

FILED
05-07-2019
Clerk of Circuit Court
Eau Claire County, WI
2019CV000192

STATE OF WISCONSIN

CIRCUIT COURT
Branch 2

EAU CLAIRE COUNTY

VOTERS WITH FACTS,
J PETER BARTL,
DAWN BERGSTROM,
CYNTHIA M. BURTON,

MARYJO COHEN,
JO ANN HOEPPNER CRUZ,
LEAH KUBETZ,
RACHEL MANTIK,

JANEWAY RILEY,
CHRISTINE WEBSTER,
DOROTHY A. WESTERMANN,
JANICE M. WNUKOWSKI

Plaintiffs,

Certiorari Review
CASE CODE: 30955
CASE NO. 19-CV-192

vs.

CITY OF EAU CLAIRE,

CITY OF EAU CLAIRE JOINT REVIEW BOARD,

Defendants.

DEFENDANTS' ANSWER TO VOTERS WITH FACTS, et. al's, COMPLAINT

City of Eau Claire and City of Eau Claire Joint Review Board, (hereinafter, "Answering Defendants"), by their attorneys, CITY ATTORNEY, STEPHEN C. NICK, DEPUTY CITY ATTORNEY, DOUGLAS HOFFER and MUNICIPAL LAW & LITIGATION GROUP, S.C., by special appearance and reserving all jurisdictional objections, to support the validity of the action of these Answering Defendants to approve tax incremental district known as Eau Claire TID #12, and to defend against and seek the dismissal of the unfounded allegations and claims of the Plaintiffs, submits the following answer and affirmative defenses to the Plaintiffs' complaint.

1. **Answering Paragraph ¶ 1**, this paragraph contains a summary of the nature of this action for which no answer is required; to the extent any factual assertions are made, these Answering Defendants deny each and every assertion and put the Plaintiffs specifically to their proof thereon.
2. **Answering Paragraph ¶ 2**, deny that the Court has jurisdiction or competency over this dispute for reasons including, but not limited to, untimeliness in commencement of this action, Plaintiffs lack standing, and the Complaint fails to state a claim upon which the Court can grant relief for reasons more fully set forth in subsequent pleadings. Denies all other allegations asserted in said paragraph.

PARTIES

3. **Answering Paragraph ¶ 3**, lack information and therefore deny those allegations asserted in said paragraph of Plaintiffs' Complaint.
4. **Answering Paragraph ¶ 4**, lack information and therefore deny those allegations asserted in said paragraph of Plaintiffs' Complaint.
5. **Answering Paragraph ¶ 5**, lack information and therefore deny those allegations asserted in said paragraph of Plaintiffs' Complaint.
6. **Answering Paragraph ¶ 6**, lack information and therefore deny those allegations asserted in said paragraph of Plaintiffs' Complaint.
7. **Answering Paragraph ¶ 7**, lack information and therefore deny those allegations asserted in said paragraph of Plaintiffs' Complaint.
8. **Answering Paragraph ¶ 8**, lack information and therefore deny those allegations asserted in said paragraph of Plaintiffs' Complaint.

9. **Answering Paragraph ¶ 9**, lack information and therefore deny those allegations asserted in said paragraph of Plaintiffs' Complaint.
10. **Answering Paragraph ¶ 10**, lack information and therefore deny those allegations asserted in said paragraph of Plaintiffs' Complaint.
11. **Answering Paragraph ¶ 11**, lack information and therefore deny those allegations asserted in said paragraph of Plaintiffs' Complaint.
12. **Answering Paragraph ¶ 12**, lack information and therefore deny those allegations asserted in said paragraph of Plaintiffs' Complaint.
13. **Answering Paragraph ¶ 13**, lack information and therefore deny those allegations asserted in said paragraph of Plaintiffs' Complaint.
14. **Answering Paragraph ¶ 14**, lack information and therefore deny those allegations asserted in said paragraph of Plaintiffs' Complaint.
15. **Answering Paragraph ¶ 15**, lack information and therefore deny those allegations asserted in said paragraph of Plaintiffs' Complaint.
16. **Answering Paragraph ¶ 16**, lack information and therefore deny those allegations asserted in said paragraph of Plaintiffs' Complaint.
17. **Answering Paragraph ¶ 17**, denies City of Eau Claire Zip Code is 54702. Admits the other allegations asserted in said paragraph of Plaintiffs' Complaint.
18. **Answering Paragraph ¶ 18**, admits the City of Eau Claire Joint Review Board was lawfully convened; as further answer, denies all other allegations asserted in said paragraph.

