



Legislation Text

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Fiscal Note

Budget authority is available in the Bikeways project within the Engineering capital budget. Account CS53-58110-810375-00-53W1552-00000000-00000000. Funds for the demolition of the existing house are available in CS53-54950-810354-00-53W1552 (\$15,000.00). The construction of other public improvements related to the development will be approved under subsequent resolutions.

Title

SUBSTITUTE - Authorizing the execution of an Purchase and Sale Agreement between the City of Madison and the Madison Audubon Society, Inc. for the purchase of a 9.48-acre improved residential parcel located at 7960 Raymond Road for the expansion of the Ice Age Junction Path, potential future extension of Jeffy Trail to Raymond Road, related infrastructure improvements, public open space, and potential residential development; and authorizing an application for an amendment to the Central Urban Service Area; and authorizing the Mayor and City Clerk to execute a petition to annex the subject lands; and authorizing the dedication of right of way for Raymond Road.

Body

The Madison Audubon Society, Inc. (the "Society") is the owner of an improved residential parcel containing 9.48 acres located at 7960 Raymond, (the "Property"). The Property fronts on Raymond Road, with Jeffy Trail and Trevor Way rights-of-way extending to the northern boundary of the Property.

The Property was acquired by the Society in September of 2011 by donation. It was the intent of the donor that the Property be sold and the proceeds used at another property that the Society owns. The Property is currently offered for sale by the Madison Audubon Society, Inc. The City Engineering Division and the Office of Real Estate Services have negotiated terms with the Society for the purchase of the Property. The Society has accepted a Purchase and Sale Agreement from the City of Madison (the "City") for the Property. The purchase price is supported by appraisals obtained by both the Society and the City.

The acquisition of the Property would facilitate the expansion of the Ice Age Junction Trail, potential extension of Jeffy Trail, and extension of sanitary sewer to serve the undeveloped lands in Hawks Creek Plat subdivision, related infrastructure improvements, and the creation of public open space. The Property has been identified in the High Point - Raymond Neighborhood Development Plan. The proposed uses shown on said Development Plan range from low density residential development, park, drainage, and open space. The acquisition of the Property would satisfy these multiple uses.

City staff from Planning and Engineering have reviewed the existing single family home located at 7960 Raymond Road and have determined that the existing house has no historical value and little monetary value. The condition of the existing home would require significant updates and repairs and would detract from the overall development. Staff have recommended that the house be demolished.

NOW, THEREFORE BE IT RESOLVED that the Mayor and City Clerk are hereby authorized to execute a Purchase and Sale Agreement (the "Agreement") with the Madison Audubon Society, Inc. (the "Seller") for the purchase by the City of Madison ("Buyer") of a 9.48-acre improved residential parcel owned by Seller and located at 7960 Raymond Road (the "Property"), as legally described below and shown on the attached exhibit, on the following terms and conditions:

1. Properties. Seller hereby agrees to convey to Buyer and Buyer hereby agrees to acquire from Seller the Property and all improvements located thereon and all appurtenances, upon the terms and conditions set

forth herein.

2. Purchase Price. The purchase price for the Property is Four Hundred Thirty Five Thousand Dollars (\$435,000) ("Purchase Price") and shall be paid as follows: Buyer shall pay Four Hundred Thirty Five Thousand and 00/100 Dollars (\$435,000) in cash or a cash equivalent at closing, subject to closing prorations and credits. The parties acknowledge and agree that the Purchase Price was established by appraisals commissioned by Seller and Buyer and accepted by Seller dated September 19, 2012 establishing this value as the fair market value for the Property.

3. 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.

4. Personal Property. Buyer acknowledges and agrees that no personal property will be conveyed in this transaction from Seller to Buyer.

5. Seller's Representations and Warranties. Seller hereby makes the following representations and warranties in connection with Buyer's purchase of the Property, and no others, express or implied, which representations and warranties shall be true as of the closing date hereof and shall survive the closing of this transaction for a period of one (1) year:

a. Seller has the authority necessary to enter into this Offer and comply with Seller's obligations hereunder;

b. There are no pending or, to Seller's knowledge, threatened condemnation or eminent domain proceedings which would affect the Property;

c. There are no agreements between Seller and any other party which relate to the Property that have not been disclosed by to Buyer;

d. Until the closing date, the Property will be maintained in substantially the same condition as it is in on the date of this Offer, subject to ordinary wear and tear and casualty damage; and

e. There is no litigation pending or, to Seller's knowledge, threatened which would affect the Property or the use thereof by Buyer.

