

In the Matter of  
Potential Violations of  
Wisconsin's Open Meetings Law

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**VERIFIED COMPLAINT PURSUANT TO WIS. STATS. §19.97**

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Pursuant to Wisconsin's Open Meetings law at Wis. Stats. § 19.97, undersigned hereby file and serve the verified complaint upon the District Attorney for Milwaukee County and seek enforcement according to applicable law of the violations alleged herein.

1. This matter concerns at least four improperly noticed and closed session meetings of the City of Milwaukee Historic Preservation Commission and specifically a subcommittee of that Commission established to take action regarding the design of a proposed parking ramp project located at 2590 Downer Avenue. The 2590 property is located within a City designated historic district and adjacent to a state and federally listed historic district.

2. The City of Milwaukee Historic Preservation Commission (HPC) is enabled under Milwaukee City Ordinance §308-81 and operates as a governmental body of the City of Milwaukee.

3. The HPC meets regularly and is governed by the open meetings law.

4. The HPC is empowered to establish subcommittees.

5. HPC-Subcommittees are governmental bodies of the City of Milwaukee and governed by the open meetings law.

6. At a May 14, 2007 meeting, the HPC took up and addressed the appropriateness of a proposed design for a parking ramp project to be built at 2590 Downer Avenue. The parking ramp project was being considered at the same time by other City agencies and bodies including the City Plan Commission (CPC) and the Zoning, Neighborhoods and Development committee (ZND).

7. At the May 14, 2007 HPC meeting, a subcommittee of the HPC was established to conduct further meetings and review of the proposed design for the parking ramp. The subcommittee was and is composed of HPC members Sandra McSweeney, Pat Balon and Matt Jarosz.

8. According to the May 14, 2007 minutes of the full HPC, the resolution called for the HPC-subcommittee to:

*The motion was to approve the ramp with changes to the design to include among other things the rooftop lighting and the east and north elevations. The subcommittee would work with the architect on changes and was empowered to make the final approval on behalf of the entire commission.*

9. The HPC-Subcommittee thereafter met on multiple occasions in May and June of 2007 to act on its charge to consider modifications to the Downer Avenue Parking Ramp project.

10. The HPC subcommittee members met at various locations within the City's offices on the following dates, at least: May 17, 2007, June 14, 2007, June 18, 2007, and June 27, 2007.

11. These face-to-face meetings discussed the Downer Avenue Parking Ramp project and took actions regarding that project.

12. The meetings were held in closed session and the public and other directly interested parties were precluded from attending. In addition no public notice of the meetings was provided to the public as is required by Wis. Stats. §19.84.

13. One of the adjacent property owners sought to attend at least 2 of the HPC subcommittee meetings but was allowed to attend only a portion of one of the meetings for a limited time to present his suggestion for a modified plan for the parking ramp project. The parking ramp design calls for and is currently being constructed within approximately 4-5 feet of that citizen's approximately 100 year old historic home, blocking all sun and views to the west and southwest of the home with an approximately 60-foot solid concrete wall and elevator tower.

14. Representatives of the developer and architect of the parking ramp project were invited to each subcommittee meeting and some or all of these members or their representatives attended each closed meeting of the HPC subcommittee

15. At the June 14, 2007 meeting, the developer presented an alternative design for the parking ramp that called for building a substantial portion of the ramp in the backyard of the Kovacs, mitigating the negative effects on the Kovac home and the historic district generally. The developer presented a sketch drawing of the "backyard plan." Staff members of the City's Department of City Developer (DCD) participated in the June 14 meeting, and others, and had prepared sketches showing the backyard plan. The backyard plan was discussed and action taken regarding the back-yard plan taken at the June 14, 2007 HPC-subcommittee meeting.

16. Soon after the June 14, 2007 meeting, the backyard plan idea was withdrawn from consideration by the developer. Upon information and belief, this was

done because the developer was told by the Chairman of the ZND and another City official that pursuing the approvals necessary for the backyard plan could take up to six months. DCD staff sent an email to the HPC subcommittee members stating to them that the developer had withdrawn his backyard proposal because of the time it would likely take to obtain "re approvals."

