



## Legislation Details (With Text)

**File #:** 20460      **Version:** 1      **Name:** 9371 Don Miller Acquisition

**Type:** Resolution      **Status:** Passed

**File created:** 11/3/2010      **In control:** BOARD OF ESTIMATES (ended 4/2017)

**On agenda:** 11/30/2010      **Final action:** 11/30/2010

**Enactment date:** 12/2/2010      **Enactment #:** RES-10-00934

**Title:** Authorizing the execution of a Purchase and Sale Agreement with East Washington LLC and East Washington II, LLC (collectively the "Seller") for the purchase of properties owned by the Seller located in Blocks 133, 143 and 144 of the Original Plat of the City of Madison and authorizing the use of Land Banking Funds for the acquisition.

**Sponsors:** David J. Cieslewicz, Bridget R. Maniaci, Marsha A. Rummel

### Indexes:

### Code sections:

**Attachments:** 1. 9371 Don Miller Sites Exhibit A .pdf, 2. 9371 Land Banking Guidelines Exhibit.pdf, 3. Registration Forms 11-30-2010.pdf

Date	Ver.	Action By	Action	Result
11/30/2010	1	COMMON COUNCIL	Adopt	Pass
11/29/2010	1	ECONOMIC DEVELOPMENT COMMITTEE	Return to Lead with the Recommendation for Approval	Pass
11/22/2010	1	PLAN COMMISSION	Return to Lead with the Recommendation for Approval	Pass
11/22/2010	1	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
11/9/2010	1	BOARD OF ESTIMATES (ended 4/2017)	Refer	
11/9/2010	1	BOARD OF ESTIMATES (ended 4/2017)	Refer	
11/9/2010	1	COMMON COUNCIL	Referred	Pass
11/3/2010	1	Community and Economic Development Unit	Referred for Introduction	

### Fiscal Note

Total costs for purchase, taxes, closing, and site stabilization activities are estimated at \$5,566,436. Funds totaling \$1,423,000 for the purchase, taxes and closing costs are available in the 2010 PCED adopted Capital Budget, Project No. 23, "Land Banking" (Account No. 810638). The additional \$3,393,436 needed for purchase, taxes and closing costs would be authorized in the proposed 2011 Capital Budget (PCED Project #23 - Land Banking), if adopted as recommended by the Board of Estimates. Funds for site stabilization activities of \$750,000 would be available in the 2011 Capital Budget (PCED Project #4 - TID #36), if adopted as recommended by the Board of Estimates. These purchase and site stabilization costs would be funded with general obligation borrowing. Of the \$5,566,436 total cost, \$4,509,000 is within the current boundary of TID #36. Therefore, a substantial portion of the debt repayment will be charged to TID#36 and repaid with TIF increment if sufficient increment is generated from future development within the district. The most recent year's property taxes on this property were roughly \$103,000, with about 81% paid on parcels located within TID #36. Therefore, City purchase will reduce the annual increment received in TID #36 by \$81,000 until the property is resold for a taxable use.

### Title

Authorizing the execution of a Purchase and Sale Agreement with East Washington LLC and East Washington II, LLC (collectively the "Seller") for the purchase of properties owned by the Seller located in Blocks 133, 143 and 144 of the Original Plat of the City of Madison and authorizing the use of Land Banking Funds for the acquisition.

#### **Body**

East Washington, LLC and East Washington II, LLC own properties located along East Washington Avenue in Blocks 133, 143, and 144 of the Original Plat of the City of Madison (the "Properties") which they currently have on the market for sale. The Properties total 338,174 square feet or 7.77 acres. The Office of Real Estate Services has negotiated terms with the Seller for the acquisition of the Properties. The purchase price is supported by an appraisal obtained by the City.

The primary reason to acquire the Properties is to preserve, to the fullest extent possible, the principles of coherent urban infill redevelopment that are highlighted in the adopted Comprehensive Plan, the Tenney-Lapham Neighborhood Plan, and the East Washington Capitol Gateway Corridor Plan.

