



Legislation Text

File #: 38219, **Version:** 2

Fiscal Note

The acquisition of this parcel is anticipated to have an acquisition cost of \$3,125,000, plus \$45,710 in closing costs, and is funded from three sources.

The parkland acquisition of 16.9 acres of parkland will be funded from the City-wide Parkland Acquisition Fund. The allocation of \$1,430,000 of existing reserves is approximately 20% of available resources within this fund.

The Stormwater Utility's acquisition of the 36.6 acres of stormwater lands will be funded with \$513,300 of stormwater utility reserves.

Future streets right-of-way acquisition will be funded with \$222,410 of new General Obligation borrowing for the Major Streets Right-of-Way Acquisition Project (Project 10924).

The remaining 13.74 acres of long term developable land will be acquired by the PCED Department and held until such time as it can be sold for private development. This portion is valued at approximately \$1,000,000, along with a share of closing costs (\$5,000) and will be funded through new general obligation debt.

Title

SUBSTITUTE Amending the 2015 Adopted Capital Budget related to Acquisition of the Garver Replacement Property / LB Lands Purchase

Body

From 1906 through 1997, the Garver Feed Mill was a working industrial building and a significant feature on the east side of Madison. The building was designated as eligible for listing on the National Register in 1992 and designated a local landmark in 1994. In 1997, the Olbrich Botanical Society (the "OBS") acquired the Garver Feed Mill (the "Building") and approximately five acres of land surrounding it (collectively the "Garver Property") for \$700,000. OBS then transferred ownership of the Garver Property to the City of Madison (the "City"). The City Parks Division acquired the 17.8 acres surrounding the Garver Property, east of Fair Oaks Avenue, commonly known as the "North Plat".

Wisconsin Department of Natural Resources (WDNR) Stewardship Funds from the Urban Rivers program were used for both purchases of the Garver Property and the North Plat. As a condition of the receipt of funding from the WDNR, both the Garver Property and the North Plat have deed restrictions placed upon them restricting their use to parkland and requiring the WDNR to approve any sale, lease or transfer of the property. To rehabilitate the Building, allow non-park uses on the Garver Property and the North Plat, and sell the Building and enter into the necessary ground leases for the Garver Property and the North Plat, the City needs to acquire additional parkland with some type of water feature and secure WDNR's authorization to transfer the WDNR deed restrictions to this new parkland ("Future Parkland"). The transfer of these deed restrictions is called the "Conversion Process".

The Board of Park Commissioners accepted a Historic Structure Report from OBS in 2005 and recommended that the Building be declared surplus for the purpose of seeking a public/private partnership for adaptive reuse. The Board of Park Commissioners recommended that the reuse include some storage and maintenance for Olbrich Botanical Gardens ("OBG"); that it include some broadly defined public space for uses that are compatible with the mission of OBG; and that the reuse should minimize the amount of parking and maximize the amount of open space on surrounding parkland.

Under the guidelines of the City's surplus property procedures, the Garver Building Reuse Committee (the "Committee") was established and its members were appointed by the Mayor and approved by the Council on September 6, 2006 (Resolution No. 06-00767, ID No. 04224). The Committee was charged with establishing criteria for reuse of the Garver Property, with soliciting proposals and with selecting a proposal. The Committee drafted an RFP and the Common Council approved the issuance of the RFP on June 5, 2007 (Resolution No. 07-00595, ID No. 06115).

While a developer was selected in accordance with the RFP, due to the economic recession in 2008-2009, the developer ultimately withdrew its proposal in 2011.

Beginning in June of 2014, the Mayor reconstituted the Committee with newly appointed members. The Committee was again charged with establishing criteria for reuse of the Garver Property, with soliciting proposals, and recommending a proposal to the Common Council. The Committee again developed a RFP while holding four (4) public meetings, including a public hearing. The RFP was recommended to the Common Council and approved on October 22, 2014 (Resolution No. 12-00752, File I.D. #35479). In accordance with the RFP, proposals were received until December 19, 2014. Four proposals were received.

