

Report to the Manitowoc Plan Commission

Meeting Date: May 23, 2018

Report Print Date: May 18, 2018; 2:18 PM

Request: PC 16-2018: Request from James and Kimberly Everett to Purchase City Owned Land Adjacent to 1418 N. 3rd Street.

Reason for Request: The Everett's would like to increase the size of their property.

Existing Land Use for Subject Property: Vacant

Existing Zoning for Subject Property: R-4 Single and Two Family

Surrounding Property Land Uses and Zoning

Direction	Existing Land Use	Existing Zoning
North	Apartment	R-6 Multiple Family
South, East, West	Residential	R-4 Single and Two Family

Comprehensive Plan: Proposed land purchase is compatible with the Comprehensive Plan

Report: The Common Council referred a request from James and Kimberly Everett who are interested in purchasing a City owned parcel of property. The Everetts recently purchased their residence at 1418 N. 3rd Street which is adjacent to and south of the City owned parcel.

The City parcel is described as Lot 13, Block 5, Reed Lawn Subdivision. The triangular shaped lot is 0.10 acres with 62' of frontage along N. 3rd Street, 162' along the north line and 145' along the south line. In the R-4 zoning district the minimum lot size for a buildable lot is 5,500 s.f.; front and rear yard setbacks are 25', and the side yard setbacks are 6'. The small lot size and setbacks make the lot unlikely to have a residence constructed on it.

The parcel was transferred from the Manitowoc Veteran's Housing Corporation to the City of Manitowoc in 1982. The deed did not show any restrictions or covenants. If the recommendation to sell the property is approved, title work should be done to determine if there were any other covenants or restrictions recorded in a separate document.

City and MPU staff were contacted to determine if there was any reason to retain ownership of the lot, and no department indicated a reason to retain the property. Currently the City is responsible for cutting the grass and shoveling the sidewalk.

Recommendation: The Community Development Department recommends approval of the sale of the lot with City staff to proceed with any steps required to coordinate the sale.

James Everett
1418 N. 3 Rd Street
Manitowoc Wi, 54220
920-717-0839
April 30 2018

City Hall
900 Quay Street
Manitowoc Wi. 54220

Honorable Mayor Nickels, Counsel Members,

I would like to introduce us. We are James and Kimberly Everett, we recently acquired the house on 1418 N. 3rd st in Manitowoc.

Looking at our survey we noticed that there is a small parcel of land on the north side Lot 13 BLK 5 that belongs to the city and we are inquiring to purchase this land.

Inclosed is the information we have on hand.

Thank you for your attention.

Sincerely James Everett



RECEIVED
MAY 01 2018

PROPOSED HOUSE AT 1418 N. 3RD STREET

OWNER / BUILDER CAYEMBERG BUILDERS

LOT AREA 9,740 SQ. FT.

000.00 = EXISTING GROUND ELEV.

000.00 = PROPOSED NEW ELEV.

