from January 1, 2002, to present.

RESPONSE TO REQUEST NO. 2:

Defendant objects to Request No. 2 on the grounds that it is vague and ambiguous with respect to its use of the term "notices" and states that it is incapable of certain response. Subject to this objection and the general objections, and without waiving same, Defendant states: see Response to Request No. 1.

REQUEST NO. 3: Produce all notices of any kind, whether or not to the public, of meetings of the BDADC's Board of Directors from April 1, 1997, to present.

RESPONSE TO REQUEST NO. 3:

Defendant objects to Request No. 3 on the grounds that it is vague and ambiguous with respect to its use of the term "notices" and states that it is incapable of certain response. Subject to this objection and the general objections, and without waiving same, Defendant states: see documents bearing bates numbers BDADC 0127 - BDADC 0155 which will be forthcoming pending the resolution of the motion for protective order.

REQUEST NO. 4: Produce all notices of any kind, whether or not to the public, of meetings between the BDADC and the City, city agencies, or committees from January 1, 2002, to present.

RESPONSE TO REQUEST NO. 4:

Defendant objects to Request No. 4 on the grounds that it is vague and ambiguous with respect to its use of the terms "notices" and "BDADC and the City, city agencies, or committees" and states that it is incapable of certain response. Subject to this objection and the general objections, and without waiving same, Defendant states: see Response to Request Nos. 1 and 3. If BDADC prepared any notices of such meetings for the members of its Board of Directors other than those documents provided in Response to Request No. 3, BDADC no longer has such notices in its possession through the ordinary course of normal business practices.

REQUEST NO. 5: Produce all agendas, as well as the accompanying agenda packages, and minutes of the BDADC's Board of Directors' meetings from January 1, 2002, to present.

RESPONSE TO REQUEST NO. 5:

Defendant objects to Request No. 5 on the grounds that it is vague and ambiguous with respect to its use of the term "accompanying agenda packages" and states that it is incapable of certain response. Subject to this objection and the general objections, and without waiving same, Defendant states: see documents bearing bates numbers BDADC 0156 - BDADC 0221 which will be forthcoming pending the resolution of the motion for protective order.

REQUEST NO. 6: Produce all employment contracts, cooperation agreements, grant agreements, letters of agreement, and letters of appointment between the BDADC and other persons, consultants, agents, employees, or other entities from January 1, 2002, to present.

RESPONSE TO REQUEST NO. 6:

Defendant objects to Request No. 6 on the grounds that it is vague and ambiguous with respect to its use of the terms "all employment contracts, cooperation agreements, grant agreements, letters of agreement and letters of appointment" and "persons, consultants, agents, employees or other entities" and is incapable of certain response. Subject to this objection and the general objections, and without waiving same, see documents bearing bates numbers BDADC 0082 - BDADC 0114 and BDADC 02222 - BDADC 0238 which will be forthcoming pending the resolution of the motion for protective order. See also Response to Interrogatory No. 3. Finally, pursuant to agreement with Plaintiff's counsel, this Request does not include the Defendant's Incentive Agreements with private business and, therefore, such documents are not being provided.

REQUEST NO. 7: Produce all annual reports and management plans of the BDADC from January 1, 2002, to present.

RESPONSE TO REQUEST NO. 7:

Defendant objects to Request No. 7 on the grounds that it is vague and ambiguous with respect to its use of the term "annual reports" and states that it is incapable of certain response. Subject to this objection and the general objections, and without waiving same, see documents bearing bates numbers BDADC 0239 - BDADC 0251 which will be forthcoming pending the resolution of the motion for protective order.

REQUEST NO. 8: Produce all annual budgets and accounting reports of the BDADC from January 1, 2002, to present.

RESPONSE TO REQUEST NO. 8:

See documents bearing bates numbers BDADC 0252 - BDADC 0504 which will be forthcoming pending the resolution of the motion for protective order.

REQUEST NO. 9: Produce all proposals and reports documenting the relationship between the BDADC and the City, city agencies, or committees from January 1, 2002, to present.

RESPONSE TO REQUEST NO. 9:

Defendant objects to Request No. 9 on the grounds that it is vague and ambiguous with respect to its use of the term "documenting the relationship." Subject to this objection and the general objections, and without waiving same, Defendant states: see documents bearing bates numbers BDADC 0082 - BDADC 0114, BDADC 0116 - BDADC 0119 accompanying this document, and BDADC 0184 - BDADC 0221 which will be forthcoming pending the resolution of the motion for protective order.

