

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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SHARON HUMMEL individually and on	)	
behalf of SAVE THE GREEN, INC.	)	NO. _____
Plaintiffs,	)	
	)	
v.	)	
	)	<b>COMPLAINT AND</b>
The DES MOINES INDEPENDENT	)	<b>JURY DEMAND</b>
COMMUNITY SCHOOL DISTRICT	)	
and the BOARD OF DIRECTORS OF THE	)	
DES MOINES INDEPENDENT	)	
COMMUNITY SCHOOL DISTRICT and	)	
MARC WARD, GINNY STRONG, CONNIE	)	
BOESEN, TERE E CALDWELL-JOHNSON,	)	
DICK MURPHY, PHIL ROEDER, JEANETTE	)	
WOODS, JOE JONGEWAARD, NEIL	)	
WESTIN, ANDREA HAUER, KATHY	)	
KAHOUN, DUANE VAN HEMERT, JAMIE	)	
WORNSON, and NANCY SEBRING,	)	
individually,	)	
Defendants.	)	

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COMES NOW the above-named Plaintiffs and for cause of action states:

1. That the Plaintiff Sharon Hummel is a citizen of the State of Iowa.
2. That the Plaintiff Save The Green, Inc. is a corporation organized and existing under the laws of Iowa.
3. That the Defendant the Des Moines Independent Community School District is a school corporation organized and existing under the laws of Iowa.

**COUNT I - VIOLATIONS OF THE IOWA OPEN MEETINGS LAW**

4. That the Defendant, The Board of Directors of the Des Moines Independent Community School District (hereinafter "School Board"), is a governmental body as defined by Iowa Code § 21.2 and is subject to the Iowa Open Meetings Law (Iowa Code Chapter 21).

5. That this Court has jurisdiction over this matter pursuant to Iowa Code § 21.6(1) (2005), which provides, in relevant part, as follows:

The remedies provided by this section against state governmental bodies shall be in addition to those provided by section 17A.19. Any aggrieved person, taxpayer to, or citizen of, the state of Iowa, or the attorney general or county attorney, may seek judicial enforcement of the requirements of this chapter. Suits to enforce this chapter shall be brought in the district court for the county in which the governmental body has its principal place of business.

6. That Iowa Code § 21.4 (2005) provides, in relevant part, as follows:

PUBLIC NOTICE.

1. A governmental body, except township trustees, shall give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

2. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given.

7. That the School Board has adopted policy substantially similar to the Iowa Open Meetings Law under Code § 240 of the Des Moines Independent Community School District.

8. That this Court has authority to grant the following remedies to plaintiffs pursuant to Iowa Code § 21.6(3) (2005), which provides, in relevant part, as follows:

Upon a finding by a preponderance of the evidence that a governmental body has violated any provision of this chapter, a court:

- a. Shall assess each member of the governmental body who participated in its violation damages in the amount of not more than five hundred dollars nor less than one hundred dollars. These damages shall be paid by the court imposing it to the state of Iowa, if the body in question is a state governmental body, or to the local government involved if the body in question is a local governmental body...

b. Shall order the payment of all costs and reasonable attorney fees in the trial and appellate courts to any party successfully establishing a violation of this chapter. The costs and fees shall be paid by those members of the governmental body who are assessed damages under paragraph "a"...

c. Shall void any action taken in violation of this chapter, if the suit for enforcement of this chapter is brought within six months of the violation and the court finds under the facts of the particular case that the public interest in the enforcement of the policy of this chapter outweighs the public interest in sustaining the validity of the action taken in the closed session. . .

e. May issue a mandatory injunction punishable by civil contempt ordering the members of the offending governmental body to refrain for one year from any future violations of this chapter.

9. That the Defendants Marc Ward, Ginny Strong, Connie Boesen, Teree Caldwell-Johnson, Dick Murphy, Phil Roeder, and Jeanette Woods, are individual members of the governmental body (hereinafter "Members of the Board").
10. That on May 9, 2006 in a Special School Board Meeting, the School Board specifically authorized a seven member Review Committee (hereinafter "Review Committee") to consider development proposals regarding the Rice Field property owned by the School District.
11. That the Review Committee consisted of the following persons who are named as Defendants in the instant suit: Joe Jongewaard, Neil Westin, Andrea Hauer, Kathy Kahoun, Duane Van Hemert, Jamie Wornson.
12. That the purpose of the Review Committee was to consider proposals for the purchase and development of the Rice Field property owned by the Des Moines Independent Community School District (hereinafter "School District").
13. That the Review Committee met on one or more occasions regarding the Rice Field property on or between May 9, 2006 and October 17, 2006.

14. That one or more of the aforesaid meetings of the Review Committee which occurred on or between May 9, 2006 and October 17, 2006 were not publicly noticed as required by the Iowa Open Meetings Law.
15. That one or more of the aforesaid meetings of the Review Committee which occurred on or between May 9, 2006 and October 17, 2006 were not open to the public as required by the Iowa Open Meetings Law.
16. That one or more of the aforesaid meetings of the Review Committee which occurred on or between May 9, 2006 and October 17, 2006 did not comply with the terms of the Iowa Open Meetings Law.
17. That the Review Committee did present a proposal regarding the Rice Field property to the Superintendent of the School District, Nancy Sebring.
18. That the Superintendent of the School District, Nancy Sebring did deliver to the School Board the proposal of the Review Committee regarding the sale of the Rice Field property.
19. That the School Board ultimately voted to accept the proposal regarding the Rice Field property which was recommended by Superintendent and the Review Committee.
20. That on October 20, 2006, the School Board caused to be published a notice of Public Hearing concerning the sale of real estate located at 3001 Beaver Avenue, Des Moines, Iowa with a legal description of “The West one fourth of Lot 5 of the Official Plat of the South half of the Northwest Quarter of Section 29 Township 79 North, Range 24 West of the 5th P.M., Polk County, Iowa, and Lot C Ashby Manor, Polk County, Iowa” (hereinafter “Rice Field”) owned by the Des Moines Independent Community School District (hereinafter “School District”) in the *Des Moines Register* of Des Moines, Iowa.

