



## Legislation Text

File #: 00365, Version: 2

### Fiscal Note

This resolution amends the 2005 Capital Budget by the addition of a project involving the purchase of the 18 acre Whitson Swift parcel for \$550,000. Resources are available in Fund S105 "Platting Fees". There is no impact upon General Obligation borrowing.

### Title

SUBSTITUTE - Accepting an Offer to Sell from Whitson Swift Homes, Inc. for the acquisition of approximately 18 acres for the Northeast Open Space and amending the 2005 Capital Budget.

### Body

#### Preamble

The Common Council adopted a resolution (Resolution no. 47,586, ID No. 8641) on February 19, 1991, that authorized the acquisition of approximately 254 acres for the establishment of a permanent open space (the "Northeast Open Space") between the cities of Madison and Sun Prairie. The City has acquired all the lands to be included in the Northeast Open Space with the exception of the 17.96-acre Whitson Swift Homes, Inc. property (the "Property").

The Wisconsin Department of Transportation (WISDOT) is acquiring access rights to the Property that will eliminate the Property's current access to USH 151 for \$1,400,000 as part of its USH 151 Highway Improvement Project. The current owner of the Property has made an Offer to Sell the Property to the City for \$550,000 (\$30,624/acre) contingent on sale of the access rights to the WISDOT.

NOW THEREFORE BE IT RESOLVED that the City of Madison hereby accepts an Offer to Purchase (the "Offer") from Whitson Swift Homes, Inc. (the "Seller") an approximately 17.96 acre parcel of land (the "Property"), legally described below and as shown on Exhibit A, for the Northeast Open Space on the following terms and conditions:

- Description. The Seller agrees to sell to the Buyer and the Buyer agrees to purchase from the Seller the Real Estate, together with the building, improvements and fixtures located thereon (hereinafter collectively referred to together with the Real Estate as the "Property").
- Purchase Price: Condemnation Proceeds. The total purchase price of the Seller's interest in the Property shall be Five Hundred Fifty Thousand Dollars (\$550,000.00), payable in cash at closing, subject to the adjustments and prorations herein provided. The Wisconsin Department of Transportation is condemning the Property's access to Highway 151 pursuant to an Agreement attached hereto as Exhibit C. Accordingly, after the Department of Transportation acquires the access, there will be no access to the Property, except through adjacent lands currently owned by the Buyer. All condemnation proceeds paid by the Department of Transportation as a result of such condemnation shall belong to the Seller. Buyer hereby assigns all right to receive all condemnation proceeds paid by the Department of Transportation as a result of such condemnation. Buyer hereby agrees to execute a written Assignment at Closing transferring all rights of the Buyer under said Exhibit C to the Seller and join in the execution of all documents necessary to transfer the access routes to the Wisconsin Department of Transportation.
- Title Insurance. The Seller shall provide to the Buyer at the Seller's expense at least ten (10) business days prior to closing a commitment from a title insurance company licensed in Wisconsin to issue title insurance in the amount of the total purchase price upon the recording of proper documents, together with a gap endorsement and UCC search.
- Personal Property. The transaction contemplated by this Offer does not include any personal property, including but not limited to, all mobile homes located on the property. Any personal property left on the property after June 30, 2005, shall be deemed abandoned and shall become the property of the Buyer.

