



## Legislation Text

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**File #:** 34536, **Version:** 1

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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, "McKenna Blvd. Neighborhood Center," Account No. 801806, and to appropriate \$469,000 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 #34538, proposes an additional expenditure of \$550,000 from the General Land Acquisition fund). The budget will be amended as follows:

CD21-58330-810806	\$469,000	Building Acquisition
CD21-79442-810806	(\$469,000)	Transfer In from Land Fund
CL21-57446-810347	\$469,000	Transfer Out to Buildings
CL21-78320-810347	(\$469,000)	Land Sales

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

Following acquisition, there will be significant costs for renovations or reconstruction if the City wishes to transform the site into a new neighborhood center. Such costs are currently unknown, but will likely amount to several hundred thousand dollars or more. The 2014 PCED adopted capital budget appropriates \$400,000 in General Obligation borrowing for capital expenditures relating to the development of neighborhood centers (Project No. 8, "Neighborhood Centers," Acc't No. 810559). It is unclear whether these funds will be utilized for improvements relating to the McKenna Boulevard property.

There may be some desire on the part of the City to directly support neighborhood center operations if the site is developed in to a neighborhood center. Any such funding is currently unbudgeted and will need to be included in future operating budgets, subject to State levy limits and Common Council approval.

Finally, 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, but can sometimes be significant. 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.

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Wingham-Kai Anthony Cheung for the City's acquisition of a commercial property located at 1233 McKenna Boulevard for a neighborhood center and an amendment to the 2014 Capital Budget to fund the acquisition.

The proposed 2014 Capital Budget includes funding for capital costs associated the acquisition and/or renovation/construction of neighborhood centers. A property (formerly occupied by Griff's restaurant) located at 1233 McKenna Boulevard (the "Property") has been identified that, if purchased, would provide a site for a new neighborhood center. The Property is a one story building with approximately 3,882 square feet located on a 31,152 square foot parcel across from Elver Park. A Letter of Intent has been executed between the City

and the owner Wingham Kai Anthony Cheung setting forth the terms and conditions for a Purchase and Sales Agreement (the "Agreement") for the acquisition of the Property.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the execution of a Purchase and Sale Agreement with Wingham Kai Anthony Cheung (the "Seller") for the purchase of a property located at 1233 McKenna Boulevard (the "Property"), legally described in Exhibit A below and depicted on the attached Exhibit B, for the location of a neighborhood center, on the following terms and conditions:

1. Property. The Buyer shall purchase, and the Seller shall sell and convey by Warranty Deed (the "Deed"), fee simple ownership of the Property, including all improvements 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. The Property. The Buyer shall purchase and the Seller shall sell and convey by Warranty Deed (the "Deed") fee simple title to the Real Estate, together with the building, improvements, all restaurant equipment, fixtures and furnishings, and "additional fixtures" located thereon (hereinafter collectively referred to together with the Real Estate as the "Property.")

As used herein, the term "additional fixture" shall be defined as follows:

Additional fixture is an item of property which is physically attached to or so closely associated with land or buildings so as to be treated as part of the real estate, including, without limitation, physically attached items not easily removable without damage to the premises, items specifically adapted to the premises, and items customarily treated as fixtures including but not limited to all garden bulbs; plants; shrubs and trees; screen and storm doors and windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and cooling units and attached equipment; water heaters and softeners; sump pumps; attached or fitted floor coverings; awnings; attached antennas, satellite dishes, and component parts; garage door openers and remote controls; installed security systems; central vacuum systems, and accessories; in-ground sprinkler systems, and component parts; built-in appliances; ceiling fans; fences; storage buildings on permanent foundations, and docks/piers on permanent foundations.

