

**CITY OF MADISON
CITY ATTORNEY'S OFFICE
Room 401, CCB
266-4511**

January 26, 1999

OPINION 99-002

TO: Larry D. Nelson, City Engineer

FROM: Eunice Gibson, City Attorney

SUBJECT: **Approval of Improvement Design and Plans for Old Sauk Road Under the Annexation, Jurisdiction and Service Agreement Between the City of Madison and the Town of Middleton, dated November 16, 1994.**

You have requested a legal opinion regarding whether the City of Madison ("City") can unilaterally approve the design and plans for improvement of Old Sauk Road between the Beltline Highway and Prairie Smoke, notwithstanding the objections of the Town of Middleton ("Town"), pursuant to the above-mentioned Agreement. I am of the opinion that the Agreement language should reasonably and validly be interpreted as granting authority for the City alone to approve the design details and plans for improvement of the segment of Old Sauk Road in question.

The section of the Agreement to be interpreted begins with a broad grant of "maintenance and improvement responsibilities" to the City for five specified road segments. For three of those road segments--the segment of Old Sauk Road in question and specified segments of Pleasant View and South High Point Roads--**the City's responsibility for road improvement "design details" and plans is unconditional.**

Contrasted with the procedure for the above-mentioned three road segments, the parties specifically carved out two exceptions to limit the broad grant of responsibility to the City for the design of road improvements and agreed that, before improvements are made to any section of Elderberry or Blackhawk Roads remaining in the Town prior to reconstruction, the "Town and the City shall jointly agree upon the design details and the financing" of any such improvement. This language, or anything similar to it, is not found in the sub-section relating to improvement of Old Sauk Road.

However, for Old Sauk, Pleasant View and South High Point Roads, all three road improvements are specifically conditioned upon similar financing details in which: a) the Town and City agree in the 1994 Agreement to jointly request state and federal funding of the

respective improvement construction cost; b) the local share of construction costs is to be divided, or prorated, between the Town and City based upon the percentage of frontage of abutting properties in each jurisdiction; and c) except for South High Point Road, each municipality is free to determine how it will finance its respective local share through special assessments or general revenue sources.

Further financing distinctions for each respective segment are set forth in the Agreement as follows. In the case of Old Sauk Road, the Town's respective local share for the improvements is not to exceed \$54,000 in January, 1994 dollars, and adjusted for inflation annually thereafter using the Engineering News Record Construction Cost Index. For Pleasant View Road, the Town share is capped at \$22,500 in January, 1994 dollars. For South High Point Road, the Town share was not capped, but to be specially assessed by the City to all benefitting properties in both the City and the Town, pursuant to the authority of a resolution adopted by the Town under Sec. 66.65, Wis. Stats.

Accordingly, I am of the opinion that the subject Agreement is reasonably and validly interpreted as granting the City unilateral approval of the road improvement design details and plans for the segment of Old Sauk Road in question. If you have any further questions regarding this matter, please contact Assistant City Attorney James Voss at your convenience.

Eunice Gibson
City Attorney

eg:

cc: Mayor
City Clerk

Caption: The City of Madison can unilaterally approve the design and plans for improvement of Old Sauk Road between the Beltline Highway and Prairie Smoke and within the Town of Middleton, under the Annexation, Jurisdiction and Service Agreement Between the City and the Town, dated November 16, 1994.

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