



Department of City Development

City Plan Commission
Historic Preservation Commission
Neighborhood Improvement
Development Corporation
Redevelopment Authority

Rocky Marcoux
Commissioner

Martha L. Brown
Deputy Commissioner

ALD. BAUMAN
#4

October 15, 2007

Michael Duckett
Executive Director
Southeast Wisconsin Professional Baseball Park District
Miller Park - One Brewers Way
Milwaukee, WI 53214

Rick Schlesinger
Executive Vice President - Business Operations
Milwaukee Brewers Baseball Club
Miller Park - One Brewers Way
Milwaukee, WI 53214

Dear Mr. Duckett and Mr. Schlesinger:

Re: Miller Park East Access Road

Assistant City Attorney Gregg Hagopian has provided me with the enclosed memorandum discussing the history and status of the roadways at Miller Park. It lays out clearly the facts surrounding the City's authority to connect to certain stadium access roads.

The Redevelopment Authority of the City of Milwaukee faces crucial deadlines to complete construction of the roadways within the Menomonee Valley Industrial Center and to connect them to the Miller Park East Access Road. The current impasse among the City, the Milwaukee Brewers and the Stadium District is causing a great deal of concern to prospective buyers of property within the Industrial Center.

On October 18, 2007, the Redevelopment Authority will consider an offer to purchase from HSI on behalf of a company that plans to relocate to Milwaukee. HSI requires connections to the East Access Road. To ensure that we do not risk job-creating industrial development, we must resolve this situation immediately.

Sincerely,

Rocky Marcoux
Commissioner

Enclosures





Michael Duckett and Rick Schlesinger
October 15, 2007
Page 2

c: Michael Morgan, Secretary - WI Dept. of Administration
Mark Saunders, General Counsel – WI Dept. of Administration
Southeast Wisconsin Professional Baseball Park District Board Members
Milwaukee Brewers Owners Group
Laura Bray, Executive Director – Menomonee Valley Partners, Inc.
Mick Hatch, President – Menomonee Valley Partners, Inc.
Ald. Robert Bauman
Ald. Robert Donovan
Ald. Willie Hines, Jr.
Ald. Michael Murphy
Ald. James Witkowiak
Jeff Mantes, Commissioner – Dept. of Public Works
Jeff Polenske, City Engineer
Grant Langley, City Attorney
Gregg Hagopian, Assistant City Attorney
Redevelopment Authority Commissioners
Dave Misky, DCD



MEMORANDUM

OFFICE OF THE CITY ATTORNEY

ROOM 800 – CITY HALL

TO: DCD Commissioner Rocky Marcoux

FROM: Gregg C. Hagopian, Assistant City Attorney

DATE: October 12, 2007

RE: Miller Park Roadway Issues - Wheelhouse Road, Milwaukee Road, Alley

A. INTRODUCTION

You asked for an overview of the history of the transactions involving Miller Park and the City's right to use the Access Roads in Miller Park. You expressed concern about the timing of finishing construction of the City's new Wheelhouse Road, Milwaukee Road, and a new City alley. All three of those roadway facilities are designed to connect to the East Access Road in Miller Park. As you know, construction has been delayed while the City has been attempting to secure agreed-upon connections with the Stadium District and Brewers.

I attach Maps as **EXHIBIT A** (the Map at A-1 highlights areas at Miller Park while the Map at A-2 highlights areas in the Menomonee Valley Industrial Park adjoining Miller Park to the east).

Since April, the City Attorney's Office (Asst. City Attorney Hagopian) and the Brewers' and District's respective lawyers (Ben Abroahams at Foley & Lardner and Norm Mater at Davis & Kuelthau) have been trying to resolve the roadway issues by negotiating what I refer to herein as the "New-Road-Connection Easement." It appears we are at an impasse.

The new roadways are vitally important to the overall economic development of the Menomonee Valley. The added infrastructure should help the Brewers, the District and the City.

B. HISTORY

I provide the history.

1. 1994 - Regional Transportation System Plan for Southeastern Wisconsin

Extension of Canal Street across Miller Park was included in the adopted Regional Transportation System Plan for Southeastern Wisconsin since 1994 – prior to the Legislature creating the Stadium District and prior to construction of Miller Park. City Council File No. 041407.

2. 1995 – Legislature Creates District.

The Legislature enacted 1995 Wis. Act 56 (effective October 27, 1995) creating Wis. Stat. Ch. 229, Subch. III, creating the Stadium District (a local governmental unit and body corporate and politic, Wis. Stat. § 229.66 (1)) to allow the District to develop, finance, construct, and maintain Miller Park. Wis. Stat. § 229.64 indicates that another of the District’s main purposes is to encourage economic development.

The City and RACM are, of course, also interested in encouraging economic development. To that end, the City contributed to Miller Park’s construction costs, it built Canal Street, it is building the subject new roads, and RACM is selling lands east of Miller Park to employers for new development.

3. City Gave \$18 Million for Miller Park Infrastructure (the 1995 MOU).

An August 19, 1995 Memorandum of Understanding (“MOU”) among the State, the County, the City, and the Brewers shows the City, County and State were to pay for Miller-Park-public-infrastructure costs. That is, government paid for roads at Miller Park. The City portion included Pad Improvements, Parking Areas West and East of the River (note those parking areas contain the interior roads at Miller Park, herein called the “Access Roads”), removal of the old stadium, and hazardous material remediation. The MOU’s Exhibit F (Material Terms to be Incorporated in Construction Administration Agreement) required the State, County, City and Brewers to cooperate regarding design and construction of infrastructure improvements involving public highways, roads, and streets.

The City paid its \$18 million contribution in 1998. Council Resolution 980858.

Under the MOU, the Brewers and District were to share maintenance costs associated with Miller Park. It was not intended that the City share maintenance costs.

At the time of the City’s \$18 million contribution, the land east of Miller Park was owned by CMC Heartland Partners (“CMC”).

4. CMC Land Swap and 1998 Deals.

In order to build Miller Park, the Stadium District and Brewers needed land from CMC.

CMC, the State Dept. of Administration (“DOA”), the State Building Commission (“Building Commission”), the District and the Brewers entered into an “Amended and Restated Agreement for Exchange of Real Estate, Construction of Roadways and Access to Roadways” document (the “Land-Swap Agreement”) whereby:

- CMC agreed to convey the lands necessary to allow Miller Park to be built;
- **the District agreed “to cause the construction, installation, and dedication for the public benefit and use” of the Access Roads** (emphasis added);
- **the District agreed that the Access Roads would be “operational and open for general use by the public...” by March 1, 2000** (emphasis added);
- the Brewers and District agreed to enter into a 1998 “Reciprocal Operating Agreement” (the “1998 REO”); and
- the Brewers agreed that it would place restrictive covenants on parts of Miller Park.

As you can see, the Access Roads were intended to be public.

CMC, the Brewers, and the District, as required by the Land-Swap Agreement, did enter into the 1998 REO (dated September 18, 2008) pursuant to which:

- until October 20, 2095, and prior to public dedication of the Access Roads, CMC, and successor owners of the CMC lands (i.e. RACM, the City, and RACM’s buyers) have an easement to use the Access Roads;
- the District was supposed to build a 6-lane bridge for the South Access Road to cross the Menomonee River (with the City having the right to require the District to also widen the Access Roads to 6 lanes from their present 4 lanes);
- the parties agreed that traffic on the South Access Road and North Access Road would always be two-way, but that during event periods (i.e. from 4 hours prior to, until 2 hours after, games), for Miller Park “fill” purposes prior to the game, 3 lanes would flow in, while one lane would flow out, and for Miller Park “spill” purposes after the game, 3 lanes would flow out, while one lane would flow in;
- the Brewers agreed that, until the Access Roads are dedicated to the City and thereby become Public Streets, they would maintain and repair them subject to cost-sharing between the Brewers and CMC;
- Regarding cost-sharing, until the Access Roads are publicly dedicated, the Brewers would annually come up with a budget of estimated costs for maintaining and operating the Access Roads. Subject to readjustment, the initial allocation of estimated, budget costs between the Brewers and CMC is 25% Brewers, and 75% CMC.

In a September 18, 1998 “Declaration of Restrictive Covenants” given by the Brewers, as required by the Land-Swap Agreement, restrictive covenants were imposed against Miller Park (see Map attached as **EXHIBIT A**, page A-1).

5. RACM Acquired CMC Lands.

RACM subsequently acquired the CMC lands via deed-in-lieu of condemnation in 2003.

When RACM acquired, the CMC lands became RACM lands, and RACM succeeded to all of CMC's right, title and interest. Thus, RACM succeeded to CMC's interests under the Land-Swap Agreement, the 1998 REO, and the 1998 Declaration of Restrictive Covenants. So, RACM acquired CMC's easement rights in the Access Roads.

RACM paid CMC \$6.8 million for the CMC lands (i.e. \$3,550,000 on July 30, 2003 when RACM acquired the lands and an additional \$3,250,000 in early 2006 when RACM settled the valuation/just compensation dispute with CMC).

