

CITY OF MILWAUKEE

Form CA-43

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September 13, 2001

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Alderman Donald F. Richards
9th District Alderman
200 East Wells Street
Room 205
Milwaukee, Wisconsin 53202

**Re: M7 Community Development Corporation
Lincoln Park Center Project
Community Development Block Grant Funding**

Dear Alderman Richards:

On July 10, 2001, the Community Development Committee voted to approve Community Development Block Grant funding for a proposed project to be constructed by M7 Community Development Corporation in Lincoln Park. This approval was contingent upon an opinion of the City Attorney as to whether the proposed project complies with deed restrictions on the Lincoln Park Property.

The deed by which Lincoln Park was conveyed, dated October 20, 1936 and recorded with the Milwaukee County Register of Deeds as Document No. 2111040, contains a restriction that the premises are conveyed upon the express condition that they "shall be used forever solely and exclusively as a public park, amusement and recreation grounds." The deed further provides that in the event that Milwaukee County shall cease to use or operate the land for park purposes, it shall revert to the City of Milwaukee.

We understand that M7 Community Development Corporation proposes to enter into a lease agreement with Milwaukee County in connection with the project, but no lease agreement has yet been provided to us for review. Materials provided by M7 Community Development Corporation describe the proposed project as follows:

The Lincoln Park Center is a 31,750 sq. ft. multipurpose facility for community-based organizational administrative offices, Milwaukee County Administrative Offices, banquets, meetings, private events, moderate price dining and club dining oriented primarily toward the social and recreational needs of the Lincoln Park Community. It will also serve as a community-centered facility for consumer oriented companies and all individuals interested in further their business with central city enterprises. It will be professionally managed serving over 100,000 people of the public. Projections show the facility can be operated on a self-sufficient basis.

The description further states that the project "is proposed as a public-private partnership with participation and investment by state and local governments, private enterprise, foundations and the African American Community. It will provide full access to the public but will be operated as private enterprise to keep the operational discipline at a level to ensure efficiency." A copy of the full project description provided by M7 Corporation is attached to this opinion.

The Wisconsin Court of Appeals provided a definition of a "park" in *State v. Lopez*, 207 Wis.2d 423, 432, 559 N.W.2d 264 (1996) when considering a criminal statute that provided enhanced penalties for convictions for drug transactions near any park:

Since "park" is not defined within §161.01 or 161.49, Stats., we look to the standard dictionary definitions for guidance. Webster's Third New International Dictionary 1642 (1976) defines a park as: "a tract of land maintained by a city or town as a place of beauty or public recreation." Our supreme court has defined a park as: "[a] piece of ground set apart and maintained for public use, and laid out in such a way as to afford pleasure to the eye as well as opportunity of open-air recreation." *State ex rel. Hammann v. Levitan*, 200 Wis. 271, 279, 228 N.W. 140, 143 (1929)(quoted source omitted).

Other jurisdictions considering the projects similar to the M7 proposal have concluded that they do not fall within the definition of "public park purposes." In *Fairhope Single Tax Corporation v. City of Fairhope*, 281 Ala. 576, 578, 206 So. 2d 588, 589 (1968), the court considered a deed restriction that property be used "according to the general usage of public parks," and held that the construction of a civic center building or recreation building on the property violated the deed restriction. The court relied upon a definition of "park" that was almost identical to the definition adopted by the Wisconsin court in *State v. Lopez* ("a piece of ground...for ornament, and as a place for the resort of the public for recreation and amusement. It is usually laid out in walks, drives, and recreation grounds, as to afford pleasure to the eye as well as opportunity for open-air recreation").

In *White v. Metropolitan Dade County*, 563 So.2d 117 (1990), the court held that the holding of a tennis tournament in a public park, during which the public would be excluded from the park for two weeks a year, violated a deed restriction that the property be used for "public park purposes only."

