Darsi Foss RR/3

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

WISCONSIN
DEPT. OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary
Gloria L. McCutcheon, Regional Director

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2300 N. Dr. ML King Drive, PO Box 12436
Milwaukee, Wisconsin 53212-0436
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RECEIVED

January 25, 2000

Jon K. Wactor- Partner
Luce, Forward, Hamilton, and Scripps
121 Spear Street, Suite 200
San Francisco, CA 94105

Subject: Liability Clarification for former MPS site, 801 S. 70th Street, West Allis, Wisconsin

Dear Mr. Wactor:

On December 13, 1999 you sent a request for a liability clarification letter to Pat Chung regarding the former MPS property located at 801 S. 70th Street, West Allis, Wisconsin (hereinafter "the Property"). This letter will clarify the responsibility of various parties for the cleanup of the Property under state regulations.

Background

As you explained in your request, the City of West Allis (hereinafter "the City") is undertaking the cleanup of the Property for redevelopment. To facilitate the redevelopment, it has divided the Property into two parcels, "parcel one" and "parcel two." In March of 1998, the City applied and was accepted into the Voluntary Party Liability Exemption (VPLE) process and the City is in the process of conducting an investigation and cleanup of the Property and is currently working with the Department in accordance with state regulations. The VPLE process is found in Wisconsin law (s. 292.15 Stats.). The VPLE process allows parties to conduct an environmental investigation and cleanup of an entire property and then, when the investigation and cleanup is approved by the Department, the voluntary party receives limits on future liability. The Certificate of Completion, which is obtained when the remediation is completed, is transferable to any future owner of the Property. Furthermore, it is our understanding that your client "Opus North Corporation" has purchased parcel one and intends to purchase parcel two from the City in reliance on the City's agreement to complete the cleanup of the property. Your client will develop the property as a medical clinic.

Prospective Purchaser Liability Clarifications

The Department recognizes that the state's hazardous substance discharge law, s. 292.11, Stats. imposes liability on the owner of a contaminated property where a hazardous substance discharge is continuing to discharge to the environment from contaminated soil, even if the contamination was caused by another person. However, the Department has determined that it is in the public interest to exercise its enforcement discretion in situations where the Department has clear evidence that a former owner or occupant of the Property has taken over responsibility for necessary remedial actions at a property and has the means to conduct any future response actions, if necessary (especially, if that party has entered into a written agreement to do so). Furthermore, it is important to understand that in general, the Department does not take legal actions at sites where a voluntary party is in the process of working with the

Department to remediate a property in a timely manner in accordance with state regulations. The Department typically takes legal actions only in situations where someone is not following their legal responsibilities under state law.

It is my understanding that as part of the Purchase and Sale Agreement for this Property, the Community Development Authority of the City of West Allis (the "Seller"), Opus North Corporation (the "Buyer"), the City of West Allis (the "City") and St. Mary's Hospital of Milwaukee (the "Tenant") entered into an "Environmental Addendum" on November 20, 1998, to define the respective responsibilities of the parties to the agreement. The Addendum indicated that Seller was undertaking remedial actions in order to meet the standards set forth in Wisconsin Statute 292.15(2)(a)2 (the Voluntary Party Liability Exemption Process), and would "use reasonable efforts to undertake and complete, as expeditiously as reasonable, any and all activities that are necessary, appropriate or required to obtain a 'Certificate of Completion' for the Property, ..." Further, the Addendum states that "until the Certificate for the Property is issued, Seller and City, jointly and severally, shall, . . . indemnify, defend and hold Buyer . . . harmless from and against any and all damages . . . related to Hazardous Substance contamination on the Property as of the Closing Date . . . ." Thus, if Seller and the City fail to complete the environmental cleanup at the Property, Buyer would be able to enforce the terms of the Environmental Addendum against them.

For this particular Property, the Department agrees to exercise its enforcement discretion, given the site-specific circumstances. The Department can assure your client and any lender that it will take no legal action to compel the purchaser to take responsibility to investigate or remediate – under the Hazardous Substance Discharge law or any other applicable state environmental clean-up law – all or a portion of the environmental contamination that was present on the Property prior to the date of purchase as long as the City continues making satisfactory progress towards cleanup of the soil and groundwater at the Property. Also, when the City of West Allis completes the necessary remedial actions at the Property and receives a Certificate of Completion from the Department, that Certificate, with the liability protections which it affords, can be transferred to your client.

