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December 16, 2013

VIA E-MAIL

Mr. James Owczarski
City Clerk
City Hall, Room 205

Re: Council File No. 131033; Cache Investments, LLC

Dear Mr. Owczarski:

Council File No. 131033 was sent to our office for review and approval, including our signature as to legality and enforceability.

We are returning this file to you unsigned.

File 131033 is set up as an *ordinance* authorizing the return of three City-owned parcels to the former owner, Cache Investments, LLC.

Attached is an article from the League of Wisconsin Municipalities providing a concise description of ordinances and resolutions, and the differences between them. As the article indicates, and as you are aware, an ordinance is local law of the City “prescribing general, uniform and permanent rules of conduct relating to the corporate powers of the municipality,” while resolutions “are generally less permanent enactments than ordinances” that “commonly deal with matters of a special or temporary character.”

While styled as an ordinance, File 131022 does not refer to, create, or amend any specific Milwaukee Code of Ordinance section, and it deals with three specific parcels and a specific former owner. Consequently, it addresses a matter of special or temporary character, and a unique situation, that we believe is better suited for a resolution as opposed to an ordinance.

We looked a bit into the history of these three specific parcels. The former owner, Cache Investments, LLC, filed three separate applications for vacation of the City’s *in rem* judgment under MCO 304-50. The City had acquired the three parcels by *in rem* judgment dated December 17, 2012. The respective vacation applications were filed on

the dates set forth in the table below, and the table also shows the respective Council Files that were created in response to the applications.

Address and Key Number	MCO 304-50 Council File regarding Vacation App.	Payment Required Under MCO 304-50 (the Vacation Process)	Was MCO 304-50 Payment Received?
1801 West Keefe TIN 284-0215-000-0	File 121283 Application Date: 12/20/12	\$20,024.99 if paid by March 7, 2013 ¹	No payment
3075-3077 North 14 th Street TIN 311- 0301-000-7	File 121284 Application Date: 12/20/12	\$17,564.72 if paid by March 7, 2013	No payment
3299 North 11 th Street TIN 283-0437-000-0	File 121408 Application Date: 1/17/13	\$16,693.75 if paid by April 1, 2013	No payment

Regarding the three above “vacation-procedure” files under MCO 304-50, per MCO 304-50-9, the applicant was required to pay the respective amounts listed above (the City’s *then* total costs and expenses attributed to the parcels); and, under 304-50-13, because the applicant failed to make payment of those amounts within 30 days of the date of the Council resolutions approving vacation, then the Council’s approval of the vacation of the *in rem* judgment and return of the parcels to the applicant became “null and void.”

Under File 131033, notwithstanding MCO 304-50-13, and the applicant’s failure to pay the amounts listed in the table, the Council would authorize the return of the three parcels to the former owner. Whether styled as an “ordinance” or a “resolution,” we also have concern about the Council allowing the former owner to use any procedure that resembles the MCO 304-50 procedure because MCO 304-50-4 provides that the former owner may only make one request to the Council to vacate an *in rem* judgment on a particular parcel.

And, the instant file (at least the version that we have) does not require *any* payment to the City of any sums, by any period in time, as a condition to the City’s return of the parcels to the former owner. However, an LRB “note” in File 131033 indicates that \$190.70 should be paid by noon today and that delinquent taxes will be calculated after the Council has taken action on December 17. DNS informed us that no payment was received today.

¹ The March 7, 2013 and April 1, 2013 dates represent the respective 30-day deadlines for payment under MCO 304-50-13.

When the City obtained tax-foreclosure judgment against the three parcels on December 17, 2012, the City became owner². The parcels are now City assets. Under the public purpose doctrine, it would be expected for there to be some recognition of benefit to the City or consideration in exchange for a City conveyance to someone of City assets. For example, in MCO 304-50 (the vacation procedure), the Council legislated that the former owner at least pay to the City the City costs and expenses. Under MCO 304-49-4-c and 304-49-7 governing City sales of City real estate, the Council legislated that consideration be paid to the City for City real estate. Under MCO 304-49-4, that consideration can be monetary as well as nonmonetary benefits to the City such as neighborhood stabilization, returning the parcel to the tax rolls, etc.

Accordingly, not only do we have concern about File 131033 being drafted as an “ordinance” as opposed to a “resolution,” and concern about creating some process for reconveyance that appears to be a second MCO 304-50 vacation request, we also have concern about required consideration.

We suggest an alternative to File 131033 that attempts to respect, and harmonize MCO 304-49 and 304-50.

If the Council, in its discretion, would like to have the City reconvey these three parcels to the former owner, then the Council could pass a resolution (as opposed to an ordinance) under MCO 304-49-7 and 304-49-8 authorizing that. For example, the former owner could offer to reacquire the parcels from the City (a conveyance to a designated person under 304-49-7), and the Council could, notwithstanding the buyer policies of 304-49-8-e³, approve the transaction. In doing so, the Council could, by its resolution, recognize consideration under 304-49-4-c and 304-49-7, including for example, such things as payment of the outstanding taxes, interest and penalties that would have otherwise been due, along with other City expenses, and recognition of benefit to the City due to return of the parcels to the tax rolls, etc. This type resolution was recently passed allowing the reconveyance of 1817 West National Avenue to Alice Ledesma. *See* Council File No. 130160.

We have spoken to the Treasurer’s Office about the parcels, and we see that there is a December 2, 2013 DCD letter and a December 4, 2013 DNS letter in File 131033 regarding City expenses. Our research shows that the DCD expenses (\$3,463.28) and the DNS expenses (originally reported in the letter as \$150.70 but missing a \$50 charge for the parcel on 11th Street) are new expenses *beyond those reported to the Council* in the MCO 304-50 files listed in the above tables. Moreover, while the Treasurer can calculate what interest and penalties would have been on the outstanding taxes that the

² Under City ownership, the parcels then became tax exempt for year 2013.

³ MCO 304-49-8 provides general buyer policies, one of which would – *unless the Council approves otherwise* – prohibit conveyance to a person who, in the past 5 years, had lost a parcel to the City by tax foreclosure.

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City foreclosed upon through December 31, 2013 had we not foreclosed, realize that – under City ownership, the parcels were tax-exempt for 2013. We could calculate a 2013 tax figure number using, for example, most recent assessed values and current tax rates.

In discussing these parcels with the Treasurer's Office, we learned that no mortgage holders existed at the time the City obtained *in rem* tax-foreclosure judgment.

Our office would be happy to work with the sponsor of File 131033, Alderwoman Coggs, and the Department of City Development, in putting together a transaction like the Ledesma one (File 130160) if desired.

Thank you very much. Please call if you have questions or comments.

Very truly yours,

GRANT F. LANGLEY
City Attorney

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Assistant City Attorney

JOANNA GIBELEV
Assistant City Attorney

GCH/ml: 1033-2013-3038/198542
Enclosure

CC by E-Mail: Alderwoman Milele Coggs

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