



## Legislation Text

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**File #: 57577, Version: 1**

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### **Fiscal Note**

The proposed resolution authorizes the execution of a Purchase and Sale Agreement between the City of Madison and the owner of the property located at 354 East Lakeside Street for future incorporation with Olin Park. Real Estate has estimated the acquisition cost at \$792,500 for the parcel plus \$20,000 in additional real estate costs for environmental site assessment, title work, miscellaneous closing costs, and staff time for a total amount of \$812,500. The purchase will be funded by impact fees in the Land Acquisition project (Munis project 17128). Funding is available in this project for the purchase of the parcel and associated costs based on the estimate.

As a condition of the sale, the seller may lease back the property. The initial term of the lease is one year from the closing date on the property, or through December 31, 2020, whichever is longer. The seller will not be charged rent for the first lease back term but will pay for all operating and maintenance expenses relating to the use of the property. Any capital expenditures over \$2,000 are the responsibility of the City and will be made at the City's discretion.

The seller has two options to extend the term of the lease for consecutive periods of one year each. If the seller exercises the first option to extend the lease, the seller will pay market rent on a month to month basis as mutually agreed upon by the City and seller. The rental rate for this year will be \$2,000 per month. If the seller opts to extend the lease for the second option, the rental rate will be \$2,100 per month (5% increase).

### **Title**

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Sally J. Stevens for the City's acquisition of the property located at 354 East Lakeside Street for assemblage with Olin Park. (13th A.D.)

### **Body**

WHEREAS, Sally J. Stevens ("Seller") is the owner of the property containing 8,591 square feet of land and single family home improvements, located at 354 East Lakeside Street legally described as Lot 3, Plat of Pleasure Park, in the City of Madison, Dane County, Wisconsin ("Property"); and

WHEREAS, the City of Madison ("City") desires to purchase the Property for assemblage with Olin Park, as the acquisition of properties in the vicinity of Olin Park is a long term goal of the City's Parks Division; and

WHEREAS, the City's adopted 2018 Comprehensive Plan identifies the Property as parkland on the Generalized Future Land Use Map with the following note: "The existing office and residential uses are recommended to continue until a future opportunity arises to convert this area to public park and open space use ...;" and

WHEREAS, the City's acquisition of the Property would add approximately 58 linear feet of shoreline for public access to Lake Monona, while providing expanded opportunities for recreational uses in this heavily used park, which is consistent with the City's adopted 2018 Park and Open Space Plan includes the recommendation to "Improve Public Access to Lakes"; and

WHEREAS, the Seller agrees, by virtue of an executed Purchase and Sale Agreement ("Agreement"), to sell the Property to the City for a purchase price of \$792,500, which was negotiated based on two appraisals reviewed and approved by the City's Office of Real Estate Services; and

WHEREAS, the City and the Seller (“Parties”) agree that the Agreement for the acquisition of the Property shall include an addendum defining initial terms, in the event the Seller desires to lease the Property after conveyance to the City, to allow time for the Seller to purchase and move to a replacement property.

NOW, THEREFORE, BE IT RESOLVED that the City’s Common Council hereby authorizes the City’s execution, as Buyer, of the Agreement with the Seller for the purchase of the Property, subject to the following terms and conditions:

1. Property.
  - a. The Buyer shall purchase and the Seller shall sell and convey by Warranty Deed (“Deed”) fee simple title to the real property identified as tax parcel 251/0709-252-0303-9, located at 354 East Lakeside Street, Madison, Wisconsin (“Property”), legally described as follows:

Lot 3, Plat of Pleasure Park, in the City of Madison, Dane County, Wisconsin.
  - b. Fee simple title shall include the building, improvements and fixtures located thereon.
2. Effective Date. The “Effective Date” shall be the later date of execution of the Agreement by the Parties, as indicated on the signature pages.
3. Purchase Price. The total purchase price for the Seller’s interest in the Property (“Purchase Price”) shall be Seven Hundred Ninety-Two Thousand Five Hundred and 00/100 Dollars (\$792,500). The Purchase Price shall be payable in cash at the time of conveyance of the Property (“Closing”), subject to the adjustments and prorations herein provided.
4. Earnest Money. Within ten (10) business days of the Effective Date, the Buyer shall deposit with the Title Company, as defined below, Thirty-Nine Thousand Two Hundred Fifty and 00/100 Dollars (\$39,250) as “Earnest Money”, which will be non-refundable except that the Earnest Money shall be forfeited and returned to the Buyer as provided in Paragraphs 8, or 11, or if Seller defaults on the terms of the Agreement. The Earnest Money shall be applied toward the Purchase Price at Closing in accordance with Paragraph 3.
5. Personal Property. The purchase of the Property does not include any personal property.
  - a. The Seller shall remove any and all personal property, including appliances, from the Property before Closing.
  - b. If the Seller desires to occupy the Property subsequent to Closing, as evidenced by the execution of Addendum A Lease to Seller (“Addendum A”), all personal property shall be removed on or before the expiration or termination of the lease back term, pursuant to Paragraph 11 of Addendum A.
  - c. The Seller shall ensure that all utilities attached to personal property be shut off prior to removal and that the Property shall be left in a safe condition upon removal of personal property.
6. Delivery of Documents. Within ten (10) days of the Effective Date, the Seller will reproduce at the Seller’s expense and send to the Buyer all environmental studies, reports, surveys, permits, applications, building inspections, and remediation plans or assessments of the Property and all studies, reports, plans or assessments related to the condition of the Property in the Seller’s

possession or control.