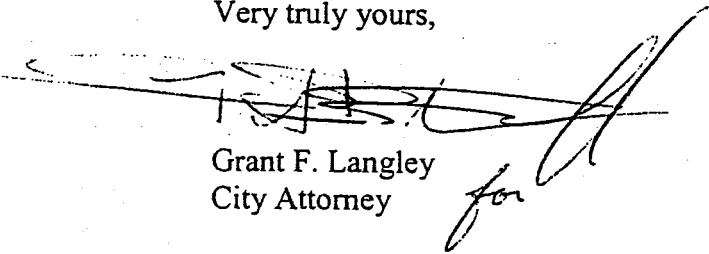
In contrast, in *Bernstein v. Pittsburgh*, 366 Pa. 200, 77 A.2d 452 (1951), the court ruled that a city could legally erect an open-air auditorium in a public park and lease it to a private, nonprofit corporation. The auditorium was to be used for light opera presentations, with admission charges. The deed restriction provided for "a Public Park and place of free, attractive and healthful resort, and open air recreation for the people of Pittsburgh and the Public and perpetually keeping and maintaining the same for such uses and purposes and for no other use or purpose whatever." The court noted that "[i]n modern times the principal purpose of a park, namely public recreation, is not limited to physical recreation but includes aesthetic recreation and mental and cultural entertainment as well," 77 A.2d at 455, and noted that monuments, museums, art galleries, public libraries, zoological and botanical gardens, conservatories, and the like are commonly accepted as being within the normal scope and ambit of public park purposes.

The determination of whether a specific enterprise is carried on for public park purposes depends on both the particular terms of the deed restriction at issue and the nature of the proposed project, and such determinations must be made on a case-by-case basis. The deed restriction imposed on Lincoln Park limits the use of the premises "solely and exclusively as a public park, amusement and recreation grounds." Although the proposed Lincoln Park Center project may arguably serve a public purpose, the apparent import of the project is one of community and business development, rather than park, amusement or recreation purposes.

Based upon the Wisconsin case law defining the term "park" and the cases cited above addressing similar projects, it is our opinion that the Lincoln Park Center project as currently proposed by M7 Community Development Corporation appears to be inconsistent with the deed restriction that limits the use of Lincoln Park to park, amusement and recreation purposes.

We must qualify this opinion by noting that it is based upon a preliminary description of the project provided by M7 Community Development Corporation. In the event that the current project description is modified or a final lease with Milwaukee County is executed, further legal analysis of the actual activities to be conducted may be warranted.

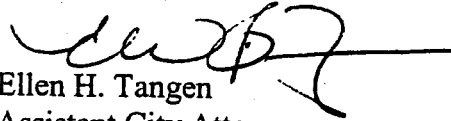
Very truly yours,


Grant F. Langley
City Attorney

September 13, 2001



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Assistant City Attorney



Ellen H. Tangen
Assistant City Attorney

cc: Alderman Marvin Pratt
Juanita Hawkins, CBGA

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1126-2001-2072



DESCRIPTION OF THE LINCOLN PARK CENTER

The Lincoln Park Center is a 31,750 sq. ft. multipurpose facility for community-based organizational administrative offices, Milwaukee County Administrative Offices, banquets, meetings, private events, moderate price dining and club dining oriented primarily toward the social and recreational needs of the Lincoln Park Community. It will also serve as a community-centered facility for consumer oriented companies and all individuals interested in furthering their business with central city enterprises. It will be professionally managed serving over 100,000 people of the public. Projections show the facility can be operated on a self-sufficient basis.

Benefits

- The Center will provide employment opportunities for approximately 100 FTE positions when suppliers and private vendors are considered.
- The Center will provide crossroads for hospitality industry commerce in the central city.
- The Center will provide business opportunities for persons and organizations seeking to do business or expand business with the Lincoln Park Community in Milwaukee. That value is difficult to estimate with precision, but it is safe to say the potential such transactions approach \$100 million annually.
- The Center would welcome development of recreation fields near the building and will work with the County Government to provide rest rooms and other support services for the fields.
- The Center will bring considerable activity to Lincoln Park without overtaking it and crowding out existing recreational uses.
- Safety in Lincoln Park will increase because of the activity at the Center.
- Long-term lease of the land will keep valuable park land in public control.

The Lincoln Park Center is proposed as a public-private partnership with participation and investment by state and local governments, private enterprise, foundations and the African American Community. It will provide full access to the public but will be operated as private enterprise to keep the operational discipline at a level to ensure efficiency.