The purchase price of the Properties is below market price. Following the completion of a more in-depth site and development plan for the Properties, consistent with the adopted plans for the area, the City will sell or transfer the Properties for redevelopment at market price, resulting in uses that are largely taxable.

The adopted 2010 Capital Budget and the proposed 2011 Capital Budget, if adopted as submitted, provide funding to purchase and stabilize developable parcels of land. The acquisition is contingent upon adoption of the 2011 Capital Budget with additional Land Banking funding authorization for the purchase and funding authorization in TID#36 for stabilization of the Properties. Priority for the use of Land Banking funds is to be given to parcels for which a development plan exists or special area plan has been approved, but no development is forthcoming due to overall economic conditions or the financial condition of the developer, thereby making the parcels available at a below market price. Funds used for this purpose will be reimbursed through subsequent sale or ground lease of the parcels as part of the redevelopment plan or plan implementation process. Any parcels purchased by the City using these funds are to be sold or transferred at market price. Upon sale by the City, the parcels are expected to remain taxable. As further provided in the 2010 Capital Budget language, the Department of Planning and Community and Economic Development developed implementation guidelines for the use of Land Banking Funds. The Land Banking Fund Guidelines (attached) were approved by the Economic Development Committee on February 3, 2010. The acquisition of the Properties is consistent with the adopted 2010 and proposed 2011 Capital Budget language and the Land Banking Fund Guidelines.

NOW, THEREFORE BE IT RESOLVED that the Mayor and City Clerk are hereby authorized to execute a Purchase and Sale Agreement (the "Agreement") with East Washington LLC and East Washington II, LLC (collectively the "Seller") for the purchase by the City of Madison (the "Buyer") of properties and improvements owned by the Seller located in Blocks 133, 143 and 144 of the Original Plat of the City of Madison (collectively the "Properties"), as legally described below and shown on the attached exhibit, on the following terms and conditions:

1. Properties. The Buyer shall purchase and the Seller shall sell and convey by Warranty Deed (the "Deed") fee simple ownership of the Properties, including all improvements located thereon and all appurtenances thereto.
2. Purchase Price. The total purchase price of the Seller's interest in the Properties (the "Purchase Price") shall be Fourteen and no/00 Dollars (\$14.00) per square foot multiplied by the number of square feet of the Properties, as shall be verified by the survey to be provided by the Seller in accordance with Paragraph 6. The Purchase Price shall be payable in cash at closing, subject to the adjustments and prorations herein provided.
3. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by the Buyer

or the Seller, as indicated on the signature page.

4. Delivery of Documents. Within ten (10) days of the Effective Date, the Seller shall make available to the Buyer for review all environmental studies, reports, permits, applications and remediation plans or assessments of the Properties and all studies, reports, plans or assessments related to the condition of the improvements on the Properties including, but not limited to, asbestos, lead-based paint inspections and other hazardous waste inspections related to the physical condition of the improvements on the Properties in the Seller's possession or control. The Seller shall also provide all documents in the Seller's possession related to the billboard sign located on the Property.
5. Inspection Contingency. The Buyer, at its sole expense, may obtain an inspection of all buildings and related improvements located on the Properties and/or a Phase I environmental assessment of the Properties. The Buyer shall have ninety (90) days from the Effective Date (the "Inspection Contingency Period") to terminate the Agreement by written notice to the Seller based on the Buyer's objection to any matter shown in an inspection report or Phase I environmental assessment or other due diligence conducted by the Buyer, which materially affects the Properties or the Buyer's use of the Properties, or if the Buyer determines in its sole discretion that the Properties are not acceptable to the Buyer for any reason, or "no reason." If the Buyer does not terminate the Agreement hereunder, then the Buyer is deemed to have waived this Inspection Contingency and any right to object to the condition of the Properties or any improvements located thereon, and the sale will be an "as is" sale. In no event shall the Seller be required to cure any matter to which the Buyer objects relating to the condition of the Properties or any improvements located thereon.

