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Date: July 17, 2015

To: Members of the Committee on Judiciary, Safety
and General Services

cc: All Other Supervisors
Shannin Brown
Erica Hayden
Interested Parties

From: Paul Bargren *PB*
Corporation Counsel

Re: "Land that is zoned as a park"

At yesterday's meeting, your honorable committee asked for my views on the extent of powers delegated to the Executive in Act 55 relating to "land that is zoned as a park."

New Wis. Stat. § 59.17(2)(b)3, enacted in Act 55 and effective July 14, 2015, delegates to the Executive the ability to "[e]xercise the authority under [Wis. Stat. §] 59.52(6) that would otherwise be exercised by [the] county board, except that the county board may continue to exercise the authority under s. 59.52(6) with regard to land that is zoned as a park..."¹

Section 59.52(6), in turn, contains a comprehensive list of powers relating to county land, including the power to acquire, sell, lease, rent, sue over and develop the property and the power to construct, operate and maintain buildings on the property. The committee asked whether the Executive would now have the ability to exercise the § 59.52(6) powers such as leasing or constructing buildings on land that is zoned as a park.

In my opinion, as to land that is zoned as a park, the powers described in § 59.52(6) are *not* delegated to the Executive by the new provision. Therefore, existing procedures continue to apply as to land that is zoned as a park. For example, if there is a proposal to lease out an operation at County property zoned as a park, it will be up to the Board to give the same review and consideration to the lease that it does now, subject to the normal Executive signature or veto/override process.

This reading of the statute is consistent with the legal concept of land as comprising a "bundle of rights" that include not just basic ownership but the additional rights to control use and disposal of the land. New § 59.17(2)(b)3 states that the "county board may continue to exercise the

¹ The Executive's authority also extends to the Transit Center, even though it is zoned as parkland. *Id.* Act 55 is the enacted version of Senate Bill 21, as amended. *See* my memo of July 8, 2015.

authority under s. 59.52(6) with regard to **land** that is zoned as a park...” (emphasis added). In the law of property, authority over “land” includes authority over all rights appurtenant to the land.

As our Supreme Court has stated:

Regardless of how [real] property is defined, certain rights are traditionally associated with property ownership. These are known as the “bundle of rights” and commonly include the right “to possess, use and dispose” of the property, among other rights. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435–36, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982) (citation and internal quotation marks omitted); *see also Mitchell Aero, Inc. v. City of Milwaukee*, 42 Wis.2d 656, 662, 168 N.W.2d 183 (1969) (“Ownership is often referred to in legal philosophy as a bundle of sticks or rights.”); Denise R. Johnson, *Reflections on the Bundle of Rights*, 32 Vt. L.Rev. 247, 253 (2007) (listing 11 incidents of full ownership in property, including inter alia, the right to possess, the right to use, the right to manage, the right to the income, the right to capital, and the right to alienate); A.M. Honoré, *Ownership, in Oxford Essays in Jurisprudence*, 107, 112–24 (A.G. Guest ed., 1961).

Rock-Koshkonong Lake Dist. v. State Dep't of Natural Res., 2013 WI 74, ¶ 129, 350 Wis. 2d 45, 102, 833 N.W.2d 800, 829

The definition of “land” in the state’s assessments statutes, while not directly controlling, is also instructive:

(1) “Real property”, “real estate,” and “**land**”, when used in chs. 70 to 76, 78, and 79, include not only the land itself but all buildings and improvements thereon, and all fixtures and rights and privileges appertaining thereto...

Wis. Stat. § 70.03

In sum, given a) the plain language of the statute, b) the traditional legal concept of “land” as including the full panoply of rights, and c) the clear intent of the statute not to alter current procedures regarding land that is zoned as a park, the new powers delegated to the Executive in § 59.17(2)(b)3 do not extend beyond County land that is not zoned as a park and the Transit Center. As in the past, it is the Board that continues to exercise the § 59.52(6) powers over land that is zoned as a park (with any Board action subject to Executive review or veto).

This memo is public and may be distributed as you see fit.