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September 13, 2005

Ms. Cherie Rodgers  
Spokane City Council  
4803 W. Woodgrove Court  
Spokane, WA 99208

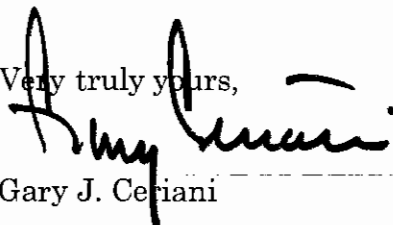
Re: River Park Square

Dear Ms. Rodgers:

Pursuant to your written request that I do so, I am sending you a copy of my email dated November 29, 2004. I understand, as we discussed at some length prior to our previous telephone conversation, that you are seeking this information from me in your official capacity as a member of the City Council and that it is information you have asked me to provide to you to assist you in fulfilling what you perceive to be your official duties.

I again remind you that this document, like the information I provided to you at your request during our earlier telephone conversation, is information that is subject to various privileges (attorney-client and attorney work-product for example). Any disclosure of the information to persons not affiliated with the City of Spokane could result in a waiver of any applicable privileges. While it is not my place to tell you what you should, or should not, do with the information, I do urge you to carefully consider, and seek appropriate advice from either the City Attorney or your personal counsel concerning, the potential ramifications of any waiver of the privilege.

Very truly yours,



Gary J. Ceriani

GJC  
enclosure

**Gary J. Ceriani**

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**From:** Gary J. Ceriani  
**Sent:** Monday, November 29, 2004 3:41 PM  
**To:** 'Lauri Siddoway'  
**Cc:** Valeri S. Pappas; Michael P. Cillo  
**Subject:** RE: RPS developer

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Lauri, I just saw these emails a few moments ago so I probably haven't given the concept the thought it deserves BUT, having said that, my initial reaction is that just dismissing the claims against the developers makes no sense to me. I don't understand why, when confronted with the threat to file BK because the City is asserting claims, the City would respond by just dismissing those claims. From both a trial and a PR standpoint, isn't the City better off calling Betsy's bet? If it's a bluff, we lose nothing. Even if it is not and she actually files BK, what have you lost that you wouldn't have just voluntarily given up if you just dismiss the claims? If nothing else, the City would get the satisfaction of Betsy's having publicly, and as a matter of indisputable record, used the BK process to renege on what everyone knows is a Cowles obligation. I suspect it's too late to teach her any humility but the historical fact is ammunition that could be used the next time the Cowles come to the city acting as if the City coffers and bonding capacity are their personal pocketbook.

Why you think we'll lose the trial date if the developers go BK (or that we won't if the landscape of the litigation is changed with a voluntary dismissal of the claims)? If Betsy files BK, the claims against the Developers will obviously be stayed and we know the other Defendants will seek a continuance based upon the "need" to evaluate the impact of the BK ("blah, blah and blah") but I don't think that means the judge is automatically going to kick the trial. Moreover, if we do keep the trial, I'd much rather you be able to stand in front of a jury and explain the developers aren't around because they went BK as opposed to having Perkins and Prudential rant about how the developers aren't around because the City, after squawking for years, just cut them loose. If I were Karl or Rudy, I'd tee you up on opening statement with something like "For years, ladies and gentlemen, the City and Ms. Siddoway have made all manner of accusations against the Developers [insert here power point presentation of all the things the City has said about the Developers in pleadings and at hearings]. You're probably surprised that you can look around this courtroom today and you don't see the Developers here. Know why? After years and years of accusing the developers of all this wrongdoing, the City dismissed, withdrew, any claims against the Developers. Know why? Because the City recognized that after three years of discovery, thousands and thousands of pages of documents and depositions, the City has no evidence to prove that anyone other than the City itself did a single thing wrong. Why else would they voluntarily just dismiss the claims against the Developers. And you'll see how my client had much less to do with this deal than did the Developers against whom the City has now conceded that it has no claim". If the Developers sit back and don't file BK because you have dismissed the claims, how do you respond? I have always felt that whenever someone attempts to use BK as leverage, the only response is to tell them to file it and then we'll talk to the trustee

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or the BK court but we are not going to negotiate with a BK gun pointed at us.

If the rationale for dismissing the Developers is the desire to keep the trial date, don't we run the same risk of losing the trial date if you just dismiss the claims against the developers? Aren't the NSD's going to say the entire landscape has changed and they need time to adjust (i.e., "we were relying on counsel for the developers to handle key parts of the trial and then the City, on the very eve of trial, just dismissed the claims they have been pursuing for year so we need time to properly prepare"). Which brings up a whole separate subject. This judge has expressed some concern (to be mild) about certain of the City's past positions regarding the Developers. If the developers go BK, there is a gain, or at least no loss, with the Judge. If the City just voluntarily dismisses the claims, it invites judicial suspicion that everything you've been arguing for years is just so much posturing.

From a PR standpoint (and, obviously, that's really in your arena) I wonder what the PR is going to be if you dismiss the claims and then the Developers don't file BK. My personal view is that the City should stand firm on a negotiating position that makes fiscal sense. If, via a "settlement", Betsy comes out better than if we went to trial and lost everything, what's the point? If Betsy files BK, so be it and we can re-focus the case accordingly. Incidentally, my re-theme on the case was in the context of the Developers not being there due to a settlement. I don't think it works anywhere near as well if the City just dismisses the Developers—it's the difference between "they're not here because they paid" and "they're not here because everything they did was OK". I think just dismissing the Developers increases the risk that the City loses everything because the inference is that if the Developers didn't do anything wrong, then nobody did anything wrong.

One final comment for whatever its worth. You have basically a month before trial. I think you should give all the Defendants a deadline of some kind—no later than next week—beyond which you and Cillo will focus solely and exclusively on trial preparation. Let someone other than the two of you (Mike is the obvious choice) handle all settlement discussions so the two of you can stay focused on the trial. Then go try the damn thing.

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