



## Legislation Text

File #: 12615, Version: 2

### Fiscal Note

This resolution authorizes the utilization of funds in an amount not to exceed \$90,000 for acquisition and related closing costs for the Wheeler Open Space Parcel, owned by Cherokee Park, Inc. Funds are available in the SI32 "Citywide Parkland Fee" Fund. There is no impact upon the property tax levy.

### Title

SUBSTITUTE - Authorizing the acceptance of a Dedication and Purchase Agreement for the acquisition of the remaining interests of Cherokee Park, Inc. in approximately 48 acres of land located adjacent to Wheeler Road referred to as the Wheeler Open Space Parcel and including agreement on the estimated dedication requirements for the remaining lands that Cherokee Park, Inc. intends to develop and amending the ~~2008~~ 2009 Parks Capital Budget to authorize the expenditure of an amount not to exceed \$90,000 for this acquisition.

### Body

#### PREAMBLE

The City of Madison ("City") and Cherokee Park, Inc. ("CPI") have worked through several agreements and closings regarding the present and future development by CPI and the dedication to and purchase by the City of CPI lands in Sections 18 and 19 in the Town of Burke and Section 24 in the Town of Westport. The intent of this present agreement, the Dedication and Purchase Agreement ("Agreement"), is to provide an agreed-upon framework for a CPI land bank for CPI's estimated future parkland dedication requirements and a means to establish the amount of compensation to be paid by the City for acquisition of CPI's remaining interest in the lands north of Wheeler Road referred to as the Wheeler Open Space Parcel. The parcel is depicted in the attached map. The City currently holds an open space easement over the Wheeler Open Space Parcel. City staff recommends that CPI's remaining fee interest in the Wheeler Open Space Parcel be acquired in order for the Parks Division and Engineering Division to be able to use the land for necessary parkland and storm water management purposes. The parcel contains 47.76 acres, based on the plat of survey, and the acquisition price for the remaining fee interest is \$87,072 or approximately \$1,823 per acre. The terms and conditions of the Agreement are included together with copies of Exhibits A, B and C of the Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby approves of the acquisition of the remaining fee interests held by Cherokee Park Inc. in the Wheeler Open Space Parcel described in the legal description marked as Exhibit A and depicted in the map marked as Exhibit B; approves the terms and conditions of the Dedication and Purchase Agreement between the City of Madison and Cherokee Park, Inc. included below together with the table marked as Exhibit C; and authorizes the Mayor and City Clerk to execute the Agreement.

### Terms and Conditions of the Dedication and Purchase Agreement:

#### RECITALS:

- A. CPI is the owner of certain real property legally described in the Parcel "A" and, Parcel "B" descriptions in the attached Exhibit A and depicted in the reduced copy of the plat of survey in the attached Exhibit B. Said plat of survey was filed in the Dane County Surveyor's Office as Plat of Survey File Number: 2008-01044 and is incorporated in this Agreement by reference. Said Parcel A and Parcel B are collectively hereinafter referred to as the "Wheeler Open Space Parcel".

- B. On April 11, 2007, CPI and the City entered into an Annexation/Attachment Agreement (“Annexation Agreement”) pertaining to the phased development and annexation of lands owned by CPI and located in Sections 18 and 19 in Town 8 North, Range 10, Town of Burke and in Section 24 in Town 8 North, Range 9 East, Town of Westport, Wisconsin (the “Project”), as more particularly described in the Annexation Agreement.
- C. Pursuant to Paragraph 5(c)(ii) of the Annexation Agreement, the City and CPI have agreed that CPI may establish a so-called land bank of parklands, which CPI will dedicate and convey to the City to meet future parkland dedication requirements for the total Project.
- D. As set forth in Paragraph 5(c)(ii) of the Annexation Agreement and shown by the calculations in Exhibit C, the land bank will provide CPI with credit for the future parkland dedication requirements for the current equivalent of 299 single family and duplex units and 326 multifamily units, which is the estimated unit mix for all future development in the Project. The total estimated dedication requirement is 12.7893 acres (“Dedicated Lands”), comprised of approximately 4 acres in Hornung Woods (“Hornung Parcel”), approximately 5.6 acres in the Range area (a.k.a. the “Hickory Parcel”) and 3.1937 acres in the Wheeler Open Space Parcel. Actual dedication requirements shall be based on the unit number and mix for each phase when development occurs, as well as the ordinance dedication requirements in effect at the time of development approval for each phase. If, at the time any development is approved, the amount of excess lands in the land bank exceeds what is estimated at this time, the City shall purchase the excess acreage at the rate established in the Annexation Agreement. Conversely, if the dedication requirements in effect at the time of development approval exceed the acreage in the land bank, CPI shall meet the additional dedication requirements at the time of development approval.
- E. A portion of the Dedicated Lands in the amount of 3.1937 acres of developable upland is applied to the Wheeler Open Space Parcel. The Wheeler Open Space Parcel contains approximately 47.76 acres in total and is restricted by an open space easement. The City desires to acquire the estimated excess acreage within the Wheeler Open Space Parcel as identified in Exhibit C, which the City will purchase at the per-acre rates established by the Annexation Agreement (and set forth in Exhibit C) for the type of land being acquired.
- F. The City and CPI desire to memorialize the terms and conditions for CPI’s conveyance of the Wheeler Open Space Parcel to the City, including the City’s purchase of the Excess Lands and the City’s acceptance of the Dedicated Lands.

