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August 20, 2019

BY EMAIL ONLY

Mr. Nathan Wautier
Reinhart, Boerner, Van Duren
22 East Mifflin St., Suite 700
Madison, WI 53703

RE: Appeal of ZBA Decision

Dear Nathan:

I am writing in response to your email of August 19, 2019, copy attached. Thank you for the email.

Despite Edgewood's assertions, you have provided the City with no controlling legal precedent that requires the course of action you propose. From the City's perspective, it would be very easy to simply appeal the state law issue to the Circuit Court in Dane County, and Edgewood could refrain from any federal action for the time being.

Edgewood has indicated this is not its preferred course of action. We understand that. But it is a possible course of action. The Mayor decided to support the repeal of the Master Plan in order to avoid a RLUIPA claim against the City. Edgewood plans to file such a claim despite the Mayor's support of a plan to avoid it. Under these circumstances, we believe the burden is on Edgewood to justify why the Mayor should continue to support Edgewood's request when the purpose of the request is about to be obliterated.

We also are somewhat confused by Edgewood's position on this matter. Yesterday, you had a discussion with ACA John Strange, considering the procedures that would apply if the Mayor were to withdraw her sponsorship of the repeal of the Master Plan or if

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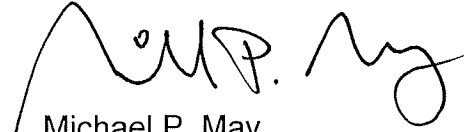
Edgewood decided not to terminate its Master Plan. Later yesterday, I had a discussion with two other Edgewood attorneys, Matt Lee and Katherine Rist, who expressed complete surprise that the Mayor was considering such action.

In our discussions, Edgewood gave only two reasons for pursuing a federal RLUIPA lawsuit combined with a ZBA appeal at this time. The one we think most accurate is the tactical decision that "Edgewood will not allow a Dane County Circuit Court to decide the case." The other was a vague statement that "We looked at this from every side and we can't go to state court." We think you can.

The City would be willing to stipulate in state court that the filing of a Circuit Court certiorari appeal is without prejudice to any RLUIPA claim that Edgewood may decide to bring.

As Edgewood is aware, it has the right to make a filing with the City's Planning Department to repeal its Master Plan, if it still desires to do so. The Mayor's decision to attempt to expedite your repeal does not prejudice Edgewood's right to file for such a repeal on its own, an option Edgewood declined to take earlier in this process.

Sincerely,



Michael P. May
City Attorney

CC: Mayor Rhodes-Conway
All Alders
ACA John Strange

May, Michael

From: Nathan J. Wautier <nwautier@reinhartlaw.com>
Sent: Monday, August 19, 2019 4:52 PM
To: Bottari, Mary
Cc: Crawley, Katie; May, Michael; 'MDLee@foley.com'; 'Elliott, Michael'; KRist@foley.com; Noel Sterett
Subject: Edgewood Appeal of Zoning Board Decision

Mary –

As we discussed in our meeting with the Mayor on August 7, Edgewood is required to file its appeal of the Zoning Board of Appeals' decision within 30 days of notice of the decision being filed in the zoning office. The notice was filed on July 22, which means that Edgewood must file its appeal no later than August 21, which is this Wednesday. Edgewood took to heart the Mayor's request that it examine whether it would be possible to file only the appeal of the ZBA decision, without simultaneously filing its RLUIPA, constitutional, and other claims. Edgewood performed an exhaustive analysis but unfortunately could not find a legal pathway for the Mayor's suggestion without compromising Edgewood's rights. Therefore, we wanted to alert you and the City Attorney's office that Edgewood will be filing a complaint in federal court early this week.

Edgewood is sensitive to the public perception of filing a lawsuit against the City for religious discrimination, especially after the City Attorney encouraged and the Mayor sponsored an ordinance calling for the withdrawal of Edgewood's Campus Master Plan. Edgewood does not intend to publicize its lawsuit, and if the press learns about it and seeks comment from Edgewood, Edgewood will make clear that it filed the lawsuit at this time solely to preserve its legal rights, that it has worked cooperatively with the Mayor and the City Attorney to advance the withdrawal ordinance, and that it urges the Common Council to pass the withdrawal ordinance in such a way that hopefully renders the lawsuit unnecessary. If the Mayor's office would like to coordinate messaging with Edgewood, we would be happy to discuss that with her representatives.

Nathan

Nathan J. Wautier

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