



## Legislation Text

**File #:** 29348, **Version:** 1

### Fiscal Note

The estimated cost for the land acquisition is \$2,400,000, plus prorated taxes of \$52,000, holding costs of \$24,000, and other closing costs of \$16,000, for a total transaction cost of \$2,492,000.

Funding of \$1,400,000 for the project was authorized as an amendment to the 2012 Fleet Service capital budget (Legistar #26754, RES-12-00510, adopted 7/3/12). The funding is General Obligation debt. The remainder of \$1,092,000 is available in the City's General Land Acquisition Fund (CL21), which has a current available balance of an estimated \$2.8M.

The budget will be amended as follows:

\$1,092,000 IM01-58110-810746 Land Acquisition (Increase Expenditure Authority)  
\$1,092,000 IM01-79442-810746 Transfer in From Land Fund  
\$1,092,000 CL21-57460-810347 Transfer Out to Internal Service Fund  
(\$1,092,000) CL21-78320-810347 Land Sales

### Title

Authorizing the purchase of properties located at 4141 and 4210 Nakoosa Trail and 4134, 4118 and 4150 Commercial Avenue from Supervalu Stores, Inc. for the relocation of City facilities and an amendment to the 2013 Capital Budget to provide additional funds for the purchase and holding costs.

### Body

The City of Madison has numerous maintenance and service facilities scattered throughout the City with many of them located within or near the East Washington Avenue corridor. These include facilities for Fleet Services, Fire Maintenance, Metro Transit, Library Storage, and Police Evidence Storage. The City owns all the facilities with the exception of Library Storage space which is leased. Most of these facilities are in poor condition and no longer suitable for their intended use.

The Mayor and Common Council identified the importance of addressing these issues in the 2012 City budget by authorizing the Mayor to create a staff team, including a Common Council representative, (the "Long Range Facilities Planning Committee") that was charged with the preparation of a long-term facilities needs analysis that makes recommendations regarding overall space requirements, facility relocations and potential property acquisitions. The Committee issued the needs analysis in June 2012 which inventoried current City facilities, discussed short- and long-term facilities needs, quantified operating budget impacts of facilities location options, identify potential site locations and examined the benefits facilities co-location.

On July 3, 2012, the Long Range Facilities Needs Analysis Report (the "Report") was accepted by the Common Council and the 2012 capital budget was amended to add \$1.4 million in general obligation borrowing to support purchase of a property for a fire maintenance, fleet service, radio shop and library support facility located on West Badger Road. The City and the owner of that parcel could not reach agreement on a purchase price and the site has subsequently been sold for private development.

After the West Badger Road property was no longer available to the City, the Long Range Facilities Planning Committee, based on alternative site recommendations in the Report, identified the former Cubs Food property located at 4141 Nakoosa Trail (the "Property") as a site that meets the needs criteria for the co-location of several City facilities, including Fleet Services, Fire Maintenance, the City Radio Shop, library support and some Madison Metro operations. The Property contains 15.4 acres and the former Cub Foods

76,715 square foot store building, as shown on the attached Exhibit B. A Letter of Intent with the terms and condition for the purchase of the Property has been executed between the City and Supervalu Stores, Inc. for the purchase of the Property, subject to the approval of the Common Council. The Purchase Price is \$2.4 million. This resolution will authorize the execution of a Purchase and Sale Agreement between the City and Supervalu Stores, Inc. for the Purchase of the Property and authorize the amendment of the 2013 Capital Budget to provide additional funding for the acquisition and holding costs.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the execution of a Purchase and Sale Agreement (the "Agreement") between the City (the "Buyer") and Supervalu Stores, Inc. (the "Seller") for the purchase of properties owned by the Seller located at 4141 and 4201 Nakoosa Trail and 4134, 4118 and 4150 Commercial Avenue, Madison, Wisconsin, legally described in Exhibit A below and depicted on the attached Exhibit B, for the relocation of City facilities including, but not limited to, Fleet Services, Fire Maintenance, Radio Shop operations, select Madison Metro operations, and Public Library vehicle maintenance and storage, on the following terms and conditions:

1. Property. The Buyer shall purchase, and the Seller shall sell and convey by Warranty Deed (the "Deed"), fee simple ownership of the Property, including all improvements located thereon and all appurtenances thereto.
2. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by the Seller or the Buyer, as indicated on the signature page.
3. Purchase Price. The total purchase price for the Seller's interest in the Property (the "Purchase Price") shall be Two Million Four Hundred Thousand Dollars (\$2,400,000). The Purchase Price shall be payable in cash at Closing, subject to the adjustments and prorations herein provided.
4. Earnest Money. Within ten (10) business days of the Effective Date, the Buyer shall pay to the Seller Twenty-Five Thousand Dollars (\$25,000) as "Earnest Money", which will be non-refundable except as otherwise provided in Paragraph 6 and the corresponding provisions of the Agreement, to be applied toward the Purchase Price at Closing in accordance with Paragraph 3.
5. Delivery of Documents. Within ten (10) days of the Effective Date and throughout the Buyer's Contingency Period as described in Paragraph 6, the Seller will reproduce at the Seller's expense and send to the Buyer at the Buyer's office copies of all environmental studies, reports, permits, applications and remediation plans or assessments of the Property, and all building plans, studies, reports, or assessments related to the condition of the improvements on the Property including, but not limited to, asbestos, lead-based paint inspections and other hazardous waste inspections related to the physical condition of the improvements on the Property in the Seller's possession or control.
6. Buyer Contingencies. The Buyer shall have ninety (90) days from the Effective Date (the "Buyer's Contingency Period") to satisfy or waive the following contingencies (the "Buyer's Contingencies") or to otherwise terminate the Agreement if any of the Buyer's Contingencies are unacceptable, in the Buyer's sole discretion. If the Buyer terminates the Agreement within the Buyer's Contingency Period as a result of any of the Buyer's Contingencies, the Earnest Money shall be promptly refunded to the Buyer.
  - a. Inspections and Testing. The Buyer obtaining various inspections and testing of the Property and all improvements located thereon. The Buyer, at its sole expense, may obtain an inspection of all buildings and related improvements located on the Property, a Phase 1 or 2 environmental site assessment of the Property and related testing, soils testing and any other inspections or testing deemed necessary by the Buyer. In no event shall the Seller be required to cure any matter to which the Buyer objects relating to the condition of the Property or any improvements located

thereon.

