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Date: May 16, 2016

To: Members of the Committee on  
Economic and Community Development

cc: Kelly Bablitch  
Shanin Brown  
Katarina Lucas  
Interested Parties

From: Paul Bargren *PB*  
Corporation Counsel

Re: File 16-310—Effect of Act 55 on ECD Committee functions

I was asked to outline matters that fall within the jurisdiction of the County Board and this committee versus matters that no longer come to the Board following the passage of Act 55 by the Legislature in July 2015.

### Background

Act 55 created new Wis. Stat. § 59.17(2)(b)3, which delegates to the Milwaukee County Executive the ability to

Exercise the authority under s. 59.52(6) that would otherwise be exercised by a 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 ....<sup>1</sup> With regard to the sale, acquisition, or lease as landlord or tenant of property, other than certain park land as described in this subdivision, the county executive's action need not be consistent with established county board policy and may take effect without submission to or approval by the county board.

Act 55 applies only to Milwaukee County.

#### 1. Land that is “zoned as a park” vs. land that is not

The first key distinction concerns land that is zoned as a park – which continues to fall under County Board authority – vs. land that is not zoned as a park, which generally now falls only under the authority of the County Executive. The “land” includes any buildings on the parcel.

The phrase “zoned as a park” refers to the zoning that is applied by the local municipality. In general, most parkland in the County has been zoned locally “as a park,” but it was discovered

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<sup>1</sup> The Executive's authority also extends to the Transit Center, even though it is zoned as parkland. *Id.*

after Act 55 became law that some of the municipalities in the County did not have an actual “parks” zone, or had not applied their “parks” zone to all parkland. The Executive and the County Parks Department then requested zoning changes to assure that all County Parks would attain local “parks” zoning, a process that is nearly complete. In the meantime, the Executive has pledged to treat all County Parks as “zoned as a park” and within the Board’s authority.

The parks/non-parks distinction carries through and supersedes other reference to county authority over other types of property. For example, Wis. Stat. § 59.56 creates Board authority to create, expand, operate and maintain public museums, § 59.54(14) creates Board authority over operation of the Courthouse, and § 59.58 creates Board authority over airport operations. The parks/non-parks distinction supersedes these other statutes, for reasons set out in Exhibit A.

Some County properties that are **not** zoned as parks include the Charles Allis Art Museum, (Multi-Family zoning), the Milwaukee Public Museum (Central Business), the Zoo (Institutional), the House of Correction (Institutional) and the Airport (Industrial).

In contrast, the Milwaukee Art Museum and the O’Donnell Park parking structure are in the City’s Parks zone, and Board approval was required for the pending transaction to transfer the O’Donnell structure and the MAM buildings to the Museum.

## **2. Powers to be exercised (whether by Board/Committee or by Executive)**

Sec. 59.17(2)(b)3 refers to § 59.52(6), which in turn, contains a comprehensive list of powers relating to county land. It is that list of powers that will belong either to the Board or to the Executive, depending on whether the land at issue is zoned as a park. Under Board rules discussed below, some of those actions relating to land zoned as a park will be referred through this committee.

Included in the list of powers and authority in § 59.52(6) are the following:

- Take and hold land acquired through foreclosure
- Acquire, lease or rent property, real and personal, for public uses or purposes of any nature, including acquisitions for county buildings, airports, parks, recreation, highways, dam sites in parks, parkways and playgrounds.
- Commence and maintain lawsuits to protect the property interests of the county.
- Lease, sell, or convey any county property, provided that special deed restrictions or other limitations do not apply.
- Construct, purchase, acquire, lease, develop, improve, extend, equip, operate, and maintain all county buildings, structures and facilities
- Operate or lease such projects, and impose fees or charges for the use of or admission to such projects.<sup>2</sup>

## **3. The requirement for funding authorization**

Even where the Executive is exercising authority under § 59.17(2)(b)3 over non-parks land without Board consideration, the Executive must still have budget authorization if spending is required. For example, the Executive would need funding through an appropriate departmental

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<sup>2</sup> § 59.52(6) states that bonds may be issued subject to § 66.0621, but bonds under that section would require Board approval regardless of the nature of the underlying land.

budget before he could issue a contract to operate or maintain a non-parks facility. That funding would be part of the Board's annual budget review and approval process.

