



## Legislation Text

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**File #:** 45939, **Version:** 1

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### Fiscal Note

The proposed resolution authorizes a sale between the City of Madison and Stream's Edge Properties, LLC or its assigns for six City-owned lots in the Center for Industry and Commerce. The total purchase price is \$920,713. Proceeds from the sale will be distributed to the General Land Acquisition Fund (account no. 14006010-48110-00000). Roughly \$241,260 of sale proceeds will be applied towards outstanding special assessments on the six lots sold assuming a August 1, 2017 closing date. In addition, a brokerage fee of \$27,621 will be paid to Kurt S. Forsthoefel of Kurt Stewart, Inc. After paying \$2976 for title, estimated storm water bills and closing costs, the remaining net proceeds of \$648,855 will be applied towards paying off special assessments on properties owned by the City of Madison located elsewhere within the Center for Industry and Commerce.

### Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Stream's Edge Properties, LLC for the purchase of City-owned Lots 24-26 and Lots 29-31 in The Center for Industry & Commerce.

### Body

The Common Council adopted a resolution (RES-13-00460) on June 18, 2013 which authorized the execution of an "Agreement to Terminate the 'Agreement to Purchase and Undertake Development of the Northeast Industrial Property' " ("Purchase and Development Agreement") which was executed between the City of Madison ("City") and The Center for Industry & Commerce, LLC ("LLC") for the development of a mixed-use industrial park. Under the terms of the Purchase and Development Agreement, the LLC deeded back to the City, at no cost, 14 lots it had previously purchased from the City, and was relieved of any remaining obligations, including the obligation to purchase an additional 78 lots from the City. The City currently owns 64 lots within The Center for Industry & Commerce ("The CIC"). These lots are being marketed by the City; 24 lots of this remaining total are under contract. The adoption of this resolution will authorize the sale of Lots 24-26 and Lots 29-31 owned by the City in The CIC.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the execution of a Purchase and Sale Agreement ("Agreement") between the City and Stream's Edge Properties, LLC and/or its assigns ("Buyer"), with the prior written approval of the City for the purchase of Lots 24-26 and Lots 29-31, totaling 368,285 square feet (collectively, "Property"), in The CIC, on substantially the following terms and conditions:

**Buyer:** Stream's Edge Properties, LLC ("Buyer") the real estate holding company of Dayton Freight Lines, Inc.

**Seller:** City of Madison ("City")

**Property:** The Buyer will acquire the following Lots: 24, 25, 26, 29, 30 and 31 ("Property") all located within the Madison Center for Industry & Commerce ("CIC"). Per the survey dated April 24, 2003 the Property is 368,285 square feet.

**Purchase Price:** The purchase price for City's interest in the Property ("Purchase Price") shall be Two and 50/100 Dollars (\$2.50) per square foot of land, totaling approximately Nine Hundred Twenty Thousand, Seven Hundred and Thirteen Dollars (\$920,713). The actual Purchase Price to be calculated upon confirmation of final lot lines

per the certified survey map for the Property.

**Due Diligence Period/**

**Buyer's Contingencies:** Buyer shall have one hundred and fifty (150) days after receiving a fully executed Offer to Purchase ("Due Diligence Period") to evaluate the Property and satisfy or waive certain contingencies, including, without limitation, the contingencies listed below (which will be more particularly described in said Offer to Purchase). Buyer may terminate the Offer to Purchase during the Due Diligence Period due to the following contingencies:

- a) CSM approval;
- b) Zoning and permit review;
- c) Document review contingencies (title, survey, etc);
- d) Environmental evaluation;
- e) Geotechnical evaluation;
- f) Verification of utilities availability.

**Survey:** The Buyer will be responsible to complete a certified survey map ("CSM") of the Property at its own cost along with all required application materials for submittal to the City of Madison Planning Commission to combine the existing lots into one developable lot.

**Earnest Money:** Buyer shall deliver \$35,000 ("Earnest Money") to First American Title Insurance Company ("Title Company") within five (5) days after execution by both parties of the Offer to Purchase. City shall notify Buyer in writing of this date, which shall become the Effective Date in the Offer to Purchase, and send Buyer a copy of the fully executed Offer to Purchase. This deposit will be held as earnest money with respect to the purchase of the Property.

