

COUNTY OF MILWAUKEE
Interoffice Memorandum

DATE: December 12, 2014

TO: Marina Dimitrijevic, Chairperson, Milwaukee County Board of Supervisors
Milwaukee County Board of Supervisors

FROM: O'Donnell Park Workgroup

SUBJECT: Addendum to the Report on the Fiscal Analysis Regarding the Disposition of the O'Donnell Park Facility and Frequently Asked Questions

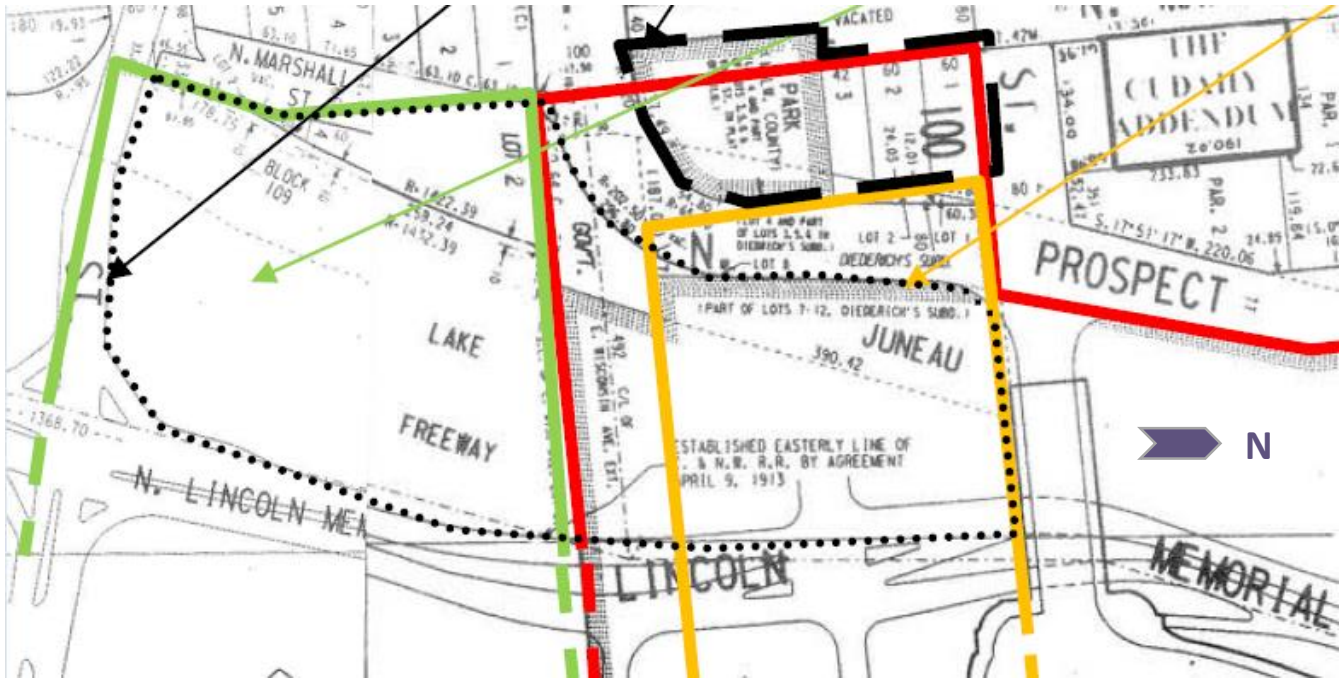
BACKGROUND

On August 22, 2014, the O'Donnell Park Workgroup issued a report on the Fiscal Analysis Regarding the Disposition of the O'Donnell Park Facility in response to a proposal by the Director, Economic and Community Development, to sell the property to Northwestern Mutual (NM). In October 2014, the Department of Administrative Services - Economic Development Division (DAS-ED) submitted to the Milwaukee County Board of Supervisors a *revised* purchase agreement for the O'Donnell Park facility between NM and the County.

The revised agreement amended language pertaining to notifying the County if NM considers requesting changes to the land parcel's zoning or deed restrictions. This raised issues about the specific deed restrictions and the portions of the property to which they apply. In addition, some other questions were raised by various stakeholders related to the proposed sale of the property, which is zoned parkland. This report serves as an addendum to the Workgroup's original report to provide more specific information related to the deed restrictions and other questions that have been put forth.

