

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
LINDA ULISS BURKE
VINCENT D. MOSCHELLA
Deputy City Attorneys



**CITY OF
MILWAUKEE**
Office of the City Attorney

THOMAS O. GARTNER
BRUCE D. SCHRIMPF
ROXANE L. CRAWFORD
SUSAN D. BICKERT
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
BETH CONRADSON CLEARY
THOMAS D. MILLER
Assistant City Attorneys

February 7, 2008

Alderman Anthony Zielinski
14th Aldermanic District
Common Council, City Clerk
Room 205, City Hall
200 East Wells Street
Milwaukee, WI 53202

Re: Kinnickinnic River Bike Path

Dear Alderman Zielinski:

You have asked our opinion as to whether there is a deed restriction or other prohibition with respect to a proposed conveyance to a private developer of certain property near South 6th Street and West Rosedale Avenue (the "Property"). The Property is abandoned railroad right-of-way formerly owned by the Union Pacific Railroad Company. The City acquired the Property pursuant to its rights of eminent domain and an Award of Damages dated December 17, 2003, recorded December 18, 2003 as Document No. 8703735 (the "Award"). We understand the City now proposes to sell the Property to a private developer, subject to the developer constructing a bike path (and other improvements) thereon.

Pursuant to Wisconsin Statute § 32.05 (7)(c), recordation of the Award vests title to the Property in the City; no deed or other instrument of conveyance is necessary to effect such vesting of title to the Property. The Award provides that the Property is being acquired "for the improvement of the Kinnickinnic River Bike Trail" but otherwise contains no language limiting the City's use of the Property or restraining the free alienability thereof.

To finance acquisition of the Property and construction of the bike path thereon, the City sought and received federal grant money. Under the Congestion Mitigation and Air Quality Improvement Program ("CMAQ"), the federal government makes funds available to State and local governments for a variety of transportation projects. The City obtained an 80% CMAQ grant to finance development of the bike path.

CMAQ is governed by 23 USC § 149. Subsection (e)(1) thereof provides that a local government may "enter into an agreement with any public, private or non-profit entity to cooperatively carry out any project" under CMAQ. Subsection (e)(2) goes on to provide

Alderman Anthony Zielinski

February 7, 2008

Page 2

that the participation by such an entity can take the form of "(A) ownership or operation of any land, facility, vehicle, or other physical asset associated with the project; (B) cost-sharing of any project expense; (C) carrying out of administration, construction management, project management, project operation or any other management or operational duty associated with the project; and (D) any other form of participation approved by the Secretary."

Accordingly, the City, as project sponsor of the bike path, is free to utilize the participation of a private entity to implement any CMAQ-funded project. Such participation could include a sale of the Property to the private entity. Such private entity would be free to develop the Property in any manner so long as the CMAQ-funded project is actually implemented by construction of a bike path on the Property.

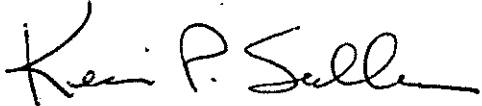
Provided that the bike path is actually developed on the Property, and such bike path is open to the general public for unlimited access, there will have been no violation of CMAQ in connection with the sale of the Property.

Please feel free to contact us should you wish to discuss this matter further.

Very truly yours,



GRANT F. LANGLEY
City Attorney



KEVIN P. SULLIVAN
Assistant City Attorney

KPS/ml:128697
1033-2008-183