

Report to the Manitowoc Plan Commission

Meeting Date: Wednesday, May 24, 2023

Request: PC12-2023: Iverson - Request to Purchase City-Owned Land, Maritime Drive. Parcels 000-003-000 & 820-103-100

Report: Jill and James Iverson, 133 Cleveland Avenue are requesting to purchase two parcels of City owned property for \$5,000 (see attached email). The parcels are located south of their residence and are located at the northwest corner of Maritime Drive and Huron Street. The northerly lot, parcel # 820-103-100, is approximately 13,330 square feet and the southerly lot, parcel # 000-003-000 is approximately 9,500 square feet.

Both lots have views of Lake Michigan although the northerly lot's view is partially blocked by the Yacht Club. The lots are zoned P-1 Conservancy and residential uses are not allowed in the P-1 zoning district. The lots are not designated as part of Lakeview Park. Both lots are partially encumbered by a sanitary sewer and the southerly lot also has a storm sewer catch basin located on it. The existing utilities encumber the lots but it is possible that a residence could be constructed on the lots if the zoning was changed and the lots were combined.

Although the City recently sold two strips of land to Doug Schwalbe, 123 Cleveland Avenue, who is a neighbor of the Iverson's, staff feels this request is different. The two strips Schwalbe purchased were unbuildable and had no long-term value to the City and were also encumbered by the sanitary sewer. In effect, that property only had value to the adjacent property owner.

Community Development staff recommends that the City retain the lots but supports any neighbor who is willing to work with the City to maintain the area. Staff would not recommend that the two lots be designated as parkland. This would provide the City the ability to sell the lots in the future for residential or other development if they so desire.

According to the aerial photography it appears that the Iverson's have a patio that crosses the property line onto the City lot. Staff recommends that the City and Iverson's enter into an agreement authorizing their use of the city owned land.

In the event the Plan Commission or Council decides to sell the property, staff recommends that the lots be put out to bid and sell the property for the highest and best use.

If the Plan Commission and Council decide to sell the property directly to the Iverson's at their suggested purchase price of \$5,000 staff recommends that the City place deed restrictions on the property stating that the purchaser and any subsequent owners cannot construct any structure or improvement on the lots and the lots must remain as open space. The covenant would prevent a purchaser from "flipping" the lake view lots for a profit.

Attached is an article from the League of Wisconsin Municipalities that discusses the procedures a municipality must follow when it sells land.

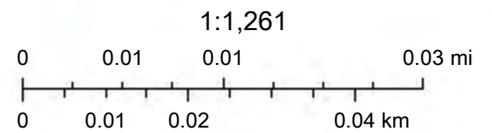
Recommendation: Community Development staff recommends the following: i) the City retain the two lots, ii) the City does not designate the lots as parkland and iii) the City and Iverson's enter into a use agreement for the patio that extends onto the City property.

Iverson Request to Purchase



5/17/2023, 3:45:54 PM

 Parcels



Paul Braun

From: Jill Iverson <jillreneeiverson@gmail.com>
Sent: Thursday, April 6, 2023 10:29 AM
To: Paul Braun
Subject: External: Offer to purchase property
Attachments: ATT00001.txt

Dear City of Manitowoc,

We would like to purchase two lots in our neighborhood in order to conserve the green space for environmental and aesthetic reasons. Our neighbors around the perimeter of the lots have all signed on to adopt and care for Lakeview Park and we thought this was part of the city park. We were surprised to learn that they are city lots because they are barely buildable for many reasons. They are however extremely valuable to the birds, wildlife, and the human neighbors. We have the ability to be stewards of this land and to keep it pristine while taking the burden of care away from the city.

We have set aside \$5,000. for purchase of these two lots and we hope that the city can make these numbers work so that we can conserve this beautiful part of the lakeshore for the good of all.

Please add this to the May 24th Planning Council meeting so that we can attend. We will be out of the area for the April meeting time.

We thank you in advance for your consideration of this matter and hope you will realize the positive impact this can have if we are to maintain our green space along the lake.

In community,

Jill and James Iverson

133 Cleveland Ave.

Manitowoc, WI 54220

Jill cell: 920-645-4088

Parcel numbers: #820103100 and #000003000

Be Alert !

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LEGAL FAQs

FREQUENTLY ASKED QUESTIONS LEGAL

1. What procedures must a municipality follow when it sells land and may a municipality sell land for below fair market value?