6. CMC Litigation Against District (2002-CV-001930, Judge Fiorenza) – RACM has CMC's Rights Under 1998 REO.

Prior to RACM acquiring the CMC lands, CMC sued the District because the District built a 4-lane bridge for the South Access Road to cross the Menomonee River when the 1998 REO required the bridge to be 6 lanes. Judge Fiorenza ruled that the District breached the 1998 REO. However, Judge Fiorenza noted that, while the case was pending, RACM acquired the CMC lands, so, RACM, not CMC, owned the right to the 6-lane bridge. Judge Fiorenza also ruled that the rights under the 1998 REO run with the land, and that RACM as the new owner of the CMC lands (now RACM lands), possesses the rights under the 1998 REO.

7. Temporary Easement for Truck Access.

While the City and RACM knew that RACM acquired and owned the CMC lands (now RACM lands), the City's Department of City Development ("DCD"), the City's Department of Public Works ("DPW"), and the City Attorney's Office were not aware of the 1998 REO and the easement rights thereunder that RACM acquired.

In October, 2003, not knowing about the 1998 REO, the City and RACM entered into a temporary "Right of Entry Agreement" with the District and Brewers allowing trucks to cross Miller Park to import fill to the RACM lands from the DOT's Marquette Interchange Project and elsewhere. After acquiring the lands from CMC, RACM significantly increased the elevation of the land in order to help remediate environmental and geotechnical adversities. RACM also conveyed interest in the RACM lands to the City, thus making the City an additional CMC-successor for purposes of the 1998 REO with the same easement rights thereunder.

Hindsight shows that the 2003 Right of Entry Agreement was not necessary because, as indicated, the City and RACM already had easement rights in the Access Roads by virtue of the 1998 REO.

8. City's Extension of Canal Street.

The City secured over \$5 million in DOT-grant funds to assist with the significant expenditure of extending Canal Street westward. The grant conditions required Canal Street to connect to the South Access Road, to traverse Miller Park, and to provide public access to the new freeway connection of Miller Park Way by April 1, 2006.

The August 19, 1995 MOU had obligated the City, State, and Brewers to cooperate regarding the connection, taking into account the timing of the federal, state, and other funds.

The Brewers and District entered into an Amended and Restated Lease, dated June 30, 2004 (the "Brewers Lease") (post-dating the 1998 REO but pre-dating the City's extension of Canal Street). Under the Brewers Lease, the Brewers (with the District providing certain cost contributions) are responsible for maintenance of Miller Park – including traffic-control staffing. And, in Brewers Lease § 18.5, the Brewers and District agreed as follows:

"18.5 Jurisdictional Transfer. The District and the Team acknowledge that the City has been preparing for the expansion of Canal Street in a westerly direction within the Menomonee Valley towards the Stadium Complex. The parties further acknowledge that the City intends to connect Canal Street to a certain access road comprising a part of the Stadium Complex and that, if such event occurs, it is likely that the City would seek the jurisdictional transfer of the access road and certain other roadway improvements from the District. As between the District and Team, the parties agree that (i) any jurisdictional transfer to the City of any portion of the Stadium Complex shall require the prior written consent of the Team (which consent shall not be unreasonably withheld or delayed, but may be conditioned upon the Team and the District receiving commercially reasonable, and legally enforceable, assurances from the City as to the restrictions on the utilization of such access roads comprising a portion of the Stadium Complex by the general public on days of Baseball Home Games, Special Events, Team Uses and Events or an emergency), and (ii) any award, proceeds or other consideration with respect to such jurisdictional transfer shall belong solely to the District and the Team shall have no right or claim to any portion thereof."

Clearly, in the Summer of 2004, when the Brewers and District signed the Restated Brewers Lease, they contemplated the South Access Road becoming part of Canal Street,

and the City wanting the South Access Road to become publicly dedicated by jurisdictional transfer.

Again, while DPW knew RACM acquired the CMC lands, it did not know about the 1998 REO, about Judge Fiorenza's ruling that RACM *already had easement rights in the Access Roads*, or about the Brewers Lease.

Faced with a grant deadline to extend Canal Street to include the South Access Road, and unaware that RACM and the City already had the easement rights it needed, DPW approached the District and Brewers.

Unlike DPW, the District and Brewers knew about the 1998 REO and, as the Brewers Lease § 18.5 reflects, the District and Brewers foresaw the City approaching them about extending Canal Street. But, the Brewers and District remained silent about their knowledge throughout their negotiations with the City. The District and Brewers wanted significant, valuable rights and property from the City and RACM in exchange for their allowing the South Access Road to be used for the Canal Street extension (rights that RACM and the City already had). The District and Brewers wanted:

(a) the City to agree, contrary to Judge Fiorenza's ruling, that the District had no duty to widen the South-Access-Road bridge over the Menomonee River to 6 lanes; and

(b) the City to convey to the District the following parcels:

- (1) the RACM-owned Lewinsky Parcel at 620 S. 44th Street, TKN 423-0002-000-8
- (2) the MMSD-owned parcel at 164 N. 44th Street, TKN 403-0101-1107
- (3) the RACM-owned Wheelhouse Parcel north of North Access Road
- (4) the City-owned Waterworks Parcel at 127 S. 44th Street, TKY 422-9996-000-X;
- (5) the privately-owned Stimac Parcel; and

(c) the City to vacate N. 44th Street which is public right-of-way traversing Miller Park; and

(d) the City to erect fencing between Miller Park and the RACM lands (this is the Brewers duty under § 2.4 (d) of the 1998 REO); and

(e) the City to install a sidewalk east of the East Access Road; and

- (f) the City to remove the restrictive covenants against Miller Park the imposition of which CMC had required; and
- (g) the City and RACM to impose restrictive covenants on the RACM lands, prohibiting RACM buyers (e.g. Palermos, Caleffi, Badger Railing, etc.) from using their parcels for parking during stadium events; and
- (h) the City to prohibit vehicular parking along Canal Street east of Miller Park and west of 25th Street; and
- (i) the City to require one-way-traffic only on extended Canal Street along the South Access Road during heavy-attendance games (this is contrary to § 2.4 of the 1998 REO); and
- (j) the City to release a deed restriction it controls on Miller Park's north parking lot (Parcel A-7).

A "Jurisdictional Transfer Agreement" reflecting the above was actually drafted and introduced to the City's Common Council under Council Resolution File No. 041407. The Council's Public Works Committee (February 7, 2005) voiced displeasure at the proposed transaction and it was not approved. Shortly thereafter, on about February 16, 2005, the City and RACM finally gained knowledge about the 1998 REO and the rights RACM and the City had under it – including the easement rights in the Access Roads.

With the City, RACM, and the public having the right to use the Access Roads under the 1998 REO, and knowing (as the Land-Swap Agreement supports) that the Access Roads were intended to be public, the City connected Canal Street to the South Access Road without the need to further negotiate, without the need to enter any agreement with the District or Brewers, and without the need to "pay" any consideration therefor.

The current impasse regarding the New-Road-Connection Easement does not have to exist, because, with respect to connecting Wheelhouse Road, Milwaukee Road, and the new alley to the East Access Road, the City can (and reserves the right to) take the same position it took to connect Canal Street to the South Access Road. See **EXHIBIT B** attached (City Attorney Opinion regarding curb-cuts in East Access Road).

9. Overhead Traffic Control Devices and Water.

The 1998 REO, § 2.4(c), allows the Brewers, during Miller Park events, to control two-way traffic on the South Access Road "through the utilization of reversible lanes and other available means."

Even though that is the Brewers' responsibility, the City provided, at its expense, and without any obligation to do so, over \$250,000 of traffic-control equipment for Miller Park - the overhead-electronic-lane-flow signs above the South-Access-Road-extension of Canal Street.

The City, District, Brewers, and State entered into a November 30, 2005 "Traffic Control Easement Agreement" regarding this because, while the 1998 REO allows any successor owner to CMC and their permittees (i.e. RACM, RACM's buyers, the City and the public) to use the Access Roads, the Traffic Control Agreement expressly granted an easement (*in addition to* the 1998 REO easements) for the traffic-control devices.

From what we understand, public use of Canal Street, extended over the South Access Road, did not hinder the Brewers' record attendance this season of roughly 2.85 million fans.

Also in September, 2005, the City, State, District, and Team entered into a Water Easement whereby the City acquired easement rights for a 12" water main that were *in addition to* the 1998 REO easements.

10. RACM Subdivision of RACM Lands; RACM Buyers.

RACM began subdividing its lands and is selling the same to buyers. Palermo Villa, Inc. (Palermos Pizza), Mulhaney Properties, LLC (Badger Railing), MVIC Development LLC (Caleffi North America), and Taylor Dynamometer, Inc. purchased from RACM and built new facilities. RACM is now negotiating with another buyer, HSI (Derse), that plans to relocate to and employ workers in Milwaukee.

RACM's buyers represent economic development. As indicated, per Wis. Stat. § 229.64, one of the District's main purposes is to encourage economic development.

RACM's buyers need public infrastructure – including Wheelhouse Road, Milwaukee Road and the alley. See **EXHIBIT C** attached – a February 21, 2005 letter from Menomonee Valley Partners urging completion of Canal Street and the end to impasse and extended negotiations, which letter applies equally to the situation at hand.

