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May 1, 2019

Redevelopment Authority of the City of Racine
c/o Amy Connolly, Executive Director
City Hall, Room 102
730 Washington Avenue
Racine, WI 53403

RE: Redevelopment Authority of the City of Racine, Agenda Item 0511-19,
Resolution 19-12 rescinding Resolutions 10-10, 18-12, and 18-15 regarding
Southside Industrial Park Design Standards and Covenants.

Dear Ms. Connolly:-

At its May 2, 2019, meeting, the Redevelopment Authority of the City of Racine will address Agenda Item 0511-19, to wit: Resolution 19-12 rescinding Resolutions 10-10, 18-12, and 18-15 regarding Southside Industrial Park Design Standards and Covenants. This letter addresses issues related to that agenda item.

By its Resolution 18-15, July 19, 2018, the Redevelopment Authority of the City of Racine ("RDA") has requested the City Attorney's approval of the "Southside Industrial Park of Racine Protective Covenants," which were approved by the RDA on May 2, 2018 (the "Protective Covenants"). The RDA directed that the Protective Covenants *not be recorded* without approval of the City Attorney. As of this writing, such Protective Covenants remain unrecorded. For the reasons set forth herein, I do not approve the Protective Covenants as drafted. I recommend they be revised before being recorded.

SUMMARY

As you know, a wireless communications facility exists in the Southside Industrial Park. Protective Covenants related to the Southside Industrial Park originally were drafted in 2010. Since then, the Wisconsin Legislature enacted new law pertaining to wireless communications facilities. The Protective Covenants—as a whole—are inconsistent with now-extant state statutes regarding wireless communications facilities; they would be in violation of the law if recorded against the property. While certain of the individual procedures and requirements of the

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Protective Covenants appear to be compliant with the statutes, the clear statutory rule is for other procedures and requirements to be handled through local zoning that is not inconsistent with the statutes. The wireless facility itself is already regulated by conditional use zoning permit, which is the preferred method of regulation.

I advise the RDA to rescind its Resolution 18-15, revise the Protective Covenants to conform to state statutes by making them inapplicable to the portion property upon which the wireless facility is sited, because it is a wireless communications facility and then record the revised version of covenants against the appropriate lands in the Southside Industrial Park. Pertinent explanation, further discussion, and recommendations follow.

BACKGROUND

Resolution 18-15 and the proposed Protective Covenants pertain to all the lands in the Jacobsen/Textron Industrial Area, including Parcel 3 of Certified Survey Map No. 2781 (hereinafter the "Property"). The Property is owned by the RDA, was developed as a wireless communications facility, and is operated by a private mobile service entity pursuant to long-term lease. The wireless communications facility was present at the Property in 2002 when the RDA adopted the Jacobsen/Textron Industrial Area Redevelopment Plan, which applies to the Southside Industrial Park.

Subsequent to adoption of that redevelopment plan, the Wisconsin Legislature created the mobile tower siting regulations set forth in Wisconsin Statutes section 66.0404. The RDA wants to sell the Property to a wireless company as soon as possible to accelerate the receipt of revenue from the Property and beneficially apply the revenue elsewhere.

ANALYSIS

As the only wireless communications facility in the Southside Industrial Park, the Property is the only parcel in the Southside Industrial Park that is subject to section 66.0404. That statute regulates and protects wireless facilities by ordaining state standards and further providing that local regulation of siting and construction of new wireless facilities and substantial modification of existing wireless facilities may only be carried out through local zoning. Consequently, the RDA is without authority to regulate those aspects of use of the Property, and the wireless facility cannot be regulated. Any attempt to regulate the whole of the in the manner proposed by the Protective Covenants against a wireless facility will invite litigation and place the RDA and any other owners or owners association created pursuant to the Protective Covenants in vulnerable legal position.

The proper regulatory authority for at least some of the procedures and content of the Protective Covenants is the City of Racine, and the proper regulatory vehicle is local zoning not inconsistent with section 66.0404, Wis. Stat. Any desired restrictions on the Property should be addressed through local zoning by the City, consistent with section 66.0404.

Connolly Correspondence, May 1, 2019

As of this writing, no person has purchased any land in the Southside Industrial Park in reliance on the Protective Covenants, because the Protective Covenants are not recorded against the Property. Therefore, the RDA may withdraw its approval of the Protective Covenants by rescission as memorialized in a suitable resolution. Because the Protective Covenants are not required by the Redevelopment Plan or by statute, the Property may be excluded from any new version of Protective Covenants that is adopted by the RDA. In addition, the RDA could also amend the Redevelopment Plan to expressly exempt wireless facilities from any protective covenants, but that would be a more involved process and is not necessary if the Protective Covenants themselves were to conform to statutes.

RECOMMENDATION

I recommend that the RDA rescind Resolution 18-15 for the purpose of reconstituting and conforming the Protective Covenants with statutes, sell the Property for use in accordance with the Redevelopment Plan, then adopt a revised set of protective covenants that does not apply to the Property, and then record the new covenants against the other properties in the Southside Industrial Park. The RDA may not sell any other property in the Southside Industrial Park until all desired protective covenants are adopted and recorded against the other properties in the Southside Industrial Park. Neither the Property nor any other land in the Southside Industrial Park may be sold before receiving the Common Council's approval of the RDA's report of the terms, conditions, and other material provisions of the transaction, and before the RDA conducts a public hearing that is preceded by class 2 notice, under Wisconsin Statutes Chapter 985.

This letter addresses only the wireless communications issues identified above. Given the length of time since the Protective Covenants were drafted, they may include other provisions that the RDA should revisit before it adopts and records any revised version of the Protective Covenants.

Sincerely,

/s/

Scott R. Letteney
City Attorney