6. Title Contingency. Promptly after the Effective Date, Seller shall deliver or cause to be delivered to Buyer, at the Buyer's expense, a current commitment (the "Commitment") for an ALTA owner's title insurance policy for the Property in the amount of the total purchase price issued by a title agent selected by Seller using a nationally recognized title insurance underwriter ("Title Company"), together with a gap endorsement and copies of the instruments listed in the schedule of exceptions in such Commitment. Buyer shall have ten (10) days after receipt of the Commitment to deliver to Seller in writing any objection to a matter shown on the Commitment which materially affects the Property or Buyer's use of the Property ("Title Objections"). If Buyer fails to deliver timely notice of Title Objections to Seller, Buyer shall be deemed to have fully accepted the Commitment and all matters disclosed therein. If Buyer timely delivers Title Objections, Seller shall have five (5) days after receipt of Buyer's objection notice to notify Buyer in writing what, if anything, Seller shall do to cure the Title Objections. Failure of Seller to respond within said period shall indicate that Seller elects not to cure the Title Objections. Seller shall have no obligation to cure any Title Objection or incur any expense with respect thereto. If Seller elects not to cure one or more of the Title Objections, Buyer shall have five (5) business days to deliver notice to Seller terminating this Offer and the parties shall have no further obligations hereunder except those provisions that expressly survive. If Seller pursues a cure and is unable to cure a Title Objection by the closing date, then Buyer shall have the option to either terminate this Offer and the parties shall have no further obligations hereunder except those provisions that expressly survive or close on the

purchase of the Property with no Purchase Price reduction, in which case Buyer is deemed to have accepted any uncured Title Objections and waived any rights against Seller relating thereto.

Notwithstanding anything to the contrary herein, the following matters shall be deemed "Permitted Exceptions" and Buyer shall have no right to object to any of said matters on the Commitment:

- a. municipal and zoning ordinances and agreements entered under them, building and use restrictions and covenants, and State and/or Federal statutes and regulations;
- b. recorded easements for the distribution of utility and municipal services;
- c. property taxes and special assessments levied in the year of closing and subsequent years;
- d. such other matters as disclosed by the Commitment and waived or deemed waived by Buyer pursuant to this Section 5.

At closing, Seller shall cause the Title Company to issue a current ALTA owner's title insurance policy in the amount of the Purchase Price of the Property insuring Buyer as the fee simple owner of the Property as of the date of recording the deed, subject to the Permitted Exceptions ("Title Policy").

7. Inspection Contingency. Promptly after the Effective Date, Seller shall make available to Buyer any and all environmental studies, permits, applications, remediation plans or assessments of the Property in Seller's possession or control for the Property. Buyer, at its sole expense, may obtain an inspection of the Property and related improvements located on the Property and/or a Phase I environmental assessment of the Property. Buyer shall not have the right to conduct any sampling of the water, soil, air or improvements without Seller's express prior written consent. Buyer shall have ten (10) days from the Effective Date to terminate this Offer by written notice to Seller resulting from Buyer's objection to any matter shown in an inspection report or Phase I environmental assessment, which materially affects the Property or any improvements located thereon or Buyer's use of the Property. If Buyer does not terminate this Offer hereunder, then Buyer is deemed to have waived this inspection contingency and any right to object to the condition of the Property or any improvements located thereon. In no event shall Seller be required to cure any matter to which the Buyer objects relating to the condition of the Property or any improvements located thereon.

8. No Representations or Warranties; AS-IS Condition.

a. Buyer is hereby purchasing the Property in "AS-IS, WHERE-IS" condition and "with all faults", and agrees that it relies upon no warranties, representations or statements by Seller, or any other persons for Seller, in entering into this Offer or in closing the transaction described herein, except for the express representations and warranties set forth in Section 4 above. 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 title and inspection contingencies set forth in Sections 5 and 6 above. In closing and completing this transaction, Buyer will have relied exclusively upon its own inspections and reviews, and not upon any representation or warranty of Seller or its agents or employees except those expressly set forth in Section 4 above.

