



Legislation Details (With Text)

File #: 34538 **Version:** 2 **Name:** 10051 - Acquisition Owl's Creek
Type: Resolution **Status:** Passed
File created: 6/20/2014 **In control:** BOARD OF ESTIMATES (ended 4/2017)
On agenda: 8/5/2014 **Final action:** 8/5/2014
Enactment date: 8/7/2014 **Enactment #:** RES-14-00574

Title: SUBSTITUTE Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and AnchorBank FSB for the purchase of 48 51 lots and 1 outlot in the Owl's Creek Subdivision and amending the 2014 Capital Budget to provide funding for the acquisition.

Sponsors: Denise DeMarb

Indexes:

Code sections:

Attachments: 1. Version 1 Master22-Jul-2014-08-35-27.pdf, 2. Owl's Creek Substitute Resolution Exhibit A.pdf, 3. Exhibit B Owl Creek - Acquisitions_v6 8.5x11.pdf

Date	Ver.	Action By	Action	Result
8/5/2014	2	COMMON COUNCIL	Adopt	Pass
7/28/2014	2	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT (15 VOTES REQUIRED) - REPORT OF OFFICER	Pass
7/7/2014	1	PLAN COMMISSION	Return to Lead with the Recommendation for Approval	Pass
7/7/2014	1	BOARD OF ESTIMATES (ended 4/2017)	Refer	Pass
7/1/2014	1	BOARD OF ESTIMATES (ended 4/2017)	Refer	
7/1/2014	1	COMMON COUNCIL	Referred	
6/20/2014	1	Economic Development Division	Referred for Introduction	

The Resolution will amend the 2014 adopted capital budget of the Planning and Community and Economic Development agency (PCED) to create a new capital project, "Owl's Creek Subdivision," Account No. 810804, and to appropriate ~~\$550,000~~ \$580,000 from the City's General Land Acquisition fund to support the land acquisition expenses (including purchase and closing costs). The current available balance of the General Land Acquisition fund is an estimated \$1.8 million. (A pending Resolution, Legistar #34536, proposes an additional expenditure of \$469,000 from the General Land Acquisition fund). The budget will be amended as follows:

CD21-58110-810804	\$550,000 <u>\$580,000</u>	Land Acquisition
CD21-79442-810804	(\$550,000) <u>(\$580,000)</u>	Transfer In from Land Fund
CL21-57442-810347	\$550,000 <u>\$580,000</u>	Transfer Out to Land
CL21-78320-810347	(\$550,000) <u>(\$580,000)</u>	Land Sales

Future property sale proceeds will be credited to the General Land Acquisition fund or as otherwise directed by the Common Council.

It should be noted that the Resolution and budget amendment will provide for the City's property acquisition, but left unaddressed are the City's future holding and maintenance expenses following the acquisition, and which City agency will oversee administration of the property. It is conceivable that the City will own the property in full or in part for quite some time and will incur ongoing costs for upkeep, at a minimum. The holding and maintenance costs are currently unknown. In general, property holding and maintenance expenses are appropriately treated as operating expenses and should be addressed as such. A future budget amendment will likely be necessary to appropriate funds for ongoing property maintenance and holding expenses.

SUBSTITUTE Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and AnchorBank FSB for the purchase of 48 51 lots and 1 outlot in the Owl's Creek Subdivision and amending the 2014 Capital Budget to provide funding for the acquisition.

The Common Council enacted Resolution RES-13-00858 which directed the Office of Real Estate Services, the Planning Division, the Community Development Authority and the Community Development Division to research the housing and neighborhood conditions in the Owl's Creek Subdivision and issue a report to the Mayor and Common Council describing these conditions and recommending actions that can be take to mitigate the challenges that are currently found in this neighborhood. A group with representatives from each of the agencies set forth above, as well as the leaders of the Owl's Creek Neighborhood Resource Team, (collectively, the "Owl's Creek Staff Team") met on multiple occasions to assess the challenges faced by the neighborhood.

As part of its work, the Owl's Creek Staff Team researched property ownership in the Owl's Creek Subdivision and found that 48 lots and 1 out lot (collectively, the "Property") were in one ownership and were being foreclosed on by Dane County for back taxes. The Property represents more than one half of the lots in the Owl's Creek Subdivision. The Owl Creek Staff Team recognized that ownership of the Property would provide the City with the opportunity to have a significant impact on the timing and quality of the development in the Owl's Creek neighborhood. This impact will extend beyond the boundaries of the Owl's Creek Subdivision to the other area neighborhoods.