As indicated, the present impasse regarding the New-Road-Connection Easement (like impasse that slowed the Canal Street extension and jeopardized grant funding) does not have to exist, because, with respect to connecting Wheelhouse Road, Milwaukee Road, and the new alley to the East Access Road, the City can take the same position it took regarding its connection of Canal Street to the South Access Road. The City has not waived that right. Once it learned about the 1998 REO, the City has consistently taken the provision that it retains rights under the 1998 REO and that the Access Roads were intended to be public.

Attached as **EXHIBIT D** is an October 5, 2007 letter the City received from the Brewers. The Brewers and District want the City to waive legal rights, to pay to connect its new roads to the East Access Road, and, possibly, to pay other costs associated with Miller Park's overall stormwater management. Per § 5.13 of the 1998 REO, the Brewers and District have the duty "to execute, acknowledge and deliver...*without additional consideration*, such further assurances, instruments and documents, and shall take such further actions, as any party shall reasonably request of the other in order to fulfill the intent of [the 1998 REO] and the transactions contemplated hereby." Emphasis added.

11. Sewer and Storm-Water Issues Involving New Roads.

In the Brewers' October 5, 2007 letter, reference is made to "the City's unfortunate decision to enter and excavate on private property and to connect to the Miller Park storm sewer, without the permission of, or even notice to, the Brewers or the District."

Before 2007 opening day, City crews did enter Miller Park and did excavate and connect storm-sewer facilities associated with the new Wheelhouse Road, Milwaukee Road and alley, to Miller Park's storm-sewer system. The City's DPW had communicated about this with Miller Park personnel, and believed the Brewers and District were on notice and understood. See **EXHIBIT E** attached (series of October – December, 2006 letters between the City and Brewers discussing, and providing notice of, the Spring, 2007 storm-sewer connections). Moreover, you were in discussions with the Brewers and District regarding possible development of the V.A. grounds, and DPW understood those communications to also include discussion about the storm-sewer connections regarding the new roadways.

After making the storm-sewer connections, the City restored the East Access Road in time for, and without disruption to, opening day.

A roadway is an integrated system. The pavement, curb, and gutter address storm-water runoff. When the City connected Canal Street to the South Access Road, the topography and grading were such that no storm-sewer connections to the Miller Park storm-sewer system were needed. Surface waters on Canal Street near the connection to the South Access Road flow east.

With new Wheelhouse Road, new Milwaukee Road, and the new alley, however, surface waters for only about the last 100 feet of the new roadways flow west. Consequently, the road systems include the storm-sewer connections to the west, to the Miller Park storm-sewer system.

While the Brewers and the District may be concerned about increased burdens on the Miller Park storm-sewer system, the City has indicated willingness to be responsible for any increased cost attributable to increased burden associated with the City's new roadways. But, RACM's significant increase in the elevation of the RACM lands, and its

significant grading of the same ought to reduce overall run-off from the RACM lands to Miller Park. Again, only about the last 100 feet of the new roadways will drain west, whereas, much of the CMC lands (now RACM lands) had previously drained west prior to RACM's acquisition. Hence, the net effect should benefit Miller Park.

12. Brewers Annual Budget.

By letter dated September 10, 2007, the Brewers sent to the City a non-final 2007 "budget" indicating it was being sent under § 2.6 of the 1998 REO.

The budget indicates the Brewers want the City to pay:

- 75% of \$114,122.26 = \$85,591.70 for various matters regarding the Access Roads, and
- 100% of a to-be-determined amount for "Sewer System costs, including permitting, incremental increases in costs, use fees and related costs at 100% to City. Additional costs related to work along Selig Drive, including but not limited to Professional Fees." Per the Brewers' cover letter, these are other costs arising under the New-Road-Connection Easement that, "if finalized," the Brewers want to pass through to the City.

Under 1998 REO § 2.6, the budget must be submitted within a certain time period "to CMC." The City, RACM, and RACM's buyers, as successor-owners to CMC, are now all "CMC" for purposes of the 1998 REO. Members of the public are also now "CMC" for purposes of the 1998 REO because they too are successor-owners to CMC because they too acquired rights in the CMC lands (now RACM lands) by virtue of public dedication of public rights-of-way. Accordingly, the Brewers budget should be submitted to each of the City, RACM, RACM's buyers, and the public.

Also, among other things, the 1998 REO requires the State to be responsible for certain costs, and it is not clear from the budget that that is recognized; the budget also shows a pass through of 25% of Milwaukee Police Department and Imperial Parking staffing costs when the 1998 REO provides that, during Event Periods, the Brewers are responsible for those costs (§ 2.6 (a) and § 2.8); etc.

RACM's buyers want the City's new roads to connect to the East Access Road, and they do not want the Brewers to pass through Miller Park roadway expenses to them. Sec. 2.7 of the 1998 REO provides that, once the Access Roads are publicly dedicated, the Brewers and CMC are relieved of budget and cost-sharing duties.

13. Law Enforcement and Emergency Issues – Naming Access Roads.

Currently, the Miller Park Access Roads are called different things by different people. For example, the East Access Road is also called Selig Drive, or East Selig Drive. And, signage does not identify the Access Roads. The Police Department concurs that naming the Access Roads and adopting an addressing system will assist emergency responders and law enforcement. Public dedication of the Access Roads would accomplish that safety goal.

14. Lingering State and County Real Estate Issues.

On June 8, 2007, I met with DOA General Counsel John Rothschild, DOA Deputy Legal Counsel Mark Saunders, and DOA Director of Portfolio Management Peter Maternowski in Madison to discuss the Access Roads and lingering State real estate issues.

At that meeting the State and City discussed the State wanting to convey bluff lands along Story Parkway back to Milwaukee County (south end of Mitchell Boulevard Park, just south of North Story Parkway and west of North 50th Street) and the State wanting to clean-up lingering real estate issues near the City's Waterworks Parcel.

I submitted to the State a draft of the New-Road-Connection Easement that addressed the State's real estate issues. The Brewers and District requested that those provisions be removed.

The City Attorney's Office remains willing to address the State's and County's issues. They should not be controversial. And, they should be addressed.

C. CONCLUSION

Dedicating the Access Roads at Miller Park as public right-of-way, as intended, would resolve most of the above issues. There would be no need to negotiate roadway-connection easements, Access Road budgets, or cost-sharing. The City would be responsible for the maintenance and plowing of the Access Roads if they were publicly dedicated – to the same extent as the City is responsible for any other City-owned public-right-of-way.

Alternatively, without dedication, the City, the Brewers and District could continue negotiating the New-Road-Connection Easement, but those negotiations have been taking place since April, 2007. I do believe we are at an impasse. And, the impasse exists even though the District's Board unanimously approved District Board Resolution No. 2007-02 authorizing the District Chair to enter the New-Road-Connection Easement "once it was acceptable to the District, the Brewers and the State of Wisconsin..." June 12, 2007 District-Board-Meeting Minutes. The Brewers have indicated by their October 5, 2007 letter that a meeting at this point would not be productive. See **EXHIBIT D.** An

impasse at this time is problematic because the City wants to complete the roads before winter, and new employers are opening up new facilities on the RACM lands.

If a meeting of the minds cannot be reached, the City retains the right to simply connect like it did with Canal Street.

I hope this has been helpful. Please call if you have questions or comments.

CAO DOC 124596

C:

DPW Commissioner Mantes

City Attorney Langley

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
PATRICK B. McDONNELL
LINDA ULISS BURKE
Deputy City Attorneys

CITY OF
MILWAUKEE
Office of the City Attorney

EXHIBIT B
CITY ATTORNEY OPINION

May 25, 2006

Mr. Joel T. Brennan, Assistant Executive Director
Redevelopment Authority of the City of Milwaukee
809 North Broadway, 2nd Floor
Milwaukee, WI 53202

Re: Curb Cuts in Stadium Ring Roads

Dear Mr. Brennan:

By an April 18, 2006 e-mail, you asked our office for an opinion "stating that the City/RACM, and potential purchasers of the RACM/City-owned land, have access to the Ring Road and can install curb cuts to all of the abutting properties to the stadium as well as the area called wheelhouse (far northwest corner of the property)."

Our office previously informed you that each of the City, RACM, and buyers from RACM of the former CMC-owned lands abutting Miller Park (the "CMC Lands"¹), are successors in interest of the CMC Lands and CMC Heartland Partners ("CMC") under that certain "Reciprocal Operating and Easement Agreement" dated September 18, 1998 (the "98 REO") among the Milwaukee Brewers Baseball Club, Limited Partnership (the "Brewers"), the Southeast Wisconsin Professional Baseball Park District (the "District") and CMC, and, as such, have all the easement rights to the South Access Road, the North Access Road, and the East Access Road as CMC negotiated and acquired by virtue of the 1998 REO.

Consistent with the above, our office drafted the February 25, 2005 letter attached as Exhibit A (Document No. 90555) that the City and RACM sent to the Brewers and the District notifying them that the City and RACM succeeded to CMC's rights under the 98 REO, including CMC's rights to and in the Access Roads. And, prior to RACM's closing on its sale of part of the CMC Lands to Palermos, our office suggested to Palermos's attorney that Palermos send a similar letter to the Brewers and the District.

¹ The 98 REO calls these lands the "Remaining CMC Land." Per 98 REO § 3.3, the "Wheelhouse" "is situated on the Remaining CMC Land."