The Committee reviewed the proposals, interviewed the developers who submitted the proposals, and heard public testimony. The Committee determined that Baum Development best met the criteria that was in the RFP and that its proposal was in the best interests of the City of Madison. On April 21, 2015, the Common Council accepted the proposal from Baum Development and authorized staff to negotiate a development agreement, ground lease and bill of sale for the Building. Additionally, staff was authorized to identify and negotiate offers to purchase replacement park property (Resolution No. 15-00334, File I.D. #37723).

Staff has identified two contiguous parcels of land (the "Conversion Property"), owned by LB Land Investment, Inc (the "Seller"), that are eligible to be used as Future Parkland for the Garver Property. In addition, the Stormwater Utility has identified a large area of the Conversion Property as being the location for a stormwater retention basin.

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Madison hereby authorizes the acceptance of the Purchase and Sale Agreement (the "Offer") by the City of Madison ("Buyer") for the purchase of the Conversion Property, as shown on the attached exhibit and as legally described below, subject to the following terms and conditions:

1. Property. The Buyer shall purchase, and the Seller shall sell and convey by Special Warranty Deed (the "Deed"), fee simple ownership of the real properties with parcel numbers 0708-321-9500-9 and 0708-324-8001-2, located on Meadow Road in the Town of Middleton, Wisconsin (collectively the "Property"), as legally described in Exhibit A attached hereto, including all improvements located thereon and all appurtenances thereto.

2. Effective Date. The "Effective Date" shall be the later date of execution of this 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 Three Million One Hundred Twenty-Five Thousand Dollars (\$3,125,000). 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 Ten Thousand Dollars (\$10,000) as “Earnest Money,” which will be non-refundable except as otherwise provided in Paragraphs 8, 11 and 14, to be applied toward the Purchase Price at closing in accordance with Paragraph 3.

5. Escrow Account. Within ten (10) calendar days of the Effective Date, an escrow account (the “Escrow”) will be established by the Seller at a title company with a local office (the “Title Company”).

6. Delivery of Documents. Within ten (10) days of the Effective Date and throughout the Buyer’s Contingency Period as described in Paragraph 8, 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 former 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 former improvements in the Seller’s possession or control.

7. Limited Representations and Warranties; AS-IS Condition. Except as otherwise provided herein, the 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 the Seller, its agents or employees, in entering into this Agreement or in closing the transaction described herein. Except as provided below, the Buyer’s closing on the acquisition of the Property shall constitute conclusive evidence that the Buyer is satisfied with the condition of and title to the Property and has waived or satisfied the Buyer’s Contingencies, as described in Paragraph 8 below.

8. 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 this Agreement if any of the Buyer’s Contingencies are unacceptable, in the Buyer’s sole discretion. If the Buyer timely terminates this Agreement 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 any improvements located thereon. The Buyer, at its sole expense, may obtain an inspection of any 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. Survey. The Buyer obtaining, at the Buyer’s expense, 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 11.

- c. Appraisal. The Buyer obtaining, at its sole cost, an appraisal that supports the Purchase Price.
- d. Lease. The Buyer receiving and agreeing to purchase the Property subject to the terms and conditions of the Lease described in Paragraph 10.
- e. Lower Badger Mill Creek Tributary Crossing. The Buyer receiving confirmation from the Wisconsin Department of Natural Resources (WDNR) that the Lower Badger Mill Creek tributary that crosses the property is not a navigable waterway.

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.

