

CITY OF MILWAUKEE

Form CA-43

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To the Honorable Members
of the Common Council
City Hall, Room 205

RE: Semi-Annual In Personam Report Under Resolution No. 961955

Dear Council Members:

By 1993 Wisconsin Act 453 §§14 and 15 (eff. 5/13/94), the legislature amended Wis. Stat. §74.53 in ways that restored the attractiveness of the in personam remedy for delinquent real estate tax collection (i.e. the legislature removed a fair market value restriction that had been in §74.53 whereby, in order to sue via in personam, the fair market value of the property had to be less than the tax amount owed plus interest and penalties; and, the legislature allowed the common council to adopt an ordinance waiving the requirement that the council approve each individual in personam lawsuit before commencement of the same so long as, instead, the council adopted procedures for the city to follow in bringing in personam suits).

Shortly after 1993 Act 453 §§14 and 15 took effect, our office researched the in personam remedy and drafted a proposed ordinance to take advantage of that remedy. We had a number of internal meetings about the proposal. In February of 1997, we got the proposal to you. When we did, you promptly adopted it one month later, thereby creating Ord. §304-48 (Resolution No. 961687, eff. 3/21/97).

The council, by Resolution No. 961957, required our office to report to the council, by 7/1/97, on the City's use of the in personam remedy under §74.53 (not Ord. §304-48) for the period from 1/1/89 to 3/4/97. By letter dated 6/30/97, we reported that our office had used §74.53 to recover razing costs, but, that we had not brought any actions under §74.53 to recover delinquent real estate taxes. We reported further that, in light of the council's creation of Ord. §304-48, we were taking steps to implement the same, that we were in the "start-up phase" of the in personam

remedy vis-à-vis delinquent real estate taxes, and that we were hopeful that the remedy would prove to be effective and efficient.

The council, by Resolution No. 961955, also required our office to report to the council, semi-annually, on the City's use of the in personam remedy under Ord. §304-48. Our first such report was dated 1/6/98. In that report, we indicated that, by sending a general warning letter to all owners on the do-not-acquire list, and by actually targeting just a few owners (owners of 11 parcels), we made, at that time, in our first batch of test cases, roughly **\$75,880.81**. We also recommended that the council amend §304-48 to deal with problems we had encountered with the mailing of notice letters.

In March of 1998 (Resolution File No. 971769), the council did amend Ord. §304-48 as we had recommended concerning "notices" and, also as we had recommended, the council added the "repeat-delinquent owner" category to Ord. §304-48.

In our second semi-annual report to you, dated 6/30/98, and covering the first half of 1998, we reported that we had collected more from our first batch of test cases, bringing the total collected to that date to about **\$100,000**, and that we were working on identifying defendants for a second batch of test cases.

The success of our first batch of our test cases resulted in a nomination for a 1998 City Innovation Award.

In our third semi-annual report to you, dated 1/7/99, we indicated that, with another general mailing to owners on the do-not-acquire list (warning of our new remedy) and our second batch of test cases (targeting owners of 16 parcels), we had collected an additional **\$455,389.13**. That brought our total amount collected with the first and second batches of test cases to approximately **\$555,389.13**.

Our fourth semi-annual report to you was dated 8/4/99. In it, we indicated that, as of 7/1/99, by sending general warning letters to owners on the do-no-acquire list and in our first and second test batches using the in personam remedy, we had collected a total of about **\$837,789.39**. From the third semi-annual report to the fourth one, we had continued to collect from targeted defendants in our second test batch. We mentioned that, in our lawsuit against Mirza Beg concerning his Citgo Station at 7110 W. Lisbon, we were able to get the court to appoint a receiver to, literally, take control of the gas station and take money out of the cash register, which, in turn, induced payment in full of the delinquent real estate taxes (over \$25,000) within 48 hours. We also reported that the City was still at the forefront of the in personam remedy in the State of Wisconsin.

Our fifth semi-annual report to you was dated 5/1/00, and covered the period from 7/2/99 to 4/13/00. In it, we reported that, by mailing general warning letters to owners on the do-not-acquire list and in our first and second test batches, we had collected a total, as of 4/13/00, of roughly **\$918,711.35**. And, we reported that we were able to get the court to appoint a receiver for Brian Bruckner's land at 4071-95 N. Port Washington Road in an arrangement that, to this day, nets the City \$855 per month in rent payments that would otherwise have gone from the tenant to Bruckner ($\$855 \times 12 = \$10,260$ per year to the City). Also, as a precursor to our office's development of new state statute §75.106¹, by using in personam as a leverage tool, and with the council's approval (Resolution File No. 000178), we were able to get a parcel (3551-61 N. Teutonia Ave.; T.I.N. 271-2701-000-0) out of a defunct corporation's hands (CB Properties, Inc.), environmentally tested, off the do-not-acquire list, and into a taxpaying developer's hands. We also mentioned a *"10-Part Game Plan to Collect Hard-to-Collect Taxes and/or Get Parcels Off the DNA-List"* that our office had developed, and that included, as one of its ten parts, the idea/goal of moving from the "test phase" of in personam into regular implementation.

Our fifth semi-annual report to you was our last regular semi-annual report because we were at a state between (a) the "test phase" of in personam, and (b) regular use of that remedy.

On 4/12/01, the Treasurer's Office, working with our office, did send out yet another general warning letter to owners on the do-not-acquire list, on our office's letterhead, and under City Attorney signature. In the month following that letter, the Treasurer's Office collected \$141,794.05. And, the number of parcels on the do-not-acquire list dropped from 340 parcels, at that time, to 274 parcels.