5. Survey. The Seller shall provide to the Buyer, at the Seller's expense at least ten (10) days prior to closing, an ALTA/ACSM Land Title Survey of the Property, certified as of a current date in favor of the Buyer and title company providing the title insurance described in Paragraph 3.
6. Contingency Regarding Environmental Conditions. The Buyer and its agents shall have the right to conduct testing as the Buyer deems reasonably necessary related to environmental conditions affecting the Real Estate. If the results of such testing are not satisfactory to the Buyer, the Buyer shall so notify the Seller in writing on or before 45 days following acceptance of the Offer. Upon receipt of such notice, the Seller shall have the option to either (a) remediate or otherwise correct the environmental conditions(s) affecting the Real Estate and the closing shall be extended as necessary for this purpose; or (b) terminate this Offer by giving written notice to the Buyer at any time prior to the date of closing. In the event the Buyer makes no written objections on or before 45 days following acceptance of the Offer, this contingency shall be deemed waived.
7. No Warranties or Guarantees as to Improvements. The Seller gives no guarantees or warranties as to the condition of any improvements on the Property, including, but not limited to, structural, basements and mechanical fixtures.
8. Leases. The Real Estate is subject to 3 residential leases and a lease in favor of Adam's Outdoor Signs to maintain a billboard sign. The tenants in the 3 residential premises are being relocated at the expense of the Wisconsin Department of Transportation by May 31, 2005. With respect to each of the residential premises, Seller shall be responsible for all maintenance and repairs and shall be entitled to retain all rents until May 31, 2005, or the date on which the tenants actually vacate each premises, whichever is earlier. The sign lease with Adams Outdoor Sign, which expires on July 31, 2007, shall be assigned to the Buyer at closing and rent shall be prorated to the date of closing.
9. Occupancy After Closing. The Seller, Norm's Homes, Inc. and L. N. Schweiss shall be entitled to occupy the Property for no rent through June 30, 2005.
10. Closing.
  - a. This transaction is to be closed on or before March 2, 2005, at the office of the title insurance company issuing the commitment for title insurance, unless the parties agree in writing to another date or place.
  - b. The Seller agrees to execute and deliver to the Buyer at closing a Warranty Deed conveying the Property to the Buyer free and clear from all liens and encumbrances, excepting the following: municipal and zoning ordinances and agreements entered under them, the landmark designation, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, and general taxes levied in the year of closing.
11. Contingency. This Offer is contingent on the acquisition of the access easement from the Property to Highway 151 by the Wisconsin Department of Transportation for \$1,400,000 by the time of closing of the transaction contemplated hereunder. In the event of the failure of this contingency, this Offer shall be null and void. This Contingency is for the benefit of the Seller. The Seller may waive this Contingency.
12. Acceptance. Acceptance of this Offer may occur upon approval by Common Council of the City of Madison. Seller will receive notification of acceptance of this Offer by the Buyer delivering or mailing via certified mail, return receipt requested, a fully-executed original of this Offer to the Seller at any time on or before February 25, 2005, whereupon this Offer and the acceptance thereof shall become a binding contract. If the Buyer does not accept this Offer within the prescribed time period, this Offer shall become null and void and be of no further force or effect.

BE IT FURTHER RESOLVED that the 2005 Capital Budget be amended to provide funding for this acquisition.

BE IT STILL FURTHER RESOLVED that should the Common Council authorize a change of use of the Property other than open space that the Property shall be replaced with a parcel or parcels providing open space on an acre for acre or equal value basis.

BE IT STILL FURTHER RESOLVED that the Mayor and City Clerk are authorized to execute any and all documents and take such other actions as shall be necessary to accomplish the purposes of this resolution

Real Estate Legal Description

Part of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , part of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  and part of the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 14, Township 8 North, Range 10 East, (Township of Burke), Dane County, Wisconsin, which is more fully described as follows: Beginning at the Northeast corner of the Southwest  $\frac{1}{4}$  of said Section 14; thence South  $1^{\circ} 35'$  West along the North and South  $\frac{1}{4}$  line of Section 14 for a distance of 994.0 feet; thence South  $89^{\circ} 55'$  East, 35.0 feet to the Northwesterly right-of-way line of newly widened U.S. Highway #151; thence South  $40^{\circ} 10'$  West along said Northwesterly right-of-way line, 690.8 feet; thence North  $43^{\circ} 14'$  West, 271.2 feet to the South line of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 14; thence North  $1^{\circ} 21'$  East, 1323.45 feet to the East and West  $\frac{1}{4}$  line of Section 14; thence North  $89^{\circ} 57'$  East along said East and West  $\frac{1}{4}$  line, 593.1 feet to the point of beginning.