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To: Monona Public Works Committee  
From: Attorney Nicholas J. Loniello  
Re: Proposed Well No. 4  
Date: August 6, 2025

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This memo explains why the Public Works Committee should table, rethink and “start over” its evaluation of Waterman Way Park (the “Park”) as the site for a new municipal water well. Among other things, it would likely be unlawful.

*Violation of Zoning Ordinance.* Exhibit 1 is Monona’s Zoning Map. The Park is zoned “Public Facilities.” Exhibit 2 is the ordinance governing permitted uses within this zoning classification. The ordinance requires:

“To the extent feasible, a substantial portion of the property shall be maintained as landscaped open space.”

The proposed municipal water well significantly diminishes the existing landscaped open space. The water well coupled with the proposed diagonal public parking stalls along the West side of Waterman Way would virtually destroy the landscaped open space character of the Park. The word “feasible” means something is possible. It is possible to not put the well in the Park, and thereby maintain its character as “landscaped open space” as required by the Zoning Code.

One could argue this reading of the ordinance would make it impossible for Monona to build an important public facility on a vacant lot. If a particular site was absolutely essential for an important public purpose, then it would not be “feasible” to maintain the open space at that location. Here, however, there is no compelling reason to put a water well at the proposed location to replace an existing and entirely functional water well. Even if a new well was essential for public health and safety, the well can be located at some other place.

The real clincher is the following additional requirement in the Zoning Code: “The proposed use shall protect and enhance the character of the surrounding neighborhood.” The existing open space Park has defined the character of the neighborhood for the last 75 or more years. Every neighborhood has some unique and defining characteristic. Here the defining characteristic of the neighborhood is the Park. A water well structure surrounded by concrete aprons plus industrial size generators and electrical transformers, together with a storm water detention pond having a near house sized footprint sure to attract mosquitos and vermin, will destroy the neighborhood’s defining characteristic.

If Monona wants to obey its own zoning ordinance, and if the proposed site is in fact essential, Monona must change the site’s zoning to “commercial/industrial.” Such a zoning change smack in the middle of an established neighborhood of single family homes has an aroma of a pig in a parlor.

Exhibit 3 is the ordinance governing protests over zoning changes.. A zoning change will surely result in a protest petition by 20% or more of the home owners within 100 feet of the proposed well site. A protest petition will result in a required 3/4ths vote to change the zoning. This means 6 of the 7 members of the Common Council would need to reject the neighborhood opposition.

*Error In Placement of Right of Way.* Exhibit 4 is Vierbicher's preliminary site plan. It shows the alleged "existing right of way line" along the West side of Waterman Way. The public land records reveal the site plan's location of this line is erroneous. In fact, the lands East of the alleged "existing right of way line" are dedicated in the plat as a public park, not as a street right of way. Here are the particulars:

- Exhibit 5 is the plat of Tonyawatha Springs. Exhibit 6 is a Replat of Block 4 of the original plat. The proposed well site is Lot 12 of Block 5 shown on the Replat.
- The lands East of Block 5 and West of Waterman Way are clearly designated on the Replat as "Park."
- The street known as Waterman Way was not created by the plat of Tonyawatha Springs. It was created by Exhibit 7, the plat of Winnequah Park. It clearly shows Waterman Way to be 68 feet wide, not twice that size as shown on the site plan. The plat of Winnequah Park also shows the lands West of Waterman Way to be "park."

The neighborhood is already upset that the water well project has proceeded largely in secret and without inviting the input and participation of the neighborhood. Was this error in the placement of the right of way line intended to give a false perception that the proposed water well would take away street right of way and add it to the inventory of public open space? If yes, then some serious harm has been done to Monona's "good government" reputation.

If Monona wants to spend hundreds of thousands of dollars for expert assistance in the planning of a new municipal water well in an open space park area, the citizens who pay for this assistance have the right to expect the lands would be properly investigated, surveyed as to boundary lines and properly identified as dedicated parklands. The propose site plan flunks this test.

*What About Lot 12, the Well Site?* The site plan shows the water well located entirely within Lot 12 of the Replat, and outside of the dedicated parkland shown on the Replat. For the reasons described in the last part of this memo, we believe Lot 12 was gifted to Monona for use as a public park. If our further investigation proves this to be correct, then the use of Lot 12 as a well site would violate both the Wisconsin Constitution and the Wisconsin Statutes.

- Exhibit 8 is Article XI, Section 3(a) of the Wisconsin Constitution. Lands dedicated or gifted for park purposes cannot be sold or used for some other purpose. Instead, the lands must be conveyed back to the donor who dedicated or gifted the property for park purposes.
- Exhibit 9 is Wis. Stat. §236.29. It governs dedications of land for public purposes, such as for parks. Such dedications in a plat must be used "for the purposes therein expressed and no other," and that the municipality shall hold the dedicated lands "in trust to and for such uses and purposes."

*History of Lot 12.* Our investigation into Monona's acquisition of Lot 12 (the well site) is an unfinished work in progress. Here is what we know so far:

- Exhibit 10 is the Quit Claim Deed by which Monona acquired Lot 12 by a gift from Ovedia K. Olson on June 13, 1949. Because no transfer fee stamps are affixed to this Quit Claim Deed, nothing was actually paid for the conveyance of this large lot. It was gift.
- All of Lot 12 is inventoried as a public park in Monona's Comprehensive Outdoor Recreation Plan for 2021-2026, and all prior year comprehensive plans. This creates an inference that the gift of Lot 12 was accepted by Monona for park purposes only.
- The grantor, Ovedia K. Olson, was the wife of Clifford Olson. He was a civic minded gentleman who served as Treasurer of the Village of Monona. Exhibit 11 is his obituary. We have already discovered a relative of Ovedia Olson who will testify that the gift of Lot 12 was intended to be for park purposes only, and that the gift was accepted by Monona for such purpose.
- The conveyance of Lot 12 to Monona by gift, if accepted by Monona for park purposes, would be governed by Article XI, Section 3(a) of the Wisconsin Constitution. Any use of Lot 12 for other than park purposes would then be unlawful and trigger a mandatory reversion to the donor or the donor's heirs.

Monona, by its conduct, sponsored the use and preservation of Lot 12 as open space lands for park purposes for more than 75 years. We expect further investigations will reveal that Monona did in fact accept the gift of Lot 12 with the understanding and agreement with the donor that the lands would be used for park purposes only. The Wisconsin Constitution would therefore prohibit and enjoin the use of Lot 12 for municipal well purposes.