b. Except for the express representations and warranties set forth in Section 4 above, Seller makes no warranties, representations or statements whatsoever, express or implied, concerning or relating to the Property, including without limitation: the income or expenses of the Property; zoning and building codes and other similar restrictions; availability or cost of utilities; the environmental condition of the Property; the presence or absence of any hazardous substances, hazardous materials, petroleum, or any substances regulated by federal, state or local law in, on or under the Property; compliance of the Property with any law, regulation, ordinance or similar requirement, including without

limitation the Americans with Disabilities Act; or the physical condition of the Property or any improvements thereon. Buyer acknowledges that no agents, employees, brokers or other persons are authorized to make any representations or warranties for Seller.

c. Buyer (and any party claiming through or under Buyer) hereby agrees that following the closing, Seller shall be fully and finally released from any and all claims or liabilities against the Seller relating to or arising on account of the condition of or title to the Property, including without limitation, any matters specifically referenced in this Offer.

d. Section 7(a) through (c) shall survive the closing of this Offer.

9. Closing.

a. The closing of this transaction shall take place after expiration of all Buyer's contingencies set forth in this Offer but no later than December 15, 2012, at the offices of Title Company, or at such other time and place as may be agreed upon by Buyer and Seller.

b. Unless other contingencies are expressly granted in this Offer, Buyer's contingencies include only the title and inspection contingencies set forth in Sections 5 and 6 above and in Section 11 below.

c. At closing, Buyer shall deliver to Title Company wired funds or other immediately available funds in the amount of the Purchase Price, as adjusted for any prorations and closing costs provided for herein, and such affidavits, resolutions and other documents agreed between the parties, required for a legal conveyance of real estate in the state where the Property is located or otherwise required by Title Company to issue Title Policy.

d. At closing, Seller shall deliver to Title Company a Warranty Deed conveying the Property to Buyer, subject only to the exceptions permitted herein and such affidavits, resolutions and other documents agreed between the parties, required for a legal conveyance of real estate in the state where the Property is located or otherwise required by Title Company to issue Title Policy.

e. All prorations required hereunder shall be computed as of the date of closing.

f. Possession of the Property shall be delivered to Buyer on the closing date.

g. Buyer shall pay for recording the deed.

h. Seller shall pay the title insurance premium for Title Policy to be issued to Buyer and gap endorsement charges and for 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 this Offer.

i. All Title Company closing charges shall be shared equally by Seller and Buyer.

j. All other closing costs, including without limitation transfer taxes and other recording fees, shall be allocated as customary in the state in which the Property is located.

10. Taxes. All general real property taxes payable with respect to the Property for the year of closing shall be prorated between Buyer and Seller as of the closing date. If the precise amount of taxes payable for the year of closing cannot be ascertained, proration shall be computed on the basis of taxes on the Property for the immediately preceding tax year.

11. Special Assessments. Any and all special assessments, area assessments, connection charges,

interceptor charges or any other charges due and payable to any municipality or utility with regard to the Property as of the date of closing shall be paid by Seller at closing.

12. Buyer Contingencies. The Buyer shall have thirty (30) 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/Soils Testing. The Buyer obtaining, at its sole cost and expense, a phase 1 and/or phase 2 environmental assessments of the Property that are satisfactory, in the Buyer’s sole discretion, to the Buyer.

b. Soil Borings. The Buyer obtaining, at its sole cost and expense, soil borings that are satisfactory, in the Buyer’s sole discretion, to the Buyer.

The Buyer’s Contingency Period may be extended for an additional thirty (30) days by written agreement of the parties prior to expiration of the original Buyer’s Contingency Period.

13. Condemnation. If the Property is condemned under the power of eminent domain, is the subject of a threatened condemnation, or is conveyed to a condemning authority in lieu of condemnation, Seller shall notify Buyer in writing of the threat, condemnation or conveyance within three (3) business days of its occurrence. Buyer shall within ten (10) days of the notice have the option of (a) proceeding with the closing and receiving the award or condemnation payment (or an assignment thereof, if the same is not received by closing), or (b) canceling this Offer.

14. Access to Property. Prior to closing, the Buyer and the Buyer’s authorized agents and contractors shall be permitted access to the Property for the purpose of 1) conducting a Phase 1 and/or 2 environmental assessments of the Property and 2) soil borings including limited tree removal to access boring sites; at reasonable times with at least twenty-four (24) hours written notice to the Seller.