THOMAS O. GARTNER
BRUCE D. SCHRIMPF
ROXANE L. CRAWFORD
SUSAN D. BICKERT
HAZEL MOSLEY
STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
MICHAEL G. TOBIN
DAVID J. STANOSZ
SUSAN E. LAPPEN
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
KURT A. BEHLING
GREGG C. HAGOPIAN
ELLEN H. TANGEN
MELANIE R. SWANK
JAY A. UNORA
DONALD L. SCHRIEFER
EDWARD M. EHRLICH
LEONARD A. TOKUS
VINCENT J. BOBOT
MIRIAM R. HORWITZ
MARYNELL REGAN
G. O'SULLIVAN-CROWLEY
KATHRYN M. ZALEWSKI
MEGAN T. CRUMP
ELOISA DE LEÓN
ADAM B. STEPHENS
KEVIN P. SULLIVAN
VINCENT D. MOSCHELLA
Assistant City Attorneys

B-1

Mr. Joel T. Brennan, Assistant Executive Director

May 25, 2006

Page 2

We previously suggested to DCD, and we renew our suggestion, that all buyers of CMC Lands be given a copy of the 98 REO and the February 25, 2005 letter (Exhibit A) so that they too may independently assert their rights under the 98 REO as successors to CMC and the CMC Lands.

At the time the City was extending Canal Street to link up with the South Access Road (see map attached as Exhibit B), our office informed DPW that the easement rights the City enjoys under the 98 REO would be meaningless without the ability to install curb cuts for vehicles to get to, and use, the Access Roads. The City made "curb cuts" and extended Canal Street, and, so far as we know, neither the Brewers nor the District protested any "curb cut" associated with the extension of Canal Street. The Brewers and District were aware, however, that the City was extending Canal Street.

We understand that a Subdivision Plat of the CMC Lands is being prepared to divide the CMC Lands (see Preliminary Subdivision Plat attached as Exhibit C), and that RACM is marketing the CMC Lands for sale. Like the City did when it extended Canal Street, it is foreseeable that buyers of CMC Lands abutting the East Access Road and the buyer of the Wheelhouse parcel will want to install their own curb cuts to get to the Access Roads. Certainly those buyers could interpret the 98 REO as we have, and they too could independently assert the right to make curb cuts as part of their independent rights under the 98 REO.

The Preliminary Subdivision Plat also shows West Wheelhouse Road and West Milwaukee Road. Presumably, these are intended as public right-of-way and the City will also be connecting these to the East Access Road via curb cuts.

The easement rights in the Access Roads created by the 98 REO were "created for the benefit of the [CMC Lands]", to "be used and enjoyed in common by" CMC, the Brewers, the District, and their respective permittees² "in connection with the development, use and enjoyment of the Stadium Complex and the [CMC Lands] . . ." (§2.1). And 98 REO §5.2 expressly provides that the 98 REO provisions constitute "covenants running with the land . . . both as to the benefits and burdens thereof and shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and assigns."

² 98 REO §1.1 defines "permittees" as including owners, lessees, and lawful occupants of any portion of the CMC Lands and "their respective officers, directors, employees, agents, partners, contractors, customers, visitors, invitees, licensees and concessionaires." Thus, owners of CMC Lands are "permittees" with the right to use the Access Roads in connection with the development, use, and enjoyment of their parcels.

B-2

Mr. Joel T. Brennar Assistant Executive Director

May 25, 2006

Page 3

While the 98 REO is silent concerning curb cuts, as indicated, buyers from RACM could take the same position that the City did by interpreting the 98 REO as allowing the right to make curb cuts in order to enjoy the easement rights in the Access Roads, because without curb cuts, the easement rights would be meaningless.

The general rule in Wisconsin is that there are no implied covenants in conveyances. See Wis. Stat. § 706.10 (6) which provides:

“Except as otherwise provided in sub. (7) and except as otherwise provided by law, no warranty or covenant shall be implied in any conveyance, whether or not such conveyance contains special warranties or covenants.”

See § 706.01 (4)'s definition of “conveyance” as a “written instrument, evidencing a transaction governed by this chapter, that satisfies the requirements of s. 706.02” (706.02 is “formal requisites for conveyances”). Per *Negus v. Madison Gas and Electric Co.*, 112 Wis.2d 52, 331 N.W.2d 658 (Ct. App. 1983), an easement is an interest in land. So, the general rule should apply to easements – there are no implied covenants in easements.

Wis. Stat. § 706.001 (1) provides that Ch. 706 (“Conveyances of real property; recording; titles”), subject to certain exclusions in § 706.001 (2) (including interests in land affected by act or operation of law, by will, or by lease for one year or less), governs “every transaction by which any interest in land is created, aliened, mortgaged, assigned or may be otherwise affected in law or in equity.” Wis. Stat. § 706.001 (3) provides that Ch. 706 “shall be liberally construed, in cases of conflict or ambiguity, so as to effectuate the intentions of the parties who have acted in good faith.”

The “good faith” provisions in 706.001 (3) and the clear intent of the parties to the 98 REO to create the easement in the Access Roads “for the benefit of the [CMC Lands]” (§2.1), in connection with “the development, use and enjoyment” of those lands (§ 2.1), to be used and enjoyed by CMC successors (§ 5.2) and owners of CMC Lands (§ 1.1), we feel, ought to put buyers of CMC Lands in a good position (*despite the general rule about no implied covenants*) to assert the right to make curb cuts and the right to get to the Access Roads so as to enjoy the easement rights therein.

Moreover, the general rule in § 706.10 (6) provides only that there are no implied “warranties” or “covenants.” The general rule, one could argue, does not relate to implied “easements” or curb-cuts to use the express easement-interests conveyed.

The general rule in 706.10 (6) is also subject to the qualifier “[e]xcept as provided in sub. (7) and except as otherwise provided by law . . .”

B-3

Sec. 706.10 (7) provides:

“(7) In the absence of an express or necessarily implied provision to the contrary, a conveyance evidencing a transaction under which the grantor undertakes to improve the premises so as to equip them for grantee’s specified use and occupancy, or to procure such improvement under grantor’s direction or control, shall imply a covenant that such improvement shall be performed in a workmanlike manner, and shall be reasonably adequate to equip the premises for such use and occupancy.” (Emphasis added).

The 98 REO reflected a major transaction in which the District would undertake improvements, including the new Stadium Complex (see “whereas” clauses) and building the Access Roads (see § 2.3) (see also “whereas” clauses, § 2.1, and §§ 2.4-2.7 where the parties to the 98 REO contemplated the Access Roads eventually being dedicated to the City as public streets), with the Access Roads being used by CMC (and its successors and permittees) after CMC developed its land. Thus, it would appear that 706.10 (7) applies because the 98 REO “conveyance” of easements reflected a transaction under which the District would improve the stadium parcel, with the improvements including the Access Roads, and with owners of CMC Lands being able to use the Access Roads. Accordingly, under 706.10 (7), there should be an implied covenant – not only that the Access Roads had to be built in a workmanlike manner – but that they had to be “reasonably adequate” and equipped for CMC and its successors. *Riverfront Lofts Condominium Owners Assn. v. Milwaukee/Riverfront Properties Ltd Partnership*, 236 F. Supp. 2d 918 (E.D. Wis. 2002) (covenants of workmanlike performance and reasonable adequacy are implied in conveyance). Thus, the 706.10 (7) exception to the 706.10 (6) “general rule” ought to also apply. And, buyers of CMC Lands can argue that the sub (7) exception allows them to make curb cuts so as to equip the Access Roads for CMC-successor use.

See, also, *Earl Milliken, Inc. v. Allen*, 21 Wis.2d 497, 124 N.W.2d 651 (1963), *Fisher v. Simon*, 15 Wis.2d 207, 112 N.W.2d 705 (1961), and *Oremus v. Wynhoff*, 20 Wis.2d 635, 123 N.W.2d 441 (1963): § 706.10 (7) applies an implied warranty of fitness to the described conveyancing transactions in which the covenant is not disclaimed expressly. Since the 1998 REO does not expressly disclaim a warranty of fitness, CMC successors can also argue that the 98 REO allows curb cuts as part of an implied warranty of fitness for use of the Access Roads for the benefit of the CMC Lands.

As indicated, the 706.10 (6) general rule of no implied covenants – besides being subject to the sub (7) exception – is also subject to the “except as otherwise provided by law” exception. Under that exception, CMC successors can further argue that curb cuts are part of a commonlaw “easement by implication,” “easement of necessity,” or other equitable easement, that enables them to be able to enjoy the express easement in the Access Roads conveyed under the 98 REO. *Schwab v. Timmons*, 224 Wis.2d 27, 589 N.W.2d 1 (S.Ct. 1999), ¶ 16: an implied easement may be created when its necessity is

B-4

so clear and absolute that, without the implied easement, the grantee cannot enjoy the property interest that was granted to him. In every deed of a part of the grantor's land, without express provision on the subject, there is an implied grant of easements of necessity for the enjoyment of the part conveyed. *Jarstadt v. Smith*, 51 Wis. 96, 8 N.W. 29 (1881). Certainly, the parties to the 98 REO intended vehicles passing from CMC Lands to stadium lands over the Access Roads, and for that to happen, curb cuts are necessary. The purpose of the court in construing conveyances is to ascertain the parties' intent. *Flynn v. Palmer*, 270 Wis. 43, 70 N.W.2d 231 (1955). See, also, *McCormick v. Schubring*, 2003 WI 149, 267 Wis.2d 141, 672 N.W.2d 63: "[e]asements may be provided by express grant of the owner of the servient estate or through court action when there is a dispute about the rights of each party" (¶ 9), "... the judicial creation of an easement is inherently equitable in nature . . ." (¶ 14), and "...interpretations relating to land that render any property useless are disfavored" (¶ 10).