- b. Land Use Approvals. The Buyer securing all land use approvals for the use of the Property for the City of Madison's Fleet Services and Fire Department Vehicle Maintenance Facilities and a Madison Metro Transit satellite terminal. Such approvals may include, but not be limited to: approval of a PUD, approval by the Urban Design Commission, and all other zoning, building, engineering, traffic and similar approvals and permits necessary to use the Property for the uses described herein.
- c. Appraisal. The Buyer obtaining, at its sole cost, an appraisal that supports the Purchase Price.
- d. Site Plan. The Buyer obtaining, at its sole cost, a site plan showing the suitability of the site to accommodate the Buyer's use of the Property for its Fleet Services and Madison Fire Department vehicle maintenance facilities and Madison Metro Transit satellite terminal facilities.

The Buyer's Contingency Period may be extended for an additional thirty (30) days by written notice from the Buyer to the Seller delivered prior to the expiration of the Buyer's Contingency Period. If the Buyer extends the Buyer's Contingency period as provided herein fifty per cent (50%) of the Earnest Money shall be non-refundable.

- 7. Access to Property. The Buyer and the Buyer's authorized agents, engineers, consultants, appraisers, and contractors shall be permitted access to the Property for the purpose of conducting the inspections and testing anticipated by the Buyer's Contingencies including, but not limited to, a Phase 1 or 2 environmental assessment of the Property and/or a physical inspection of the Property and any building and related improvements located on the Property at reasonable times with at least twenty-four (24) hour notice to the Seller. The Buyer will repair, at the Buyer's cost, all damages caused by its inspections or testing so that the condition of the Property is returned to as good or better condition as existed prior to the inspections or testing.
- 8. Leasing. The Seller shall represent that the Property is not leased or occupied, and the Seller shall agree that it shall not enter into any lease or rental agreement for the Property, or any portion thereof, or allow the occupation of the Property during the Buyer's Contingency Period and through the date of closing, without the prior written consent of the Buyer.
- 9. Survey. The Seller shall provide to the Buyer, at the Seller's expense, within sixty (60) days of the Effective Date, an ALTA/ACSM Land Title Survey of the Property that meets the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys effective February 23, 2011 in order to eliminate all survey related exceptions to the title insurance policy, certified as of a current date in favor of the Buyer and the title company providing the title insurance described in Paragraph 10.
- 10. Title Insurance. The Seller shall provide to the Buyer, at the Seller's expense, within thirty (30) days prior to Closing a commitment from First American Title Insurance Company (the "Title Company") to issue an ALTA Owner's Title Insurance Policy in the amount of the Purchase Price upon the recording of proper documents, together with a gap endorsement. The commitment shall show title to the Property, as of a date no more than fifteen (15) days before such title proof is provided to the Buyer, to be in the condition called for in the Agreement, and further subject only to liens which will be paid out of the proceeds of the Closing and to any exceptions acceptable to the Buyer ("Permitted Exceptions"). The Buyer shall notify the Seller of any valid objection to title, in writing, prior to Closing. The Seller shall have a reasonable time, but not exceeding fifteen (15) days, to remove the objections and Closing shall be extended as necessary for this purpose. Should the Seller be unable or unwilling to carry out the Agreement by reason of a valid legal defect in title which the Buyer is unwilling to waive, the Agreement shall be void and the Buyer shall be entitled to a return of the Earnest Money.

11. Closing.

- a. Closing shall occur within thirty (30) days after the waiver or satisfaction of the Buyer's Contingencies listed in Paragraph 6, at the office of the Title Company, unless the parties agree in writing to another date or place.
- b. The Seller agrees to execute and deliver to the Buyer at Closing the Deed conveying the Property to the Buyer free and clear from all liens and encumbrances, excepting the following: Municipal and zoning ordinances and the Permitted Exceptions.
- c. The Buyer shall pay all recording/filing fees except that the Seller shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to the Property to be in the condition called for by the Agreement.
- d. All real estate taxes with respect to the Property shall be prorated between the Buyer and the Seller as of the date of Closing based upon the latest known assessment and latest known mil rate.
- e. The Seller shall be responsible for any and all special assessments, area assessments, interceptor charges or any other charges payable to any municipality or utility with regard to the Property as of the date of Closing.
- f. The Seller shall pay any Wisconsin Real Estate Transfer fee due in connection with the conveyance of the Property.

BE IT FURTHER 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.

BE IT STILL FURTHER RESOLVED that the 2013 Capital Budget be amended to transfer \$1,092,000 from the City's General Land acquisition fund to the Fleet Service Land Acquisition capital project and to increase the expenditure authority by a commensurate amount to cover the balance of the Purchase Price, costs incurred in satisfying the City's purchase contingencies (appraisal, environmental assessments and soil tests if necessary, miscellaneous closing costs (prorated taxes and recording costs) and holding costs incurred by the City upon purchase of the Property (utilities and property maintenance costs).

**EXHIBIT A**

**Legal Description of the Property:**

Lots 2-6, inclusive, Cub Center Plat, City of Madison, Dane County, Wisconsin.