Desiring to actually move from the "test phase" of in personam use to regular implementation, our office recommended, and the council approved, Resolution File No. 001773 (adopted 6/29/01) amending the Kohn Law Firm 1/1/97 collection contract to include Kohn's use of the in personam remedy for delinquent real estate taxes. The Kohn contract was amended 7/23/01.

Under the Kohn contract, as amended, if the amount collected is \$15,000 or less, Kohn gets a 20% fee for prelawsuit collections and a 25% fee for postlawsuit collections. Between \$15,000 and \$35,000, Kohn gets an 18% fee for prelawsuit collections and a 22% fee for postlawsuit collections. And, over \$35,000, Kohn gets a 12% fee for prelawsuit collections and a 15% fee for postlawsuit collections.

In mid-August, 2001, our office, acting under the amended contract, referred to Kohn the entire do-not-acquire list for Kohn to analyze with respect to the bringing of in personam actions under

¹ Wis. Stat. §75.106 was enacted by 1999 WI Act 121 (enacted 5/8/00, published 5/22/00) (1999 AB 871/SB 449). The Sherman Perk coffee shop deal, 4924 W. Roosevelt, Milwaukee, that our office negotiated and that the council approved (File No. 001595), was the first-ever 75.106 deal in the State of Wisconsin.

the "suspected environmental contamination" category of Ord. §304-48. The do-not-acquire list is a fluid list in that parcels are routinely added and delisted – depending on the circumstances. At the time the list was sent to Kohn, based on information provided by the Treasurer's Office, we understand that there were about 351 parcels on it (up from 270 parcels just 4 months prior to that), with total delinquent taxes (principal, interest and penalties) of about \$8,190,764.01. Kohn started working those files, and doing credit checks against owners to determine whether it made sense to pursue them.

On 1/16/02, we went to the Kohn firm to check on progress made with respect to its collection activities, on our behalf, using the in personam remedy, for real property tax delinquencies owed by owners of parcels on the do-not-acquire list. Be aware, however, that under "Standard Operating Procedures" relating to the Kohn contract, Kohn does report: daily to the Treasurer's Office on an electronic basis; weekly to the Treasurer's Office; and monthly to the Treasurer's Office concerning "close-outs" (i.e. files closed by Kohn for various reasons, including, for example, owner has no assets or insufficient assets to justify collection against him/her/it; owner could not be located or is dead without estate; etc.). Copies of those reports (with the exception of the daily ones) also go to Bev Temple of our office. The weekly reports show weekly amounts Kohn collects and weekly costs it incurs.

At our 1/16/02 office visit, we learned that, by using the in personam remedy on our behalf against owners on the do-not-acquire list, from mid-August, 2001 (when we referred the do-not-acquire list to Kohn) to 1/16/02:

- (1) prior to (without) bringing any lawsuits, Kohn collected \$541,012.94 and we incurred \$84,479.37 of fees to Kohn, to net the City **\$456,533.57** in *prelawsuit* collections (due to *prelawsuit* nature, we do not owe Kohn court costs for these collections because Kohn did not incur court costs for these collections);
- (2) Kohn initiated a total of 146 lawsuits. Those lawsuits were filed between November, 2001 and 1/9/02. Thus, it is still *very early* in the litigation to judge the rate of success of those suits. Nonetheless, as of 1/16/02, by bringing those suits, Kohn collected \$40,494.45, and on that amount, it earned fees of \$10,123.63 and incurred total court costs (filing fees and service fees) of \$24,348.60. But, of those court costs incurred, \$1,471 was returned to the City because, when Kohn does bring an action and incur court costs, and when Kohn does collect, it uses the first dollars it collects on a particular file to pay the City back for the court costs incurred, and after those costs have been reimbursed, then Kohn takes the remaining net collection to calculate its percentage fee. Thus, taking the \$40,494.45 amount collected, deducting the \$10,123.63 in earned fees, and deducting the *net* court costs of \$22,877.60 (i.e. \$24,348.60 total court costs less \$1,471 of court costs returned to City equals net court costs of \$22,877.60) equals a total amount

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collected, as of 1/16/02, at that *very early stage in litigation*, of **\$7,493.22** as the net amount of postlawsuit collections to the City; and

- (3) Kohn thus collected **a total net amount of \$464,026.79** (i.e. \$456,533.57 net in prelawsuit collections + \$7,493.22 net in postlawsuit collections = \$464,026.79 in total collections).

Thus, you can see, that by enacting Ord. §304-48, and by using it and the in personam remedy, and by sending general warning letters to owners on the do-not-acquire list warning them of our remedies, **the City has collected approximately \$1.5 million to date.**

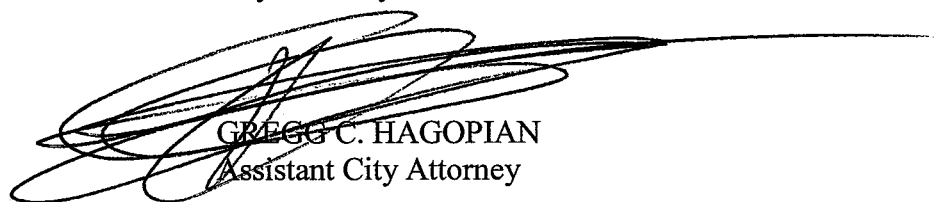
We have in our offices computer printout pages that we received from Kohn at our 1/16/02 visit that provide more detail, including owner names and tax key numbers, that are available for your review upon your request. In addition, as indicated, Bev Temple of our office and the Treasurer's Office have copies of Kohn's regular reports to the City.

Also be aware that Khon was recently awarded a new contract for City collection work to cover the period from 1/1/02 to 12/31/06.

We hope the above has been helpful.

Sincerely,


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