



OFFICE OF CORPORATION COUNSEL

PAUL BARGREN
Corporation Counsel

MARK A. GRADY
COLLEEN A. FOLEY
Deputy Corporation Counsel

TIMOTHY R. KARASKIEWICZ
LEE R. JONES
MOLLY J. ZILLIG
ALAN M. POLAN
JENNIFER K. RHODES
DEWEY B. MARTIN
JAMES M. CARROLL
PAUL D. KUGLITSCH
KATHRYN M. WEST
JULIE P. WILSON
Assistant Corporation Counsel

Date: December 17, 2014

To: Chairwoman Dimitrijevic

cc: All Supervisors
Teig Whaley-Smith
Stephen Cady

From: Paul Bargren *PB*
Corporation Counsel

Re: O'Donnell Park Transaction Steps

Madam Chair,

You asked if I could provide a summary of steps that would follow if the County approved the O'Donnell transaction in this cycle.

- County and NM officials will sign the Real Estate Purchase and Sale Agreement (File 14-837 "Exhibits A-P" at pdf page 39. This triggers NM's "Inspection Period."
- During the Inspection Period of up to 120 days, NM will approach the City of Milwaukee and seek modification in the deed restrictions affecting the northern half of the O'Donnell parcel. These modifications would:
 - Remove the restriction contained in the 1991 deed that prevents the County from selling or leasing the land to a private party such as NM.
 - Remove the restriction stating that the land will revert to the City if it is not used for a park or if the County attempts to sell it to a private party, and update language requiring the parks-only use to be maintained.
- Removing these restrictions requires agreement of the Milwaukee Common Council and Mayor.
- If the City does not agree to modify these restrictions, NM has the right to cancel the deal and O'Donnell will remain in the County's hands and will remain subject to all 1991 restrictions.

- If the deal is cancelled, the County keeps NM's \$50,000 option fee.¹
- As described in the Purchase and Sale Agreement, NM must also obtain the following retroactive modification to the 1940 and 1991 City-County deeds, to apply to the northern half of O'Donnell:

It is expressly understood and agreed by the parties hereto that **this deed is given upon condition that the lands herein conveyed shall forever solely and exclusively be used as a public park**, amusement and recreation grounds or parkway and for such purposes as municipal public park grounds are generally used without expense to the City of Milwaukee, except such as may properly be included in the tax levy upon said city for the current year involved.

- If these and other requirements are met, NM and the County will close on their transaction, the County will issue the Special Warranty Deed, and NM will acquire O'Donnell for a net payment to the County of \$12.7 million.
- In my opinion, the language of the documents and other provisions prevents the City the unilateral right to withdraw the park's only restriction. If NM wishes in the future to remove the parks-only deed restriction, it cannot do so without the County's permission.
- The entire O'Donnell parcel, including the southern portion that is not subject to the deed restrictions, is subject to Parks and Lakeshore zoning. That zoning can be changed by the Milwaukee Common Council, but 12 of the 16 members would need to agree if the County objected to the change.

¹ The \$50,000 option fee is for the first 60 days of the Inspection Period. NM can obtain two 30 day extensions for an additional \$25,000 each.