

COUNTY OF MILWAUKEE
INTEROFFICE COMMUNICATION

DATE: April 2, 2015

TO: Supervisor Marina Dimitrijevic, Chairwoman, County Board of Supervisors

FROM: Emily Van Deraa, Associate Project Manager, DAS-Economic
Development

SUBJECT: Supplemental Report - Park East Memorandum of Understanding

REQUEST

Authorization to enter into a Memorandum of Understanding with the Wisconsin Department of Transportation and the United States Department of Transportation Federal Highway Administration to permit the sale of Park East land pursuant to the existing RFP, consistent with the Park East Redevelopment Compact.

BACKGROUND

When Milwaukee County assumed jurisdiction of the former Park East freeway lands in 2002 from the Wisconsin Department of Transportation (WisDOT) it was tasked with selling the land for redevelopment purposes with WisDOT oversight, pursuant to a Land Disposition Agreement approved by County Board Resolution File No. 01-749. The Land Disposition Agreement was signed by the County, WisDOT and the City of Milwaukee. Though it referenced the United States Department of Transportation's Federal Highway Administration (FHWA), FHWA was not a signatory.

The 2002 Land Disposition Agreement requires the County, as owner of the remnant parcels, to order appraisals to be reviewed and approved by WisDOT. However, it also explicitly states, "The appraised value shall be used to establish the asking price of the remnant parcels to be sold, but the parcels may be sold at a price other than the appraised value" (2002 Land Disposition Agreement, pg. 3). When the County was preparing to issue its rolling RFP for all Park East lands on the west side of the Milwaukee River, WisDOT uncovered an ambiguity in the 2002 Land Disposition Agreement: namely, that because federal monies were used to fund a portion of the initial land acquisition for freeway purposes, 23 U.S.C. § 156(a) and 23 C.F.R. § 710.403(d) requires the surplus freeway lands to be sold at fair market value, unless there is an exemption granted by the Federal Highway Administration (FHWA). As these U.S. Code provisions were not cited in the 2002 Land Disposition Agreement, the County was unaware of their applicability. Further, not having such a federal exemption, and thus the ability to sell the lands to any party at less than fair market value, directly conflicted with one of Milwaukee County's strongest policy statements: the Park East Redevelopment Compact (PERC), which states in part, "Milwaukee County should not just sell the land for the highest price offered but rather should seek development proposals which will provide the greatest future benefit in jobs, tax base and image for the community, as well as, a fair price" (PERC, lines 63-66).

Since the discovery of the ambiguity, WisDOT and the County have been working with FHWA to have reach an agreement to formalize the grant of such an exemption on the basis of a public interest for economic purposes. Discussions between all parties began in March of 2014, and resulted in the County and WisDOT drafting letters to FHWA formally requesting such exemption on the basis of spurring economic development in the City of Milwaukee. FHWA sent its letter of concurrence in July of 2014, on the condition that the parties enter into a Memorandum of Understanding to memorialize the disposition process and the circumstances surrounding why the exemption was granted. (See attached letters from April-July, 2014). Nonetheless, both FHWA and WisDOT were aware of the County's desire to launch the Park East Marketing Plan and rolling RFP in June of 2014, had reviewed and approved the terms of the RFP prior to issuance, and acknowledged at the time that the formal exemption and MOU could come later.

At the time of the original request, only Park East parcels on the west side of the Milwaukee River were available for redevelopment, as Blocks 6E/12 and 2E/22 were both under contract. As circumstances changed, both parcels were worked into the MOU. WisDOT and FHWA were aware of the changes to the proposal on Block 6E/12, which resulted in the assignment of the option to Milwaukee River Partners I, LLC and a reduction of purchase price as a result of environmental contamination, and agreed that the complex relationship of land ownership and parcel size on that block warranted special treatment as compared to other Park East parcels. Section (2)(c)(i) of the MOU acknowledges this. Details of the Milwaukee River Partners I, LLC development and the terms thereof with respect to DBE participation, residential hiring, prevailing wage and workforce development were approved by WisDOT even before final terms for the MOU were agreed upon.