REQUEST NO. 10: Produce all documents filed with a governmental entity or public corporation that describe the relationship between the BDADC and the City, city agencies, or committees from January 1, 2002, to present.

RESPONSE TO REQUEST NO. 10:

Defendant objects to Request No. 10 on the grounds that it is vague and ambiguous with respect to its use of the term "relationship." Subject to this objection and the general objections, and without waiving same, Defendant states: see documents bearing bates numbers BDADC 0505 - BDADC 0613 accompanying this document.

REQUEST NO. 11: Produce a list of all allocations and disbursements and their source(s) to the BDADC from January 1, 2002, to present.

RESPONSE TO REQUEST NO. 11:

Defendant objects to Request No. 11 on the grounds that it is vague and ambiguous with respect to its use of the terms "allocations and disbursements" and "sources" and states that it is incapable of certain response. Subject to this objection and the general objections, and without waiving same, Defendant states: see Response to Request No. 8.

REQUEST NO. 12: Produce all written notices from the City requesting permission to examine the accounting records of the BDADC from April 1, 1997, to present.

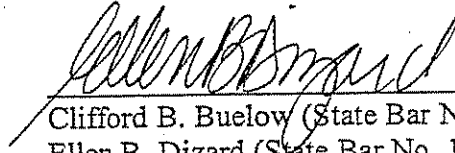
RESPONSE TO REQUEST NO. 12:

Defendant objects to Request No. 12 on the grounds that it is vague and ambiguous with respect to its use of the term "notices" and states that it is incapable of certain response. Subject

to this objection and the general objections, and without waiving same, Defendant states: see Response to Interrogatory No. 18.

Dated: September 24, 2004.

AS TO OBJECTIONS:



Clifford B. Buelow (State Bar No. 1015379)
Ellen B. Dizard (State Bar No. 1025423)
Attorneys for Defendant
Beaver Dam Area Development Corporation

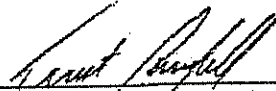
P.O. ADDRESS:

Davis & Kuelthau, s.c.
111 E. Kilbourn Avenue, Suite 1400
Milwaukee, WI 53202
(414) 276-0200

VERIFICATION


I, Trent Campbell, state that I am the Executive Vice President of Beaver Dam Area Development Corporation, and in such capacity am authorized to make this verification.

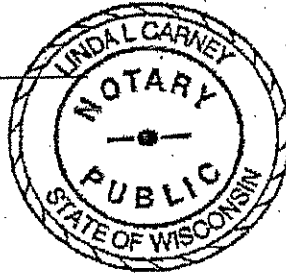
I have read Defendant's Response to Plaintiff's Interrogatories and First Request for Production of Documents. The responses stated therein are true and correct to the best of my knowledge and belief.



Trent Campbell, Executive Vice President
Beaver Dam Area Development Corporation

Subscribed and sworn to before me
this 27 day of September, 2004.


Notary Public, State of Wisconsin
My commission: 4/27/07

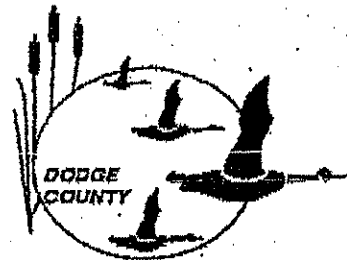


FEB - 2 2004

OFFICE OF THE DISTRICT ATTORNEY

Steven G. Bauer, District Attorney

Administration Building • 2nd Floor • 127 East Oak Street • Juneau, Wisconsin 53039-1329
(920) 386-3610 • Fax: (920) 386-3623 • Website: www.co.dodge.wi.us/attorney



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Coordinators
John Hietman
Peggy Goodman
Investigator
Brian Drumm
Office Manager
Kristine K. Kohlhoff
Secretaries
Evelyn Decker
Paula Justman
Kelly McMillan
Dawn Bjork
Receptionist
Kathy Bosak

February 1, 2004

Charles A. Sena
630 Denning Avenue
Beaver Dam, Wisconsin 53916

RE: Beaver Dam City Council Open Meetings Complaint
regarding Wal-Mart Distribution Center

Dear Mr. Sena:

In response to your open meetings complaint against the Beaver Dam City Council dated January 13, 2004 regarding the Wal-Mart distribution center, I, with the assistance of law-enforcement investigators, investigated your allegations. The substance of your allegations are as follows:

- 1.) That members of the Beaver Dam City Council or committees of the Beaver Dam City Council had met to discuss the possible citing of a Wal-Mart Distribution Center in the Beaver Dam area without proper notice of these meetings, and
- 2.) That public notice of a meeting of the Beaver Dam City Council on October 30, 2003 was legally insufficient as the notice did not indicate the subject of the meeting or whether the city council would definitely enter closed session.

