

**2015 July 21**

Common Council

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*Public comment excerpt*

23:55 Bruce Joffe (at 24:04)

“[...] When I listened to things that were going on yesterday [WRA meeting] certain things just really concerned me. I was confused about some, I was concerned about others. First let me speak to what I was confused about. I was confused about, as my friends over here mentioned, there seems to be two completely different stories or explanations or whatever. According to Midwest Environmental, which yesterday Ms. Catarozoli said that right before the meeting she was on the phone with the DNR and they confirmed it, in big bold letters here it says ‘the DNR’s Ordinary High Water Mark determination does NOT cover the entire hotel parcel’, and it said that the city is proceeding at significant risk that title insurance for the hotel parcel will be rescinded. But I also heard representatives from the City say that that’s not true, that the entire parcel. Well there’s got to, it’s either one thing or the other and I would like to see it in writing. I would like to know what the answer is. Is this parcel totally zoned to do what’s expected or isn’t it? Because we are hearing two different things. So that is my confusion.

(30 seconds warning)

My concern has to do with the speed at which this is occurring. This is Wisconsin, folks. It has taken me three months from the point at which the weather turned nice to get my house painted. It has taken three months and still their pictures [the two new alderpeople] are not up here [on the city website]. I heard yesterday June 2016 that this hotel would be done. That concerns me. Thank you.”

*Motion to approve items mentioned for compliance with Sawyer Hotel Development agreement (costs, final plan, financing).  
discussion.*

31:13 Ald Ron Vandertie: “If the high water mark changes when the construction is underway, performance bond is what we’re wanting, its what we’re going to have before, so the taxpayer won’t be on the hook?”

Marty: “The performance bond has no relation to the high water mark. That has to do with the fact that the builder has the means to accomplish the construction. We don’t want them going out of business halfway through the construction of the hotel.

Ald. Vandertie: “And that’s, so that’s really the same thing.”

Marty: “Well, No it’s not the same thing.”

Ald Vandertie: “well, if he can’t construct it, he’s on the hook”.

EXHIBIT G

Mayor: No I think what Ron, what we're talking about here or what you may be referring to and I don't want to put words in your mouth, but if the DNR should happen to change their high water mark determination, their title company would be on the hook. Okay? That's why you have title insurance.

Ald. Vandertie: oh, yes.

Mayor: Right now we have title insurance on that piece of property. So that's been issued. *[more discussion of performance bond for construction]*

32:43

Ald. Kelly Catarozoli: Just a comment to Ron [Vandertie]. With the title insurance, and I'm not sure if you were here yesterday, we kind of went over that and Mr. Nesbitt wrote a letter to the title insurance company waiving two exceptions on there because it was his perception, is that safe to say [to Nesbitt] that the letter of concurrence did cover both parcels? We've now, after it's been reviewed, it does not cover both parcels. So I think part of what you were asking, though, is what happens if that changes. And is that something that we need to address at this point? Because obviously we've only looked at, we've only got concurrence for one parcel so we need a letter of concurrence for the other parcel, we need a determination there because the hotel sits on both.

Mayor: No I would disagree. I don't believe we do need a concurrence for a parcel that we already have insurance for.

Ald. Catarozoli: But we gave them wrong information.

Mayor: No we didn't, you know we didn't give -

Ald. Catarozoli: Yes we did, because -

Mayor: Ms. Catarozoli, you know we didn't give anybody wrong information. As a matter of fact, nobody, I don't think, here knows what information was used by the DNR to determine the high water mark that they came up with. Nobody in this room I believe was in that meeting.

Ald. Catarozoli: That's not the part we're discussing, here, Mr. Mayor. We are talking about the second parcel, which essentially would be one side of the hotel. We made a new lot for this hotel, which covers both [parcels]. I am not implying anything, but the letter written from Randy to the title insurance company at the time told them to waive that because this covered the whole thing. And we know now it doesn't. So what do we do at this point Randy, with the fact that we have new information and we have confirmation from the DNR - what do we do with the title company?

Randy Nesbitt: Can I address that Mr. Mayor?

Mayor: Sure go ahead.

Randy Nesbitt: First of all, I'd like to note that the letter I sent to the title company asking them to remove two exceptions was based upon the developer's request that those two exceptions be removed. And, so that was a request to the title company asking if they would remove those exceptions. Second of all, a letter such as that requesting that exceptions be removed is of very little value to a title company. They don't base anything other than it being a request. They could care less what I think about the title to the property, or where I think the high water mark is. They do their own evaluation. As a matter of fact Don Schenker, one of the state's top title searchers who did the evaluation for the title company, he's the underwriter, was in touch with counsel throughout this prospect and he's the one that suggested as to everything but the co-op property, you need something additional. And then it was discussed through the process with the DNR as to what that additional item would be. And that's where the DNR concurrence came up. And so it was actually the title company that directed, in order to issue complete title for this property, we need a concurrence on the adjacent property. We already have what we need as to the existing property which was the co-op property. So there was never a question from day one as to needing anything additional on that co-op property. Not only did the DNR not ask for it, but the title company and their underwriter didn't ask for it. So that's where it stands. I mean, we proceeded according to what the title company said they needed in order to issue title insurance on the adjacent parcel which was the DNR concurrence.

Mayor: Ok. And Ms. Catarozoli I'm understanding your question to be shouldn't we ask - or your question is on the co-op parcel, is that correct?

Ald. Catarozoli: That's right. We don't have, there was no determination made on that because we didn't even ask. Did we? Because we didn't think we had to. Which is, I'm understanding why. But wouldn't we now have maybe more understanding of this, and we do have evidence and we are understanding more of the Public Trust Doctrine, and what it really means, and how do we just say, okay, we have the evidence, but we don't have to look at it? I don't get how that's the right thing to do for this city.

Mayor: Well, I think that's a good question for the title company. I don't know how they came up with their - I mean, they made a determination to issue title insurance.

Ms. Catarozoli: Okay so just to be clear. There would be no implications for the city, even though we have all this information, which we do, I mean you put it together very nicely [to Nesbitt] for us, that the DNR told us they do not have any determination on the second parcel, there will be no implication on the city if there is a lawsuit or anything - it will go to the title company will have to worry about that?

Randy: I've always said, anybody can sue anybody. [laughs]

Ald. Catarozoli: That's what I'm asking. I want to make sure we are doing everything we can to protect us, because I have to protect them [the audience] - we all do. So are we doing everything, Randy, to protect ourselves?

Randy: We are proceeding in the same manner that the DNR did when they built their district headquarters on the waterfront. They did not obtain a concurrence, they obtained insured title. They built their own facility, without going through the concurrence process [laughs]. [gestures to Mayor].

Ald. Catarozoli: I think that's kind of a ridiculous comparison. And considering that is a public building. They are a public entity. That's a little different. So, I don't think that was really a fair comparison. And sometimes you learn things, and then you have to deal with the facts at that time. You can't continue to ignore them, is my point. Because how sad would we be if we continued to ignore new information, with science, with everything, if we said well that's great, but this is how we've always been doing it. We can't keep doing that. That's just not right. Especially in this, in an area where our biggest benefit is conservation of our natural resources. We should set the precedents and say, we adhere to the public trust doctrine because we know how important it is. We have to be the ones that are clear here. We have to be the ones setting a good example. We know this was filled land. We know it. And you know what, we respect our constitution. That's what I'm looking at here. And covering the city's butt. That's all I want to know. Are we doing that, Randy?

Randy: We are doing that.

Ald. Catarozoli: Okay. I will remember that. It's on camera. Thank you.