Legal Memorandum

To: City Plan Commission

From: Stephen F. Matty – City Attorney

Date: 2-24-22

Re: Legistar 21-1259; Resolution declaring certain property located at Nakomis Avenue (parcel #17-10675-165) as surplus property.

The Legal Department was asked to opine on the above-mentioned resolution, specifically, what happens to the property at issue if the public access designation is removed. Reviewing the legislative file, it appears the intent of the resolution is to declare the property surplus and then sell the property in order to allow a single-family home to be built. The Engineering Department, however, identified that discontinuing the public access will not allow this result. Rather, the discontinuance will cause the property to be split to the adjoining property owners instead.

After review of the file, Wis. Stat. §§ 66.1003 to 66.1006 and other information available, the Legal Department agrees with the ultimate analysis of the Engineering Department. The vacation will not create a new lot for single-family development, but rather it will eliminate public access to the water and provide additional land to the neighboring property owners.

Whether the public access should be vacated and given to neighboring property owners is a political decision with many factors for consideration. It has already been identified that the public access' terrain makes it difficult for actual public access. Likewise, it is the Legal Department's understanding that this is the only public access in the area to the Black River. There is generally a strong public interest in maintaining public access to water. To that end, Wis. Stat. § 66.1006 would prohibit the City Council's decision to vacate the public access unless the Wisconsin Department of Natural Resources agrees.

Since the primary intent of the resolution is to create a lot for single-family home construction and there is nothing in the file to show that the WDNR has approved the vacation, it is the recommendation of the Legal Department that the resolution be denied.

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