● — DENOTES EXISTING PIPE

○ — DENOTES IRON ROD SET

→ DENOTES WATER DRAINAGE

— Varies DENOTES UTILITY & DRAINAGE

— Varies EASEMENT, WIDTH SHOWN ON MAP

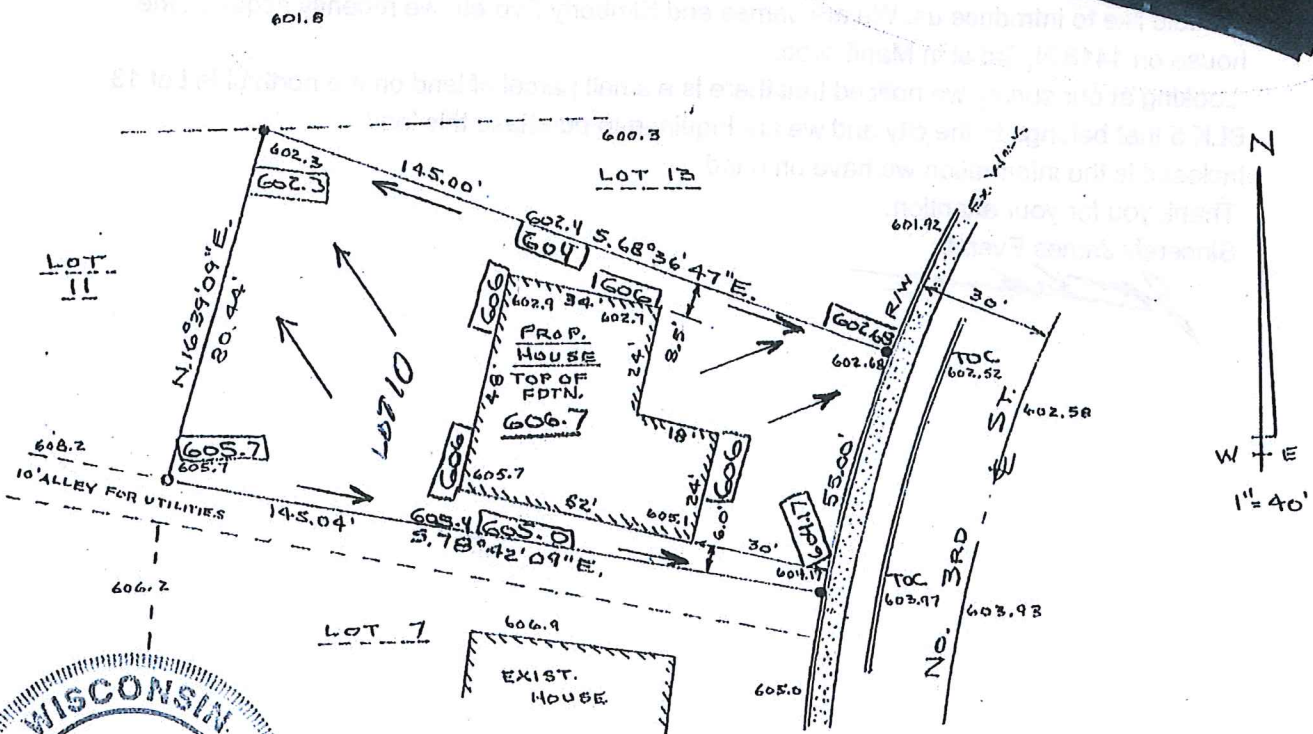
LOT DESCRIPTION

LOT 10, BLOCK 5
REED LAWN SUBD.

BENCHMARK

TOP OF CURB AT SOUTH
PROP. LINE 603.97

LOT AREA 9,740 SQ FT



WE HEREBY CERTIFY THAT WE HAVE
CHECKED LOT CORNERS, SET - BACKS
AND GRADES.