15. Open Space. Buyer shall designate both private and public open space, similar to what is depicted on the attached site plan. Permitted uses in the public open space shall include storm water drainage, storm water retention and/or detention to serve the proposed lots contained within the Property, as depicted on the attached site plan, storm sewer, sanitary sewer and water main facilities, sidewalks and/or ped/bike paths and trails, other recreational uses, and any required grading or sloping activities necessary to construct the sidewalks, bike paths, and adjacent roadways. Grading for the proposed lots to facilitate development of those lots shall not be permitted in the public or private open space.

In the event that the Common Council does not approve a development on the site similar to the attached site plan or in the event the attached site plan cannot be constructed for any reason the Buyer shall be entitled to use the land in any fashion provided the following criteria are met.

Public open space shall exceed 3.0 Acres.

Public open space plus private open space shall exceed 5 Acres.

Permitted uses within the public and private open space as outlined above are applied.

16. Default. If Buyer defaults in the full and timely performance of any of its obligations hereunder, Seller shall be entitled to terminate this Offer. If Seller defaults in the full and timely performance of any of its obligations hereunder, Buyer, as its only remedies, may elect to either terminate this Offer or seek specific performance.

17. Seller 1031 Exchange. Seller, at its option, may structure the sale of the Properties as a tax-deferred exchange (the “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 rights in and delegate its duties (in part or in whole) under this Offer, as well as the transfer of its interests 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, provided that such cooperation shall be at no out-of-pocket expense to the City, in connection with the Exchange, by executing documents of exchange (including, but not limited to, escrow instructions and amendments to escrow instructions), provided the City shall not act as an intermediary in the 1031 Exchange transaction.
- c. The transaction contemplated by this Offer shall timely close in accordance with the terms contained in this Offer, 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.

18. Real Estate Commissions. Seller hereby represents and warrants that it has not engaged the services of any real estate agent, broker or firm in connection with the Property or this real estate transaction. Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all loss, cost or expense from any claim for real estate commission made by any agent, broker or firm engaged by Seller in connection with the Property or this transaction. Buyer hereby represents and warrants that it has not engaged the services of any real estate agent, broker or firm in connection with the Property or this real estate transaction.

19. Assignment. Neither party may assign their rights to this Offer without the prior written consent of the other party.

BE IT FURTHER RESOLVED that the purchase of the Property is authorized in Account No. 810375 for \$445,000 and the funding will come from current sources within this account. The acquisition costs include the following: \$435,000 for the Purchase Price, \$3,000 for a Phase I and 2 Environmental Assessments, \$3,000 for soil borings, and \$4,000 for miscellaneous closing costs including the City's portion of pro-rated real estate taxes, recording and settlement fees.

BE IT FURTHER RESOLVED that the Mayor and the City Clerk are authorized to execute an annexation petition and all documents related thereto to cause the Property to be annexed to the City from the Town of Verona.

BE IT FURTHER RESOLVED that the Office of Real Estate Services, City Engineering Division and Planning Division are authorized to complete the annexation petition and file it with the Town of Verona and City Clerk.

BE IT 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.

BE IT FURTHER RESOLVED that the Planning Division is hereby authorized to request approval from the Capital Area Regional Planning Commission of an amendment to the Central Urban Service Area (CUSA) to include the Property and other nearby properties not currently located within the CUSA, and that the Common Council hereby adopts the boundaries of any wetlands or environmental corridors within said amendment area.

BE IT FURTHER RESOLVED that the proposed use of the property is consistent with the High Point-Raymond

Neighborhood Development Plan and City of Madison Comprehensive Plan.

BE IT FURTHER RESOLVED that the plans and specifications for the demolition of the existing house located at 7960 Raymond Road, located in the Town of Verona, are hereby approved and the Mayor and City Clerk are hereby authorized to advertise for and receive bids related to said work, or authorize this work to be completed with City staff.

BE IT FURTHER RESOLVED that the Common Council hereby authorizes the Office of Real Estate Services and City Engineering Division to prepare the necessary documents to cause the dedication of a strip of right of way for Raymond Road adjacent to the southern edge of the Property necessary to create sufficient right of way width for said road while preserving a sufficient connection between the properties in the Town of Verona located to the east and west of the Property.