I have had interviewed the individuals who you stated in the complaint were witnesses (with the exception of Frederick Bird whom my investigator ascertained was not in Wisconsin). I reviewed the videotape of the January 5, 2004 public hearing. I, along with a detective, interviewed Mayor Thomas Olson. I interviewed past and present members of the Beaver Dam City Council, the City of Beaver Dam attorney and assistant city attorney, the secretary to the city clerk, Trent Campbell of the Beaver Dam Area Development Corporation, Eric Becker, President of the Beaver Dam Area Development Corporation, a representative of the Daily Citizen newspaper, a representative of WBEVWXRO radio stations and a representative of WMDC radio station. I also consulted with Assistant Attorney General Bruce Olson.

FILED
CIRCUIT COURT
SEP 27 2004

DODGE COUNTY, WIS
LYNN M. J...
CLERK OF COURT
EXHIBIT

EXHIBIT
G

0167

The first issue is whether the Beaver Dam City Council or any committee of the city council met to discuss a possible Wal-Mart distribution center (or any other unnamed large development) without notice of this meeting. Evidence obtained from the investigation does not support the conclusion that any such meetings were held.

On May 7, 2003, a letter was written by Mayor Thomas Olson to a Mr. Colby Tanner of Carter and Burgess. Mr. Burgess at that time was acting as an agent for an unnamed principle which was ultimately identified as Wal-Mart Stores East, LP. That letter stated, in part "In total, we are proposing to provide \$6,182,040 in financial incentives for this project. Both the Beaver Dam City Council (in closed session) and the Beaver Dam Area Development Corporation have voted unanimously to support his incentive package for your client." The letter also stated, "In addition, the Beaver Dam City Council (in closed session) voted unanimously to support the eventual annexation and rezoning actions that will be required to make the proposed site a viable location for your client."

The letter of May 7, 2003 certainly raised a prima facie case for a violation of the open meetings law. If the letter was true, a violation of the open meetings law would have occurred. No meeting notices of the city council were ever created or published to discuss the Wal-Mart Distribution Center project prior to May 7, 2003. The city council could not legally vote to support annexation and rezoning actions in closed-session without following statutory procedures which require public hearings.

However, my investigation has shown that the referenced representations in the letter of May 7, 2003 were not factual. I received a letter from Assistant City Attorney Herman D. Schacht, who addressed the May 7, 2003 letter as follows, "The Mayor, acting as a cheerleader, puffed the City's wares without any formal commitment to an undisclosed principal." Neither the city attorney nor the assistant city attorney reviewed this letter prior to it being sent.

My interview with Mayor Thomas Olson confirmed this interpretation. The Mayor stated that he made these representations in this letter based on his enthusiasm for the project and the enthusiasm that had been communicated to him by other alderpersons who had attended a joint meeting of two committees on April 16, 2003, and discussed more fully below. The Mayor emphatically denies that any "secret meetings" of the common council or any other committee of the common council were ever held, nor were any secret votes held on this project. I have not discovered any evidence to the contrary. The Mayor, as a member of the Beaver Dam Area Development Corporation, would have been privy to any negotiations or proposed incentive packages by the Beaver Dam Area Development Corporation, and would have known more about this project than any city council member. He would have had earlier knowledge of the details of the incentive package (that he communicated in the May 7, 2003 letter) eventually formally offered to Wal-Mart by the city council.

Subsequent interviews with members of the city council and the Beaver Dam Area Development Corporation did not uncover any evidence that any meetings were held to discuss this project with the exception of: 1.) A joint meeting of the Finance, Taxation, License & Insurance Committee and the Community Development Committee held on April 16, 2003, and 2.) A special meeting of the Common Council of the City of Beaver Dam held on October 30, 2003.

