Department of Public Works

**Engineering Division**

Robert F. Phillips, P.E., City Engineer

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| **Deputy City Engineer**Gregory T. Fries, P.E.**Deputy Division Manager**Kathleen M. Cryan**Principal Engineer 2**John S. Fahrney, P.E.Christopher J. Petykowski, P.E.Janet Schmidt, P.E.**Principal Engineer 1**Christina M. Bachmann, P.E.Mark D. Moder, P.E.James M. Wolfe, P.E.**Facilities & Sustainability**Bryan Cooper, Principal Architect  **Land Information & Official Map Manager** Eric T. Pederson, P.S.**Financial Manager**Steven B. Danner-Rivers |

City-County Building, Room 115

210 Martin Luther King, Jr. Boulevard

Madison, Wisconsin 53703

Phone: (608) 266-4751

Fax: (608) 264-9275

engineering@cityofmadison.com

[www.cityofmadison.com/engineering](http://www.cityofmadison.com/engineering)

**Date: November 9, 2021**

**To: Mayor Rhodes-Conway, Common Council Alders**

**From: Robert F Phillips, P.E. City Engineer**

**Re: 2022 Capital Budget**

**Common Council Proposed Amend. #5**

**Purchase of 351 Russell St.**

The Common Council will be considering a proposed amendment to the City’s 2022 Capital Budget that would fund the City’s acquisition of a contaminated property located at 351 Russell Street with general obligation borrowing. The stated purpose of the amendment is to mitigate the effects of known contamination, protect the public health, restore the environment, and to promote the economic renewal of the subject property and surrounding area. The purpose of this memo is to provide the Council with additional information that should be considered before acting on the amendment.

***Property History and Enforcement Actions***

The subject property at 351 Russel Street operated as a dry cleaner in the 1960s and 1970s and is currently a residential rental unit. The City of Madison has approximately 250 former dry cleaners, the majority of which have never been investigated. Many of these historic dry cleaners are contaminated by chemical solvents which can turn into vapors that enter a building along foundation cracks and utility lines through a process called vapor intrusion. Unlike large industrial properties, dry cleaners are unique in that they come and go from small commercial sites and there may be no obvious signs of contamination. Many of them closed operations long before modern spill laws were created.

In 2013, the Wisconsin Dept. of Natural Resources conducted a pilot study to investigate 25 historic dry cleaners located near residential housing, schools, day cares, senior facilities, or other at risk populations. During this study, chlorinated solvent contamination was discovered at 351 Russell Street. In 2015, the WDNR issued the owner, Ken Koepler, a letter notifying him of his responsibility to further investigate the contamination and to take immediate actions to mitigate chemical vapor intrusion into his and adjacent properties. As the property owner, Ken Koepler is responsible for reporting, investigating, and cleaning up contamination, regardless of whether he caused the original release. These requirements are established in sections 292.11 and 292.31, Wis. Statutes and chapters NR 700 to 754, Wis. Adm. Code.

Mr. Koepler responded by conducting preliminary soil, groundwater, and building air quality sampling. The results indicated unsafe indoor air quality due to vapor intrusion in both 351 Russell St. and the adjoining property at 2002 Helena St. Mr. Koepler paid for mitigation systems (e.g. radon fans) on both buildings. It does not appear any additional site work has been conducted since 2016. In April 2021, the WDNR issued a *Notice of Noncompliance* to Mr. Koepler. The DNR has requested a work plan for additional soil, groundwater, and vapor sampling, including in those homes across Russell St.

The extent of the environmental liability associated with the site is not currently known as the investigation has not yet been completed. However, it needs to be emphasized that, *if the City purchases the property as directed by the budget amendment, the City would assume full responsibility for the investigation and clean up of the site.* This City would be exposing itself to an unknown amount of future liability, while fully relieving the property owner of his responsibility.

***Staff Recommendation***

City Engineering does not recommend that we purchase 351 Russell St. Instead, we recommend enrolling 351 Russell St. in the City’s EPA Brownfield Site Assessment grant program. The program can fully pay for additional environmental investigation and remedial planning costs, but will not cover remediation expenses. The benefits of this program are that the property can be quickly enrolled, per EPA approval, and the additional work required by the DNR can be conducted this winter at no expense to the property owner. This work will be consistent with the Council’s stated goals regarding this property, but won’t place the City in a position of accepting unknown amounts of future liability.

While Mr. Koepler did not cause the contamination on his property, Wisconsin State Statute and Administrative Codes clearly outline his responsibility as the property owner to clean it up and ensure the protection of public health and the environment. Moreover, there are myriad of properties in Madison and across Wisconsin that are in the same situation—historically-contaminated sites purchased by unsuspecting buyers. If the City agrees to purchase this property, then scores of similar requests will be made for other contaminated properties. The City does not have sufficient funds to make such purchases, nor should the City be blindly taking on such enormous liabilities.