Similarly, though the terms of the MOU had been substantially worked out, FHWA determined it should have a second letter officially requesting the addition of Blocks 6E/12 and 2E/22 and clarifying some errors found in the original concurrence letter from July of 2014. WisDOT was able to quickly accommodate that request with its March 2015 letter. (See attached letters from March-April, 2015). As such, the MOU applies to all west side Park East Parcels (Blocks 1W/1, 2W/2, 3W/4, 4W/7), as well as the two remaining east side blocks under County ownership: Blocks 6E/12 and 2E/22.¹ (See Exhibit A to MOU)

The attached Memorandum of Understanding (MOU) represents the final agreement of the parties with respect to the terms and conditions under which a public interest exemption was granted. Such terms and conditions include:

¹ The MOU does not impact the prior Park East Land sales on Block 1E to Wangard and Blocks 3E/4E/5E to MSOE. Both sales were at appraised value, though the MSOE sale did provide environmental credits. The 2002 Land Disposition Agreement does permit "environmental contamination discovered on any remnant parcel [to] be considered in the determination of the estimated market value concluded in the appraisal of the remnant parcel." (page 3). As is listed in Exhibit A to the MOU, these sales are explicitly excluded from the MOU.

- Utilization of the existing Rolling RFP, which considers not just purchase price when evaluating development proposals, but also the benefits to the community in the form of new permanent jobs, increased tax base, participation goals for DBE firms and Milwaukee County residents during construction, and workforce training opportunities. The use of a competitive RFP with scoring categories relating to community benefits are directly consistent with Sections 1, 4, 5, 6 and 7 of the PERC (PERC, lines 61-70; 82-119). The scoring categories can be found on pages 20-22 of the RFP (See www.parkeastmke.com).
- Seeking approval for any changes to the community benefits sections of the Rolling RFP from FHWA and WisDOT. The FHWA exemption permitting the sale of Park East parcels at less than fair market value was based on the terms and scoring categories of the current Park East RFP with respect to the community benefits noted above. As such, any substantive changes thereto would warrant a reevaluation by FHWA and WisDOT, to ensure the proposed changes are consistent with the purposes for which the exemption was granted: spurring economic development.
- Ensuring WisDOT monitors parcel sales by having a WisDOT representative on the RFP Review Panel. The 2002 Land Disposition Agreement did specify WisDOT oversight of parcel sales in the Park East. Previously, such oversight was the review and approval of appraisals. With the FHWA exemption permitting a sale at less than fair market value, including a WisDOT representative on the RFP Review Committee will provide additional oversight to ensure community benefits set forth in the RFP are properly included selected proposal.

This MOU in no way invalidates the 2002 Land Disposition Agreement nor does it take any authority away from the County to give it to WisDOT or FHWA. WisDOT will not have the authority to unilaterally accept or reject proposals received by the County, as their representative will be but one reviewer on a panel of five. However, if the County does not approve the MOU, FHWA will be able to enforce the federal regulations that require the parcels to be sold only for the appraised value without giving consideration to the policy initiatives set forth in the PERC. Such a result would have a negative impact on the current project for Block 6E/12 and any future RFP responses which propose a purchase price below the appraised value.

The MOU also leaves unchanged the percentage of proceeds each party is entitled to and the priority of such payments as set forth on pages 1 and 2 of the 2002 Land Disposition Agreement.² Any sales proceeds received from future Park East land sales, regardless of whether they were sold at or below fair market value, will be split

² NOTE: The County does have a right to FHWA's portion of the proceeds up to \$5.2 million, as a credit for paying to demolish the Courthouse Annex during the Marquette Interchange reconstruction. To date the County has received approximately \$2.2 million. However, if total proceeds from land sales are less than \$5.2, County will not be entitled to further reimbursement from WisDOT or FHWA, as set forth in paragraph (3)(a) of the MOU.

according to each entity's respective percentage involvement in the original purchase of the land.

Corporation Counsel was consulted consistently throughout negotiations with WisDOT and FHWA and reviewed all drafts of the MOU prior to finalization.