VENUE AND JURISDICTION

19. **Answering Paragraph ¶ 19**, admit.

20. **Answering Paragraph ¶ 20**, deny that the Court has jurisdiction or competency over this dispute for reasons including, but not limited to, untimeliness in commencement of this action, Plaintiffs lack standing, and the Complaint fails to state a claim upon which the Court can grant relief for reasons more fully set forth in subsequent pleadings.

TAX INCREMENTAL LAW

21. **Answering Paragraph ¶ 21**, this paragraph of the Plaintiffs' Complaint contains narrative and conclusions of law that are neither "short" nor "plain" (s. 802.02 (1) (a), Wis. Stats.), which these Answering Defendants may dispute but for which no answer is required due to the objectionable nature of the pleading; to the extent any factual or legal assertions are made, these Answering Defendants deny each and every such allegation and put the Plaintiffs specifically to their proof thereon.

22. **Answering Paragraph ¶ 22**, this paragraph of the Plaintiffs' Complaint contains narrative and conclusions of law that are neither "short" nor "plain" (s. 802.02 (1) (a), Wis. Stats.), which these Answering Defendants may dispute but for which no answer is required due to the objectionable nature of the pleading; to the extent any factual or legal assertions are made, these Answering Defendants deny each and every such allegation and put the Plaintiffs specifically to their proof thereon.

23. **Answering Paragraph ¶ 23**, this paragraph of the Plaintiffs' Complaint contains narrative and conclusions of law that are neither "short" nor "plain" (s. 802.02 (1) (a), Wis. Stats.), which these Answering Defendants may dispute but for which no answer is required due to the objectionable nature of the pleading; as further answer, this paragraph contains conclusions of law for which no answer is required; to the extent any factual or

legal assertions are made, these Answering Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

24. **Answering Paragraph ¶ 24**, admit the creation of a TID must be approved by a Joint Review Board in which all local taxing authorities are represented and their legislative judgment is expressed in regard to TID creation. The remainder of this paragraph of the Plaintiffs' Complaint contains conclusions of law which these Answering Defendants may dispute but for which no answer is required; to the extent any factual or legal assertions are made, these Answering Defendants deny each and every such allegation and put the Plaintiffs specifically to their proof thereon
25. **Answering Paragraph ¶ 25**, admit only to the extent Plaintiffs correctly cite portions of current state law, but to the extent said paragraph contains conclusions of law which these Answering Defendants may dispute, no answer is required; to the extent any factual assertions are made, these Answering Defendants deny each and every such allegation and put the Plaintiffs specifically to their proof thereon.
26. **Answering Paragraph ¶ 26**, this paragraph of the Plaintiffs' Complaint contains narrative and conclusions of law that are neither "short" nor "plain" (s. 802.02 (1) (a), Wis. Stats.), which these Answering Defendants may dispute but for which no answer is required due to the objectionable nature of the pleading; as further answer, this paragraph contains conclusions of law for which no answer is required; to the extent any factual or legal assertions are made, these Answering Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

EAU CLAIRE'S CREATION OF TID #12

27. **Answering Paragraph ¶ 27**, admit that on September 12, 2017, the Eau Claire City Council approved TID No. 12 and admit that the Joint Review Board approved TID No. 12 on September 15, 2017. As further answer to this paragraph and other paragraphs in this section and other sections of the Complaint, affirmatively state that, at such public meetings, the City Council heard public comment prior to making legislative decisions to approve the project plans, the public was given robust opportunity to provide input at public hearings, that several of the same Plaintiffs availed themselves of these opportunities prior to the legislative decision and the City of Eau Claire and Joint Review Board completed all statutory steps required by Wisconsin's TIF law including, but not limited to, the boundaries were properly designated, blighted properties were identified, and project plans were approved.
28. **Answering Paragraph ¶ 28**, admit TID No. 12 contains a list of estimated expenditures which speaks for itself; as further answer, deny all remaining allegations are complete or correct.
29. **Answering Paragraph ¶ 29**, deny the allegations are complete or correct and affirmatively allege the project plan speaks for itself.
30. **Answering Paragraph ¶ 30**, deny the allegations are complete or correct.
31. **Answering Paragraph ¶ 31**, deny the allegations are complete or correct.
32. **Answering Paragraph ¶ 32**, deny the allegations are complete or correct.
33. **Answering Paragraph ¶ 33**, admit the City Council met on September 12, 2017; as further answer, deny all remaining allegations are complete or correct.
34. **Answering Paragraph ¶ 34**, this paragraph of the Plaintiffs' Complaint contains narrative and conclusions of law that are neither "short" nor "plain" (s. 802.02 (1) (a),

Wis. Stats.), which these Answering Defendants may dispute but for which no answer is required due to the objectionable nature of the pleading; as further answer, deny the allegations are complete or correct.