A joint meeting of the Finance, Taxation, License & Insurance Committee and the Community Development Committee was held on April 16, 2003. An agenda for that meeting was prepared stating that these committees may consider entering into closed session under Wis. Stat. § 19.85(1)(e) to consider multiple proposed developments and related matters and that they may consider taking a consensus to return to open session to formally dispose of any issues discussed in closed session. This meeting notice was posted on 4/10/03 at 2:03 p.m. with copies of the notice being placed in a special mail box for the Daily Citizen newspaper and WXRO/WBEV, the local radio station. Further, the notice would have been faxed to WMDC radio station in Mayville.¹

At this meeting of April 16, 2003, the committees entered closed session, and then returned to open session and took action on three different community development projects. None of these projects involved the Wal-Mart distribution center project. However, during closed-session, the possibility of a large-scale development project for Beaver Dam was introduced to the members of the City Council who were in attendance by Trent Campbell of the Beaver Dam Area Development Corporation, and the project was generally discussed by the committee members. No vote was taken, however general enthusiasm for the project was voiced by those in attendance which caused the Beaver Dam Area Development Corporation to continue with its efforts at pursuing this development project.

On October 30, 2003, a special meeting of the Common Council of the City of Beaver Dam was held. An agenda was prepared on October 27, 2003, and posted on the same date at 3:30 p.m.. The agenda item stated that the council may consider entering into closed session pursuant to Wis. Stat. § 19.85(1)(e) for competitive or bargaining reasons and more specifically to consider matters related to a major development project. The notice further stated that the council may consider taking a consensus to return to open session following the closed session to formally dispose of the any issue discussed in closed session. Again, this notice was posted in the municipal building and put in the mail boxes for the Daily Citizen and WBEV/WXRO. (The notice may also have been faxed to

¹ An interview with Linda Carney, the secretary to the Mayor and City Clerk, indicated that her standard practice is to post all meeting notices at the Municipal Building and with the agreement of the Daily Citizen and WBEV/WXRO, place these notices in boxes for later collection by the media. She also faxes the notices to WMDC. Subsequent interviews with the media confirmed this arrangement.

WMDC in Mayville but the assistant clerk could not state with certainty that it was.)

At the October 30, 2003 meeting, in closed-session, the identity of the large scale development project was revealed as being a Wal-Mart distribution center. A memorandum of understanding was discussed that had been negotiated and drafted by the Beaver Dam Area Development Corporation which is a private non-government organization that works for the City of Beaver Dam in the area of economic development.² The council returned to open session where discussion continued, and the memorandum of understanding was voted on and approved by a unanimous vote.

The first issue is whether proper notice was given the public of the April 16, 2003 meeting and the October 30, 2003 meeting.

The presiding officer of a public body, or the officer's designee, must give notice of each meeting of the body to: 1.) the public, 2.) any members of the news media who have submitted a written request for notice, and 3.) the official newspaper, designated pursuant to state statute, or if none exists, to a news medium likely to give notice in the area. Wis. Stat. § 19.84(1).

Public notice of a meeting may be given by posting the notice in one or more places likely to be seen by the general public. 66 Op. Att'y Gen at 95 (1977).³

I find that public notice of both the April 16, 2003 meeting and the October 30, 2003 meeting was properly given. Notices of both meetings were posted at the municipal building which is a place likely to be seen by the general public. They were also provided to the official newspaper, the Daily Citizen, as well as WBEV/WXRO which is a news medium likely to give notice in the area. Further, the notice was probably faxed to WMDC. I did not find any media that had submitted a written request for notice.

It could be argued that the joint meeting of April 16, 2003 should have been noticed as a meeting of the entire city council. The two committees together comprise a quorum of the city council. Also, additional members of the council were present. The Court has stated (admittedly in dicta) in State ex rel Badke v. Greendale Village Board, 173 Wis. 2d 553, 578, 494 N.W. 2d 408 (1993) that in situations where meeting notices of one governmental body gives the public the fullest knowledge possible of the presence of members of another governmental

² The Beaver Dam Area Development Corporation (BDADC) board is comprised of 15 directors including the Mayor of Beaver Dam and the chairperson of the council's community development committee. The sole employee of the BDADC is not a city employee. The BDADC rents office space from the city. The city has provided partial funding of the BDADC. The City has no control of the appointment of directors or officers. Although no allegations have been made that the BDADC is subject to the open meetings law, I find that it is not, based upon the above facts. See 80 Op. Att. Gen. 130 (1991). ←

³ The Attorney General has opined that ideally the notice be posted in three different locations within the jurisdiction. However, I am constrained in my analysis in using the minimal requirements to meet the law.

body, the open meetings laws have been met. In this situation, the notice of the joint meeting of the Finance, Taxation, License & Insurance Committee and the Community Development Committee provided notice that a quorum of the city council would be present. This notice did not give notice that other members of the city council would be present. However, since no official action was taken at this meeting, and a quorum of the city council was officially noticed, a violation of the open meetings law could only be found under a highly technical, legalistic interpretation of the law which I will not impose on citizen members of local governmental bodies.⁴ Although I do believe it would be a better practice to notice joint meetings that constitute a quorum of the city council as meetings of the city council, especially when members of the council who were not members of the committee attend.

