



## Legislation Text

---

**File #:** 35982, **Version:** 1

---

### **Fiscal Note**

The total acquisition costs are estimated to be \$37,500 broken out as follows: \$35,000 for the purchase price of the Real Estate, \$2,500 miscellaneous closing costs (prorated taxes, filing fees etc). Funds are available in Engineering Account No. ESTM-58110-810389-00-53W1690.

### **Title**

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Tina M. Schmidt for the purchase of a parcel located at 5200 Camden Road for the location of a City Engineering bio-retention basin.

### **Body**

Tina M. Schmidt (the "Owner") is the owner of a 0.34-acre improved residential parcel located at 5200 Camden Road, (the "Property"). The Property is located at the southeast quadrant of the intersection of Camden Road and Linda Vista Road.

The Property is improved with a 3-unit triplex dwelling and 3-car detached garage. The triplex fronts both Camden Road and Linda Vista Road. The detached garage is located at the end of the Linda Vista Road frontage. The building improvements date to the early 1960's.

The detached garage has had a history of flooding during significant rain events due to its location at the end of the Linda Vista Road right-of-way and below grade topography. A recent City of Madison sidewalk construction project that included storm sewer improvements was unable to completely alleviate the flooding problem with the detached garage.

After discussions between the Owner and the City Engineering Division, it was concluded that the purchase of a 0.07-acre parcel including the detached garage (the "Retention Parcel"), razing of said detached garage, and construction of a bio-retention basin at the end of Linda Vista Road was the best long term solution.

The 0.07-acre Retention Parcel, including the detached garage has been appraised by an independent fee appraiser contracted by the City. Based on the appraisal, the City Engineering Division and the Office of Real Estate Services have negotiated terms with the Owner for the purchase of the Retention Parcel. The Owner has accepted a Purchase and Sale Agreement from the City of Madison (the "City") for the Retention Parcel. The purchase price is supported by the appraisal obtained by the City.

NOW, THEREFORE BE IT RESOLVED that the Mayor and City Clerk are hereby authorized to execute a Purchase and Sale Agreement (the "Agreement") with Tina M. Schmidt (the "Seller") for the purchase by the City of Madison ("Buyer") of a 0.07-acre parcel and detached garage owned by Seller and located at 5200 Camden Road (the "Property"), as legally described below on attached Exhibit A and shown on the attached Exhibit B, on the following terms and conditions:

1. Property. Seller hereby agrees to convey to Buyer and Buyer hereby agrees to acquire from Seller the Property and all improvements located thereon and all appurtenances, upon the terms and conditions set forth herein.

2. Purchase Price. The purchase price for the Property is Thirty Five Thousand Dollars (\$35,000) ("Purchase Price") and shall be paid as follows: Buyer shall pay Thirty Five Thousand and 00/100 Dollars (\$35,000) in cash or a cash equivalent at closing, subject to closing prorations and credits. The parties acknowledge and

agree that the Purchase Price was established by appraisal commissioned by the Buyer and accepted by Seller dated October 20, 2014 in assisting to establish the value as the fair market value for the Property.

3. 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.

4. Personal Property. Buyer acknowledges and agrees that no personal property will be conveyed in this transaction from Seller to Buyer.

5. Seller's Representations and Warranties. Seller hereby makes the following representations and warranties in connection with Buyer's purchase of the Property, and no others, express or implied, which representations and warranties shall be true as of the closing date hereof and shall survive the closing of this transaction for a period of one (1) year:

- a. Seller has the authority necessary to enter into this Offer and comply with Seller's obligations hereunder;
- b. There are no pending or, to Seller's knowledge, threatened condemnation or eminent domain proceedings which would affect the Property;
- c. There are no agreements between Seller and any other party which relate to the Property that have not been disclosed by to Buyer;
- d. Until the closing date, the Property will be maintained in substantially the same condition as it is in on the date of this Offer, subject to ordinary wear and tear and casualty damage; and
- e. There is no litigation pending or, to Seller's knowledge, threatened which would affect the Property or the use thereof by Buyer.

6. Title Insurance. The Seller shall provide to the Buyer, at the Buyer's expense, at least thirty (30) business days prior to the end of the Buyer's Contingency Period a commitment from a title insurance company licensed in Wisconsin for an ALTA owner's title insurance policy for the Property in the amount of the total purchase price, together with copies of the instruments listed in the Schedule of Exceptions to the commitment. The commitment shall show title to the Property, as of a date no more than fifteen (15) days before such commitment is provided to the Buyer, to be in the condition called for in this Agreement, subject only to liens which will be paid out of the proceeds of the closing and to any standard title insurance exceptions acceptable to the Buyer (the "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. At closing, the Seller at Buyer's expense, shall cause the title company to issue a current ALTA owner's title insurance policy in the amount of the Purchase Price insuring the Buyer as the fee simple owner of the Property as of the date of the recording of the Warranty Deed, including gap coverage, subject only to any Permitted Exceptions.

7. Inspection Contingency. Promptly after the Effective Date, Seller shall make available to Buyer any and all environmental studies, permits, applications, remediation plans or assessments of the Property in Seller's possession or control for the Property. Buyer, at its sole expense, may obtain an inspection of the Property and related improvements located on the Property and/or a Phase I environmental assessment of the Property. Buyer shall not have the right to conduct any sampling of the water, soil, air or improvements without Seller's express prior written consent. Buyer shall have ten (10) days from the Effective Date to terminate this Offer by written notice to Seller resulting from Buyer's objection to any matter shown in an inspection report or

Phase I environmental assessment, which materially affects the Property or any improvements located thereon or Buyer's use of the Property. If Buyer does not terminate this Offer hereunder, then Buyer is deemed to have waived this inspection contingency and any right to object to the condition of the Property or any improvements located thereon. In no event shall Seller be required to cure any matter to which the Buyer objects relating to the condition of the Property or any improvements located thereon.