Should the Buyer determine, at its sole discretion, prior to the end of the Inspection Contingency Period that it needs additional budget authorization for remediation of the Properties, demolition of the improvements located on the Properties, or any other necessary improvements required to reposition the Properties for redevelopment, the Buyer may extend the Inspection Contingency Period an additional sixty (60) days to obtain such budget authorization by providing written notice to the Seller at least five (5) days prior to the expiration of the Inspection Contingency Period.

6. 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 Properties that meets the 2005 Minimum Standard Detail Requirement, certified as of a current date in favor of the Buyer and title company providing the title insurance described in Paragraph 9.
7. Access to Properties. The Buyer and the Buyer's authorized agents and contractors shall be permitted access to the Properties for the purpose of conducting a Phase I environmental assessment of the Properties and/or a physical inspection of any building and related improvements located on the Properties at reasonable times with at least twenty-four (24) hour notice to Seller. All notices shall be given to Don W. Miller unless another person is identified to receive notice by Don W. Miller. Buyer will repair all damages caused by its inspections, at Buyer's cost, so that the condition of the Property is returned to as good or better condition as existed prior to the inspection.
8. Seller's Vacation of Properties. The Seller shall have ninety (90) days from the satisfaction or waiver of the Inspection Contingency, including any extension that is provided herein, to vacate the Properties. Vacating the Properties means that Seller will remove certain above-ground hoists, front-end lifts, oil change lifts, and body frame machines. Seller will also remove certain computer equipment, desks, chairs, furniture, telephones, and other office equipment and supplies. As a part of the Inspection Contingency, Seller will perform a walk-through of all Properties with Buyer's agents and will identify any property that will be left upon the premises. Upon vacating the Properties and prior to closing, Seller will again do a final walk-through with Buyer's agents. If Buyer objects to any of the property that is left by Seller upon the premises, Seller will remove the objectionable personal property prior to closing.

9. Title Insurance.

- a. 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 Purchase Price upon the recording of proper documents, together with a gap endorsement. The commitment shall show title to the Properties, 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 standard title insurance exceptions acceptable to the Buyer. 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 the Agreement by reason of a valid legal defect in title which the Seller is unwilling to waive, the Agreement shall be void.
- b. Buyer has been informed that Madison Gas & Electric Company has a First Right of Refusal with respect to the Properties located at 806 and 820 East Main Street. Seller shall have sixty (60) days after the Effective Date to obtain a waiver from Madison Gas & Electric Company with respect to this First Right of Refusal.
- c. Buyer is also informed that Madison Gas & Electric Company holds a recorded easement over the southern corner of 806 East Main Street.
- d. East Washington, LLC owns all of the subject property with the exception of the following parcel which is owned by East Washington II, LLC:

The Southwest ½ of Lot 11, the Southeast 99 feet of Lot 10, and Southeast 99 feet of the Northeast ½ of Lot 11, Block 143, in the City of Madison, Dane County, Wisconsin.

10. Closing.

- a. Closing shall occur within fifteen (15) days after the Seller's vacation of the Properties, 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 the Deed conveying the Properties 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, municipal and association services; easements for the performance of association duties; recorded easement held by Madison Gas & Electric Company; and 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 fees for such documents as are required to be recorded/filed in order to cause title to the Properties to be in the condition called for by the Agreement.
- d. All real estate taxes with respect to the Properties shall be prorated between the Buyer and the Seller as of the date of closing based upon the latest known assessment and latest known mill 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 Properties as of the date of closing.

