



## Legislation Text

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**File #:** 35835, **Version:** 1

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### Fiscal Note

Funding of \$173,000 for the purchase price, \$5,000 for expenses associated with buyer's contingencies, \$25,000 for demolition costs, and \$7,000 for closing costs including prorated real estate taxes will be transferred from the General Land Acquisition Fund for expenditure in 2014. The projected 2014 ending balance in the General Land Acquisition is \$505,164 after this transaction.

### Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Mount Olive Evangelical Lutheran Church for the City's acquisition of a residential property located at 4016 Mineral Point Road and an amendment to the 2014 Capital Budget to fund the acquisition.

### Body

The City of Madison on March 3, 2014, acquired the Mount Olive Evangelical Lutheran Church located at 4018 Mineral Point Road for use as a future Midtown Neighborhood Police Station. Recently a single family residential property located at 4016 Mineral Point Road (the "Property") and adjacent to the former church was placed on the market for an asking price of \$ 185,900. An independent appraisal for the Property was obtained by staff indicating a fair market value of \$ 173,000. A letter of intent including a purchase price of \$ 173,000 has been executed between the Mount Olive Evangelical Church (the "Seller") and the City of Madison (the "Buyer") setting forth the terms and conditions of a Purchase and Sales Agreement ("the Agreement") for the Property. The acquisition of the Property will provide the flexibility to construct driveway access from Mineral Point Road to the Midtown Neighborhood Police Station.

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 Mount Olive Evangelical Lutheran Church (the "Seller") for the purchase of a property located at 4016 Mineral Point Road (the "Property"), legally described in Exhibit A below and depicted on the attached Exhibit B, for the development of a Midtown Neighborhood Police Station, 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. Purchase Price. The total purchase price for the Seller's interest in the Property (the "Purchase Price") shall be One Hundred Seventy Three Thousand Dollars (\$173,000) as supported by an independent appraisal. The Purchase Price shall be payable in cash at Closing, subject to the adjustments and prorations herein provided.
4. Earnest Money. Within ten (10) business days of the Effective Date, the Buyer shall pay to the Seller One Thousand Five Hundred Dollars (\$1,500) as "Earnest Money", which will be non-refundable except as otherwise provided in Paragraphs 8 and 11 and the corresponding provisions of the Agreement, to be applied toward the Purchase Price at Closing in accordance with Paragraph 3.
5. Approval By Seller. This sale of the property shall be contingent on Mount Olive Evangelical Church

Voters' Assembly (the "Assembly") approving the sale of the Property to the Buyer no later than December 31, 2014. If the voters do not approve the sale, the Agreement shall be null and void. Once the sale is approved by the Assembly and the Common Council of the City of Madison, the Agreement will be prepared by the Buyer for execution by both parties.

6. Personal Property. The sale of the Property does not include any personal property.
7. Delivery of Documents. The Seller shall represent that it does not have 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.
8. 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 City of Madison for a public use. 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. 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.

9. 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 therefore. 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.
10. 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.

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 RBA Title Services (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. Lease. The Seller shall represent that the Property is not leased or occupied by any person by any person other than the Seller, and the Seller agrees that it shall not enter into any lease or rental agreement for the Property, or any portion thereof, or allow the occupation of the Property other than by Seller during the Buyer's Contingency Period and through the date of closing, without the prior written consent of the Buyer.
13. Commissions. The Seller shall represent that it has entered into a listing contract with Bunbury and Associates and is obligated to pay any real estate commissions or finders' fees on account of the execution of the Agreement. The provisions of this Paragraph 13 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 herein contemplated.
14. Closing.
  - a. Closing shall occur thirty (30) days after the waiver or satisfaction of the Buyer's Contingencies listed in Paragraph 8; however, in no event, shall the closing date be earlier than January 1, 2015 or later than January 31, 2015, at the office of the Title Company, unless the parties agree in writing to another date or place.
  - b. The Seller shall agree 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. The following items shall be prorated between the Buyer and the Seller at closing: real estate taxes, water and sewer use charges, garbage pick-up and other private and municipal charges, etc. Net general taxes shall be prorated based on the net general taxes for the current year, if known, or latest assessment times the 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 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 \$210,000 to provide funds from the General Land Acquisition Fund for the acquisition of the Property (\$173,000 for the Purchase Price, \$5,000 for expenses associated with the Buyer's Contingencies, \$25,000 for demolition costs and \$7,000 in closing costs including prorated real estate taxes).

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 purposed of this resolution.

**Legal Description (Exhibit A)**

Lot 2, Certified Survey Map No. 11711 as recorded in Dane County Register of Deeds in Volume 71 Page 315 of Certified Surveys.