8. No Representations or Warranties; AS-IS Condition.

a. Buyer is hereby purchasing the Property in "AS-IS, WHERE-IS" condition and "with all faults", and agrees that it relies upon no warranties, representations or statements by Seller, or any other persons for Seller, in entering into this Offer or in closing the transaction described herein, except for the express representations and warranties set forth in Section 4 above. Buyer's closing on the acquisition of the Property shall constitute conclusive evidence that Buyer is satisfied with the condition of and title to the Property and has waived or satisfied Buyer's title and inspection contingencies set forth in Sections 5 and 6 above. In closing and completing this transaction, Buyer will have relied exclusively upon its own inspections and reviews, and not upon any representation or warranty of Seller or its agents or employees except those expressly set forth in Section 4 above.

b. Except for the express representations and warranties set forth in Section 4 above, Seller makes no warranties, representations or statements whatsoever, express or implied, concerning or relating to the Property, including without limitation: the income or expenses of the Property; zoning and building codes and other similar restrictions; availability or cost of utilities; the environmental condition of the Property; the presence or absence of any hazardous substances, hazardous materials, petroleum, or any substances regulated by federal, state or local law in, on or under the Property; compliance of the Property with any law, regulation, ordinance or similar requirement, including without limitation the Americans with Disabilities Act; or the physical condition of the Property or any improvements thereon. Buyer acknowledges that no agents, employees, brokers or other persons are authorized to make any representations or warranties for Seller.

c. Buyer (and any party claiming through or under Buyer) hereby agrees that following the closing, Seller shall be fully and finally released from any and all claims or liabilities against the Seller relating to or arising on account of the condition of or title to the Property, including without limitation, any matters specifically referenced in this Offer.

d. Section 8(a) through (c) shall survive the closing of this Offer.

9. Closing.

a. The closing of this transaction shall take place on a date that is mutually agreed to by the parties that is with thirty (30) days after the waiver of satisfaction of the Buyer's Contingencies, unless an extension to the closing date is mutually acceptable to the Seller and Buyer.

b. Unless other contingencies are expressly granted in this Offer, Buyer's contingencies include only the title and inspection contingencies set forth in Sections 5 and 6 above and in Section 12 below.

c. At closing, Buyer shall deliver to Title Company wired funds or other immediately available funds in the amount of the Purchase Price, as adjusted for any prorations and closing costs provided for herein, and such affidavits, resolutions and other documents agreed between the parties, required for a legal conveyance of real estate in the state where the Property is located or otherwise required by Title Company to issue Title Policy.

d. At closing, Seller shall deliver to Title Company a Warranty Deed conveying the Property to Buyer,

subject only to the exceptions permitted herein and such affidavits, resolutions and other documents agreed between the parties, required for a legal conveyance of real estate in the state where the Property is located or otherwise required by Title Company to issue Title Policy.

e. All prorations required hereunder shall be computed as of the date of closing.

f. Possession of the Property shall be delivered to Buyer on the closing date.

g. Buyer shall pay for 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.

h. Buyer shall pay the title insurance premium for Title Policy to be issued and gap endorsement charges and for 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 Offer.

i. All Title Company closing charges shall be paid by the Buyer.

j. All other closing costs, including without limitation transfer taxes and other recording fees, shall be allocated as customary in the state in which the Property is located.

10. Taxes. All general real property taxes payable with respect to the Property for the year of closing shall be prorated between Buyer and Seller as of the closing date. If the precise amount of taxes payable for the year of closing cannot be ascertained, proration shall be based upon the latest known assessment and latest known mil rate on the Property for the immediately preceding tax year.

11. Special Assessments. Any and all special assessments, area assessments, connection charges, interceptor charges or any other charges due and payable to any municipality or utility with regard to the Property as of the date of closing shall be paid by Seller at closing.

12. 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 or to otherwise terminate the Agreement, unless extended as provided herein:

a. Environmental/Soils Testing. The Buyer obtaining, at its sole cost and expense, a phase 1 and/or phase 2 environmental assessments of the Property that are satisfactory, in the Buyer's sole discretion, to the Buyer.

The Buyer's Contingency Period may be extended for an additional thirty (30) days by written agreement of the parties prior to expiration of the original Buyer's Contingency Period.

13. Access to Property. Prior to closing, the Buyer and the Buyer's authorized agents and contractors shall be permitted access to the Property for the purpose of 1) conducting a Phase 1 and/or 2 environmental assessments of the Property and 2) boundary survey; at reasonable times with at least twenty-four (24) hours written notice to the Seller.

14. Bio-retention Pond. The Buyer shall construct a bio-retention pond within the Property, pursuant to City of Madison Engineering Division design standards; after the razing of the detached garage. The Buyer shall maintain the bio-retention pond in a satisfactory manner consistent with the intended design of the facility, and plantings shall be maintained at a minimum of an annual basis.

15. Acceptance. Acceptance of this Agreement may occur upon approval by Common Council of the City of

Madison. Seller will receive notification of acceptance of this Agreement by the Buyer delivering or mailing via certified mail, return receipt requested, a fully-executed original of this Agreement to the Seller at the following address: 5200 Camden Road, Madison, Wisconsin, at any time on or before December 31, 2014, whereupon this Agreement and the acceptance thereof shall become a binding contract. If the Buyer does not accept this Agreement within the prescribed time period, this Agreement shall become null and void and be of no further force or effect.

BE IT FURTHER RESOLVED that the funds in the amount of \$35,000 are available for the purchase price of the Real Estate, and \$2,500 miscellaneous closing costs (prorated taxes, filing fees, etc); and

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.