21. That the aforesaid public notice of October 20, 2006 set forth the time, date and location for the Public Hearing as “the 31st Day of October, 2006, at 6:00 o’clock P.M. central time, in the Board Room on the first floor of Central Campus, 1800 Grand Avenue, Des Moines, Iowa”.
22. That on October 31, 2006, the School Board convened a Regular Meeting of the School Board at approximately 6:00 P.M at Hiatt Middle School, 1214 E. 15<sup>th</sup> Street, Des Moines, Iowa.
23. That at the meeting of October 31, 2006, the School Board considered and subsequently came to a decision on the sale of the Rice Field property.
24. That at the meeting of October 31, 2006, the School Board voted to sell the Rice Field property owned by the School District.
25. That members of the Board Marc Ward, Ginny Strong, Teree Caldwell-Johnson, Dick Murphy, Phil Roeder, Jeanette Woods, and Nancy Sebring participated in the October 31, 2006 vote to sell the Rice Field property with each of the aforementioned individuals voting in the affirmative.
26. That at its October 31, 2006 meeting the School Board also considered numerous items of business as contained in the agenda and memorialized in the minutes of that meeting including but not limited to the expenditures of School District funds, award of contracts on bid, personnel recommendations, compensation items, and contracts for services.
27. That subsequent to the October 31, 2006 meeting of the School Board, the School Board caused to be published minutes of said meeting.

28. That the published minutes of October 31, 2006 meeting of the School Board listed the place of meeting as “Boardroom—1800 Grand Avenue”.
29. That on November 14, 2006, at a Regular School Board Meeting, Board member and Defendant Phil Roeder moved to approve the minutes of the October 31, 2006 meeting.
30. That on November 14, 2006, at a Regular School Board Meeting, Board member and Defendant Connie Boesen seconded a motion to approve the minutes of the October 31, 2006 meeting.
31. That on November 14, 2006, at a Regular School Board Meeting, Board members and Defendants Marc Ward, Ginny Strong, Connie Boesen, Teree Caldwell-Johnson, Dick Murphy, and Phil Roeder, voted to approve the minutes of the October 31, 2006, thereby approving the minutes of the October 31, 2006 meeting.
32. That when the School Board approved the minutes of its October 31, 2006 meeting on November 14, 2006, said minutes erroneously listed the location of the October 31, 2006 meeting as “Boardroom—1800 Grand Avenue”.
33. That in conducting the closed session, the Defendants violated the Iowa Open Meetings Law in the following respects:
  - a. In failing to give proper notice to the public of the meeting;
  - b. In discussing matters at the session which are not permitted by the statute;
  - c. In taking action at the session in contravention of the law;
  - d. In voting to approve the minutes of a Public Meeting which contained false information.

34. That on or about October 31, 2006, the School District entered into a written contract to sell Rice Field to Rice Development Partners.

**COUNT II - VIOLATION OF IOWA CODE § 297.22**

35. Plaintiffs re-allege paragraphs 1-33 and incorporates them herein as set forth in full.

36. That Iowa Code § 297.22 (2005), provides, in relevant part, as follows:

“Before the board of directors may sell, lease for a period in excess of one year, or dispose of any property belonging to the school, the board shall hold a public hearing on the proposal. The board shall set forth its proposal in a resolution and shall publish notice of the time and the place of the public hearing on the resolution. The notice shall also describe the property. A locally known address for real property may be substituted for a legal description of real property contained in the resolution. Notice of the time and place of the public hearing shall be published at least once not less than ten days but not more than twenty days prior to the date of the hearing in a newspaper of general circulation in the district. After the public hearing, the board may make a final determination on the proposal contained in the resolution.”

37. That the School Board has adopted policy substantially similar to Iowa Code § 297.22 (2005) under Code § 735 of the Des Moines Independent Community School District.

38. That in entering into an Agreement to sell the Rice Field property subsequent to the School Board’s meeting of October 31, 2006, the Defendants violated Iowa Code § 297.22 in the following respects:

- a. In failing to provide the public with proper notice of a hearing before the sale of property owned by a school district as required by the statute;
- b. In failing to hold a public hearing before the sale of property owned by a school district as required by the statute;
- c. In making a final determination to dispose of property prior to a public hearing as set forth in the statute.

WHEREFORE, Plaintiff prays that the Court assess against each individual Defendant damages of up to \$500; that the Court order the payment of all costs and reasonable attorney fees to Plaintiff by either the individual Defendants or the governmental body; that the Court void the actions taken at the closed sessions; that the Court enter an injunction, punishable by civil contempt, ordering the Defendants to refrain from further violations of the law; and for such other relief as the Court may deem appropriate.

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