DATED 10/27/94

Paul M. Steinbrecher
PAUL M. STEINBRECHER, L.S. NO. 1608



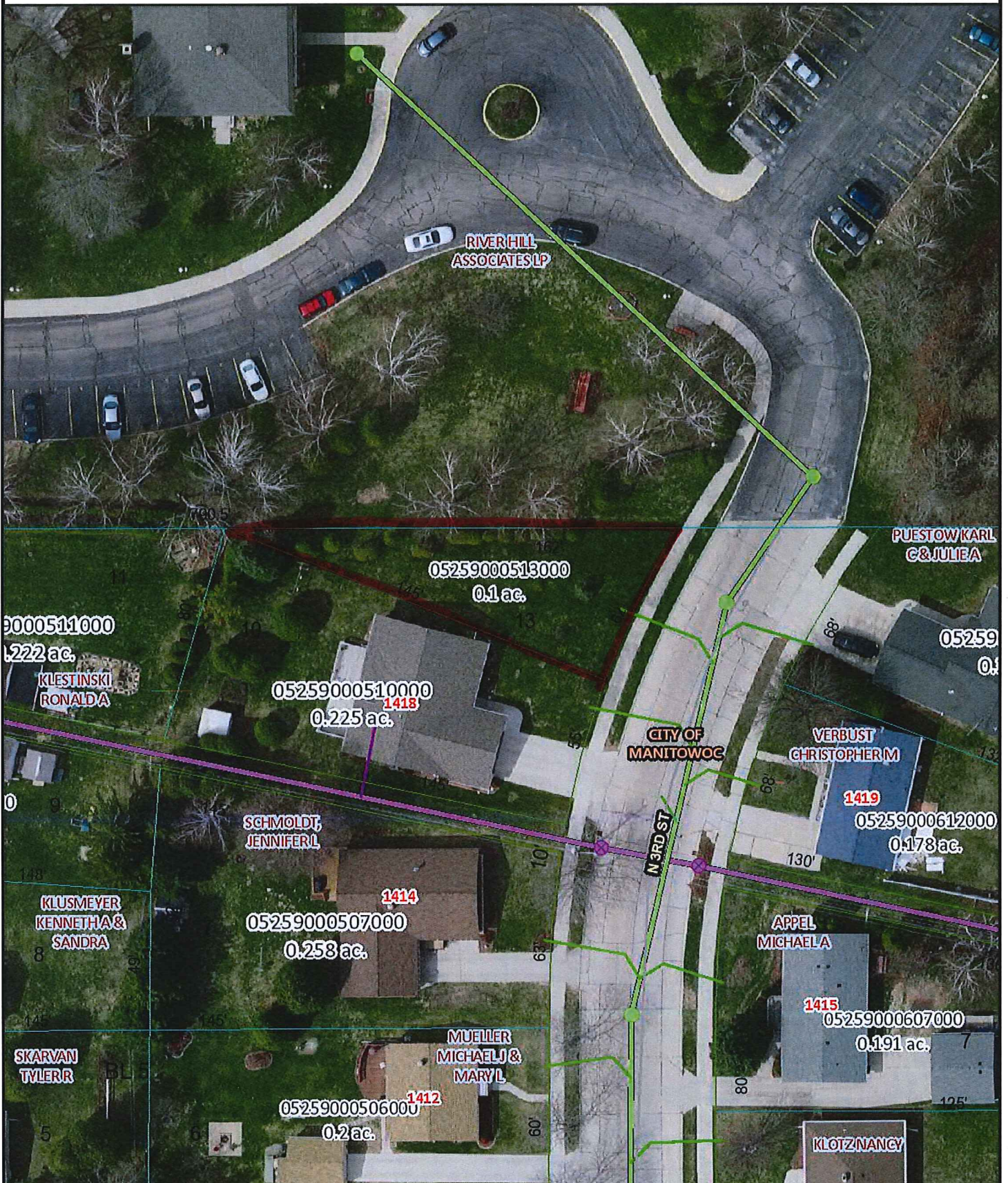
BREY-STUEWE & BRAUN INC.

Consulting Engineers
Registered Engineers
and Land Surveyors

709 WASHINGTON ST.
MANITOWOC, WIS.
ZIP 54220
TELEPHONE 684-5503
684-5504

L15402

City Lot



Author:
Date Printed: 5/16/2018



The burden for determining fitness for use rests entirely upon the user of this website. Manitowoc County and its co-producers will not be liable in any way for accuracy of the data and they assume no responsibility for direct, indirect, consequential, or other damages.



05.17.2018 12:43

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-

ality 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

Funding the MIDWEST

one project at a time.

MSA

PROFESSIONAL SERVICES More Ideas. Better solutions.

800.362.4505 • www.msa-ps.com

ENGINEERING • SURVEYING • ARCHITECTURE • ENVIRONMENTAL • PLANNING • FUNDING

CH. 61 = VILLAGES
CH. 62 = CITIES

(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.