



# O'Meara Law Firm, LLC

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June 14, 2019

**VIA E-MAIL ONLY**

Attorney Kathleen McDaniel  
City of Manitowoc Common Council

Subject: Tax Incremental District No. 19

Dear Attorney McDaniel and Common Council Members,

I have reviewed the Amended Plan for Tax Increment District No. 19 (the "TID Plan") in the City of Manitowoc and the TIF Application submitted by Strand Adventures, LLC (the "TIF Application"). I have also reviewed the Development Agreement prepared by the City's Community Development Director and the Memo provided by Ehlers regarding the Strand Adventures, LLC Application both of which recommend a developer incentive in the maximum total amount of \$70,000. Based upon my review of the documents referenced above and the analysis that follows, it is my opinion that a development incentive in the amount of \$70,000 for Strand Adventures, LLC would be a permissible incentive under the terms of the TID Plan.

**TIF Application Analysis**

Under the terms of the TID Plan, "(t)he City may use District funds to provide incentives to developers and businesses to promote and stimulate new development." Traditionally, such incentives are agreed to either prior to or during the process of the construction and improvement of a property. Based upon the representations of Strand Adventures, LLC and my discussion with the City Attorney, the applicant did discuss incentives with the City prior to obtaining financing.

In analyzing the terms of any development incentive, the primary concerns are whether the development incentive is necessary for the completion and success of the development and whether the incentive would unduly enrich a developer. While the Strand Adventures, LLC development is past the construction stage of the development, the ongoing operational success of the development is important for maintaining the improvements made to the property, which will maintain the increased value and increment created by the development. In addition, ongoing success of developments within a district often has a cascade effect helping to attract further development.

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Ehlers has analyzed the proposed incentive and has provided the opinion that the proposed incentive would bring the proposed \$70,000 incentive is sufficient for the developer to achieve a commercially reasonable return on their investment, while not unduly enriching the developer.

**Conflict of Interest Issues**

In reviewing the TIF Application, I have noted that there are two potential conflicts of interest presented. I do not believe that there is a substantial conflict of interest presented by Curt Hall's employment by the DPI. I am more concerned with the conflict of interest presented by Mike Howe. Mr. Howe should recuse himself from all discussions on this issue to prevent a violation of the provisions Code of Ethics for Public Officials contained in Chapter 19 of the Wisconsin Statutes. I am more concerned about the provisions contained in Section 946.13, Wis. Stats., relating to private interests in public contracts. Section 946.13(1)(a) prohibits any public officer (i.e. alderperson) from negotiating any contract in which the alderperson has a direct or indirect private pecuniary interest if that alderperson is authorized or required by law to participate in the making of the contract. Section 946.13, Wis. Stats., is a strict liability statute and may not be remedied by recusal. If structured correctly, I do not think that the proposed development incentive would cause a violation of this statute, as the proposed annual incentive is currently projected to be \$7,000 or less per year. To further address this issue, I would recommend that a provision restricting the incentive to not more than \$15,000 per year be included in the Development Agreement.

Sincerely,

O'Meara Law Firm, LLC



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IAP/hmp