

**REMLEY &**  
**SENSENBRENNER, S.C.**  
LAW OFFICES  
EXPERIENCED • TRUSTED • RESPECTED

JAMES L. CUMMINGS  
Also a Licensed C.P.A.  
JEFFREY W. HANES  
Also Licensed in Arizona  
WYON F. WIEGRATZ  
Also Licensed in Florida  
JAMES L. RUDD  
Also a Licensed C.P.A.  
MARK J. TYCZKOWSKI  
TIMOTHY B. ANDERSON  
CHRISTINE M. WANLESS  
RENEE A. READ

June 9, 2011

**VIA PERSONAL SERVICE:**

City of Menasha  
c/o Mayor Don Merkes and City Clerk Debbie Galeazzi  
140 Main Street  
Menasha, Wisconsin 54952

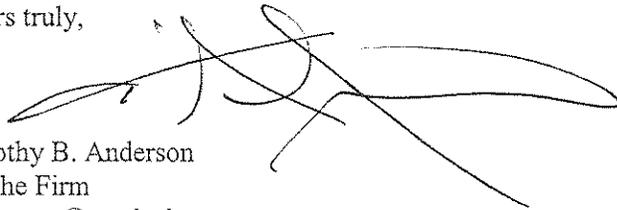
OF COUNSEL:  
ARTHUR P. REMLEY (1917-2007)  
F. JOSEPH SENSENBRENNER  
(1921-2009)  
JOHN D. STEIN (1925-1998)

Re: Lot No. 16 of Lake Park Villas

Dear Mayor Merkes and City Clerk Galeazzi:

Enclosed with this letter is Thomas G. Schanke's Notice of Circumstances of Claim against the City of Menasha pursuant to Wis. Stats. § 893.80(1)(a). This Notice of Circumstances of Claim is being given to *preserve* my client's rights and claims involving the City. Although we are giving this Notice of Circumstances of Claim to *preserve* Mr. Schanke's rights and claims, we are hopeful that we can further our dialogue with the City and its representatives in connection with this matter and that we will not need to proceed with submitting Mr. Schanke's Formal Claim pursuant to Wis. Stats. § 893.80(1)(b). To that end, I would again request that Mr. Schanke's concerns either be placed on the upcoming Agenda for the next Council meeting or that a special meeting be called at which Mr. Schanke and I can further address these matters with you, council members, and the City's attorney.

Yours truly,



Timothy B. Anderson  
For the Firm  
[tanderson@remleylaw.com](mailto:tanderson@remleylaw.com)

Enclosure(s)

cc: Thomas G. Schanke  
Attorney Pamela Captain (via email)  
Stan Sevenich (via email)  
Chris Klein (via email)  
Michael Taylor (via email)  
Mark Langdon (via email)  
Steve Krueger (via email)  
Dan Zelinski (via email)  
Jim Englebert (via email)  
Kevin Benner (via email)

RECEIVED  
JUN 10 2011  
CITY OF MENASHA  
BY dgf

JUN 10 2011

CITY OF MENASHA  
BY dg

**PERSONAL SERVICE**

City of Menasha  
c/o Mayor Don Merkes and City Clerk Debbie Galeazzi  
140 Main Street  
Menasha, Wisconsin 54952

**NOTICE OF CIRCUMSTANCES OF CLAIM**

This is a Notice of Circumstances of Claim by Thomas G. Schanke against the City of Menasha, Wisconsin, pursuant to Wis. Stats. §893.80(1)(a).

PLEASE TAKE NOTICE that the Claimant, Thomas G. Schanke, (the "Claimant") by his attorneys, Remley & Sensenbrenner, S.C., by Attorney Timothy B. Anderson, states that the following circumstances give rise to a claim against the City of Menasha (the "City"):

The Claimant is an individual who resides at W245 S6020 Red Wing Drive, Waukesha, Wisconsin 53189, and whose telephone number is (262) 542-3283.

Pursuant to a Vacant Land Offer to Purchase between the Claimant and the City, the Claimant purchased two parcels of land, identified as Property #1 and Property #2 in the Vacant Land Offer to Purchase, from the City. Property #1 is now known as, and will be referred to herein as, Lot #17 of Lake Park Villas, and Property #2 is now known as, and will be referred to herein as, Lot #16 of Lake Park Villas. Both Lot #16 and Lot #17 are part of the Lake Park Villas Plat in the City of Menasha, Winnebago County Wisconsin.