Finally, you should be aware that the Department and the Environmental Protection Agency (EPA), on October 27, 1995, entered into a brownfields memorandum of agreement (MOA) to clarify the role of the federal Superfund program in Wisconsin's voluntary cleanups. This MOA clearly was intended to assist property owners, such as yourself, understand any potential liability under Superfund if a cleanup with the Department is in progress or complete. In essence, the MOA states that the federal Superfund program will not take action at any property where the responsible or voluntary party is undertaking a cleanup in accordance with Wisconsin laws. The federal Superfund program has no interest in properties, such as yours, where parties are working cooperatively with the Department.

Lender Liability Issues

As of May 13, 1994, lenders and representatives were provided with a clear release from environmental liability under Wisconsin's hazardous substance discharge law, if they were involved in lending activities at a property contaminated by a hazardous substance discharge. Subject to certain limited conditions, lenders involved with a contaminated property cannot be held environmentally responsible for a property if the lender:

(1) engages in normal lending activities, such as executing mortgages, providing financial assistance, or advancing funds;
(2) acquires the property and conducts an environmental assessment;
(3) inspects the property before acquiring it;
(4) enforces a security interest in personal property or fixtures; or
(5) acts as a representative.

These five situations are furthered explained in the enclosed fact sheet: "Fact Sheet 5: Environmental Liability Exemption for Lenders and Representatives (12/99)." At your Property, the Department cannot hold a lender responsible for the environmental cleanup, except in the rare situation where the lender would directly or indirectly (i.e., through tortious conduct) cause a discharge of a hazardous substance. Therefore, any lender engaged in normal lending activities with your Property or business could not be held liable under Wisconsin's Hazardous Substance Discharge law for the cost of investigating and cleaning up the Property.

Future Issues

Please understand that the Property has not yet met the conditions necessary for closure and that the City may need to do additional testing or remediation at the Property. Any new building or redevelopment on the property should not interfere with the environmental cleanup activities at the Property. Also, prospective purchasers should be aware that there may be deed restrictions or other conditions for closure at the Property. If a party chooses to build or do other construction activities at the property before the site has received a Certificate of Completion, I recommend that they work with the City and their consultant. Also, please understand that the future owner would be responsible if they cause a new discharge of a hazardous substance on the Property after they purchase the property.

Hopefully this letter, which clarifies the Department's enforcement policies, will help your client to feel more comfortable purchasing this property. If you have any questions or need any additional assistance with this property, please feel free to call me at 414-263-8561.

Sincerely,

James A. Schmidt

James A. Schmidt
Remediation and Redevelopment Supervisor
Southeast Region

cc: Pat Chung- SER
Scott Ferguson - SER
Judy Ohm- LS/5
Darsi Foss- RR/3
John Stibal- City of West Allis

FORM NO. 965-A

Stock No. 26273

CERTIFIED SURVEY MAP NO. 6578

BEING A REDIVISION OF LOT 1, BLOCK 2, ASSESSORS PLAT NO. 263, BEING A DIVISION OF THE NORTHWEST 1/4 AND THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP 7 NORTH, RANGE 21 EAST IN THE CITY OF WEST ALLIS, COUNTY OF MILWAUKEE, STATE OF WISCONSIN.

● INDICATES 1" DIAMETER IRON PIPE, 24" LONG, 1.13 POUNDS PER LINEAL FOOT, UNLESS OTHERWISE NOTED.

ALL DIMENSIONS ARE MEASURED TO THE NEAREST 0.01 FOOT.