**AGREEMENT:**

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the City and CPI hereby agree as follows:

1. Dedicated Lands. CPI agrees to dedicate the Dedicated Lands described on Exhibit C to the City, at no cost to the City, and the City agrees to accept such dedication, all in accordance with Section 6 below.
2. Description of Lands to be Purchased. CPI agrees to sell to the City, and the City agrees to purchase from CPI, the estimated Excess Lands, for the amount of the total due to CPI on Exhibit C (\$87,072.17) in the form of a certified or cashier’s check or wired funds paid at closing, subject to the adjustments and prorations set forth in Section 6.
3. Title Insurance. CPI shall, at its sole expense and at least fifteen (15) days prior to closing (as defined in the following section), provide a final title insurance commitment for the Wheeler Open Space Parcel issued by a title insurance company licensed in Wisconsin to issue ALTA title insurance in the amount of Three Hundred Ten Thousand Six Hundred Twenty Eight and 10/100 Dollars (\$310,628.10) together with

a gap endorsement extending from the date of such commitment through the date of closing. The City shall be named as the insured party. The commitment shall show title to the Wheeler Open Space Parcel to be in good and marketable condition, in the reasonable determination of the City, and subject only to liens to be paid out of the proceeds of the closing and standard title insurance exceptions. The City shall notify CPI of any valid objection to title in writing within ten (10) days of receiving the title commitment and CPI thereafter 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 CPI be unable or unwilling to correct any legal defect in title which the City is unwilling to waive, this Agreement shall be void.

4. No Personal Property. The transactions contemplated by this Agreement do not include any personal property.
5. Conditions Precedent to Closing. The Common Council of the City of Madison must adopt a resolution that approves the Agreement, authorizes the Mayor and City Clerk to execute the documents involved and authorizes the expenditure of funds required.
6. Closing on Purchase and Dedication of Lands.
  - a) This transaction is to be closed on or before December 31, 2008 at the office of the title insurance company issuing the commitment for title insurance ("closing"), unless the parties agree in writing to another date or place.
  - b) CPI agrees to execute and deliver to the City at closing a Warranty Deed conveying the Wheeler Open Space Parcel to the City free and clear from all liens and encumbrances, excepting the following: municipal and zoning ordinances and agreements entered under them, recorded conservation or similar easements for the benefit of the City, easements for the distribution of utility and municipal services, building and use restrictions and covenants, general taxes levied in the year of closing and any condition of title not objected to by the City pursuant to Section 3.
  - c) The dedications or conveyance of parkland in the Hornung Woods and the Range (a.k.a. Hickory ) area referred to in Exhibit C shall be dealt with at the time such lands are submitted by CPI for plat approval and in accordance with City of Madison ordinances in effect at such time.
  - d) The City shall pay all recording fees necessary to consummate the closing, except that CPI shall pay the recording fees for such documents as are required to cause title to the Wheeler Open Space Parcel to be in the condition called for by this Agreement.
  - e) CPI shall pay all real estate transfer taxes payable pursuant to Section 77.25, Wisconsin Statutes, if any.
  - f) The closing fee charged by the Title Company, if any, and related costs shall be shared equally between the City and CPI.
  - g) CPI shall provide and sign the required Owner's Affidavit at closing.
7. Real Estate Taxes. Net general real estate taxes for the Wheeler Open Space Parcel shall be prorated to the date of closing based on the net general taxes for the current year, if known, or latest assessment times the latest known mil rate.
8. Special Assessments. CPI shall be responsible for special and deferred assessments levied against the Wheeler Open Space Parcel prior to the date of closing.

9. Representations. CPI represents and warrants to the City that, to the best of CPI's knowledge, with respect to the Wheeler Open Space Parcel:
- a) No person has any option, right of first refusal or similar right to purchase all or any portion of the Wheeler Open Space.
  - b) There are no parties in possession of any portion of the Wheeler Open Space as tenants at sufferance or trespassers.
  - c) There are no parties in possession of any portion of the Wheeler Open Space as lessees.
10. Notices. Any notice or communication to be given hereunder shall be given in writing signed by the party giving notice, personally delivered or mailed by first class U.S. Mail, proper postage affixed, to the parties' respective addresses as set forth below:

**To CPI:** Cherokee Park, Inc.  
Attn: Dennis Tiziani, President  
13 Cherokee Circle  
Madison, WI 53704-8400

**To the City:** City of Madison  
Attn.: Donald S. Marx, Manager  
Office of Real Estate Services  
Post Office Box 2983  
Madison, WI 53701-2983

Notices shall be deemed given on the date of personal delivery or three (3) days after deposit in the case of mailing by first class U.S. Mail.

11. Miscellaneous.
- a) The parties each agree the written request of any other to sign and deliver such other documents as may be reasonably requested or as may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Agreement.
  - b) The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.
  - c) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, successors, and assigns. The provisions herein contained shall survive closing and delivery of the Warranty Deed and shall not be merged therein.
  - d) This Agreement, including the recitals set forth at the beginning and Exhibits A through C attached hereto, contains the entire agreement between the parties regarding the matters addressed in this Agreement and any modification, alteration or addendum to this Agreement shall be valid only when written and executed by both parties.
  - e) If any non-material part, paragraph, or article of this Agreement shall be determined to be invalid, or otherwise unenforceable, the validity of all the remaining parts, paragraphs, and articles shall not be affected thereby. Any such non-material parts, paragraphs, or articles shall be deemed severable.
  - f) This Agreement shall be governed by, and construed in accordance with, the laws of or applicable to

the State of Wisconsin.

- g) The headings in this Agreement are meant for reference purpose only and shall not in any way affect the meaning or interpretation of this Agreement.

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 purpose of this resolution.

BE IT FURTHER RESOLVED that the ~~2008~~ 2009 Parks Capital Budget (Project No.6 11 , Development Fee Projects) be amended to authorize the expenditure of an amount not to exceed \$90,000 for the acquisition of the Wheeler Open Space Parcel, funded with parkland dedication fees.