



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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I-34-90

Mr. John W. McNamee
Kramer and McNamee
Post Office Box 87
Fennimore, Wisconsin 53809

Dear Mr. McNamee:

You have asked whether a covenant committee created by resolution of the common council of the City of Boscobel is a governmental body subject to the open meetings law.

You provide the following facts:

The City of Boscobel is the owner of certain land which it has developed as an Industrial Park by the installation of storm sewer, water, sanitary sewer and roads.

The City has granted an option to purchase lots in the Industrial Park to Boscobel Developers, Ltd., a nonprofit corporation.

Currently the City is considering placing certain restrictive covenants on the Industrial Park for the purpose of assuring orderly and compatible development. These restrictive covenants would be in addition to established and enacted zoning regulations.

Some of the covenants relate to design and architectural matters, the enforcement of which involve discretionary approval or disapproval of certain plans. It is proposed that such matters be determined by a "Covenant Committee".

The Covenant Committee is to consist of five members. Initially, three of the members are to be selected by the Common Council and two by the Boscobel Developers Limited. After 50% of the Industrial Park land has been sold to private interests, one of the members selected by the City will be replaced by an owner (or officer of a corporate owner) of Industrial Park lands, that member to be selected by the remaining four Covenant Committee members.

You state that the covenant committee and the restrictive covenants will be created and approved by a resolution of the common

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council; and you ask whether the committee will be subject to the open meetings law by virtue of the fact that a part of its membership is to be selected by the common council.

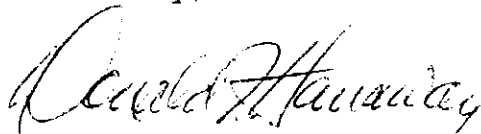
The open meetings law applies to a governmental body, which is defined in section 19.82(1), Stats., as follows:

"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); a nonprofit corporation operating an ice rink which is owned by the state; 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 a meeting for the purpose of collective bargaining under subch. IV or V of ch. 111.

Being created by resolution of the common council, the covenant committee falls within this definition because a resolution is an order. Certain Lots Etc. v. Town of Monticello, 159 Fla. 134, 31 So. 2d 905, 911 (1947); City of Pensacola v. Southern Bell Telephone Co., 49 Fla. 161, 37 So. 820, 824 (1905); Boyer Fire Apparatus Co. v. Town of Bruceton, 16 Tenn. App. 143, 66 S.W.2d 210, 214 (1932); and Keigley v. Bench, 90 Utah 569, 63 P.2d 262, 265 (1936).

The covenant committee, therefore, is subject to the open meetings law because of the manner in which it is created.

Sincerely,



Donald J. Hanaway
Attorney General

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