Deed Restrictions

The County acquired the O'Donnell Park land parcel through three deeds from the City of Milwaukee and State of Wisconsin. A map attached to this report provides a comprehensive view of the deed restriction area as it outlines the three deed boundaries as they apply to the O'Donnell Park facility. The O'Donnell land parcel is outlined in the dotted black line. A *portion* of the attached map is shown below, which isolates the O'Donnell property.



1940 City of Milwaukee Deed – Yellow

The 1940 deed outlined in yellow applies to most of the northern half of the property. It restricts the land parcel’s use solely to public parkland. The deed documents call for the City, County, and NM to agree to insert a uniform parks-only restriction into this deed that will be binding on NM. The revised purchase agreement requires NM to notify the County at least 90 days prior to requesting the City to remove or revise this deed restriction. NM will not pursue the removal or revision if the County notifies the company within 90 days that it objects to the action.

1991 City of Milwaukee Deed – Red

The 1991 deed outlined in red overlaps the 1940 deed and applies to the entire northern half of the property. It prohibits the sale of the land parcel to a private party or municipal corporation and restricts the land parcel’s use solely to public parkland. If the County and NM approve the purchase agreement, NM will need to petition the City to remove the restriction on private ownership. The deed documents call for the City, County, and NM to agree to insert a uniform parks-only restriction into this deed that will be binding on NM. The revised purchase agreement requires NM to notify the County at least 90 days prior to requesting the City to remove or revise this deed restriction. NM will not pursue the removal or revision if the County notifies the company within 90 days that it objects to the action.

1988 State of Wisconsin – Green

The 1988 deed outlined in green applies to the southern half of the property and contains no deed restrictions. This section is from East Michigan Street to the southern edge of where East Wisconsin Avenue would be if it continued east towards the lake rather than curving north.

City Zoning

The entire O'Donnell land parcel is zoned as a Parks District but is also included in the Lakefront Overlay Zone, which then becomes the controlling zoning. The City of Milwaukee's code of ordinances outlines the restrictions for types of structures and services that can be provided in the overlay zone. The owner of the O'Donnell Park facility may apply to amend the zoning map to change the property's zoning designation or request special permits for certain structures or activities on the property.

The revised purchase agreement with NM requires the company to notify the County if it seeks to amend the zoning of the O'Donnell parcel. NM must notify the County at least 90 days before requesting the zoning change from the City. If the County chooses to protest the zoning change, the revised purchase agreement allows NM to still pursue the zoning change. However, as an adjoining landowner, the County could lodge an objection that would require the City's Common Council to approve the change by a super majority vote of three-fourths of the 16 Common Council members.

FAQ begins on next page

FREQUENTLY ASKED QUESTIONS

Based on valuations of other lakefront property, the O'Donnell Park facility should be worth more than \$14 million; how was the sale price determined?

The Nicholson Group (TNG), a real estate valuation and consulting firm, appraised the O'Donnell Park facility at \$14 million in 2013. The value was estimated by forecasting the income and expenses of the parking structure using historical operating data and current market trends. The O'Donnell Park facility was valued within the context of the property's current land use restrictions. As stated in the appraisal, "(T)he property is zoned Parks District with Lakefront Overlay Zone which permits a very limited number of uses. It is assumed that a for-profit buyer can acquire property within the Parks District and furthermore, that a buyer of the property will keep the top terrace area a public park by simultaneously entering into a public access agreement with Milwaukee County."

The County cannot change the property's zoning or remove its deed restrictions; thus its value is based on the earning potential of the parking structure. If there were no deed or zoning restrictions and the site was cleared of the structure and pavilion (at an estimated cost of approximately \$7 to \$8 million) the value of the land would be higher.

Is the Miller Pavilion part of the sale?

Yes, the Miller Pavilion is part of the sale of the O'Donnell Park facility. If NM purchases O'Donnell, it must honor the existing leases and zoning of the property. The lease with Betty Brinn's Children's Museum runs through 2033 and the lease with Zilli runs through 2016. The new property owner could not amend any lease without approval of both the tenant and landlord. Northwestern Mutual has indicated that it does not have any plans to amend the leases.

