



Legislation Text

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Fiscal Note

The Adopted 2016 Capital Budget includes \$7,750,000 (funded by Impact Fees) within the Parks Division for costs associated with park land acquisition. The project proposed in this resolution is estimated to cost \$15,000 which will include title work, survey and closing costs, and staff time. The remaining balance in the 2016 project is \$7.4 million.

Title

SUBSTITUTE Authorizing the execution of a Dedication Agreement, including the acceptance of a Warranty Deed and an Access Easement between the City of Madison and Lloyd and Jo Ann Bitzer, pertaining to the dedication of 8.288 acres of vacant land for conservation park purposes, located adjacent to and north of 3020 Shady Oak Lane in the Town of Verona, Dane County.

Body

WHEREAS, Lloyd and Jo Ann Bitzer (the "Bitzer Family") are the owners of two parcels located in Section 5, Township 6 North, Range 8 East, Town of Verona, Dane County, Wisconsin, legally described on attached Exhibit A and depicted on attached Exhibit B (the "Property"); and

WHEREAS, the Bitzer Family wishes to contribute to the advancement and enlargement of the City of Madison's (the "City") park system by donating a portion of the Property to the City, at no cost to the City, to be used as a future conservation area (the "Dedication Area"), with said lands to be dedicated being legally described on attached Exhibit A and depicted on attached Exhibit C; and

WHEREAS, the Dedication Area is currently located within the Town of Verona, within the City's urban expansion growth area as indicated on the City's 2006 Comprehensive Development Plan, and is included in the proposed Ice Age Trail Conservation Corridor detailed in the 2009 Shady Wood Neighborhood Development Plan; and

WHEREAS, after conveyance to the City, the Dedication Area will be land-locked and require an exclusive access easement over a portion of the Property for the benefit of the City; and

WHEREAS, the Bitzer Family requests naming and signage rights, reversionary rights, deed restrictions, use restrictions, and specific access easement terms as a condition of the dedication and desires to memorialize these certain terms and conditions with a Dedication Agreement (the "Agreement"); and

WHEREAS, a Phase 1 Environmental Site Assessment dated September 27, 2016 concludes that no recognized environmental conditions exist at the Dedication Area and therefore no additional investigation into the environmental status is warranted; and

WHEREAS, the City's Parks Division desires to accept the Dedication Area to support the future expansion of conservation areas, as well as a potential route for the Ice Age Trail connection, with the understanding that certain costs will be paid by Parks account number 17455-51-110. Costs shall not exceed \$5,000.00 to provide for the following: title documents, appraisal, Phase 1 Environmental Site Assessment and customary closing costs.

NOW, THEREFORE, BE IT RESOLVED that Common Council of the City of Madison authorizes the execution of a Dedication Agreement between the City and the Bitzer Family for the dedication of vacant land for preservation and conservation purposes, at no cost to the City, located adjacent to and north of 3020 Shady

Oak Lane in the Town of Verona, more particularly described on attached Exhibit A and depicted on attached Exhibit C; subject to the following terms and conditions:

1. Legal Description of Dedication Area. The Bitzer Family agrees to dedicate, and the City agrees to accept, the Dedication Area legally described on attached Exhibit A, at no cost to the City. Said legal description shall be included in the instrument used to convey the Dedication Area to the City.
2. Warranty Deed. The Dedication Area shall be conveyed by a Warranty Deed (the "Deed") prepared by the City. The Deed will be executed by the Bitzer Family and shall include the following comments and restrictions:
 - a) The lands to be conveyed are 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 and public services, recorded building and use restrictions and covenants, and general taxes levied in the year of closing.
 - b) The lands conveyed by this Deed shall be used to enlarge the City's conservation park areas only, subject to the condition that certain uses shall be prohibited, consistent with other City conservation parks, such as: dumping, dogs, horses, motorized vehicles, hunting, sporting fields, bicycles, firearms, and other such uses inconsistent with Madison's policies governing conservation park areas.
3. Ice Age Trail Connection. The Dedication Area shall be to provide area for a path suitable for the extension of the Ice Age Trail. The Bitzer Family has engaged in discussions with the Ice Age Trail Alliance and has expressed support for an Ice Age Trail route that includes the Dedication Area.
4. Naming and Signing Rights. At such time that the Dedication Area becomes a part of the City's expanded conservation park areas, it shall be named Bitzer Family Preserve. The name shall appear upon a sign approved by the City's Park Division, including "A Gift Honoring Jeff Bitzer, 1959-2015".
5. Reversionary Rights. If by December 31, 2026, the City has not acquired permanent access to the Dedication Area such that said area is used and maintained as intended by the Bitzer Family and set forth by this Agreement, ownership of the Dedication Area shall revert to the Bitzer Family or any heirs, assigns, or designees, at no cost, via Quit Claim Deed to be delivered within 30 days. All costs and fees associated with such reversion shall be borne by the City.
6. Reversion Postponement. The Bitzer Family or any heirs, assigns, or designees shall have the option to postpone the reversion for a period of time selected by said parties for the purpose of fulfilling the original intent of this Agreement. Such a postponement shall be documented and signed by both parties and shall not change the validity of the remaining terms of this Agreement.
7. Contingencies of Dedication. This Agreement and the City's acceptance of the Dedication Area are contingent upon the results of the Phase 1 Environmental Site Assessment ("ESA") for the Dedication Area dated September 27, 2016 that was performed by a qualified independent environmental consultant. No defects were discovered during performance period of the ESA that present a material consequence to the City. This paragraph shall create no liability for the Bitzer Family arising from any defect found on the Dedication Area after the City's acceptance of said area, outside the performance period of the ESA.
8. Appraisal. If they so desire, an appraiser may be hired by the Bitzer Family to prepare a determination of fair market value for the Dedication Area. The City shall reimburse the Bitzer Family for the reasonable and customary cost of the vacant land appraisal.