- 9. 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 improvements located on the Property at reasonable times with at least twenty-four (24) hour notice to the Seller. The Buyer's access to and inspection of the Property shall be at Buyer's sole risk and expense and Seller shall have no responsibility therefor. 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.
- 10. Lease. The Seller represents that the Property is currently leased to Dennis Acker through December 31, 2015, and the Seller agrees that it shall not enter into any new lease or rental agreement nor renew the current lease for the Property, or any portion thereof, during the Buyer's Contingency Period and through the date of closing, without the prior written consent of the Buyer. The Seller shall provide to the Buyer within ten (10) days of the Effective Date a copy of the current lease.
- 11. Title Insurance. The Seller shall provide to the Buyer, at the Seller's expense, within thirty (30) days prior to closing a commitment from Preferred Title 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 this 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 this Agreement by reason of a valid legal defect in title which the Buyer is unwilling to waive, this Agreement shall be void and the Buyer shall be entitled to a return of the Earnest Money.
- 12. Commissions. The Seller represents that it has not entered into any contracts with any brokers or finders nor has the Seller obligated itself to pay any real estate commissions or finders' fees on account of the execution of this Agreement or the close of the transaction contemplated hereby. The Buyer

represents that it has not entered into any contracts with any brokers or finders nor has the Buyer obligated itself to pay any real estate commissions or finders' fees on account of the execution of this Agreement or the close of the transaction contemplated hereby.

13. Closing.

- a. Closing shall occur within thirty (30) days after the waiver or satisfaction of the Buyer's Contingencies listed in Paragraph 8, at the office of the Title Company, unless the parties agree in writing to another date or place. In no case shall closing occur before July 1, 2015.
- 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 this Agreement.
- d. The Seller shall pay the pro-rated share of the 2015 real estate taxes with respect to the Property 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.
- g. Assignment of Lease. Seller hereby assigns the Farm Lease to the Buyer. Any unpaid balance for the Farm Lease shall be pro-rated at closing.

14. Condemnation. If the Property, or any portion thereof, is condemned under the power of eminent domain, is the subject of a threatened condemnation, or is conveyed to a condemning authority in lieu of condemnation, the Seller shall notify the Buyer in writing of the threat, condemnation or conveyance within five (5) business days of its occurrence. The Buyer shall, within ten (10) days of the notice, have the option of (a) proceeding with the closing and receiving the award or condemnation payment (or an assignment thereof, if the same is not received by the closing), or (b) terminating this Agreement. If the Buyer terminates this Agreement as provided herein the Seller shall promptly return the Earnest Money to the Buyer without further notice to or direction by the Seller.

15. Licensed Broker. The Buyer acknowledges that Jeanne Whitish, one member of the Seller, has represented that she is a licensed real estate broker.

16. Commissions. The Seller represents that it has not entered into any contracts with any brokers or finders nor has the Seller obligated itself to pay any real estate commissions or finders' fees on account

of the execution of this Agreement or the close of the transaction contemplated hereby. The Buyer represents that it has not entered into any contracts with any brokers or finders nor has the Buyer obligated itself to pay any real estate commissions or finders' fees on account of the execution of this Agreement or the close of the transaction contemplated hereby.

17. Notices. All notices required or permitted to be given hereunder shall be given by certified mail, postage prepaid, or by overnight delivery service, or shall be personally served, to the Buyer and the Seller at the following addresses:

BUYER: Office of Real Estate Services
Attention: Manager
City of Madison
215 Martin Luther King, Jr. Blvd., Room 312
Post Office Box 2983
Madison, WI 53701-2983

Facsimile: (608) 267-8739

SELLER: Jeanne Whitish
c/o Purple Cow Organics, LLC
3213 Laura Lane
Middleton, WI 53562

Facsimile: 608) 836-1878

All notices shall be deemed received either when actually received or three (3) days after deposit (if mailed), one business day after deposit with the delivery service (if sent by overnight delivery), or when delivered (if personally delivered). Either party may change the above addresses by written notice to the other.

18. Default. If the Seller defaults in the full and timely performance of any of its obligations hereunder, the Buyer shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to terminate this Agreement or seek specific performance. If the Buyer defaults in the full and timely performance of any of its obligations hereunder, the Seller shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to terminate this Agreement or seek specific performance.

19. Entire Agreement. This Agreement contains the entire agreement between the Seller and the Buyer and there are no other terms, conditions, promises, understandings, statements or representations, express or implied, regarding the transaction contemplated hereby. This Agreement may be amended only by a further written document signed by each of the parties.

20. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, executors, administrators and legal representatives.
21. Captions. The captions of the paragraphs in this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any provision hereof or be used to construe any of the provisions hereof.
22. Severability. If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability shall be limited to the particular provision(s) involved and shall not affect the validity or enforceability of the remaining provisions.
23. Counterparts and Transmittal of Signatures. This Agreement may be executed in one or more counterparts, and all such executed counterparts shall constitute the same agreement. A signed copy of this Agreement transmitted by facsimile or email shall be treated as an original and shall be binding against the party whose signature appears on such copy.
24. Time of the Essence. Time is of the essence for the performance of this Agreement.

BE IT STILL FURTHER RESOLVED, that the Common Council also authorizes placing a deed restriction on the 16.9 contiguous acres of the Conversion Property adjacent to Hill Creek Park identified for Future Parkland stating:

“By the acceptance of this deed, the sponsor, for itself and its successors and assigns, hereby covenants and agrees not to convey, sell, lease, assign or mortgage the premises herein described or convert it to uses that are inconsistent with the Wisconsin Department of Natural Resources' Stewardship Program described in Chapter 23, Wisconsin Statutes and Chapter NR 51, Wisconsin Administrative Code and Grant Agreements URGP-92A and URGP-79 without prior written approval of the Secretary of the Department of Natural Resources, his designee, or any successor.”

BE IT STILL FURTHER RESOLVED, that City Staff is authorized to submit any and all necessary and appropriate documentation to the WDNR to complete the Conversion Process, and;

BE IT STILL FURTHER RESOLVED, that City Staff is authorized to solicit offers to purchase the areas of the Conversion Property identified as “Developable”, which shall be brought before the Council for review and approval, and;

BE IT STILL FURTHER RESOLVED, that the Mayor and City Clerk are hereby authorized to execute the Offer and all additional documents that may be required to complete this transaction.

BE IT STILL FURTHER RESOLVED, that the 2015 Parks Division Capital Budget Project #4 Parkland

Acquisition (Project 10473) be amended to include \$1,430,000 in new expenditure authority funded from the City-wide Parkland Acquisition Fund, and;

BE IT STILL FURTHER RESOLVED, that the 2015 Stormwater Utility Capital Budget Project #10 Lower Badger Mill Creek (Project 10921) be amended by \$513,300 in new expenditure authority funded from Stormwater Utility Reserves, and;

BE IT STILL FURTHER RESOLVED, that the 2015 Major Streets Capital Budget (Project 10924) be amended by \$222,410 in new expenditure authority funded from GO bond proceeds for the acquisition of future right of way, and;

BE IT FURTHER RESOLVED that the Mayor and the City Clerk are authorized to execute an attachment petition and all documents related thereto to cause the Property to be attached to the City from the Town of Middleton.

BE IT FURTHER RESOLVED that the Office of Real Estate Services is authorized to file the attachment petition with the Town of Middleton and City of Madison Clerk according to the procedures for intermediate attachments in Section 12.01 of the 2003 Final City of Madison and Town of Middleton Cooperative Plan.

BE IT FURTHER RESOLVED that the Planning Division is hereby authorized to request approval from the Capital Area Regional Planning Commission of an amendment to the Central Urban Service Area (CUSA) to include the Property in the CUSA, and that the Common Council hereby adopts the boundaries of any wetlands or environmental corridors within said amendment area; and

BE IT FURTHER RESOLVED that the proposed use of the property is consistent with the Mid-Town Neighborhood Development Plan and City of Madison Comprehensive Plan.

BE IT FINALLY RESOLVED, that the 2015 Planning Community and Economic Development Capital Budget Project #52 be created to provide \$1,005,000 in additional expenditure authority funded with new General Obligation Borrowing to facilitate the acquisition of the Conversion Property and allow the redevelopment and rehabilitation of the Building to proceed.