Cities and villages are expressly authorized to sell and convey property. See Wis. Stat. secs. 61.34(1) and 62.22(1). The statutes do not specify any procedures a municipality must follow when selling property. We often get asked whether a municipality must, when selling property, solicit bids and sell to the highest bidder. A municipi-

pality may, but is not required to, use a competitive bidding process when selling property. A municipality may, just as well, choose to list the property with a real estate broker or establish any other reasonable sales procedure.

When a party interested in buying a particular parcel of land from a municipality initiates discussion with the municipality about the possibility of purchasing the parcel, the municipality may negotiate exclusively with the interested party and need not publicly

advertise the lot's availability before selling the property to the interested party.

We have advised municipalities in the past, however, that they should obtain an appraisal of any parcels to be sold to eliminate the possibility of a successful taxpayer's suit challenging the adequacy of the purchase price. The Wisconsin Supreme Court has held that a sale of municipal property authorized by the governing body may be voided if a taxpayer can establish

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(1) illegality, (2) fraud or (3) a clear abuse of discretion on the part of the governing body. *Newell v. Kenosha*, 7 Wis.2d 516, 96 N.W.2d 845 (1958); *Hermann v. Lake Mills*, 275 Wis. 537, 82 N.W.2d 167 (1957). If a municipal governing body sells property for substantially less than a fair consideration in money or other benefits, it may be found to have abused its discretion. See *Hermann v. Lake Mills*, *supra*. This is especially true if the land is sold to private parties who intend to use the land for purely private purposes.

When municipalities sell property to nonprofit organizations or governmental entities for a municipal public purpose, the sale price is less of a concern. Under such circumstances, the sale price could even be below fair market value as long as the amount of loss incurred by the municipality as a result of the sale is for a public purpose under the public purpose doctrine. The public purpose doctrine requires that a municipality's expenditure of public funds be for a public purpose. *Hopper v. City of Madison*, 79 Wis.2d 120, 256 N.W.2d 139, 142 (1977).

The courts have stated that what constitutes a public purpose is, in the first instance, a matter for the legislature to determine and that the legislature's determination is entitled to great weight. *Id.* The courts have established the following test for determining whether a particular appropriation is for a public purpose:

For the public purpose requirement to be met, the subject matter of the appropriation must be a public necessity, convenience or welfare. Each case must be decided with ref-

erence to the object sought to be accomplished and to the degree and manner in which that object affects the public welfare. Factors which may be considered include the course or usage of the government, the objects for which taxes have been customarily levied, the objects which have been considered necessary for the support and proper use of government, the extent to which the expenditure results in competition with private enterprise, the presence or absence of a general economic benefit, the number of citizens benefited, and the necessity and infeasibility of private performance.

Id., 256 N.W.2d at 143 (all citations omitted). For further discussion of the public purpose doctrine see League legal opinion Powers of Municipalities 852.

Finally, any proposed sale of municipal property should be referred to the plan commission, if there is one, for its recommendation before final action is taken by the governing body. Wis. Stat. sec. 62.23(5). See also *Scanlon v. Menasha*, 16 Wis.2d 437, 114 N.W.2d 791 (1962).

2. Can municipalities adopt and enforce ordinances prohibiting the discharging of a gun within the municipality?

Yes. While municipalities are generally prohibited from regulating firearms more stringently than state law, the statutes expressly provide that municipalities may enact ordinances restricting the discharging of firearms. Wis. Stat. sec. 66.0409(3)(b).

Section 66.0409(2) prohibits, with certain exceptions, any city, village, town or county from enacting an ordinance or adopting a resolution that regulates the "sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration or taxation of any firearm or part of a firearm, including ammunition and reloader components," unless the ordinance or resolution is the same as or similar to, and no more stringent than, a state statute. "Firearm" is defined to mean "a weapon that acts by force of gunpowder." Wis. Stat. sec. 167.31(1)(e). As a result of this prohibition, municipalities may adopt or continue to enforce ordinances regulating the use of a firearm only if the ordinance has a statutory counterpart. Any municipal ordinances which attempt to regulate firearms differently or more stringently than state law are invalid and unenforceable.

3. May a municipality enforce a municipal ordinance outside its corporate boundaries (e.g., on land the municipality owns that is located in an adjacent town)?

No. The general rule is that absent an express grant of authority to enforce an ordinance extraterritorially, municipal ordinances have no effect outside of the municipality's corporate boundaries. See *Wisconsin's Environmental Decade, Inc. v. DNR*, 85 Wis.2d 518, 271 N.W.2d 69, 76 n. 8 (1978).

Municipal ordinances would apply to territory owned by and lying near but not necessarily contiguous to a city or village if annexed under Wis. Stat. sec. 66.0223.