In the case at hand, CMC Land owners can argue that, in order to make their easement in the Access Roads useful and meaningful, they have the equitable and implied right to get to the Access Roads by curb cut and access way.

Sec. 2.6 of the 98 REO establishes a cost-sharing mechanism for operating, maintaining and insuring the Access Roads (such costs being called "Access Roads Maintenance Costs" in 98 REO § 2.6 (a)) with the Brewers establishing annual, estimated budgets for those costs and, initially, CMC paying 75% and the Brewers paying 25% of those budgeted costs. Since buyers from RACM are successors to CMC and CMC Lands, unless some other agreement is reached, they too would or could be liable for sharing in Access Roads Maintenance Costs. From an equitable standpoint, that fact also weighs in favor of buyers having the right to make curb cuts. One who must pay should realize benefits.

In *Hunter v. Keys*, 229 Wis.2d 710, 600 N.W.2d 269 (Ct. App. 1999), Keys was the owner of the servient estate benefited by an access easement over Hunter's land. Keys wanted to fill wetlands and build a road over the easement area to improve access to his parcel. The instrument creating the access easement did not address those rights or possibilities. Hunter brought an action seeking a declaration as to the extent and scope of the access easement and to restrain Keys from his planned improvements. The Court found that: "[a]n unrestricted grant of an easement gives the grantee all rights that are incident or necessary to the reasonable and proper enjoyment of the easement" (229 Wis.2d at 715), and that Keys could "make changes in the easement for the purpose specified in the grant as long as the changes are reasonably related to the easement holder's right and do not unreasonably burden the servient estate" (229 Wis.2d at 715). The Court allowed Keys to build the roadway – even though not specifically authorized in the easement document – because the roadway was directly related to the purpose of the access easement and because Hunter did not show that the improvement would unreasonably burden his parcel. The Court concluded its decision by saying, "[t]he grant

B-5

of an access and egress easement necessarily implies the right to create and maintain a suitable access way." 229 Wis.2d at 719.

Here, as indicated, CMC Land owners can argue they have the equitable and implied right to make access-way-curb cuts in order to get to, and use, the Access Roads

In *Connehan v. Ford*, 9 Wis. 240 (1859), the Court held that a dedication of right-of-way to the public by parol, for use by the public with the owner's assent, was not in conflict with the statute of frauds, and was considered an estoppel *in pais* that debars the owner from reclaiming what was dedicated. While we are not dealing with a parol dedication of the Access Roads in the case at hand, the 98-REO-easement interests will be used by the public, with the State's, the District's, and the Brewers' knowledge. And, the 98 REO, as indicated, contemplated the Access Roads eventually being dedicated as public streets (see "whereas" clauses, § 2.1, and §§ 2.4-2.7).

In a November 20, 1997 "Amended and Restated Agreement for Exchange of Real Estate, Construction of Roadways and Access to Roadways" among CMC, the State of Wisconsin (by its Department of Administration and its Building Commission), the District, and the Brewers (the "97 PASA"), the District agreed to build the Access Roads and to dedicate them for public benefit and use (page 2, "whereas" clauses). In § 6 of the 97 PASA, the District agreed (subject to the 98 REO) that the roads would be complete, "operational and open for general use by the public..."

In line with *Connehan*, owners of CMC Lands can also point to the contemplated dedication and public use of the Access Roads as support for their right to full use of the Access Roads, including the attendant right to make curb cuts to get to the Access Roads.

The title of the 98 REO is "Reciprocal Operating and Easement Agreement" and, as discussed, it creates easements in the Access Roads. One of the "whereas" clauses indicates that the parties' intent was "to impose covenants . . . and to grant certain reciprocal easements. . ." Sec. 5.2 of the 98 REO, entitled "Covenants Running with the Land," provides that:

"The covenants and agreements set forth in this Agreement are intended to be and shall be construed as covenants running with the land comprising the Remaining CMC Land and the Premises, including the CMC Exchange Tract, both as to the benefits and burdens thereof and shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and assigns."

Reasonable restrictive covenants are enforced in favor of the landowners for whose benefit the restrictions were imposed. *Doherty v. Rice*, 240 Wis. 389, 3 N.W.2d 734 (1942). In addition to "easement" arguments, CMC-Land successors can also argue that, per *Doherty*, the 98 REO, as a "restrictive covenant," should be interpreted in their favor.

B-6

Mr. Joel T. Brennan, Assistant Executive Director
May 25, 2006
Page 7

In light of the above, CMC successors, including Wheelhouse buyers and buyers of other CMC Lands, can make a number of good faith arguments that they have the right to make curb cuts to get to, and use, the Access Roads.

Section 5.13 of the 98 REO, entitled "Further Assurances" provides:

"The parties shall execute, acknowledge and deliver, after the date hereof, without additional consideration, such further assurances, instruments and documents, and shall take such further actions, as any party shall reasonably request of the other in order to fulfill the intent of this Agreement and the transactions contemplated hereby."

Buyers of CMC Lands, as successors to CMC with the same rights CMC had under the 98 REO, can invoke § 5.13 and request that the Brewers and District provide assurance on their curb-cut and access rights.

We hope this has been helpful. Please call if you have questions or comments.

Very truly yours,


GRANT F. LANGLEY
City Attorney


GREGG C. HAGOPIAN
Assistant City Attorney

GCH/ml:105475

c: Rocky Marcoux
Joel Brennan
Jeff Mantes
Jeff Polenske
Patrick B. McDonnell
Gregg C. Hagopian

1089-2006-1218

B-7



Department of City Development

Housing Authority
Redevelopment Authority
City Plan Commission
Historic Preservation Commission
NIDC

Rocky Marcoux
Commissioner

Martha L. Brown
Deputy Commissioner

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED & FACSIMILE

February 25, 2005

Milwaukee Brewers Baseball Club
Miller Park
One Brewers Way
Milwaukee, WI 53214
Attn: Successor to Wendy Selig-Prieb

Foley & Lardner
777 East Wisconsin Avenue, Suite 3800
Milwaukee, WI 53202-5367
Attn: Ben J. Abrohams

Southeast Wisconsin Professional Baseball Park District
Miller Park
One Brewers Way
Milwaukee, WI 53214
Attn: Michael R. Duckett

Davis & Kuelthau, S.C.
111 East Kilbourn Avenue, Suite 1400
Milwaukee, WI 53202
Attn: Norman J. Matar

Re: Notice Under Section 2.4 and 5.1, Reciprocal Operating and Easement Agreement

Dear Brewers and District:

This notice is given under § 5.1 of that certain "Reciprocal Operating and Easement Agreement" by and among the Brewers, the District, and CMC Heartland Partners, dated September 18, 1998 (hereinafter called the "REO").

Section 5.1 of the REO indicates that any party may change the address to which notices are to be directed by providing written notice of the change of address to the other parties.



Milwaukee Brewers Baseball Club, et al
February 25, 2005
Page 2

The Redevelopment Authority of the City of Milwaukee ("RACM") succeeded to all right, title, and interest of CMC Heartland Partners ("CMC") when RACM condemned CMC and acquired CMC's real estate interests - including what is referred to in the REO as the "Remaining CMC Land." In litigation between the District and CMC in the Milwaukee County Circuit Court, Judge Fiorenza (Case No. 02-CV-001930) held that that was the case and that, specifically, CMC's rights under the REO run with the land and belong to RACM. See also REO § 5.2: REO runs with land and inures to the benefit of RACM as CMC's successor.

Moreover, RACM conveyed an interest in the "Remaining CMC Land" to the City of Milwaukee by virtue of a Warranty Deed dated January 27, 2005. Hence, the City too is a successor to the REO under REO § 5.2.

In light of the above, any notices to CMC under the REO should now go to each of RACM and the City at the following respective addresses:

Notices to RACM

Redevelopment Authority of the City of Milwaukee
809 North Broadway, 2nd Floor
Milwaukee, WI 53202
Attn: Executive Director

With a copy to:

Patrick B. McDonnell, Deputy City Attorney
City Attorneys Office
200 East Wells Street, Room 800
Milwaukee, WI 53202

With a further copy to:

Gregg C. Hagopian, Assistant City Attorney
City Attorneys Office
200 East Wells Street, Room 800
Milwaukee, WI 53202

Notices to City

City of Milwaukee
809 North Broadway, 2nd Floor
Milwaukee, WI 53202
Attn: Commissioner of the Department of City Development

B-9

Milwaukee Brewers Baseball Club, et al
February 25, 2005
Page 3

With a copy to:

Patrick B. McDonnell, Deputy City Attorney
City Attorneys Office
200 East Wells Street, Room 800
Milwaukee, WI 53202

With a further copy to:

Gregg C. Hagopian, Assistant City Attorney
City Attorneys Office
200 East Wells Street, Room 800
Milwaukee, WI 53202

Because we are aware that the Brewers and District each have an address at Miller Park, One Brewers Way, you will see that we used that address to send this letter rather than the addresses for the Brewers and District listed in REO § 5.1. In any event, this letter is being sent to the addresses that are listed in REO § 5.1 for the Brewers' and District's respective attorneys.