17. However, after the June 14, 2007, one of the HPC subcommittee members wrote in an email to City staff explaining that the 45 minute discussion of the backyard plan was absent from the draft minutes. This same subcommittee member requested of staff that additional information be included in the minutes. A true and correct copy of the email making this request is attached hereto as Exhibit 1.

18. City staff did not include the requested information in the minutes of the June 14, 2007 meeting and did not inform the HPC subcommittee member of that decision or the basis for it at that time. Upon information and belief, the minutes were tailored in this way in order to prevent the public from learning about the alternative backyard proposal and other business of the HPC-Subcommittee

19. Undersigned has been provided copies of records purporting to be minutes of the various HPC subcommittee meetings. These were provided in response to an open records request in December of 2007. These minutes were not posted on the City's Website at the time of their creation, as is typical of other minutes of meetings of City of Milwaukee agencies and committees. Copies of what has been provided are attached hereto as exhibits 2-5. Minutes of the four HPC subcommittee meetings have been posted on the City's Website as of this day as a result of a January 16, 2008 order of the

circuit court for Milwaukee County, the Honorable Elsa C. Lamelas, presiding. A true and correct copy of the order is attached hereto as exhibit 6.

20. After withdrawal of the backyard alternative, a third alternative design was put forward by the developer at a subsequent meeting of the HPC subcommittee. This plan called for removal of the basement level of the structure and reduction in the amount of parking and relocation of the building footprint (the “no-basement plan”). This plan was discussed and inserted into the process by City Staff and the developer and its architect. The HPC subcommittee did not originate or initiate the third-alternative.

21. None of the four HPC-subcommittee meetings were publicly noticed in advance. City staff was in control of scheduling and setting the agendas for the meetings and took charge of preparing the minutes for the meetings. HPC staff was allowed to prepare minutes for the June 18, 2007 meeting (see exhibit 4).

22. The individual members of the HPC subcommittee sought advice from City Staff regarding whether the subcommittee’s meetings were proper under the open meetings law. An email from one of the subcommittee’s members to City staff is attached at Exhibit 7. The records provided to date as well as testimony of City staff show that the request for open meetings advice went unanswered by City Staff and the City Attorney’s office.

23. A approximately 4 months after the subcommittee’s springtime meetings, the developer ultimately put forward an application to the City to obtain a modification to the originally approved zoning for the parking ramp project. This application was for approval of the third alternative/no basement plan that was injected into the process at the private meeting of the HPC subcommittee. The no-basement alternative was taken up by

the Zoning and Neighborhoods and Development subcommittee of the common council on November 6, 2007. At that meeting, City staff represented to the ZND that the HPC-subcommittee had reviewed and approved of the new third alternative design for the parking ramp, had rejected the backyard plan, that the City had worked with nearby property owners and neighbors up to the last possible moment to try to satisfy their concerns, that the City and the Developer and HPC had made changes to appease and satisfy those neighbors, and that the neighbors were happy and satisfied with the changed plans reflected in the no basement third-alternative plan. These statements were made on at least November 6, 2007 to the 5-member ZND committee, at a public meeting of that committee. There were made in furtherance of having the ZND committee members rely on the statements in making a decision to approve or deny the third alternative/no basement plan being sought by the developer at the November 6, 2007 ZND meeting. These statements were inaccurate.

24. The ZND approved of the minor modification on November 6, 2007 relying on and based on inaccurate and misleading representations and information. The ZND was not provided with access to the members of the HPC subcommittee nor the minutes or email correspondence of that subcommittee.

25. At a hearing in the case of *McCarthy et al v City of Milwaukee et al*, Case No. 07-CV-14155, the Court stated the following:

COURT: .... my reading of the [open meetings] statute and my understanding of the record as it appears before me has revealed no apparent reason to justify the closing of those meetings; no subsection of the statutes seems immediately apparent. ... While the City contended that the commissioners are not conversant with the requirements of the Open Meetings Law, it turned out that one of the commissioners had raised that very question with city staff and that concern apparently went unanswered.

