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Date: September 18, 2015

To: Honorable Supervisors of the County Board

cc: County Clerk Czarnezki (c/o Janelle Jensen)
County Executive Abele
Parks, Recreation and Culture Director Dargle
Comptroller Manske
Interested Parties

From: Paul Bargren

Re: Referral of File 15-498

At its meeting of July 30, 2015, pursuant to MCO 1.15, your honorable body referred File 15-498 to me with a number of questions. MCO 1.15 allows a one-third minority of the County Board to refer a matter to me for a “written opinion ... as to the legality of the resolution or ordinance offered.”

File 15-498 sought passive review under Wis. Stat. § 59.52(31)(b) by the Committee on Finance, Personal and Audit of a \$209,450 Development Agreement with the University of Wisconsin Milwaukee Real Estate Foundation, Inc. for an artificial turf infield at Lincoln Park.

In this case, the act of referral killed the file on which opinions were sought. The Finance Committee voted on July 23 to reject the Agreement. Under passive review rules, that action was final unless the full Board approved the contract within 30 days. *See* Wis. Stat. § 59.52(31)(b)2. In referring the file to me, the County Board did not take any vote to affirm the contract, so the measure died.¹

Normally, given that the referred file is dead, there would not be any basis for me to offer opinions “as to the legality of the resolution,” etc. However, at the July 30 meeting, I had agreed to answer supervisors’ questions regardless of the outcome of the File.

1. Did 2015 Act 55 change the County Board’s authority to consider contracts related to land that is zoned as a park?

No. 2015 Act 55, the state budget bill, granted the County Executive new authority over certain county real estate and related contracts, but specified that “the county board may continue to exercise the authority under s. 59.52(6) with regard to land that is zoned as a

¹ File 15-593 is an alternate measure in which UWM will make an outright gift of the turf to the County. File 15-593 was recommended for adoption at the September 15, 2015, meeting of the Parks, Energy and Environment Committee and will be before the full Board at its September 24 meeting.

park.” Wis. Stat. § 59.17(2)(b)3. Thus, existing procedures remain in place as to contracts with regard to land that is zoned as a park, including Lincoln Park.

2. Did the County Executive or Director of Parks exceed his authority or violate separation of powers by signing the UWM Development Agreement before submitting it to the Finance Committee for passive review?

No. The Development Agreement was presented to the County Board for passive review under Wis. Stat. § 59.52(31)(b). The passive review process is triggered only once a fully signed contract is presented to the Board, because the contracts take effect immediately if the Finance Committee approves them or takes no action. Therefore, contracts presented for passive review by necessity must be submitted completely signed and “ready to go.” It was appropriate – and indeed required – for the Executive and the Director of Parks (and UWM, Corporation Counsel, the Risk Manager and the DBE Director) to sign the Agreement before it went to the Committee.²

3. Why was the Lincoln Park Development Agreement referred to Finance Committee but not the Parks Committee?

Under MCO 1.09(b)(1), referrals to committee are made by the County Board Chair.³ All contracts must go through Finance, which by statute is the only committee with jurisdiction over contracts. Wis. Stat. § 59.52(31)(d). Whether also to make a dual referral to another committee is a decision for the Chair, not the administrator submitting the file.

4. Did the final version of 2015 Act 55 include authority for the Executive to sell O’Donnell Park without Board action? If not, who has that authority?

Act 55 does not include authority for the Executive to sell O’Donnell Park without Board action. As revised by Act 55, Wis. Stat. § 59.17(2)(b)3 now permits sales of county land that is not zoned as a park if the executive and either the Comptroller or an ICC appointee certify that the sale is in the best interests of the County. Those sales are not considered by the County Board.

An early draft of Act 55 also included O’Donnell Park, which is zoned as a park, within the Executive’s sale authority. But Senate Amendment 2 to Act 55, adopted on a vote of 17-16, deleted that provision. A provision placing the Transit Center under the Executive’s sale authority remains in place, even though it is zoned as a park. *See* § 59.17(2)(b)3 (setting boundaries that include Transit Center but not O’Donnell Park within Executive’s sale authority).

Thus if O’Donnell Park is to be sold, it will be under traditional procedures governing county land sales, including requiring County Board approval.

5. What prevents breaking a large contract of more than \$100,000 (requiring passive review) or more than \$300,000 (requiring full Board approval) into two or more smaller

² If a contract survives passive review, a final approval is added by Corporation Counsel per Wis. Stat. § 59.42(2)(b)5 “to verify that the contract[] compl[ies] with all statutes, rules, ordinances, and the county's ethics policy,” and the contract takes effect. Here, where the contract failed passive review, Corporation Counsel did not provide the final approval, and the contract never took effect.

³ MCO 1.09(b)(1) states, as relevant: “The chairperson shall, within five (5) days of receipt of the document, refer the resolution or ordinance to the appropriate standing committee(s) for a report.” *See also* MCO. 1.18(a) (same).

contracts of less than \$100,000 that could be issued under departmental authority without Board review?

Two strong safeguards are in place.

First, statutes and ordinance prevents aggregating or “daisy-chaining.” The contract review statute itself, Wis. Stat. § 59.52(31)(c), states (emphasis added):

(c) Any single contract, **or group of contracts** between the same parties which generally relate to the same transaction, **with a value or aggregate value of more than \$300,000**, to which a county is a party and which satisfies any other statutory requirements, **may take effect only if it is approved by a vote of the board.**

This is consistent with other long-standing statutory bans on piecemeal contracting. *See, e.g.,* Wis. Stat. § 59.794(2)(b) (applying aggregate-value standard to intergovernmental agreements), MCO 32.25 and 44.14(1) (applying aggregate-value standard to County public works contracts).

Second, Corporation Counsel and the Comptroller monitor contracts for abuses such as aggregating contract values as they fulfill their statutory obligations to review and sign *every* county contract.

Respectfully submitted,



Paul Bargren
Corporation Counsel