Sections 2.4 and 5.2 of the REO indicate that, in the event a CMC-successor desires to use the Access Roads prior to the Access Roads Easement Effective Date (as defined in the REO) for the purpose of facilitating construction of what is now the RACM parcel and the City interest therein, and its and their future development, the CMC-successor shall give prompt written notice thereof to the Brewers. And, thereafter, the CMC-successor shall have the right to use the Access Roads for construction, subject to the REO.

This letter (beyond providing notice as to whom notices to RACM and City should be sent) also provides notice under REO § 2.4 that RACM and City, as successors to CMC, desire to use the Access Roads prior to the Access Roads Easement Effective Date for the purpose of facilitating construction of what is now the RACM parcel and the City interest therein, and its and their future development. Part of the use of the Access Roads will include use for the construction of the extension of Canal Street.

RACM and City, with the giving of this letter of notice, expressly assert all of their respective rights, title and interest as successor to CMC, including, *but not limited to*, access and other rights under the REO.

In accordance with REO § 5.1, this notice is being signed by RACM and by City, or a respective officer, or respective attorney thereof.

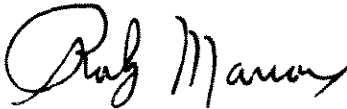
B-10

Milwaukee Brewers Baseball Club, et al
February 25, 2005
Page 4

Very truly yours,



JOEL T. BRENNAN
Assistant Executive Director-Secretary of RACM



ROCKY MARCOUX
Commissioner of the City of Milwaukee's Department of City Development

Cc: Mayor Tom Barrett
Patrick B. McDonnell, Deputy City Attorney
Gregg C. Hagopian, Assistant City Attorney
Jeff Mantes, DPW Commissioner
Jeff Polenske, City Engineer
Clark Wantoch, DPW
David Windsor, DPW
Jim Thiel, WISDOT

Doc No 90555

B-11

Key

Parcels:

- 1. Lewinsky (RACM)
- 2. Stimac (private)
- 3. A-9 (District)
- 4. Water Works (City)
- 5. MMSD
- 6. Wheelhouse (RACM)
- 7. Palermo CSM

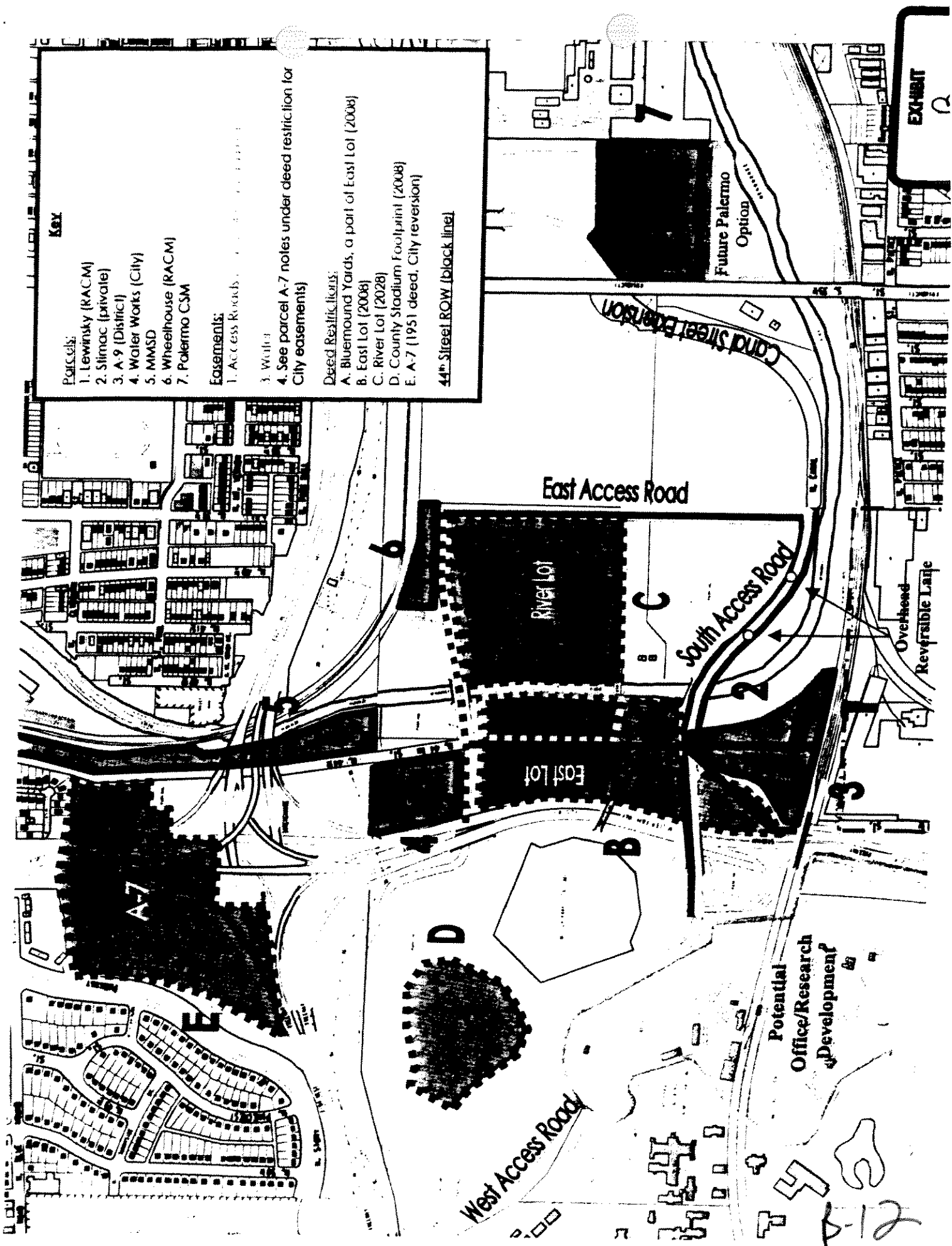
Easements:

- 1. Access Roads
- 3. Water
- 4. See parcel A-7 notes under deed restriction for City easements

Deed Restrictions:

- A. Bluemound Yards, a part of East Lot (2008)
- B. East Lot (2008)
- C. River Lot (2028)
- D. County Stadium Footprint (2008)
- E. A-7 (1951) deed, City reversion

44th Street ROW (black line)



B-12





EXHIBIT C

BRM 5-0141
DD

301 West Wisconsin Avenue
Milwaukee, WI 53203
phone: 414-274-4655
fax: 414-274-4640
www.RenewTheValley.org

MEMOMOONEE VALLEY PARTNERS, INC., a Wisconsin nonprofit, nonprofit corporation

MVP LETTER

February 21, 2005

RECEIVED
FEB 28 2005
OFFICE OF THE SECRETARY
WISCONSIN DOT

OFFICERS:

- President
Mr. Mark Martin
Foley and Lauder LLP
- Vice President
Mr. Peter McAvoy
Sixteenth Street Community
Health Center
- Secretary
Mr. Ron H. Altenburg
Marquette University
- Treasurer
Mr. Larry Salustro
We Energies

DIRECTORS:

- Mr. Ruben Anthony, Jr.
WI Department of Transportation
- Mr. John Brennan, III
J.M. Brennan, Inc.
- Mr. Earl Buford
BIG STEP
- Mr. Ramon Candelaria
Latino Community Center
- Ms. Virginia Carlson
UWM School of Architecture
& Urban Planning
- Mr. Jeffrey Crawford
Forest County Potawatomi
- Mr. Frank Cumberbatch
City of Milwaukee
- Ms. Michael Dawson
Consultant
- Mr. David Doer
Folk Corporation
- Ms. Laura Engan
WI Department of Revenue
- Ms. Laura Goranson
SE WI Professional Baseball
Park District
- Mr. David Kahler
DK Consulting, LLC
- Mr. Ted Matkom
van Briesen and Roper, PC
- Ms. Jane Penman
HGA Architects and Engineers
- Mr. Tom Sheehy
MMAC
- Mr. Dasha Young
Milwaukee County

HONORARY DIRECTOR:

- Mr. John P. Shmida, Jr.
Shmida, Blumens, Corder and

EXECUTIVE DIRECTOR:

- Ms. Laura Bray

Dear Partners:

On behalf of the Board of Directors of the Menomonee Valley Partners, Inc. (MVP), I write to urge the City of Milwaukee and the Southeast Wisconsin Professional Baseball Park District to quickly come to an agreement on the jurisdictional transfer of the ring road. We fear that an impasse and/or extended negotiations will cause serious delays on construction of an extended Canal Street and, thereby, have a negative impact on the Valley's redevelopment.