Ordinarily we expect the governmental entity in question to provide this sort of information, regarding the law, to lay people appointed to serve the community in commissions such as the ...City's Historical Preservation Committee .... I learned that there was no response to the commissioner who raised the question. I also learned during the course of the hearing that the city attorney's office has an expert in the area. And yet the city permitted closed meetings to go forward, thereby frustrating Mr. Kovac's access to information. Not only did the City conduct these meetings in closed session, it then took it upon itself to record meetings incompletely. When one of the commissioners objected over the omission of certain material covered during one of these meetings and attempted to supplement the record, the request was ignored. City staff did not trouble itself to inform the commissioner that the record would not be supplemented.

The explanation given for this conduct is that the subcommittee had been discussing matters outside of its jurisdiction. It is a matter so fundamental that I am amazed to have to reference it that the purpose of minutes is to record. If minutes were scrubbed by staff to include only those matters deemed appropriate by the writer, there would be no value to minutes at all.

Isn't that what they do in totalitarian states?

So with respect to the subcommittee, the public was denied access at the time of the meetings, the record was manipulated, and the city sought to suppress the testimony of those who might have clarified what transpired. The City then sought to have the Zoning and Neighborhood committee believe that the modification to the DPD [zoning overlay] were the work of the Historical Society subcommittee ....

The course of conduct seems extraordinary, so extraordinary that it raises questions about the manner in which Milwaukee made the decision at issue here. I am concerned that the [ZND] was deprived of accurate information. Whether or not the subcommittee was acting outside of its jurisdiction, the fact is that it appears that the ZND was misinformed regarding the ....subcommittee's position.

*See Exhibit 6 at pp 14-16*

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26. The HPC subcommittee established on May 14, 2007 is a governmental body of the City of Milwaukee as that term is defined in Wis. Stats. § 19.81.

27. The face to face meetings of the HPC subcommittee members held between McSweeny, Balon, Jarosz on at least May 17, June 14, June 18 and June 24, were meetings governed by the Open meetings law.

28. Pursuant to Wis. Stats. § 19.84, public notice complying with the provisions of that section was required in advance of the four HPC subcommittee meetings.

29. No public notice complying with Wis. Stats., §19.84, or otherwise, was provided to the public or the media in advance of the four HPC subcommittee meetings

30. The four HPC subcommittee meetings were held and business conducted at said meetings despite lack of proper public notice, and were thus held and conducted in violation of Wis. Stats. §19.84.

31. City of Milwaukee officials and staff planned and did cause the meetings to be held without proper notice.

32. In addition, as noted, the HPC subcommittee established on May 14, 2007 is a governmental body of the City of Milwaukee as that term is defined in Wis. Stats. § 19.81.

33. The face to face meetings of the HPC subcommittee members held between McSweeny, Balon, Jarosz on at least May 17, June 14, June 18 and June 24, were meetings governed by the Open meetings law.

34. The four HPC subcommittee meetings took place in closed session and actively excluded members of the public, although allowing representatives of the developer to attend.



35. Wis. Stats, §19.85 allows for closed session meetings of governmental bodies in certain exceptional circumstances.

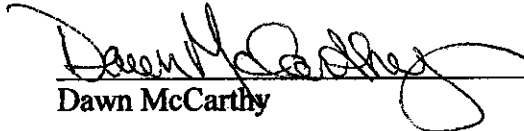
36. The subject matter of the four HPC Subcommittee meetings did not and does not fall under any exception provided in Wis. Stats. § 19.85.

37. The four HPC subcommittee meetings and each of them were held in violation of the open meetings law, including Wis. Stats. § 19.83 prohibiting public meetings in closed session.


38. City of Milwaukee officials and staff planned and did cause the meetings to be improperly held in closed session.

**WHEREFORE**, undersigned Complainant hereby submits this verified complaint and requests that the State of Wisconsin investigate and pursue enforcement of these alleged violations pursuant to Wis. Stats. §19.97

Undersigned has reviewed the allegations herein and verify that they are true and correct to the best of her knowledge and belief.

  
Dawn McCarthy

Sworn to and Subscribed before me  
This 25<sup>th</sup> day of January, 2008

  
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Notary Public, State of Wisconsin  
My Commission is Permanent