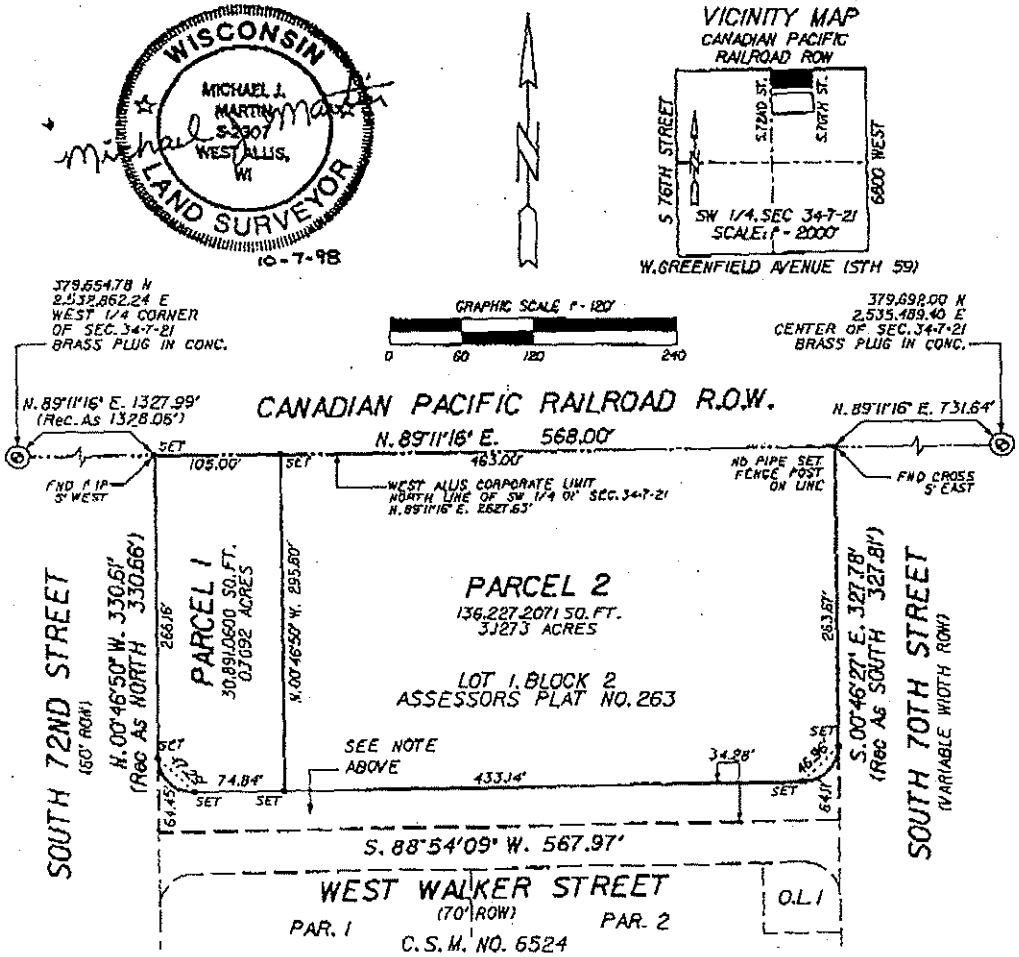
BEARINGS ARE REFERENCED TO GRID NORTH, WISC. STATE PLANE COORD. SYSTEM, SOUTH ZONE (NAD 27).

OWNER AND SUBDIVIDER: COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS

MAP PREPARED BY: MICHAEL J. MARTIN, RLS
CITY OF WEST ALLIS
7525 WEST GREENFIELD AVENUE
WEST ALLIS, WI 53214
(414)302-8377

RIGHT-OF-WAY FOR WEST WALKER STREET CONVEYED TO THE CITY OF WEST ALLIS FOR STREET AND HIGHWAY PURPOSES BY QUIT CLAIM DEED RECORDED JULY 9, 1997, ON REEL 4091, AS IMAGES 981 THROUGH 982, INCL., AND AS DOCUMENT NO. 7391026.

WISCONSIN MICHAEL J. MARTIN S-2307 WEST ALLIS, WI LAND SURVEYOR 10-7-98



CURVE DATA TABLE							
PARCEL	ARC	RADIUS	CHORD BEARING	CHORD	DELTA	TANGENT BEARING	TANGENT BEARING
PAR. 1	47.29'	30'	N. 45° 56' 21" W.	42.54'	90° 19' 01"	N. 88° 54' 09" E.	N. 00° 46' 50" W.
PAR. 2	46.96'	30'	S. 44° 03' 51" W.	42.31'	89° 40' 38"	N. 00° 46' 27" W.	S. 88° 54' 09" W.

This instrument drafted by Michael J. Martin, Registered Wisconsin Land Surveyor S-2307