In the 1998 Menomonee Valley Land Use Plan, infrastructure improvements were one of eight priorities recommended to revitalize the Valley. For the past seven years, private and public sector partners have joined forces to ensure that the Valley has the required infrastructure for business development and recreation. The completion of the 6th Street bridges was a first important step and, now, the timely completion of Canal Street is essential for existing Valley businesses and those considering a Valley location.

We are most concerned that additional delays on Canal Street will negatively impact the redevelopment of the former Milwaukee Road Shops immediately east of Miller Park. Once known Wisconsin's most visible brownfield, this site is now one of Wisconsin's greatest opportunities for economic development. At this site, we will have the chance to create at least 1000 new jobs, expand the Milwaukee economy, increase the city's property tax base and provide needed recreational space. The signature site is ready for marketing to expanding or relocating businesses with the goal of having the first shovel in the ground in the beginning of 2006. To meet this schedule, there is little room for error or delay on the Canal Street timeline.

MVP has faith that you will be able resolve your differences quickly and to the benefit of the entire Milwaukee region, but if we can be of assistance in moving your negotiations forward, please do not hesitate to contact us.

Sincerely,

Laura Bray

Laura Bray
Executive Director

Cc: Mayor Tom Barrett

- Board of Directors, Menomonee Valley Partners, Inc.
- Frank Busalacchi, Secretary, Dept. of Transportation, State of Wisconsin
- Michael Duckett, Exec. Director, Southeast Wisconsin Professional Baseball Park District
- Steve Ethier, Vice President Miller Park Operations
- Jeffrey Mantes, Commissioner, Dept. of Public Works, City of Milwaukee
- Rocky Marcoux, Commissioner, Dept. of City Development, City of Milwaukee
- Doug Melvin, Executive Vice President and General Manager, Milwaukee Brewers
- Jay Williams, Chairman, Southeast Wisconsin Professional Baseball Park District

REVITALIZING THE MEMOMOONEE VALLEY FOR THE BENEFIT OF THE ENTIRE MILWAUKEE COMMUNITY

C-1



CAO Rec'd
10/8/07 11:22AM

ATTORNEYS AT LAW
777 EAST WISCONSIN AVENUE
MILWAUKEE, WI 53202-5306
414.271.2400 TEL
414.297.4900 FAX
www.foley.com

October 5, 2007

EXHIBIT D

WRITER'S DIRECT LINE
414.297.5703
babrohams@foley.com EMAIL

CLIENT/MATTER NUMBER
054780-0101

VIA FACSIMILE AND U.S. MAIL

Gregg C. Hagopian, Esq.
Assistant City Attorney
City of Milwaukee
City Hall, Room 800
200 East Wells Street
Milwaukee, WI 53202

BREWERS LETTER

Re: Miller Park

Dear Gregg:

Thank you for your September 26, 2007 email in which you set out in bullet points what the City sees as the outstanding issues with respect to the proposed Miller Park Sewer and Roadway Easement. The brewers and the District agree that these are the principal substantive issues that remain. Having considered those issues, the Brewers and the District do not believe that a meeting would be productive at this time. Instead, we have set out our positions below, and presume that you will respond appropriately on behalf of the City. If it later appears that a meeting would be a useful step in attempting to finalize the agreement, we can discuss the matter at that time.

As a preface to our specific comments, we think it critical that the City keep in mind how we arrived here. Your email makes references to the City's desire for more "mutuality" in the agreement. In our view, however, the principal objective of this agreement is to rectify the consequences of the City's unfortunate decision to enter and excavate on private property and to connect to the Miller Park storm sewer, without the permission of, or even notice to, the Brewers or the District. The terms and conditions of the proposed agreement will benefit the City exclusively, and are being considered by the Brewers and the District in the interests of being cooperative neighbors and good corporate citizens. The Brewers and the District, however, reasonably insist that the rights and privileges requested by the City not impose any unnecessary cost, inconvenience or expense on them, and the positions we have articulated below reflect that perspective.

With that said, we have the following comments on the bullet points set forth in your email:

1. **The Sidewalk:** This issue appears to be resolved. There will be no sidewalk. We do not know how the City got the impression that the Brewers wanted a sidewalk, but the parties now appear to be on the same page.

D-1

BOSTON
BRUSSELS
CHICAGO
DETROIT
JACKSONVILLE

LOS ANGELES
MADISON
MILWAUKEE
NEW YORK
ORLANDO

SACRAMENTO
SAN DIEGO
SAN DIEGO/DEL MAR
SAN FRANCISCO
SILICON VALLEY

TALLAHASSEE
TAMPA
TOKYO
WASHINGTON, D.C.

Gregg C. Hagopian, Esq.
October 5, 2007
Page 2

2. **Sovereign Immunity Waiver**: Our position remains the same -- the City must waive whatever rights it has to assert the defense of sovereign immunity or statutory notice. The City will have substantial obligations under the proposed agreement, including monetary obligations. Neither the Brewers nor the District has any interest in renegotiating the City's obligations in the face of an assertion of sovereign immunity or that the City received inadequate notice of claims. The City is operating here principally in a proprietary capacity as a real estate developer, rather than in a core governmental capacity. It wants to enter into a commercial agreement with the Brewers and the District to secure rights and privileges that are not otherwise available to it. Given that posture, the City cannot expect that the Brewers and the District will permit any opportunity for the City to disclaim or avoid its obligations later. We are open to "comfort language" that will clarify that the scope of the waiver is narrow (limited to this agreement) but will insist on the waiver.

3. **Indemnification**: You phrased this bullet point as the City wanting "more mutuality" in the agreement, but specifically referenced only the indemnity provision. If there are other provisions implicated by your "mutuality" comment, please let us know. With respect to indemnity, our view is that this agreement is necessitated entirely by the City's prior conduct and request for additional rights and privileges. If the agreement is executed, the benefits will inure almost exclusively to the City. Under those circumstances, we think it entirely appropriate that the City agree to indemnify the Brewers and the District for activities on property belonging to the Brewers and the District and the obligations undertaken by the City in order to gain access to that property. Conversely, the agreement does not contemplate a reciprocal right of access to the Brewers or the District to property belonging to the City (unlike past agreements between the City, the Brewers and the District), and there is no reasonable commercial purpose for indemnification by the Brewers or the District.

4. **Permitting Issues**: We were pleased to see that the City will accept responsibility for paying increased costs and permitting fees incurred by the District as a result of the City's connection to the Miller Park storm sewer. In our view, this makes sense, since the City would be saving the cost of securing its own permit and the City will not have to incur independent testing costs and undergo the other requisite analyses to maintain an ongoing permit. What seems apparent from your comments is that the City wants to devise a mechanism for calculating the increased cost. In order to do that, the District will have to undertake an engineering analysis, both at this time and in the future, as any increased costs become known to the District through the permitting process. Is the City prepared to pay the costs of such an analysis by a reputable, independent consultant, and set forth a cost sharing mechanism in the Agreement? If not, do you have another suggestion such as a formulaic approach to this issue? The District is prepared to follow up specifically on the details of these issues with you and the appropriate City engineers.

5. **Special Assessments**: We fail to see how this is an issue related in any way to this agreement. We do not read any provision of the current draft as speaking to whether or not the Brewers or the District would be required to pay a fee or special assessment in the event of a future connection to the City's storm sewer system. If such an issue arises in the future, the parties can

D-2

Gregg C. Hagopian, Esq.

October 5, 2007

Page 3

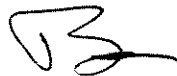
address it at that time. If I have missed your point here, I apologize, but this does not appear to be an issue that needs to be addressed in this agreement.

6. **Connection Fee by City:** In the District's view, the most fair resolution to the connection fee issues is to charge the connection fee that the City would charge a private party for connecting to the City's storm sewer system under similar circumstances. We suggest that the City make a proposal within those parameters, and explain the basis for the fee it proposes. If the City is not willing to set forth such a proposal, the District will have to undertake the analysis, and the District would then look to the City for compensation for the cost of such analysis.

We are available to discuss the open issues further, but think you will agree that a meeting is simply not necessary at this time. Issue Nos. 4 and 6 would appear to be the only one requiring the parties' substantial attention, and we are open to discuss how best to resolve them. Your views on whether the City will pay for the necessary engineering analysis, or whether the City has an alternative proposal for calculating its share of permitting fees and expenses, would be most helpful.

We look forward to hearing from you.

Very truly yours,



Ben J. Abrohams

D-3



SA

EXHIBIT E



Department of Public Works
Infrastructure Services Division

Jeffrey J. Mantes
Commissioner of Public Works
James P. Purko
Director of Operations
Jeffrey S. Polenske
City Engineer

October 11, 2006

Mr. Tom Folk
Senior Director of Operations
Miller Park
One Brewers Way
Milwaukee, WI 53214

Subject: Installing Storm Sewer Facilities in Selig Drive for the
Menomonee Valley Industrial Park Project

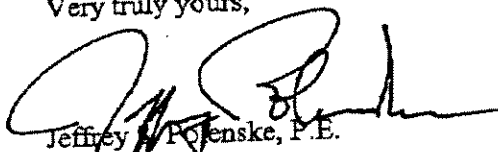
Dear Mr. Folk:

The City of Milwaukee has proposed new storm sewer work in Selig Drive to accommodate storm water runoff from newly proposed roads in the Menomonee Valley Industrial Park Project. The scope of this work will consist of open cutting and installing new storm sewer mains and manhole structures at the intersections of Selig Drive and West Wheelhouse Road, Selig Drive and West Milwaukee Road and Selig Drive and an alley 326 feet south of West Milwaukee Road. The new storm sewer mains will then connect to the existing stadium 30-inch diameter storm sewer located on the west side of Selig Drive (see enclosed Plan File Number 211-68 and 212-5).