7. Limited Representations and Warranties; AS-IS Condition. Except as otherwise provided in the Agreement, 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, or any other persons for Seller, in entering into the Agreement or in closing the transaction described herein. 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 contingencies, as generally described in Paragraph 8.
8. Buyer Contingencies. The Buyer shall have sixty (60) 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. In the event Buyer's Phase 1 Environmental Site Assessment report ("ESA") recommends a Phase 2 ESA, the Buyer must notify Seller in writing to extend the Buyer's Contingency Period as necessary to conduct such investigation. If the Buyer timely terminates the Agreement as a result of any of the Buyer's Contingencies, the Earnest Money shall be promptly refunded by the Title Company to the Buyer.
- a. Inspections and Testing. The Buyer, at its sole expense, has the option to conduct various inspections and testing on the Property and any improvements located thereon, including a Phase 1 or 2 ESA 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. City Budget Authorization. The Buyer shall obtain budget authorization from the Common Council of the City of Madison for the purchase of the Property.
- c. Lease. The Parties may negotiate the terms of Addendum A during the Buyer's Contingency Period in the event Seller wants to occupy the Property after Closing. Pursuant to Paragraph 2 of Addendum A, the Seller shall also execute a Lease at Closing, setting forth standard leasing terms and conditions for the City of Madison subject to mutual negotiation between the Parties. Upon execution by the Seller, Addendum A shall be attached hereto and made part of this Agreement.

If the Buyer does not provide written notice terminating the Agreement on or prior to the sixtieth (60th) day of the Buyer's Contingency Period, the Agreement shall remain in full force and effect, the Buyer shall accept the Property as-is, and the Parties shall proceed to close the transaction as provided herein. The Buyer's Contingency Period may be extended upon written agreement of the Parties.

Should the Buyer desire to close prior to the end of the Buyer's Contingency Period, the Buyer may provide the Seller with written notice of its intent to do so. The provision of such notice by the Buyer shall not affect the terms contemplated in the Agreement, except that the Closing shall occur on or before fifteen (15) days from the date the Seller receives such notice ("Closing Date"), unless the Parties agree in writing to another date.

9. Access to Property.
- a. Inspections & Testing. The Buyer and the Buyer's authorized agents, engineers, consultants, 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 ESA of the Property and/or a physical inspection of 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.

- b. Walk-Through. The Buyer will be permitted to enter the building located on the Property prior to Closing, at a time agreed to by the Seller.
10. Survey. Any survey of the Property including, but not limited to, an ALTA/ACSM Land Title Survey that meets the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys effective February 23, 2016 that is required 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 shall be at the sole cost and expense of the Buyer.
  11. Title Insurance. Seller shall obtain, at the Seller's expense, a title commitment from Preferred Title, LLC ("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. The Buyer shall notify the Seller of any valid objection to title, in writing, prior to the expiration of Buyer's Contingency Period. 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.
  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 the Agreement or the close of the transaction contemplated therein. 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 the Agreement or the close of the transaction contemplated therein. The provisions of this Paragraph shall survive any expiration or termination of the Agreement and shall not merge into any deed delivered and accepted upon the closing of the transaction therein contemplated.
  13. Closing.
    - a. Closing shall occur on or before ten (10) days from (a) the expiration of the Buyer's Contingency Period; or (b) the date of the Seller's receipt of notice from the Buyer requesting an earlier Closing Date; or (c) such other date agreed to in writing by the Parties. In no event shall Closing occur later than Monday, December 30<sup>th</sup>, 2019 ("Closing Deadline"). If the Parties are unable to schedule Closing on or before the Closing Deadline, the Parties shall have the option to proceed to Closing on a date that is mutually agreed to by both Parties, or if one or both Parties do not desire to reschedule Closing for a later date, either Party may declare the Agreement null and void by providing notice as set forth in Paragraph 14.
    - 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 agreements entered under them; recorded easements for the distribution of utility and municipal services; easements; recorded building and use restrictions and covenants.
    - c. The Buyer shall pay all recording/filing fees except that the Seller shall pay the recording/filing



terms, conditions, promises, understandings, statements or representations, express or implied, regarding the transaction contemplated hereby, with the exception of Addendum A and the related Lease, if executed and attached hereto. This Agreement may be amended only by a further written document signed by the Parties.

17. 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.
18. 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.
19. 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.
20. 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.
21. Time of the Essence. Time is of the essence for the performance of this Agreement.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to sign, accept, and record any and all documents and legal instruments required to complete the transactions contemplated in this resolution, on a form and in a manner that has been approved by the City Attorney.