A Sheriff's Sale for the Property was held on April 8, 2014. AnchorBank FSB was the successful bidder at the Sheriff's Sale for the Property. AnchorBank FSB is awaiting confirmation of the Sheriff's Sale at which time it will own the Property and be able to sell it to the City. A Letter of Intent containing the terms and conditions of a Purchase and Sale Agreement (the "PSA") has been negotiated and executed between the City and AnchorBank FSB for the purchase of the Property. Adoption of this resolution will authorize the execution of the PSA and amend the 2014 Capital Budget to provide funds for the acquisition.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the execution of a Purchase and Sale Agreement (the "Agreement") between the City (the "Buyer") and AnchorBank FSB (the "Seller") for the purchase of 48 51 lots and 1 outlot owned by the Seller within the Owl's Creek Subdivision, Madison, Wisconsin (the "Property"), legally described in Exhibit A and depicted on Exhibit B, for the stabilization of the Owl's Creek neighborhood, on the following terms and conditions:

1. The Property. The Buyer shall purchase and the Seller shall sell and convey by Special Warranty Deed (the "Deed") fee simple title to the Property including all related improvements, if any, located thereon and all appurtenances thereto.
2. 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.
3. Purchase Price. The total purchase price of the Seller's interest in the Property (the "Purchase Price") shall be ~~Four Hundred Ninety Thousand Dollars (\$490,000)~~ Five Hundred Twenty Thousand Dollars (\$520,000). The Purchase Price shall be payable in cash at closing, subject to the adjustments and prorations herein provided.

4. 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 at the Buyer's office copies of all environmental studies, reports, surveys, permits, applications 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.

5. Seller's Confirmation Contingency. The sale of the Property to the Buyer is contingent upon confirmation of the purchase of the Property by the Seller at the Sheriff's Sale held on April 8, 2014.

6. Buyer's 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. The Buyer obtaining, at its sole cost and expense, a Phase 1 and/or Phase 2 environmental assessment of the Property that is satisfactory, in the Buyer's sole discretion, to the Buyer.

b. Appraisal. The Buyer obtaining, at its sole cost and expense, an appraisal supporting the Purchase Price.

c. Budget Approval. The Common Council of the City of Madison approving budget authorization for the purchase of the Property.

The Buyer's Contingency Period may be extended for an additional thirty (30) days by written notice from the Buyer to the Seller delivered prior to expiration of the Buyer's Contingency Period.

7. Access to the Property. The Buyer and the Buyer's authorized agents and contractors shall be permitted access to the Property for the purpose of conducting a Phase 1 or 2 environmental assessment and/or wetlands delineation survey of the Property at reasonable times with at least twenty-four (24) hour notice to the Seller. The Buyer will repair all damages caused by its inspections, at the 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. 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 (the "Title 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 Property, as of a date not 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 Buyer 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.

9. Lease. The Seller represents that the Property is currently not leased, and the Seller agrees that it shall not enter into any new lease or rental agreement for the Property, or any portion thereof, during the Buyer's Contingency Period and through the date of closing, without the prior written consent of the Buyer.

10. Closing.

a. Closing shall occur within thirty days (30) days after the satisfaction or waiver of the Buyer's Contingencies unless an extension to the closing date for up to an additional thirty (30) days is requested by the Buyer in writing and such written request is accompanied by a non-refundable Ten Thousand Dollar (\$10,000) deposit (the "Extension Payment") payable to the Seller. The Extension Payment shall be applied as a credit against the Purchase Price at closing or, in the event of the

Seller's refunded promptly to the Buyer.

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, 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 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.

d. All real estate taxes with respect to the Property shall be prorated between the Buyer and the Seller as of the date of closing based upon the latest known assessment and latest known mil rate.

e. The Buyer shall be responsible for any existing, area assessments or any other charges payable to any municipality or utility with regard to the Property as of the date of closing.

f. The Seller shall pay any Wisconsin Real Estate Transfer fee due in connection with conveyance of the Property.

g. The Seller and/or the Buyer shall each pay any and all or their respective broker commissions or fees due in connection with the sale of the Property.

11. Default. If the Seller defaults in the full and timely performance of any of its obligations under the Agreement, the Buyer shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to terminate the Agreement or seek specific performance. If the Agreement is terminated due to the default of the Seller the Extension Payment shall be promptly refunded to the Buyer. If the Buyer defaults in the full and timely performance of any of its obligations hereunder, the Seller shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to the Extension Payment as liquidated damages, the right to terminate the Agreement or seek specific performance.

BE IT FURTHER RESOLVED that the 2014 Capital Budget is amended by ~~\$550,000~~ \$580,000 to provide funds in from the General Land Acquisition Fund (~~\$490,000~~ \$520,000 for the Purchase Price, \$20,000 for expenses associated with the Buyer's Contingencies and \$40,000 in closing costs including assessments, impact fees, and prorated real estate taxes. Proceeds from the sale of all or any portion of the Property shall be deposited in the General Land Acquisition Fund or as directed by the Common Council.

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.