Every public notice of a meeting must give the "time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof." Wis. Stat. § 19.84(2).

The Court has addressed the issue of notice in several cases. In *State ex rel. Schaive v. Van Lare*, 125 Wis. 2d 40, 370 N.W. 2d 271 (Ct. App. 1985) the court held that notice that a board would "conduct a hearing to consider the possible discipline of a public employee" met the notice requirements for specificity. In *State ex rel H.S. Enterprises v. City of Stoughton*, 230 Wis. 2d 480, 602 N.W.2d 72 (1999), the court held that the word "Licenses" on the agenda was sufficient notice to apprise the public of the subject matter of a meeting regarding the reconsideration of the issuance of a liquor license to a specific business. The Court stated, "We decline to burden municipalities with an obligation to detail every issue that will be discussed under every agenda item during meetings when it is not mandated by statute." *City of Stoughton*, 230 Wis. 2d at 487.

In this case, the notice of the April 16, 2003 meeting stated that it was going into closed session under the provisions of Wis. Stat. § 19.85(1)(e) for the permitted purpose of conducting public business whenever competitive or bargaining reasons require a closed session and more specifically to "consider multiple proposed developments and related matters." This notice also stated that it may return to open session to formally dispose of any issues discussed in closed session.

At the April 16, 2003 meeting, members of the city council first learned of the potential development project. The discussion of the Wal-Mart Distribution Center project (at that time it was still unnamed) was properly done in closed session. The City of Beaver Dam was competing with other communities for this project. Competitive bargaining required that any discussion of this project be kept confidential. The legislature recognized that some public business is

⁴ This issue was not raised by any other party, but was only identified through my investigation and analysis alone.

incompatible with open sessions and has allowed statutory exceptions to the open meetings requirement. Wisconsin Statute §19.85(1)(e) allows deliberating and negotiating the investing of public funds in closed session whenever competitive or bargaining reasons require a closed session. The topic of the potential project was properly noticed, and properly discussed in closed-session. No official action on the Wal-Mart project was taken at this meeting.

The notice of the October 30, 2003 meeting stated that the Council was going into closed session under the provisions of Wis. Stat. § 19.85(1)(e) for the permitted purpose of conducting public business whenever competitive or bargaining reasons require a closed session and more specifically to "consider matters related to a major development project." The notice also stated that the council may return to open session to formally dispose of any issues discussed in closed session.

During the closed session, the full city council was informed that this major development project was a Wal-Mart Distribution Center. It was during this closed-session that council members could have asked to change the terms of the memorandum of understanding without jeopardizing the confidentiality of the project. It was only after the discussion in closed-session (and I assume an understanding of support for the project as proposed⁵) that the council returned to open session and further discussed the project and then unanimously voted to enter into the memorandum of understanding for the Wal-Mart Distribution Center.

The council appropriately went into closed session to discuss this major financial commitment. Under the law, the Council could have voted on this proposed project in closed session, as a negative vote could have resulting in continuing negotiation which required confidentiality. However, the Council chose to vote in open session (as I assume that a positive vote was anticipated) and did so. The notice that stated that the council "may consider taking a consensus to return to open session" is correct. The council had the opportunity in closed session to decide that the memorandum of understanding was not acceptable, or was acceptable only with changes. A negative vote could have been accomplished in closed-session, thereby obviating the need for returning to open session. However, the council decided that it was probably going to approve the memorandum of understanding and voted on it in open session which is the better practice.

This matter proceeded to a public hearing on the proposed annexation and will have a public hearing on the proposed zoning changes. The memorandum of understanding between the city and Wal-Mart does not require that the council vote positively on annexation or on rezoning. The council had and continues to

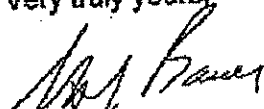
⁵ Government does not operate in an idealistic vacuum. I understand that people communicate. I must make my decisions based on the way the world works with my eye to the letter and spirit of the law.

have the option to kill this project by voting down either the annexation or the rezoning. The public has input into these decisions.

