



## Legislation Details (With Text)

**File #:** 44917      **Version:** 1      **Name:** 11023 Marsh Road Acquisition  
**Type:** Resolution      **Status:** Passed  
**File created:** 10/25/2016      **In control:** BOARD OF ESTIMATES (ended 4/2017)  
**On agenda:** 11/1/2016      **Final action:** 11/22/2016  
**Enactment date:** 11/28/2016      **Enactment #:** RES-16-00853  
**Title:** Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Thomas R. Welch and Carol L. Welch for the purchase of a parcel located at 3629 Marsh Road.  
**Sponsors:** Denise DeMarb  
**Indexes:**  
**Code sections:**

**Attachments:** 1. 11023 Marsh Road Exhibit A Legal Description.pdf, 2. 11023 Exhibit B Addendum A to Offer to Purchase.pdf

Date	Ver.	Action By	Action	Result
11/22/2016	1	COMMON COUNCIL	Adopt	Pass
11/7/2016	1	PLAN COMMISSION	Return to Lead with the Recommendation for Approval	Pass
11/7/2016	1	BOARD OF ESTIMATES (ended 4/2017)		
11/2/2016	1	BOARD OF PUBLIC WORKS	Return to Lead with the Recommendation for Approval	
11/2/2016	1	BOARD OF ESTIMATES (ended 4/2017)	Refer	
11/2/2016	1	BOARD OF ESTIMATES (ended 4/2017)	Refer	
11/1/2016	1	COMMON COUNCIL	Refer	Pass
10/25/2016	1	Economic Development Division	Referred for Introduction	

### Fiscal Note

The Adopted 2016 Capital Budget includes \$167,500 in the Stormwater Utility's budget for the Marsh Road Land Acquisition project. The total acquisition costs are estimated to be \$160,000 broken out as follows: \$130,000 for the purchase price of the Real Estate, \$25,000 for demolition costs, and \$5,000 for miscellaneous closing costs (prorated taxes, filing fees etc). Munis No. 11447-84-110.

### Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Thomas R. Welch and Carol L. Welch for the purchase of a parcel located at 3629 Marsh Road.

### Body

WHEREAS, Thomas R. Welch and Carol L. Welch, (together, the "Seller") are the owners of an improved residential parcel located at 3629 Marsh Road, (the "Property") which has been zoned into the City of Madison's (the "City") Regulatory Floodplain; and

WHEREAS, on August 2, 2016, the Common Council authorized the City's Storm Water Utility to accept a Municipal Flood Control Grant (the "Grant") award administered by the Wisconsin Department of Natural Resources to purchase the Property, remove all structures and return the Property to a natural floodway for the expansion of the Main Penito Creek Greenway; and

WHEREAS, the Grant will reimburse the City 50% of property acquisition costs up to \$83,750; and

WHEREAS, the Property will be owned and managed by the City's Storm Water Utility, which already owns adjacent floodway lands; and

WHEREAS, the City's Storm Water Utility and the Office of Real Estate Services have negotiated terms with the Seller for the purchase of the Property; and

WHEREAS, the purchase price is supported by an appraisal obtained by the Seller and reviewed and approved by the City's Office of Real Estate Services.

NOW, THEREFORE BE IT RESOLVED that the Mayor and City Clerk are hereby authorized to execute a Purchase and Sale Agreement (the "Agreement") between the City of Madison (the "Buyer") and Thomas R. Welch and Carol L. Welch (together, the "Seller") for the purchase by the City of an improved parcel owned by the Seller located at 3629 Marsh Road (the "Property"), for the expansion of the Main Penito Creek Greenway, as legally described below on Exhibit A and shown on the attached Exhibit B, subject to the following terms and conditions:

1. The Property. The Buyer shall purchase and the Seller shall sell and convey by Warranty Deed (the "Deed") fee simple title to the real property located at 3629 Marsh Road, Madison, WI (the "Property"), together with the building, improvements and fixtures located thereon. Notwithstanding the foregoing, the Seller shall have the right to remove the following fixtures and improvements: the furnace, water heater, doors, sinks, tub, toilet, counters, cabinets, and fencing. The removal of said fixtures shall be at the Seller's expense and shall occur prior occupancy by the Buyer. The Seller shall ensure that all utilities to the fixtures shall be shut off prior to removal and that the Property shall be left in a safe condition upon removal of the fixtures and improvements.

2. 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.

3. Purchase Price. The total purchase price of the Seller's interest in the Property (the "Purchase Price") shall be One Hundred Thirty Thousand Dollars (\$130,000). The Purchase Price shall be payable in cash at closing, subject to the adjustments and prorations herein provided.

4. Personal Property. The purchase of the Property does not include any personal property. The Seller shall have the option to remove any and all appliances from the dwelling before closing.

5. 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.

6. 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, its agents or employees, in entering into the Agreement or in closing the transaction described herein. Except as provided in Section 10 below, the Buyer's closing on the acquisition of the Property shall constitute conclusive evidence that the Buyer is satisfied with the condition of and title to the Property.

7. Leasing. The Seller will represent that the Property is not currently leased and the Seller will agree that it shall not enter into any lease or rental agreement for the Property, or any portion thereof, during the Buyer's Due Diligence Period, as described in Paragraph 8, and through the date of closing, without the prior written consent of the Buyer.

8. Due Diligence Period. The Buyer shall have sixty (60) days from the Effective Date (the "Due Diligence Period") to review, test and inspect all aspects of the Property, at its sole cost and expense. If within the Due Diligence Period the Buyer determines, in its sole discretion, that it does not desire to purchase the Property, the Buyer may provide written notice to the Seller of such desire and the Agreement shall terminate immediately.

If the Buyer does not provide written notice terminating the Agreement on or prior to the sixtieth (60th) day of the Due Diligence 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.

Should the Buyer desire to close prior to the end of the Due Diligence 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 Date shall occur on or before fifteen (15) days from the date the Seller receives such notice, unless the parties agree in writing to another date.

The Due Diligence Period may be extended upon written agreement of both parties.

9. 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 of the Property and building inspections at reasonable times with at least twenty-four (24) hour notice to the Seller. The Buyer will repair, at the Buyer's sole cost and expense, all damages caused by any of its assessments and inspections so that the condition of the Property is returned to as good or better condition as existed prior to the assessment(s) and inspections.

10. Title Insurance. The Seller shall provide to the Buyer, at the Seller's expense, within thirty (30) days prior to Closing a commitment from First American Title Insurance Company (the "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 ("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 the Agreement by reason of a valid legal defect in title which the Buyer is unwilling to waive, the Agreement shall be void.

11. 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, 2011 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.

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 12 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 fifteen (15) days from (a) the expiration of the Due Diligence 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.

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 Seller 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.

14. Addendum A. This Offer to Purchase is subject to the terms and conditions for continued occupancy by the Seller through March 31, 2017, or 90 days past the closing date per Addendum A, attached as Exhibit B.

BE IT FURTHER RESOLVED that the funds in the amount of \$130,000 are available for the purchase price of the Real Estate, \$25,000 for demolition costs, and \$5,000 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 the transaction contemplated by this resolution.