4. Purchase Price. The total purchase price for the Seller's interest in the Property (the "Purchase Price") shall be Four Hundred Fifty Five Thousand Dollars (\$455,000). The Purchase Price shall be payable in cash at Closing, subject to the adjustments and prorations herein provided.
5. Earnest Money. Within ten (10) business days of the Effective Date, the Buyer shall pay to the Seller Two Thousand Five Hundred Dollars (\$2,500) as "Earnest Money", which will be non-refundable except as otherwise provided in Paragraphs 7 and 11 and the corresponding provisions of the Agreement, to be applied toward the Purchase Price at Closing in accordance with Paragraph 4.
6. Delivery of Documents. Within ten (10) days of the Effective Date and throughout the Buyer's Contingency Period as described in Paragraph 7, 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, permits, applications and remediation plans or assessments of the Property, and all building plans, studies, reports, or assessments related to the condition of the improvements on the Property including, but not limited to, asbestos, lead-based paint inspections and other hazardous waste inspections related to the physical condition of the improvements in the Seller's possession or control.

7. Buyer Contingencies. The Buyer shall have ninety (90) 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. If the Buyer timely terminates the Agreement as a result of any of the Buyer’s Contingencies, the Earnest Money shall be promptly refunded to the Buyer.
- a. Inspections and Testing. The Buyer obtaining various inspections and testing of the Property and any improvements located thereon. The Buyer, at its sole expense, may obtain an inspection of any buildings and related improvements located on the Property, a Phase 1 or 2 environmental site assessment of the Property 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. Land Use Approvals. The Buyer securing all land use approvals for the use of the Property by the Buyer for the siting of a community center. Such approvals may include, but not be limited to: approval of a PUD, approval by the Urban Design Commission, and all other zoning, building, engineering, traffic and similar approvals and permits necessary to use the Property for the uses described herein.
  - c. Appraisal. The Buyer obtaining, at its sole cost, an appraisal that supports the Purchase Price.
  - d. Site Plan. The Buyer obtaining, at its sole cost, a site plan showing the suitability of the Property to accommodate the siting of a community center.
  - e. Budget Authorization. The Buyer obtaining budget authorization from the Common Council of the City of Madison 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 the expiration of the Buyer’s Contingency Period.

8. Access to Property. The Buyer and the Buyer’s authorized agents, engineers, consultants, appraisers, 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 environmental assessment of the Property and/or a physical inspection of the Property and any building and related improvements located on the Property at reasonable times with at least twenty-four (24) hour notice to the Seller. The Buyer’s access to, and inspection of, the Property shall be at Buyer’s sole risk and expense and Seller shall have no responsibility therefor. 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.
9. 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 11 shall be at the sole cost and expense of the Buyer.
10. Lease. The Seller shall represent that the Property is currently not leased and the Seller shall agree 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.

11. 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 and the Buyer shall be entitled to a return of the Earnest Money.
12. Closing.
- a. Closing shall occur within thirty (30) days after the waiver or satisfaction of the Buyer's Contingencies listed in Paragraph 7 at the office of the Title Company, 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 Property to the Buyer free and clear from all liens and encumbrances, excepting the following: Municipal and zoning ordinances and the Permitted Exceptions.
  - 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. Real estate taxes shall be prorated between the Buyer and Seller as of the Date of Closing based upon the latest know Assessment and latest known mil 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 Property as of the date of Closing.
  - f. The Seller shall pay any Wisconsin Real Estate Transfer fee due in connection with the conveyance of the Property.
  - g. The Seller shall pay any and all broker commissions or fees due in connection with the sale of the Property.

BE IT FURTHER RESOLVED that the 2014 Capital Budget is amended by \$469,000 to provide funds from the General Land Acquisition Fund for the acquisition of the Property (\$455,000 for the Purchase Price, \$10,000 for expenses associated with the Buyer's Contingencies and \$4,000 in closing costs including 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.

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.

## **EXHIBIT A**

Lot One (1), Certified Survey Map No. 10736 as recorded in Dane County Register of Deeds in Volume 64, Page 20 of Certified Survey Maps.