9. Temporary Access Easement. The Bitzer Family shall convey an exclusive access easement to the City over a portion of the Property, at no cost to the City, for the purpose of granting the City temporary and limited access to the Dedication Area. The terms, duration and location of said easement shall be agreed upon by the City and the Bitzer Family and recorded by separate document subsequent to this Agreement.
10. Special Assessments. Any and all special assessments levied against the Dedication Area shall be paid by the Bitzer family prior to the closing date.
11. 2016 Real Estate Taxes. Taxes shall be estimated and prorated to the closing date based upon the current year tax amount, with the City receiving a credit for the Bitzer Family's pro rata share for payment of the tax bill at year end upon receipt by the City.
12. Title Insurance. The City shall obtain and provide, at its sole expense, a title commitment from Knight-Barry Title Group at least ten (10) business days prior to closing, for the issuance of a title policy to the City after the recording of the proper documents. The City shall notify the Bitzer Family of any valid objection to title, in writing, prior to closing. The Bitzer Family shall have a reasonable time to remove the objections, and closing may be extended as necessary for this purpose.
13. Closing Date. The City and the Bitzer Family will make a best effort to complete the closing transaction on or before December 30, 2016.
14. Recording Fees. The City shall pay all recording/filing fees for documents required to be recorded/filed in order to cause title to the Dedication Area to be in the condition called for by this Agreement.
15. No Personal Property. The transactions contemplated by this Agreement do not include any personal property.
16. Representations. The Bitzer Family represents the following:
- a) No Prior Right to Purchase. No person has any option, right of first refusal or similar right to purchase all or any portion of the Dedication Area.
 - b) No Adverse Possessors. There are no parties in possession of any portion of the Dedication Area as tenants at sufferance or trespassers.
 - c) No Lessees. There are no parties in possession of any portion of the Dedication Area as lessees.
17. Notices. Any notice or communication to be given hereunder shall be given in writing signed by the party giving notice, personally delivered or mailed by first class mail, proper postage affixed, to the parties' respective addresses as set forth below:

To Bitzer Family: Jo Ann and Lloyd Bitzer
 3020 Shady Oak Lane
 Verona, WI 53593

To the City: City of Madison Economic Development Division
 Office of Real Estate Services
 Post Office Box 2983
 Madison, WI 53701-2983

18. Miscellaneous.

- a) Cooperation. The parties each agree at any time or from time to time at the written request of any other to sign and deliver such other documents as may be reasonably requested or as may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Agreement.
- b) No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.
- c) Benefit and Burden. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, successors, and assigns.
- d) Entire Agreement. This Agreement contains the entire agreement between the parties and any modification, alteration or addendum to this Agreement shall be valid only when written and executed by both parties.
- e) Severability. If any non-material part, paragraph, or article of this Agreement shall be determined to be invalid, or otherwise unenforceable, the validity of all the remaining parts, paragraphs, and articles shall not be affected thereby. Any such non-material parts, paragraphs, or articles shall be deemed severable.
- f) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of or applicable to the State of Wisconsin.
- g) Joint and Several Liability: Forfeiture. The Bitzer Family shall be jointly and severally liable for all terms and conditions of this Agreement.
- h) Headings. The headings in this Agreement are meant for reference purpose only and shall not in any way affect the meaning or interpretation herein.

BE IT STILL FURTHER RESOLVED, that the Mayor and Clerk are authorized to sign any and all documents and legal instruments required to complete the transactions contemplated in this resolution, as well as accept any and all easement and conveyance documents required to complete said transactions, including but not limited to an Access Easement and a Warranty Deed.