



Office of the City Attorney

City Hall, Suite 206
201 Delafield Street
Waukesha, Wisconsin 53188-3646
Telephone (262) 524-3520
Fax (262) 650-2569
Email attorneys@waukesha-wi.gov

Brian E. Running
City Attorney
Miles W.B. Eastman
Assistant City Attorney
Julie M. Gay
Assistant City Attorney
Anne Marie Iselin
Assistant City Attorney
Linda M. Lamm
Legal Assistant

July 7, 2020

Memorandum

To: Common Council, Mayor
From: Brian Running
Re: Imposing National Park Service Restrictive Covenants on New Park Land

This memo is in relation to agenda items 20-0789 and 20-0881, the acquisition of lands adjacent to Missile Park and then subjecting those lands to the same restrictive covenants that are already in place in Missile Park.

Missile Park is the former Nike missile launch site on Broadway just east of the Les Paul. It was acquired from the US Government in 2012 under the Federal Lands to Parks Program. The land came with conditions, though – the program requires that lands be subject to certain restrictive covenants. They are:

1. The land can only be used for park or public recreation purposes, forever.
2. A permanent sign has to be placed on the land stating that the land was acquired through the Federal Lands to Parks Program.
3. The land cannot be sold or conveyed to anyone except another eligible government agency.
4. Biennial reports have to be filed with the National Park Service describing the lands' use.
5. Any revenues generated by the lands have to be used only for recreation purposes.
6. The National Park Service has to be allowed on the land to inspect at any time.
7. The Federal Water Pollution Control Act (Clean Water Act of 1977), and Executive Order 11990 (May 24, 1977) for Protection of Wetlands, and Executive Order 11988 (May 24, 1977) for Floodplain Management, have to be observed on the lands.
8. The Architectural Barriers Act of 1968, the Rehabilitation Act of 1973, and the Americans With Disabilities Act of 1990 have to be observed on the lands.
9. All non-discrimination regulations of the Department of the Interior issued under Title VI of the Civil Rights Act of 1964 have to be observed on the lands.

All of these restrictions are already imposed on Missile Park.

The Department of Parks, Recreation and Forestry has been in talks with the owners of the lands immediately to the east of Missile Park for the City to acquire those lands to enlarge Missile Park. Coincidentally, the Water Utility has been looking for a site to locate a booster pumping station and reservoirs for use with the Great Lakes water project. Missile Park happens to be close enough to the planned route of the pipeline that it would serve as a good location for these facilities.

The engineers working on the pipeline project have determined that the best location for the booster pump station would straddle the border between existing Missile Park and the new lands to be acquired. Putting the booster pump station on the Missile Park property would violate the Federal Lands to parks Program restrictive covenants, of course, so a proposal was made to the National Park Service. A piece of Missile Park would be released from the restrictive covenants if the newly-acquired lands would be subjected to the covenants. New land would be swapped for the old, in effect. The NPS has agreed with this concept, conditioned on a number of things that have to be done.

A couple of those things are to authorize the purchase of the lands to the east of Missile Park, and then to authorize that the restrictive covenants be placed on that new land. That is the purpose of agenda items 20-0789 and 20-0881.

Once the land is acquired, a “declaration of restrictions” will be drafted and recorded against the newly-acquired lands, except for a small corner of the land, which will be part of the booster pump station. Similarly, a “deed of release” will be drafted that will release the part of Missile Park where the booster pumping station will be from the covenants. Attached is a map showing the locations of these things. The area outlined in blue is existing Missile Park. The area outlined in green is the new land that will be purchased. The area outlined in red is where the booster pump station will be. The area with the thick red diagonal lines is the part of the new land that will not be subject to the restrictive covenants, and the area with the skinny red cross-lines is the part of Missile Park that will be released from the covenants.

The resolution that you are asked to pass tonight does the following things:

- It requires that the newly-acquired lands have the restrictive covenants placed on them.
- It authorizes me to draft a declaration of restrictions to accomplish the imposition of the covenants on the new land.
- It authorizes me to draft a deed of release which will remove the covenants from the part of Missile Park on which the pumping booster station will be located.
- It authorizes the Mayor and Clerk to execute them on behalf of the City.
- It authorizes me to record the documents and to do anything else that’s required to get the US Government’s approval to locate the booster pumping station on the land indicated on Exhibit A. As I work with the National park Service to get these documents done to their satisfaction, there may be other things that come up and need to be done, so this is a blanket authorization to let me get those things done without having to get further Council approval.

Thank you for your consideration of this resolution.

Exhibit A

CERTIFIED SURVEY MAP NO.

A DIVISION OF THAT PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4, THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4, AND THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 1, THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 12 TOWNSHIP 6 NORTH, RANGE 19 EAST, IN THE CITY OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN.

OVERLAP BETWEEN LEGAL DESCRIPTION AND CSM 7626

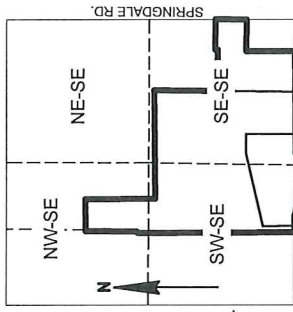
GAP BETWEEN LEGAL DESCRIPTIONS

VICINITY MAP

SE 1/4, SEC. 1-6-19

NE 1/4, SEC. 12-6-19

Scale: 1" = 2000'



EAST 1/4 CORNER OF SECTION 1-6-19 FOUND CONCRETE MON. W/ BRASS CAP N = 373456.33 E = 2485040.76

POB

SOUTH 1/4 CORNER OF SECTION 1-6-19 FOUND CONCRETE MON. W/ BRASS CAP N = 370778.482 E = 2482357.775

NW-NE

- Notes:
- Bearings are referenced to NAD 27, Wisconsin State Plane Coordinate System, South Zone, in which the South Line of the Southeast 1/4 of Section 1, Township 6 North, Range 19 East, which bears S89° 26' 44" W.
 - Overhead electric easement to WEPC, NE 1/4 Section 12 (not mappable) Doc. 242005
 - Overhead electric easement to Wisconsin Gas & Electric Company, NE 1/4 of Section 12, NE side of Highway (not mappable), Doc. 212667
 - Overhead electric easement to Wisconsin Gas & Electric Company, SE 1/4 of Section 1, NE side of Highway (not mappable), Doc. 212969
 - Overhead electric easement to Milwaukee Electric Railway and Light Company, SE 1/4 Section 1 along Springdale Road, (not mappable)

LEGEND

- FOUND IRON PIPE 1.25" OD IP
- FOUND CONCRETE MONUMENT WITH BRASS CAP
- SET 3/4" X 24" REBAR
- PROPERTY LINE
- EXISTING RAW LINE



AYRES
ASSOCIATES

N17 W24222 Riverwood Drive, Suite 310 Waukesha, WI 53188 (262) 523-4488