The closing for the sale of Lot #16 occurred in or about June of 2003. The Vacant Land Offer to Purchase, in paragraph 12, provides, in part, as follows:

"Buyer . . . shall, within five (5) years from the date of closing on [Lot #16], commence with the construction of improvements to [Lot #16]. . . . Commencement of construction of improvements shall be deemed to take place upon Buyer's submitting an application for a building permit for the construction of such improvements. If the application for said building permit is not submitted as set forth herein, Seller shall have the right to repurchase [Lot #16] for a total purchase price of \$165,000.00, plus Seller shall pay all costs associated with said purchase which shall include but not be limited to title insurance costs, transfer fee costs, and recording fees."

The Claimant and/or his assignee promptly developed Lot #17, constructing an assisted living facility, The Gardens of Fountain Way, in or about 2003. Since closing on Lot #16, the Claimant has paid real estate taxes on, and has incurred maintenance, carrying, development and other costs relating to, Lot #16.

In or about 2008, the Claimant met with representatives of the City, including Mayor Don Merkes and Community Development Director Greg Kiel, to discuss whether the City desired or intended to repurchase Lot #16 pursuant to the above-referenced paragraph of the

Vacant Land Offer to Purchase. The Claimant communicated that he desired to retain Lot #16 but that he wanted to delay development of Lot #16 to a date more than five (5) years from the closing on Lot #16 due to the economic climate and other factors. The Claimant was assured by Mayor Merkes and Mr. Kiel that it was acceptable to the City that the Claimant delay development of Lot #16, that the City had no intention of repurchasing Lot #16 from the Claimant, and further that the City, in fact, was not in a financial position to repurchase Lot #16.

The Claimant recently learned, for the first time, that the City is considering entering into, but has not yet duly entered into, a development agreement with a developer, The Ponds of Menasha, LLC ("The Ponds"), which agreement contemplates that the City will repurchase Lot #16 from the Claimant and then sell Lot #16 to The Ponds.

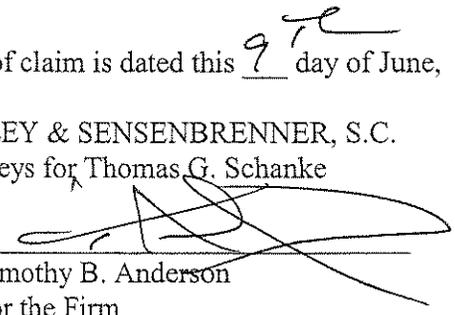
The Claimant does not intend to sell or transfer Lot #16 to the City and asserts that the City has no right to repurchase Lot #16 from Claimant. Specifically, the Claimant asserts that the City is foreclosed from purchasing Lot #16 from him for the reason that any repurchase right contained in the Vacant Land Offer to Purchase constitutes an impermissible restraint on alienation, the repurchase right, if any, fails to contain a material term (i.e. an expiration date), the repurchase right, if any, was extinguished or waived by the City subsequently giving a Warranty Deed to the Claimant for Lot #16, and/or the City's repurchase right, if any, is barred by the doctrine of promissory estoppel, laches and/or another legal or equitable theory. The foregoing is not necessarily an exhaustive list of the reasons why the City has no right to purchase Lot #16 from the Claimant.

In addition, were the City to repurchase Lot #16 for only \$165,000.00, plus costs associated with the City's repurchase, the Claimant will be damaged in an amount no less than the sums the Claimant has paid for real estate taxes on, and maintenance, carrying, development and other costs relating to, Lot #16, as well as the difference between the current fair market value of Lot #16 and the repurchase price previously contemplated to be paid by the City for Lot #16 (\$165,000.00). The Claimant's damages will be further itemized and set forth in Claimant's Claim pursuant Wis. Stats. §893.80(1)(b) when and if such Claim is later stated and submitted to the City.

Notwithstanding anything to the contrary, Thomas G. Schanke hereby expressly reserves all legal rights and remedies.

WHEREFORE, this notice of circumstances of claim is dated this 9<sup>th</sup> day of June, 2011.

REMLEY & SENSENBRENNER, S.C.  
Attorneys for Thomas G. Schanke

By:   
Timothy B. Anderson

For the Firm  
State Bar No.: 1035959

219 East Wisconsin Avenue  
Neenah, WI 54956  
Telephone: 920-725-2601  
Facsimile: 920-725-5814  
Email: [tanderson@remleylaw.com](mailto:tanderson@remleylaw.com)