

City of Whitewater Memorandum

To: Whitewater Plan and Architectural Review Commission

From: City Attorney Jonathan K. McDonell

Date: November 3, 2023

Re: In re: Kienbaum Iron & Metal Zoning Tax Property Id # /A76200001

I. Introduction

This memo addresses the current situation and proposed actions regarding the property owned by Kienbaum Iron & Metal (KIM) located on North Jefferson Street in Whitewater, Wisconsin.

II. Kienbaum Iron & Metal (KIM)

KIM operates a scrap yard on North Jefferson Street, which was originally owned by Carl Kienbaum until his passing a few years ago.

III. The 9-Kk Common Trust

Upon Carl Kienbaum's death, ownership of KIM was transferred to the "9-Kk Common Trust," of which the sole beneficiaries are Carl's children.

IV. Wind-Up of the 9-Kk Common Trust

The trustees and beneficiaries of the 9-Kk Common Trust have recently reached an agreement for the liquidation of trust assets, including KIM. The agreement stipulates that KIM's assets will be sold through a closed bid process exclusively open to Carl's children, with the intention of keeping the business within the family.

V. Zoning of Kienbaum Parcels

During the process of preparing to sell KIM's assets, it was discovered that the property on the west side of North Jefferson is zoned as M-1, while the property on the east side is zoned as R-1. KIM has operated on both sides of North Jefferson Street for several decades, with the west side acquired in 1969 and the east side in 1979. There is no record of the City raising concerns about KIM's use of the R-1 parcel, and it is believed that the use has been considered a lawful nonconforming use.

VI. Proposed Lawful Nonconforming Use Agreement

To address potential concerns that a buyer of KIM's assets may seek assurances regarding the City's position on the R-1 property's lawful nonconforming use, attorneys representing some of the parties contacted the City and requested that the City consider an agreement establishing the provisions of a nonconforming use. After explaining that the scrap yard use of the R-1 parcel is limited to vehicle and equipment storage, not scrap piles, it was suggested that a proposed nonconforming use agreement be drafted.

Attached is a draft of the proposed agreement. The draft is designed to be informative and clear, providing the historical context of the parcels. Its purpose is to describe the zoning of the parcel by indicating permitted uses which are in addition to those allowed in R-1 district. Based on our research, which included an extensive discussion with former zoning administrator Bruce Parker, we believe these uses were legal when they began and therefore the property owners would have the right to continue the uses based on state statutes and our nonconforming use ordinance.