FREQUENTLY ASKED QUESTIONS

1. How could this MOU relate to a submittal on the Park East land by Bucks Ownership or anyone else?
As stated above, this MOU is necessary for the existing RFP for all remaining Park East parcels to be consistent with the Park East Redevelopment Compact (PERC). The PERC requires the consideration of other factors in addition to land costs, which is not allowed by the FHWA without an exemption. The land remaining in the Park East includes west side parcels (1W/1, 2W/2, 3W/4, 4W/7) going forward, as well as submittals for the east side parcels Block 2E/22 and 6E/12 (should the current proposal on Block 6E/12 not move forward). The west side parcels are closest to the existing arena and would most likely receive RFPs that are related to any arena redevelopment, including any submittal by Bucks Ownership.
2. What authority does this MOU take away from the County and give to the State or FHWA?
As stated above, the MOU does not take any authority from the County with respect to sale of the Park East lands. In fact, it gives the County more authority – the authority to consider criteria other than land cost and to sell the land at less than fair market value by exempting it from a federal regulation to the contrary. While it does provide additional oversight to WisDOT, such oversight is one of five seats on the existing RFP review panel process, which does not constitute controlling authority in the decision-making process.
3. Is this consistent with the PERC and the existing RFP?
As stated above, the terms of the MOU were drafted to allow the existing RFP to move forward. The existing RFP includes the PERC requirements and related scoring criteria.
4. What land parcels does this cover?
The MOU only covers those Park East lands still owned by Milwaukee County. See Exhibit A of the MOU. Given the current proposal on Block 6E/12 and the challenges that site presents, the MOU does treat that parcel differently than the rest by not requiring an RFP for the peculiarly shaped parcel.
5. There is mention in the MOU of a letter to the FHWA from the DOT and other previous documents; could those documents be provided?
See attachments below.
6. What is the urgency of approval for this MOU?

The MOU would need to be approved prior to any acceptance of an RFP on the remaining Park East land. Moreover, while a contingency was placed in the Amended Option for Block 6E/12, the new option holder has expressed its desire to confirm the MOU has been taken care of prior to signing the Amended Option and providing the County its option fee.

7. Why was File No. 14-724 (Block 6E/12) presented to the Board for its approval before the Administration had confirmation from FHWA that it would in fact grant the waiver?

As noted above, FHWA agreed to provide the County the exemption in July of 2014, contingent upon the signing of an MOU. Since that time, the County has been working with WisDOT and FHWA to ensure all scenarios were covered. FHWA and WisDOT provided verbal confirmation that given the community benefits set forth in the proposal for Block 6E/12, it would support extending the exemption to the project. This MOU is a written confirmation of that agreement.

8. Has Corporation Counsel confirmed the legality of WisDOT binding (or rejecting) the sale of the land?

As noted in the file, Corporation Counsel has been involved in the process throughout and has reviewed the MOU. WisDOT's oversight is not so significant that it could unilaterally require the County to accept or reject a proposal. WisDOT's role is to monitor the review of any RFP submittals to ensure the review follows the process agreed to in the MOU (which essentially requires compliance with the PERC).

9. Does the County have the "first draw" on the proceeds of the sale if the land is sold below fair market value?

As noted above, the file does not alter the percentage of proceeds each party is entitled to and the priority of such payments as set forth on pages 1 and 2 of the 2002 Land Disposition Agreement. The County was never entitled to a "first draw." Any sales proceeds received from future Park East land sales, regardless of whether they were sold at or below fair market value, will be split according to each entity's respective percentage involvement in the original purchase of the land.

RECOMMENDATION

The Economic Development Division respectfully requests authorization to execute the Memorandum of Understanding with the Wisconsin Department of Transportation and the United States Department of Transportation Federal Highway Administration to permit the sale of Park East land at less than fair market value.



Emily Van Deraa, Associate Project Manager
Department of Administrative Services-Economic Development

Attachments (9): Park East MOU
2002 Land Disposition Agreement
23 U.S.C. § 156; 23 C.F.R. § 710.403
County Letter to WisDOT – April 22, 2014
Attachments 1-5 to County's April 22, 2014 Letter
(Attachment 6 can be found online at:
<http://city.milwaukee.gov/Zoning-Topics/Redevelopment-Zoning-RED/Park-East-Redevelopment-Plan.htm#.VRxEF3Yo4y8>)
WisDOT Concurrence Letter to FHWA – May 2, 2014
FHWA Exemption Letter to WisDOT – July 22, 2014
WisDOT Letter to FHWA – March 26, 2015
FHWA Letter to WisDOT – April 1, 2015

cc: Chris Abele, County Executive
Economic and Community Development Committee Members
Teig Whaley-Smith, Director, Department of Administrative Services
Kelly Bablitch, Chief of Staff, County Board of Supervisors
Raisa Koltun, Chief of Staff, County Executive's Office
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