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# Column: Marking a milestone, and a call for answers

*Shereen Siewert*

8–9 minutes





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By Keene Winters

Happy anniversary to the City Executive Committee! A year ago, we were told that it would be the solution to everything. It was the primary initiative of the new council session. As we mark this one-year milestone, it would be a good time to evaluate its track record.

Has the committee accomplished anything? Well, it has met once, ruminated on a strategic plan and adjourned. And, while consecrating the latest version of a strategic plan for its place on the shelf may sound like a lofty endeavor, it clearly does not fill any potholes.

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Moreover, there are still lingering questions about the legality of construct. Had it actually attempted to do something we would have another set of problems as people challenged whether the a lawful process was followed. In fact, if someone were to write a legal complaint about the Executive Committee right now, it might look a bit like this:

## DRAFT COMPLAINT

**Summary:** (1) The City of Wausau, its mayor and common council, have created a seven-member subgroup of the council that effectively excludes four of eleven council members from participating in the full deliberations of council matters in violation of Wisconsin Statutes 19.89. (2) The council and the mayor have endowed this subgroup with delegated powers (a) to hire consultants and (b) to engage in negotiations on behalf of the city, with no statutory authority to give away powers that belong to the common council. The subgroup, known as the Executive Committee, should, be dissolved.

## Key Statutory References

**Wisconsin Statute 19.82 Definitions.** As used in this subchapter:

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“(2) ‘Meetings’ mean the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the exercising the responsibilities, authority, power or duties delegated to or vested in the body . . .”

**Wisconsin Statute 19.89 Exclusion of members.** “No duly

lected or appointed member of a governmental body may be excluded from any meeting of such body. Unless the rules of a governmental body provide to the contrary, no member of the body may be excluded from any meeting of a subunit of that governmental body.”

## **Complaint**

1. On April 26, 2022, the Mayor of Wausau recommended and the Wausau Common Council approved the creation of a seven-member subgroup of the council called the Executive Committee. (See Exhibit 1 – Minutes of the April 26, 2022, Common Council Meeting and Exhibit 2 – Council Resolution).
2. The new seven-member subgroup has met, and members of the council were excluded from its deliberations. (See Exhibit 3 – Agenda for the Executive Committee).
3. The subgroup of council members was given delegated authority from the council to (a) hire consultants and (b) engage in negotiations on behalf of the city. (See Exhibit 4 – City Attorney’s Analysis Memo). Throughout the *Wisconsin Statutes*, committees are defined as work groups or study groups and are distinct from commissions which can have limited powers. No statutory authority exists for the common council to bestow powers to a committee or for a committee to exercise such delegated powers.
4. The new committee will have one other power that no other city committee has except for the Committee of the Whole in which all members participate. This seven-member subgroup has the votes to impose its will on the council itself, potentially rendering subsequent debate meaningless once the subgroup has agreed on a course of action.

5. Because the seven-member subgroup has an inherent quorum of the council, its meetings are *de facto* meetings of the Wausau Common Council itself based on the definition of meetings in Wisconsin Statutes 19.82.
6. Wisconsin Statute 19.89 forbids excluding any duly elected official from meetings of the body that he or she was elected to.
7. An interpretation of these statutes that would (a) permit the majority of members of a body to create a subgroup of themselves, (b) endow that subgroup with delegated powers, and (c) allow that subgroup to prevent members in the minority from any meaningful participation in its deliberations or (d) relegate them to mere public observers would effectively render the plain meaning of Wisconsin Statutes 19.82 meaningless.
8. No legitimate reason for the formation of this subgroup exists. The Wausau Common Council has seven standing committees in its Council Rules. They are: (a) the Committee of the Whole, (b) the Public Health & Safety Committee, (c) the Economic Development Committee, (d) the Finance Committee, (e) the Capital Improvements and Streets Maintenance Committee, (f) the Parks & Recreation Committee and (g) the Human Resources Committee. There is no discernable lack of issue study or work groups at the council's disposal. In addition, the Wausau Common Council is available for special meetings. There is no case to be made that time-sensitive issues would languish under pre-existing structures. The committee serves no purpose other than to exclude certain members from key parts of the debate.

### **Prayer for Relief**

Subchapter V of Chapter 19 of the *Wisconsin Statutes* declares that fair play and openness are critical to a functioning representative democracy. Devices that would result in the removing business from the public view or in excluding duly elected officials from fully representing their constituents must meet a high bar of proof that they exist to solely to promote the public good—like the specific exceptions that allow for closed sessions—to be allowed. The authors of the Wausau Common Council Executive Committee can offer no such compelling reason why this exclusionary quorum is necessary to advance the public good. Therefore, it is requested that the Wausau Common Council be ordered to dissolve the Executive Committee within 30 days and (1) return the work and study functions of the Executive Committee to the Committee of the Whole and (2) return any delegated powers back to the Common Council.

### **End of Draft Complaint**

*See exhibits, below*

Clearly, there was no value in writing this committee into the municipal code. At best, it was a waste of time. More importantly, it may very well be an unlawful construct whose every decision could end in legal wrangling. Why risk keeping it around?

Understandably, not every idea is going to be a home run. And, that is okay. The important thing for a mayor or any other leader is that he or she show the self-awareness and the integrity to re-evaluate ideas honestly and make course corrections as needed. Either the Executive Committee should be repealed, or our mayor should explain—hopefully in a op-ed—what it is doing that is valuable.

As a declared candidate for re-election, Mayor Rosenberg owes us an explanation on this and many other things. But, let's start with a simple subject before we move on to rising taxes, the doubling of public debt, squandering the federal COVID relief dollars and those pesky potholes!

*Keene Winters is a Wausau financial advisor who served two terms on the Wausau City Council from April 2012 to April 2016.*



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