**Title Insurance:** City shall provide to Buyer, at City's expense, within twenty (20) days after the Effective Date a commitment from Title Company to issue an ALTA Owner's Title Insurance Policy in the amount of the Purchase Price upon the recording of proper documents. The commitment shall show the title condition of the Property as of a date no more than fifteen (15) days before such title proof is provided to Buyer. The title commitment shall be subject only to liens which will be paid out of the proceeds of the Closing and to any exceptions acceptable to Buyer ("Permitted Exceptions"). Buyer shall notify City of any valid objection to title, in writing, no later than forty five (45) of receipt of the title commitment from City. City shall have a reasonable time, but not exceeding fifteen (15) days, to remove the Buyer's objections and Closing shall be extended as necessary for this purpose. Should City be unable or unwilling to carry out the Offer to Purchase by reason of a valid legal defect in title which Buyer is unwilling to waive, the Offer to Purchase shall be void and the Buyer shall be entitled to a return of the Earnest Money.

**Special Assessments:** City agrees to pay at Closing on the sale of Property all existing special assessments (including accrued interest thereon) as of the Effective Date.

**Closing Date:** Closing shall occur within ten (10) days after the satisfaction or waiver of Buyer's contingencies.

**Closing Costs:** There are no general real estate taxes on the Property; Buyer is responsible for all taxes assessed as a result of the acquisition of the Property subsequent to Closing.

Buyer will be responsible to pay all costs of providing a loan title insurance policy to Buyer's lender, if applicable. City will pay the Wisconsin real estate transfer tax and the recording fees to remove any existing encumbrances. Buyer will pay the recording fees to record the deed and any loan documents for Buyer's lender and any closing costs. Buyer and City shall share equally the closing fee charged by the Title Company.

**Fees:** Buyer will be responsible for any development or connection fees, including, but not limited to, impact fees, Madison Metropolitan Sewerage District connection fees and interceptor fees, CARPC fees, etc.

**Real Estate Commission:** City acknowledges that Kurt S. Forsthoefel of Kurt Stewart, Inc. ("Broker") represents Buyer in this transaction as a broker, and City shall be solely responsible for payment of a three percent (3%) commission of the Purchase Price ("Broker Fee") due to Broker as a result of the Offer to Purchase if the Buyer purchases the Property. City will pay at Closing the Broker Fee to Broker.

**Insurance:** Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors performing work on the Property shall carry commercial general liability insurance covering as insured Buyer and naming City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$1,000,000 per occurrence as may be adjusted, from time to time, by the City's Risk Manager. These policies shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of Offer to Purchase. As evidence of this coverage, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall furnish City with a certificate of insurance on a form approved by City, and, if requested by the City Risk Manager, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall also provide copies of additional insured endorsements or policy to City prior to the performance of any work on the Property. If the coverage required above expires while the Offer to Purchase is in effect, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall provide a renewal certificate to City for approval.

**Limited Representations and Warranties-AS-IS Condition:**

Except as otherwise provided in Agreement and in the Warranty Deed, Buyer shall purchase the Property in "AS-IS, WHERE-IS" condition and "with all faults," and shall agree that it relied upon no warranties, representations or statements by City, its agents or employees, or in closing the transaction.

**Indemnification:** Buyer shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Buyer or its

officers, officials, members, agents, employees, invitees, or subcontractors in the performance of any inspections or testing of the Property, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees; provided, however, the indemnification obligations shall not apply to the extent of such negligence. This paragraph shall survive termination and assignment or transfer of this Agreement.

**Construction Contingency:** Buyer shall agree to commence construction on the Property within eighteen (18) months of Closing (“Construction Deadline”). In the event Buyer fails to commence construction in that timeframe, City shall have the right, but not the obligation, to purchase the Property back from Buyer at the Purchase Price plus any reasonable out-of-pocket costs and expenses incurred by Buyer with respect to site planning and due diligence associated with the purchase described in the Offer to Purchase, but less any closing, title and transfer costs incurred by the City associated with the sale described in the Offer to Purchase or the repurchase as described in this paragraph (“Repurchase Option”). Buyer shall provide City with invoices of the aforementioned out-of-pocket costs. The City shall provide written notice to Buyer of its election to exercise the Repurchase Option of the Property.

BE IT FURTHER RESOLVED that the proceeds from the sale of the Property shall be credited against the outstanding special assessments on the balance of the Property, and any remaining proceeds after the payment of the broker’s fee and closing costs shall be used to pay down the remaining balance of The CIC’s special assessments on other lots in the park.

BE IT FINALLY RESOLVED that the Mayor and City Clerk are authorized to execute, deliver and record such documents and to take such other actions as shall be necessary or desirable to accomplish the purposes of this resolution all in a form to be approved by the City Attorney.