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January 26, 2017

To: Honorable Supervisors of the County Board

cc: County Clerk George Christenson (c/o Janelle Jensen)
County Executive Chris Abele
Interested Parties

From: Deputy Corporation Counsel Paul Kuglitsch ^{PK}

Re: Referral of File No. 16-673

At its December 15, 2016 meeting, your honorable body referred File No. 16-673 to the Office of Corporation Counsel pursuant to MCO 1.15. That ordinance allows a one-third minority of the County Board to refer a matter to Corporation Counsel for a “written opinion ... as to the legality of the resolution or ordinance offered.” File No. 16-673 is as follows:

From the Director, Facilities Management Division, Department of Administrative Services, requesting authorization to proceed with the 2017 Phase III effort of the Milwaukee County Courthouse Planning Program, to include recommendations for the appropriate space programming, swing space coordination, ownership, financing, project delivery method strategies, and long-term operation and maintenance requirements to facilitate sustainable occupancy of the new criminal courthouse.

File No. 16-673 sought review and a recommendation for approval from the Committee on Transportation, Public Works and Transit at its November 30, 2016 meeting. Specifically, the resolution addresses the ongoing Courthouse Complex Planning Program and seeks recognition of the conclusions reached in the Phase I planning process, acknowledgment of the work completed in the Phase II planning process, and the agreement that work needs to continue in Phase III. For its part, Phase III consists of developing proposed implementation plans and strategies, including establishing budgetary limits, which requires County Board oversight. File No. 16-673 was amended by motion of the committee and, subsequently, recommended to the County Board for adoption.

Rather than taking action on File No. 16-673, the County Board referred the file to Corporation Counsel to provide a legal opinion on the authority of the County Board on the pending file in relation to 2015 Act 55 and the legal implications of an administrative decision, if any, to sell or lease the Courthouse Complex.

2015 Act 55 empowered the County Executive to “[e]xercise the authority under s. 59.52(6) that would otherwise be exercised by a county board” except for “land that is zoned as park.” Wis. Stat. § 59.17(2)(b)3. The “authority under s. 59.52(6)” that the Executive now may exercise includes the authority to “lease or rent property, real and personal, for public uses or purposes of any nature.” Wis. Stat. § 59.52(6). In addition, “[w]ith regard to the sale, acquisition, or lease as landlord or tenant of property, other than certain park land ... 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.” Wis. Stat. § 59.17(2)(b)3.

Because the parcels that make-up the Courthouse Complex are zoned C9D(A) (Civil Activity) and not as a park, the sale or lease of the complex falls within the Executive’s authority under Wis. Stat. Section 59.17(2)(b)3. and would not be subject to County Board review or approval.¹ Any sale, however, requires the agreement of the county comptroller or of an appointed representative of the Milwaukee County Intergovernmental Cooperation Council, who must certify that the sale is in the best interest of the county. Wis. Stat. § 59.17(2)(b)3. This requirement does not apply to leases.

During the December 15 meeting a question arose about how Clas Park may affect the Executive’s authority to sell or lease the Courthouse, given the fact that the park is located immediately south. Clas Park, unlike other County parks, is not a separate and distinct parcel. The park is part of a larger parcel that includes both the Courthouse and the Criminal Justice Facility. (Exhibit A). As noted above, this parcel is zoned C9D(A).² Therefore, the sale or lease of this parcel falls with the Executive’s authority under Wis. Stat. Section 59.17(2)(b)3.

The County Board should be aware, however, that a report contained in this file submitted by the Facilities Director states that the Executive “is not contemplating selling or leasing the Courthouse.” (Response to Question #6, 11/14/2016 Report from Jeremy Theis to Supervisor Michael Mayo, Sr.)

With that said, the sale or lease of the Courthouse, or any part of the Courthouse complex, carries many implications. An alternative space would have to be identified and outstanding bonding issues would have to be addressed. Also, there would certainly be vigorous public debate over whether the sale or lease of the Courthouse would be in the best interest of the county.

¹ The County Executive’s authority to sell land that is not zoned as a park was recently affirmed in *Milwaukee Riverkeeper, et al. v. Milwaukee County, et al.*, Circuit Court Case Nos. 11-CV-8784 and 16-CV-2268.

² It should be noted that zoning classifications are determined at the local municipal level.

MILWAUKEE COUNTY INTERACTIVE MAPPING SERVICE



376

188

376 Feet

NAD_1927_StatePlane_Wisconsin_South_FIPS_4803

1: 2,257



Notes

DISCLAIMER: This map is a user generated static output from the Milwaukee County Land Information Office Interactive Mapping Service website. The contents herein are for reference purposes only and may or may not be accurate, current or otherwise reliable. No liability is assumed for the data delineated herein either expressed or implied by Milwaukee County or its employees.

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