

RESOLUTION NO. 124

A RESOLUTION WAIVING CONFLICT OF INTEREST

WHEREAS, the Attorneys for the Village of Oconomowoc Lake, ARENZ, MOLTER, MACY & RIFFLE, S.C. and its attorneys ("Law Firm"), represent both the Village of Oconomowoc Lake ("Village"), and the Town of Summit, (hereinafter "Town"), as to the specific legal issues that the Village and Town refer to Law Firm; and

WHEREAS, the Town is seeking to incorporate as a village, and believes it would be aided in seeking incorporation if it would secure its borders through a border agreement with the Village; and

WHEREAS, the Village is generally willing to support the Town's efforts to incorporate as a village, provided that a border agreement could first be reached that would be acceptable to the Village; and

WHEREAS, the Law Firm has not been asked to offer any advice, and will offer no advice, as to the many policy issues involved in the proposed border agreement and possible incorporation of the Town. Among the issues that are not within the parameters of Law Firm's representation are: (a) Whether the Town and Village should enter a border agreement; (b) Whether the Town should incorporate as a village; (c) If there will be a border agreement, what the ultimate border should be which separates the Town from the Village; (d) Whether there should be any shared services or joint planning associated with any such border agreement, and if so what the terms of such arrangements should be; and (e) whether any additional policy issues should be decided and agreed upon as part of this border discussion and agreement and possible incorporation; and

WHEREAS, the Town and the Village have asked the Law Firm to represent both the Town and the Village, not for purposes of considering the foregoing policy issues, but for the limited purpose of being the scrivener and adviser to the clerk, which role is limited to:

- reducing any agreements that may be reached by the Town and the Village to an appropriate written form;
- attending meetings to ensure that proper procedures are followed;
- participating in discussions to clarify intentions,
- assisting, on request, with open meetings, public records and other procedural aspects of entering such an agreement

(the foregoing paragraph constitutes the "Limited Representation" as used herein); and

WHEREAS, Law Firm has advised both the Town and the Village that Law Firm cannot represent the Village and Town even in this Limited Representation, without the express written consent of both the Town and the Village, in part because of Supreme Court Rule 20:1.7, which provides that a lawyer shall not represent a client if the representation of that client will be directly adverse to another client unless the lawyer reasonably believes the representation will not adversely affect the relationship with either client and each client consents in writing, after consultation; and

WHEREAS, the Law Firm reasonably believes that representing both the Town and the Village in this Limited Representation will not be adverse to the Law Firm's relationship with either client; and

WHEREAS, Law Firm has consulted with the Village and advised the Village that the Village's interests could be materially impacted by entering a border agreement with the Town, and by the Town's possible incorporation as a village; in particular, Law Firm has advised Village of the following rights that could be lost if a border agreement would be entered and the Town would incorporate as a village, among others:

- a. Village would lose the ability to adopt and enforce extraterritorial zoning powers (except as the border agreement may allow);
- b. The Village would lose the ability to adopt and enforce extraterritorial plat approval jurisdiction (except as the border agreement may allow);
- c. The Village would lose the ability to annex land from the Town (except as the border agreement may allow); and

WHEREAS, the Law Firm has advised the Village that if the Village Board has legal questions about these issues or any other aspect of the border agreement discussions and/or the Town's incorporation discussions, the Village should obtain independent counsel to represent the Village regarding those questions, as advising the Village in such issues exceeds the Law Firm's Limited Representation; and

WHEREAS, the Law Firm is aware of a proposed amendment to Supreme Court Rule 20:1.7 which would allow a lawyer to represent a client who has a conflict of interest only if, among other requirements, the following is true:

- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

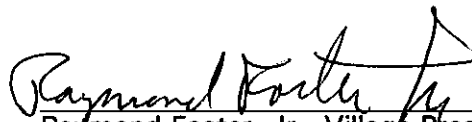
and;

WHEREAS, the Law Firm anticipates that one possible or likely mechanism for memorializing a border agreement, if a border agreement is reached, would involve one client suing the other client, stipulating to dismissal of the litigation, and entering a court ordered judgment that adopts the stipulated border agreement; and

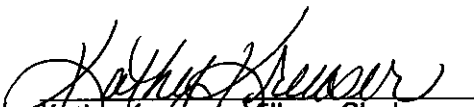
NOW, THEREFORE, BE IT RESOLVED, by the Village Board of the Village of Oconomowoc Lake, Waukesha County, Wisconsin, that the Village hereby consents to the Village Attorneys, ARENZ, MOLTER, MACY & RIFFLE, S.C., and its attorneys individually and collectively, representing the Village and the Town regarding the Limited Representation described herein.

Dated this 17th day of July, 2006.

VILLAGE OF OCONOMOWOC LAKE


Raymond Foster, Jr., Village President

ATTEST:


Kathy Kreuser, Village Clerk