

MEMORANDUM

TO: City Council, City Administrator, City Clerk

FROM: City Attorney, Daniel S. Draper

DATE: January 23, 2026

RE: Offer to Purchase Re Parcel Number ZA467900001, ZA467900002, ZA468000001 & ZA6846800002 – Open Session

The above offer to purchase and counteroffer is in open session, because in order to go into closed session for negotiating or bargaining purposes, §19.85(1)(e), Wis. Stats., the city council needs to know why they are going into closed session for negotiating purposes.

In this instance, the City Council was presented with an Offer to Purchase at the City Council meeting of January 12, 2026. The city council discussed negotiating strategy. After coming out of closed session, the City Council directed staff to continue negotiating with the buyer on terms discussed in closed session. The terms requested by the city council were put into a counteroffer which was accepted by the buyer **subject to ratification by the City Council**. The offer and counteroffer are being presented in open session. If the terms are acceptable, then the City Council can ratify the offer and counteroffer. If there are additional terms to be negotiated, the City Council can go into closed session as set forth on the agenda. Reasons should be put forward why a closed session is required.

The reason why the Offer to Purchase and Counteroffer are in open session is because of a recent case decided in the Wisconsin Court of Appeals, State of Wisconsin ex rel Oitzinger v. City of Marinette, 415 Wis. 2d 635 (Wis. App. 2025). Very basically, the case stands for the proposition that “the burden is on the governmental body to show that competitive or bargaining interests **require** closed session under...§19.85(1)(e), Wis Stats.” State ex rel. Citizens for Responsible Development v. City of Milton, 300 Wis. 2d 649, 731 N.W.2d 640 at 649 ¶¶9-10. The Oizinger case further stands for the proposition that “...the governmental body must begin its discussion in an open session, place the initial discussion of the subject matter on the record, and clarify why a specific topic with that discussion requires a closed session prior to voting to go into closed session.” Oitzinger, at ¶38. Since the city council had previously set forth terms in closed session to negotiate, and because those terms were presented and accepted by the buyer, further justifications would need to be made as to why further negotiations are required in closed session.

Since there is an offer to purchase and counteroffer that has been accepted, the governmental body must express reasons why further negotiations are required. An agenda item has been set for that purpose.

If you have any questions, please do not hesitate to contact me.