In conclusion, this investigation has found no secret meetings, no secret votes, or any other substantive violation of the open meetings law. After careful scrutiny and consideration, I have no basis to bring any action against members of the Beaver Dam City Council or the Mayor of Beaver Dam for violations of Wisconsin's Open Meetings law.

Thank you for bring this important matter to my attention. Although ultimately I did not believe that this complaint warranted prosecution, it certainly warranted investigation. If you have any questions, feel free to contact me.

Very truly yours,



Steven G. Bauer
District Attorney
Dodge County

mc:SGB

FILED
IN THE CIRCUIT COURT

SEP 27 2004

DODGE COUNTY, WIS
LYNN M. HRON
CLERK OF COURTS

STATE OF WISCONSIN : CIRCUIT COURT : DODGE COUNTY

STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 04-CV-0341
Case Code 30703

BEAVER DAM AREA DEVELOPMENT CORPORATION, et al.,

Defendants.

AFFIDAVIT OF JOHN LANDDECK

STATE OF WISCONSIN)
) §
DODGE COUNTY)

JOHN LANDDECK, being first duly sworn upon oath, deposes and states as follows:

1. I am the President of the Beaver Dam Community Hospital, and since January of 2004, I have served as the President of the Beaver Dam Area Development Corporation.
2. Some of the exhibits referred to in my affidavit are confidential and governed by a protective order in this case and all exhibits are therefore being filed in a separate envelope marked "Landdeck Exhibits Under Protective Order."
3. All of the officers of the Beaver Dam Area Development Corporation are private individuals who are elected by the Board of Directors of the Beaver Dam Area Development Corporation.
4. I have served on the Board of Directors of the Beaver Dam Area Development Corporation since its inception in 1997, and previously served as Vice-President of the corporation.

5. Pursuant to the corporate by-laws, the President of the Beaver Dam Chamber of Commerce, Philip Fritsche, sits on the Board as a non-voting member. Jack Hanks, the Mayor of Beaver Dam, and Michael Wissell, Chairperson of the City Community Development Committee serve as *ex officio* Board members. The other ten board members, all of whom have voting rights, are private citizens who reside in Beaver Dam.

6. The Board of Directors for the Beaver Dam Area Development Corporation meets on the second Thursday of the month, over the lunch hour, from noon to about 1:00 p.m.

7. The Board meetings are generally conducted at private places of employment of various Board Members, including the Beaver Dam Community Hospital Board Room and Apache Stainless Equipment Corporation.

8. At no time has the Beaver Dam Area Development Corporation ever provided services related to public health or safety to any county or municipality, including the City of Beaver Dam.

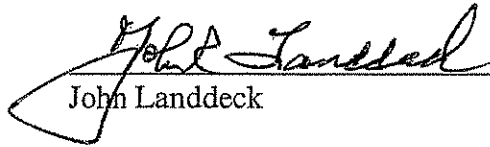
9. That attached as Exhibit A is a copy of a letter of resignation that I received from Trent Campbell, the former Executive Vice-President of the Beaver Dam Area Development Corporation.

10. That as President of the Beaver Dam Area Development Corporation, I was authorized by the Board of Directors to negotiate and execute a transition services agreement with Trent Campbell. Attached as Exhibit B is a copy of a letter to Mr. Campbell dated December 13, 2004 and a copy of the Transition Employment Agreement.

11. The Beaver Dam Area Development Corporation currently leases an office from Richard E. Hedberg and no longer has an office in the municipal building. Attached as Exhibit C

is a copy of the lease which I signed on behalf of the Beaver Dam Area Development Corporation.

Dated this 14 day of November, 2005.



John Landdeck

Subscribed and sworn to before me

this 14 day of November, 2005.

Debi Peace, Notary Public
Notary Public, State of Wisconsin
My Commission: May 13, 2008

CERTIFICATION

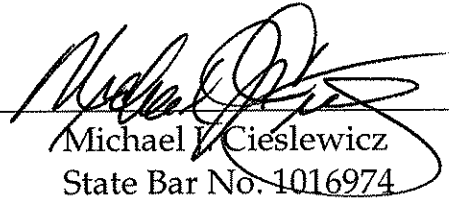
I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains: (1) a table of contents and (2) portions of the record essential to an understanding of the issues raised.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 13th day of June, 2006.

KASDORF, LEWIS & SWIETLIK, S.C.
Attorneys for Defendants-Respondents

By: _____


Michael J. Cieslewicz
State Bar No. 1016974
Patti J. Kurth
State Bar No. 1005665

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