11. Brokerage Fees. The Seller has listed the Block 144 Properties for sale with Opitz Realty. The Seller shall be solely responsible for any brokerage fees owed to Opitz, if any. Both parties warrant that no other brokerage fees have been or will be incurred as a result of this sale.
12. Seller's 1031 Exchange. Seller, at its option, may structure the sale of the Property as a tax-deferred exchange ("Exchange") pursuant to Section 1031 of the Internal Revenue Code. If Seller shall elect to undertake an Exchange, the following terms shall apply:
  - a. Seller, at its option, may assign its right in and delegate its duties (in part or in whole) under the Agreement, as well as the transfer of its interest in the Property, to an Exchange Accommodator, selected by Seller. Seller shall provide Buyer with written notice of any such assignment.
  - b. Buyer agrees to cooperate with Seller in connection with the Exchange, by executing documents of exchange (including, but not limited to, escrow instructions and amendments to escrow instructions).
  - c. The transaction contemplated by this LOI shall timely close in accordance with the terms contained in the LOI, notwithstanding any failure, for any reason, of the consummation of the Exchange.
  - d. All representations, warranties, covenants, and indemnification obligations of Seller to Buyer shall inure to the benefit of the Buyer, notwithstanding the Exchange.

BE IT FURTHER RESOLVED that funds for the acquisition and stabilization of the Properties are authorized in the City's Capital Budget as follows: The acquisition costs include the purchase price \$4,734,436, City portion of pro-rated real estate taxes \$80,000 (assumes April 1, 2011 closing date) and miscellaneous closing costs \$2,000. The stabilization costs include demolition of improvements and remediation of land \$750,000 (actual costs to be determined prior to closing).

BE IT STILL FURTHER RESOLVED that the disposal of the Properties shall be by direct sale or through a Request for Proposals process once the site review analysis and a redevelopment plan are completed.

BE IT STILL FURTHER RESOLVED that the Mayor and City Clerk are authorized to execute, deliver accept and record any and all documents and take such actions as shall be necessary or desirable to accomplish the purpose of this resolution in a form approved by the City Attorney.

### Legal Descriptions

#### 854 East Washington Ave.

The Southeasterly 99 feet of Lot 10, the Southeasterly 99 feet of the Northeasterly 33 feet of Lot 11, and the Southwesterly 33 feet of Lot 11, all in Block 143, Original Plat of the City of Madison, EXCEPT that part described as follows:

Beginning at the Easterly corner of said Lot 10; thence South 46 Degrees 08 Minutes 01 Seconds West, 81.68 feet; thence North 44 Degrees 43 Minutes 20 Seconds East, 72.11 feet to a point of curve, radius 9 feet, chord bearing North 01 Degrees 28 Minutes 31 Seconds East, 12.35 feet; thence North 41 Degrees 46 Minutes 19 Seconds West, 21.51 feet to the Westerly right of way line of North Paterson Street; thence South 43 Degrees 54 Minutes 59 Seconds East, 31.94 feet along said

Westerly right of way line to the point of beginning.

802 East Washington Ave.

Lots 1 thru 18, Block 143, Original Plat of the City of Madison, EXCEPT:

The Southeasterly 99 ft of said Lot 10, the Southeasterly 99 ft of the Northeasterly 33 ft of said Lot 11, and the Southwesterly 33 ft of said Lot 11.

754 East Washington Ave.

Lots 8, 9, 10 and 11, Block 133, Original Plat of the City of Madison.

741 East Mifflin St.

Lots 7 and 12. Block 133, Original Plat of the City of Madison.

801 East Washington Ave.

Lot 1 and the Southwesterly 34 feet of Lot 2, Block 144, Original Plat of the City of Madison.

806 East Main St.

Lot 18 and the Southwesterly 34 feet of Lot 17, Block 144, Original Plat of the City of Madison.

815 East Washington Ave.

Lots 3 and 16 and the Northeasterly 32 feet of Lots 2 and 17, Block 144, Original Plat of the City of Madison.

820 East Main St.

Lot 15. Block 144, Original Plat of the City of Madison.