Why didn't the County remove the City deed restriction prior to the sale?

The deed restrictions and zoning are the jurisdiction of the City; the County does not have the ability to implement the removal or revision of the deed restrictions or zoning. The County can request the City to change the zoning and deed restrictions, but the City may reject the request. In 1997, the County requested the removal of deed restrictions on parkland with the intention of selling the property to a private entity. The City allowed the deed removal, but on condition that the County convey County-owned lands at Cherokee Point to the City and provide \$250,000 for site development. It is possible that if the County petitions for the removal of the deed restrictions prior to the sale, the City will request compensation that negates any additional financial gain the County could earn from selling the land without restrictions. The value of the land will usually always accrue to the entity that controls the deed restriction and/or zoning limitations.

In addition, the removal of the deed restriction, and any rezoning, would only be considered if a redevelopment is proposed. Since no redevelopment is being proposed it would be premature to remove the deed restriction.

Why can't the County lease the parking structure to NM?

If the County enters into a lease for the facility with a private entity, the County would be required to defease (pay off) the outstanding tax-exempt general obligation bond debt on the facility. The cost to defease the outstanding debt is approximately \$7.7 million. Leasing revenues would not cover the initial lump sum payment to defease the outstanding debt, thus requiring the County to find another source of funds. Alternatively, the County could issue additional *taxable* bonds to pay off the outstanding tax-exempt debt, but this approach is not cost effective. Any lease of the facility would also require the removal of the deed restriction, as a lease is considered a conveyance. Moreover, NM has made it clear that it is not interested in leasing the O'Donnell facility.

What is basis for the "useful life" of the parking structure?

The parking structure's "useful life" is the amount of time that a structure could be used for the intended purpose, assuming industry standard operation and maintenance (O&M) activities are conducted during the remaining life of the structure. The useful life of the O'Donnell parking structure was determined by the County's design consultant GRAEF USA, assuming the recommended repairs were implemented immediately and the above referenced O&M activities are conducted by the facility operator during the remaining life. In 2011, that remaining useful life was estimated to be 25 years. Given that O'Donnell parking structure was first constructed in 1991 that would bring the parking structure's total useful life to about 45 years.

Other parking garages in the city might be expected to last about 50 years assuming appropriate O&M. Typical parking structures in northern climates are expected to provide adequate service for at least 50 years if appropriately designed, and maintained and repaired on an on-going basis. A US Bank-owned parking structure near O'Donnell was demolished approximately 36 years after its construction. Another parking structure at 6th and Wells Street (Firestone dealership) was recently demolished after 42 years of operation due to decay.

ATTACHMENT A: O'Donnell Park Facility Title Map

- cc: County Executive Chris Abele
O'Donnell Workgroup Members
- Scott Manske, County Comptroller
 - John Dargle, Director, Parks Department
 - Paul Bargren, Corporation Counsel
 - Teig Whaley-Smith, Director, DAS-Economic and Community Development
 - Josh Fudge, DAS-Budget Director
 - Daniel Laurila, Fiscal and Management Analyst 3, DAS
 - Jim Keegan, Chief of Planning and Development, Parks Department
 - Paul Kuglitsch, Assistant Corporation Counsel
 - Pam Bryant, Capital Finance Manager, Office of the Comptroller
 - Justin Rodriguez, Budget and Management Coordinator, Office of the Comptroller
 - Cynthia Pahl, Budget and Management Coordinator, Office of the Comptroller
 - Jill Suurmeyer, Research and Policy Analyst, Office of the Comptroller
 - Steve Cady, Research and Policy Director, Office of the Comptroller

Doc # 645 3546 1/29/1991. Deed from City of Milwaukee to Milwaukee County.

Doc #2261 025 5/8/1940. Deed from City of Milwaukee

Doc # 6149 930 3/2/88. Deed from State of Wisconsin to Milwaukee County.

910 E. Wisconsin Ave. and portion of 800 E. Wisconsin Ave. previously sold to NM in 1997.

Outline of O'Donnell Structure

O'DONNELL TITLE MAP

Produced by County Economic Development Staff for Discussion purposes, not an official document. Survey and original documents needed for actual boundaries.

