

Spencer, Tearman

From: Spencer, Tearman
Sent: Tuesday, May 4, 2021 3:54 PM
To: Johnson, Cavalier
Cc: Crump, Lafayette
Subject: RE: Couture SoW Redlines to Pres. Johnson
Attachments: Uniformity and Anti-Displacement Fund.docx; Municipality Article-Roles and authority of governing body members.pdf

President Johnson,

Thank you for your May 3rd response to my office. As you are aware, as City Attorney, I expressed concerns to you and the Council regarding: the Couture files 201365 and 201573; the aldermanic actions that resulted in the Ald. Bauman motion at the 2-23-2021 ZND Committee in File 201365; and the requirement in Section 13.4 of the Couture Restated Development Agreement mandating a \$100,000 contribution to the MKE United Anti-Displacement Fund. The Mayor too had concerns and he did not sign onto file 201365.

Some of my concerns regarding the aldermanic actions (i.e. reaching out directly to the developer without DCD, and without my office, and without a separate Council resolution or ordinance authorizing such direct aldermanic contact and action, and shortly prior to a Council Committee vote and not at a Council Committee hearing, to negotiate and require a \$100,000 donation to a tax fund) are expressed in my March 9, 2021 letter and in my March 12, 2021 letter (both letters are in File 201365). My concerns are supported in the League of WI Municipalities June 2019 article, "Roles and Authority of Governing Body Members" (**attached** and referred to in my March 9 letter). And, my concerns are also supported by the absence of a prior Council resolution (predating or preceding File 201365) and by the absence of a City ordinance authorizing direct aldermanic contact with developers (outside of Council meetings and Council Committee meetings) to require or negotiate material provisions in a contract.

Another concern I have as City Attorney is that the City-contractually obligated \$100,000 contribution does not seem to pass muster under Wisconsin's Uniformity Clause (see memo **attached**).

While I expressed my concerns to you and the Council, in the spirit of moving the Couture matter forward, you and I agreed, by means of File 201573, that the \$100,000 would be put in escrow, and that you and I would engage Special Counsel (Chuck Kahn) to look at these matters.

Council File 201573 (in the analysis section) "affirms" the Council's prior action (201365) and approved or re-approved the Council's earlier action (in the first resolved clause), but then 201573 goes on, in seemingly contrary fashion, to attempt to rescind 201365. The Special Counsel, of course, must analyze both files, 201365 and 201573 to do his job. Indeed, if 201365 were really rescinded, then immediate adoption of 201573 and of the funding required by the restated Development Agreement would be inappropriate. So, again, you and I must have Special Counsel review and analyze both files, including all materials submitted to both files.

In the analysis section of 201573, Special Counsel must "determine whether the amendment requiring the contribution was adopted in a manner consistent with law." Again, of course, that amendment requiring the contribution came up in File 201365 so obviously, Special Counsel must analyze both file 201365 and file 201573.

The second resolved clause of 201573 provides that Special Counsel must determine whether the Common Council's actions adopting the amendment providing for this contribution" (i.e. the Council's actions in 201365 and Ald. Bauman's motion that was heard at the 2-23-21 ZND Committee but that was negotiated prior to that hearing) "were done in a manner consistent with law." So, clearly 201365 and the materials in that file, and 201573, are both relevant and

important to the Special Counsel's inquiry and must be analyzed. Also, of course, the Special Counsel must analyze applicable law.

DCD Commissioner Crump, who is copied on this email, had been speaking to you and to me concerning the creation of File 201573 and he can attest to the importance of the words in the 3rd "Resolved Clause" of 201573 that mandates that you, President Johnson, and I (not the Council) must "agree to a set of terms, conditions, and a scope of work" for the hiring of Chuck Kahn as Special Counsel. I can attest to the importance of those words as well. You and I must agree.

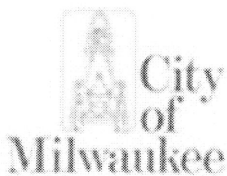
While you and I work on the wording of a Scope of Work meeting our mutual approval, I ask you President Johnson to please expedite a funding resolution through the Council to approve funding for Judge Kahn's services at the hourly rate of \$250. Per File 201573, the Council approves funding for Judge Kahn, not the Scope of Work. You and I must agree on the Scope.

President Johnson, if you will not negotiate the terms of the Scope of Work, or if we are not able to agree upon a Scope, then I will send your initial draft of the Scope, and my redlines to that draft, and this email and the **attachments** to Chuck Kahn letting him know we were not able to decide on a Scope of Work, and suggesting a meeting amongst the 3 of us. In any event, as City Attorney, I assert (for the reasons indicated in my March 9th and 12th letters and herein) (A that individual alderpersons outside of a Council Committee or Council hearing did not have authority to engage in direct contract negotiations with the Couture developer or its principals, and did not have authority to mandate the \$100,000 contribution to the Anti-Displacement Tax Fund (I am not aware of any ordinance or resolution that would have given individual alderpersons such authority), and (B) that the Uniformity Clause prohibits the \$100,000 contractual contribution to the Anti-Displacement fund because it amounts to the City providing an indirect tax reduction for some but not all taxpayers of real property taxes, thus disrupting uniformity.

See the MKE United website itself, under the "Frequently Asked Questions" that explains that government funds are not in the Anti-Displacement Fund due to the prohibition of the Uniformity Clause. As per the attached memo, if government cannot directly fund that fund, it cannot indirectly fund that fund, meaning it cannot mandate others, by contract, to fund that fund. The "Frequently Asked Questions" states, "*Why can't the City reduce the taxes of low-income or elderly residents directly? The Wisconsin Constitution prohibits that. Local governments cannot provide relief to specific groups of homeowners or create rebates or programs to reduce property taxes for groups of property owners.*"

Respectfully,

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From: Johnson, Cavalier <Cavalier.Johnson2@milwaukee.gov>

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