35. **Answering Paragraph ¶ 35**, deny the allegations are complete or correct.

36. **Answering Paragraph ¶ 36**, deny the allegations are complete or correct.

37. **Answering Paragraph ¶ 37**, deny the allegations are complete or correct and affirmatively allege the project plan speaks for itself.

**CLAIM FOR RELIEF
(Certiorari Review)**

38. **Answering Paragraph ¶ 38**, repeat, reallege and incorporate herein by reference all responses to allegations, denials and affirmative defenses contained within the text of this responsive pleading.

39. **Answering Paragraph ¶ 39**, admit the Complaint attaches, as Exhibit A, a Notice of Claim and Injury dated January 12, 2018 but deny it was timely filed and deny it properly satisfies Wis. Stat. s. 893.80(1d); as further answer to any remaining allegation, these Answering Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

40. **Answering Paragraph ¶ 40**, to the extent Plaintiffs correctly cite portions of case law admit; however, this paragraph contains conclusions of law for which no answer is required; to the extent any factual assertions are made, these Answering Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

41. **Answering Paragraph ¶ 41**, to the extent Plaintiffs correctly cite portions of case law admit; however, this paragraph contains conclusions of law for which no answer is

required; to the extent any factual assertions are made, these Answering Defendants deny the same and put the Plaintiffs specifically to their proof thereon.

42. **Answering Paragraph ¶ 42**, deny.

43. **Answering Paragraph ¶ 43**, deny.

44. **Answering Paragraph ¶ 44**, deny.

45. **Answering Paragraph ¶ 45**, deny.

46. **Answering Paragraph ¶ 46**, deny.

47. **Answering Paragraph ¶ 47**, deny.

48. **Answering Paragraph ¶ 48**, deny.

49. **Answering Paragraph ¶ 49**, deny.

50. **Answering Paragraph ¶ 50**, deny.

AFFIRMATIVE DEFENSES

As and for affirmative defenses to the Plaintiffs' complaint, the answering defendants submit the following:

1. Plaintiffs' Complaint contains claims which may fail to state a claim upon which relief may be granted;
2. Plaintiffs' claims and allegations presented in the Complaint may violate Wis. Stat. § 802.05;
3. There may be lack of personal jurisdiction, subject matter jurisdiction or competency to proceed;
4. Plaintiff's claims may be barred by laches, applicable statutes of limitations or preclusion theories (claim or issue);
5. One or more Plaintiffs may lack capacity to sue or standing;

6. Plaintiffs may have failed to join all necessary parties; and

7. Plaintiffs' claims may be subject to the limitations, prerequisites and immunities in Wis. Stat. § 893.80, including notice requirements.

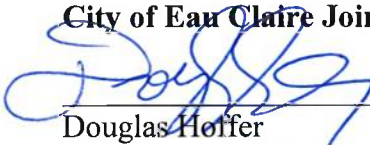
WHEREFORE, City of Eau Claire and City of Eau Claire Joint Review Board seek judgment as follows:

A. For dismissal of the Complaint.

B. For fees, costs, disbursements, and such other relief as the Court deems equitable and just, including but not limited to, pursuant to Wis. Stat. § 802.05 and the Court's equitable power.

Dated: May _____, 2019

**Attorneys for Defendants, City of Eau Claire and
City of Eau Claire Joint Review Board**



Douglas Heffer
State Bar No. 1079432
Deputy City Attorney
City of Eau Claire
203 S. Farwell St.
Eau Claire, WI 54701
(715) 839-6006

Stephen C. Nick
State Bar No. 1020929
City Attorney
City of Eau Claire
203 S. Farwell St.
Eau Claire, WI 54701
(715) 839-6006 AND

Municipal Law & Litigation Group, S.C.
Remzy D. Bitar
State Bar No: 1038340
730 N. Grand Avenue
Waukesha, WI 53186
(262) 548-1340