We are submitting to you the preliminary sewer construction plans for your review and comments or concerns. Based on the tight schedule of this project, we request your immediate attention.

If you have any questions, please contact Mr. Martín A. Aquino at (414) 286-2462.

Very truly yours,


Jeffrey S. Polenske, P.E.
City Engineer

MAA
ZY

ZY: kf
Attachments
c: Mr. Phil Bielefeld - HNTB
Mr. Dave Miskey - DCD
RNP/JAM: 15-3

E-1

RECEIVED
 INFRASTRUCTURE
 SERVICES DIV-ADMIN.



003 OCT 20 PM 3: 54

MILWAUKEE BREWERS BASEBALL CLUB
 MILLER PARK ♦ ONE BREWERS WAY ♦ MILWAUKEE, WISCONSIN 53214 ♦ 414.902.4400
 WWW.MILWAUKEEBREWERS.COM

RICK SCHLESINGER
 EXECUTIVE VICE PRESIDENT - BUSINESS OPERATIONS

FROM CITY ENGINE			
	ORIG	COPY	REVIEW
JP		X	REPLY
CW		X	COMMENT
DM			DISTRIB
MA	X		INFO
SP			COORD
			SEE ME
			ACTION
			ATTN:

FROM	OPERATIONS	DATE
MAA		10/26
ORIG	COPY	INVEST
MAA	MAA	REPLY
TJT	TJT	COMMENT
ZY	ZY	ACTION
FPC	FPC	INFO
RCB	RCB	FILE
NMJ	NMJ	COORD
NW	NW	REVIEW
		SEE ME
		DISTRIB.
SECT		
SCAN		

VIA FACSIMILE

October 19, 2006

Mr. Jeffrey Polenske
 City Engineer
 City of Milwaukee
 841 N. Broadway
 Room 701
 Milwaukee, WI 53202

Re: Installing Storm Sewer Facilities in Selig Drive for the Menomonee Valley Industrial Park Project

Dear Mr. Polenske:

Thank you for your recent letter to Tom Folk regarding the placement of storm sewers adjacent to Selig Drive at Miller Park. Your letter is the first communication we have received from the City regarding storm sewer system placement and proposed roads for the development East of Miller Park. In order to evaluate the situation, we will need to obtain from the City all engineering and other information related to the sewer systems/configuration in the relevant area. From our perspective, it is not clear whether the existing Miller Park storm sewer facilities can accommodate the additional burden of the proposed new facilities. As such, it may be necessary to retain an outside engineering consultant to render an opinion with respect to the capacity of the existing sewer facilities.

That being the case, I am sure you can appreciate that any development by the City that may impact the Miller Park property raises a number of additional issues. Such issues include, among other things, public safety, economic considerations, utility capacity, environmental issues, architectural controls, liability issues including indemnifications and insurance, law enforcement, road maintenance and repair, snow removal and street lighting. Of course, since we sublease the Miller Park premises from the Southeast Wisconsin Professional Baseball Park District, the terms of our sublease require that the Stadium District be intimately involved in development issues affecting Miller Park. Earlier this week, Rocky Marcoux from the Department of City Development left voice mail messages with me and with Laura Goranson of the Stadium District for the purpose of gauging our interest in meeting with him to discuss the City's proposed developments East of Miller Park. From our perspective, we believe a meeting attended by Mr. Marcoux, other City officials and representatives from the Stadium District would be worthwhile so that we collectively can discuss the specific issues raised by your letter as well as development issues generally.



E-2

06 OCT 20 PM 3:11

Mr. Jeffrey Polenske
October 19, 2006
Page 2

Your letter references a "tight schedule for the project," and we want to cooperate with the City to promptly address the issues raised by your letter. In an effort to expedite this process, I am copying Mr. Marcoux and Ms. Goranson on this letter and requesting them to propose a number of alternative dates for a meeting among representatives from the City, the Stadium District and the Brewers.

Thank you for your attention to this matter and we look forward to working with the City.

Very truly yours,



Rick Schlesinger

c: Rocky Marcoux, Department of City Development
Laura Goranson, Stadium District
Mike Duckett, Stadium District



E-3



Department of Public Works
Infrastructure Services Division

Jeffrey J. Mantas
Commissioner of Public Works

James P. Purko
Director of Operations

Jeffrey S. Polenska
City Engineer

November 17, 2006

Mr. Rick Schlesinger
Executive Vice President-Business Operations
Milwaukee Brewers Baseball Club
Miller Park
One Brewers Way
Milwaukee, WI 53214

Subject: Installing Storm Sewer Facilities in Selig Drive for the
Menomonee Valley Industrial Park Project

Dear Mr. Schlesinger:

We have reviewed your letter, dated October 19, 2006, regarding the subject project and we offer the following comments relating to the issue of hydraulic capacity of the existing 30-inch diameter storm sewer located in Selig Drive:

1. Based on the post-developed drainage area, the proposed development will reduce storm water runoff to the existing 30-inch diameter storm sewer located on the west side of Selig Drive. We have enclosed the storm drainage area system map showing both the pre- and post-construction drainage areas and the preliminary sewer Plan File Numbers 211-68 and 212-5 for your reference. From the drainage area system map the following observations can be made.
 - a. For the area between proposed West Milwaukee Road and West Wheelhouse Road there will be a decrease of drainage area of 0.7 acres to Selig Drive.
 - b. For the area between proposed West Milwaukee Road and the Menomonee River there will be a decrease of drainage area of 2.4 acres to Selig Drive.
 - c. Therefore, the net decrease of drainage area to Selig Drive due to the proposed development will be 3.1 acres. This net decrease includes all the area of the proposed development to be served by the new storm sewer mains connecting to the existing 30-inch diameter storm sewer as shown on Plan File Numbers 211-68 and 212-5.

E-4


Mr. Rick Schlesinger
November 17, 2006
Page 2

2. The design tributary area for the newly proposed storm sewer facilities in Selig Drive will be a total of 2.10 acres generating a total flow (Q) of 9.19 cubic feet per second (cfs). The areas comprising of 2.10 acres are shown on the enclosed storm sewer system plan. Storm water runoff from all other areas in the development will be directed in an easterly direction away from Selig Drive. The design sheets are enclosed and highlighted showing the design calculations for the newly proposed storm sewer mains being installed in Selig Drive.

Based on the above facts and our analysis of the existing 30-inch diameter storm sewer located in Selig Drive, the storm sewer will have adequate hydraulic capacity to accommodate the redirected storm water runoff.

If you have any questions, please contact Mr. Martin A. Aquino at (414) 286-2462.

Very truly yours,


Jeffrey V. Potenske, P.E.
City Engineer

MZ ZY: kf

Enclosures

c: Mr. Jeffrey Mantes
Mr. Richard Marcoux
Mr. Mike Loughran
Mr. David Miski

RNP/JAM: 15-3

E-5

RECEIVED
MILWAUKEE
SEWERAGE DIVISION



2006 DEC 11 PM 2:15

MILWAUKEE BREWERS BASEBALL CLUB
MILLER PARK ♦ ONE BREWERS WAY ♦ MILWAUKEE, WISCONSIN 53214 ♦ 414.902.4400
WWW.MILWAUKEEBREWERS.COM

RICK SCHLESINGER
EXECUTIVE VICE PRESIDENT - BUSINESS OPERATIONS

FROM CITY ENGINEER			
	ORIG	COPY	REVIEW
JF		X	REPLY
CW		X	COMMENT
DM			DISTRIB
MA	X		INFO X
SP			COORD
			SEE ME
			ACTION
			ATTN:

VIA FACSIMILE

December 7, 2006

Mr. Jeffrey Polenske
City Engineer
City of Milwaukee
841 N. Broadway
Room 701
Milwaukee, WI 53202

Re: Installing Storm Sewer Facilities in Selig Drive for the Menomonee Valley Industrial Park Project

Dear Mr. Polenske:

Thank you for your November 17, 2006 letter. I have forwarded a copy of the letter to Stadium District representatives and some of our operations personnel for their review. After I have had a chance to speak with these persons, I will contact you to discuss next steps.

Very truly yours,

Rick Schlesinger

c: Rocky Marcoux
Jeffrey Mantes
Mike Loughran
David Miski

FROM	DATE	
MAA	12/12	
ORIG.	COPY	INVEST
MAA	MAA	REPLY
TJT	TJT	COMMENT
ZY	ZY	ACTION
FPC	FPC	INFO
RCS	RCS	ILE
NMJ	NMJ	COORD
NW		REVIEW
		SEE ME
		DISTRIB
SECT		
SCAN		

06 DEC 12 AM 10:41



E-6