Contract funding required over more than budget year is also subject to Board approval, even for non-parks land. Wis. Stat. § 59.60(12).

#### **4. Land sales restrictions**

A sale of non-parks land by the Executive requires certification by the Executive and either the Comptroller or a representative in that municipality designated by the Intergovernmental Cooperation Council that the sale is in the best interests of the County. § 59.17(2)(b))3.a-c. Act 55 does not provide for consideration of these sales by the Committee or the Board. A number of parcels have been sold under this process, including foreclosed properties and former Park East Freeway lands. The Comptroller has pledged to provide a regular report of sales under this process.

#### **5. Effect on duties of Committee**

Sec. 1.11(c)(6) of the County Board Rules in Chapter 1 of the Milwaukee County Ordinances sets out a list of duties included in this Committee's responsibilities. Addressing them one by one in light of the above:

- **1. All matters pertaining to economic development and the disposition of excess or surplus county lands, including, but not limited to, sale or lease of property and financing terms.**

Committee action will be limited to consideration of development, etc., of land zoned as parks and review (but not approval) of non-parks transactions that are reported as informational items or as completed transactions.

- **2. All matters pertaining to the research park and airport business park.**

The last Research Park property was sold to the Research Park Corporation earlier this year, so the County is no longer involved there except indirectly through board of directors membership.

The airport business park is not zoned as parks.

- **3. The study and recommendations of all plans, projects and programs for fostering community development throughout the county, including the urban county development block grant program and the survey of available improved and unimproved housing sites and funds for county housing purposes.**

This will apply to parks land but not to non-parks land, except as to items reported for information or as completed transactions.

- **4. Overview the administration of all federal, state and local housing programs at the county level.**

Since housing is on non-parks land, this function will no longer apply except as to items reported for information or as completed transactions. Some multi-year federal housing contracts have traditionally gone through the Health and Human Needs and Finance Committees before going to the County Board.

- **5. The study, review and recommendation of plans and solutions of housing persons displaced from their dwellings by governmental actions of the county or the municipalities which compose it, and the coordination and implementation of**

**relocation plans and procedures with federal, state and local agencies and units of government within the county.**

See No. 4.

- **6. Veteran's housing.**

See No. 4.

- **7. All policy matters pertaining to disadvantaged business enterprises.**

DBE matters are not normally related to land issues, so consideration of these matters would not be limited by Act 55.

**Exhibit A**

The express grants of authority to the Executive in Act 55 and § 59.17(2)(b)3 supersede the more general grants of authority to the Board in certain areas for the following reasons:

First, the express and specific delegation of authority by the Legislature in Act 55 came after provisions like § 59.58 regarding airports were already on the books. The Legislature expressly granted the Milwaukee County Executive broad authority to exercise all powers listed in § 59.52(6). If the Legislature had meant to exclude use of that authority over GMIA or other county property, it would have so specified, just as it excluded the Executive's authority to control land that is zoned as a park.

Second, historically and in practice, the powers set out in § 59.52(6) have been exercised by the County Board in connection with and in addition to any enabling legislation such as the airport or courthouse statutes. The County is authorized to have an airport by § 59.58, but the County's many specific options to exercise control over the operation, use and disposition of the airport are set out in § 59.52(6). In Milwaukee County, that authority is now delegated to the Executive by Act 55 and § 59.17(2)(b)3.

Third, although § 59.58 says "the **board** may ... operate and maintain airports," any board action to do so is necessarily subject to approval or veto by the Executive. The entire point of § 59.17(2)(b)3 was to allow the Executive to take action to "operate and maintain" (and lease and sell) **without** board approval. The legislature's intent to give that authority solely to the Executive needs to be seen as trumping the existing board/executive procedure.

Finally, I note that the legislature delegation of authority to Executive in this regard is consistent with § 59.51(1), Stats., which states as relevant here:

The board of each county shall have the authority to exercise any organizational or administrative power, subject only to the constitution and any enactment of the legislature which grants the organizational or administrative power to a county executive...

The enactment of § 59.17(2)(b)3 is such an enactment of the legislature.