



## Legislation Text

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**File #:** 70643, **Version:** 1

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### **Fiscal Note**

No additional City appropriation is required for the proposed property sale. The purchase price for approximately 607,893 square feet, or 13.96 acres, of City-owned land shall be \$2.41 per square foot as identified in the final certified survey map for an estimated total of \$1,146,000. Any net proceeds following the sale and associated closing costs will be deposited into the Water Utility Fund.

### **Title**

Authorizing the City's execution of a Purchase and Sale Agreement between the City of Madison and Hawthorne & Stone Construction, Inc. for the sale of surplus property located at 10451 Old Sauk Road in the City of Madison. (9<sup>th</sup> AD)

### **Body**

WHEREAS the Property at 10451 Old Sauk Road totals approximately 15.68 acres and was acquired by the Madison Water Utility (the "Water Utility") in 2000 for the purposes of establishing an aerial reservoir to serve the far west side of the City; and

WHEREAS the property was attached to the City from the Town of Middleton in August 2016 in anticipation of construction of the water tower, which occurred from 2017-2019 and is now completed; and

WHEREAS now that the water tower is established, the Water Utility intends to retain an approximately 1.72-acre parcel ("Outlot 3") providing access to its water tower and related operations and sell the remainder of the Property, which has been identified as surplus; and

WHEREAS selling the balance of the Property represents an important opportunity to add a tax-generating development for the benefit of the City and its other taxing jurisdictions that can also provide housing, connectivity, transportation, and additional amenities to residents; and

WHEREAS the City of Madison desires new high-quality residential development on the Property that connects to existing neighborhoods in the immediate area, proceeds in a manner that is consistent with adopted City values, plans and ordinances; and

WHEREAS, pursuant to a Request for Proposals (RFP) issued by the Department of Planning, Community & Economic Development, as authorized by Resolution Enactment No. RES-21-00335, File I.D. No. 64599, adopted May 4, 2021 the City selected the proposal of Hawthorn & Stone Construction, Inc. for sale of the Property for future residential development; and

WHEREAS, the sale and development shall be consistent with the preliminary and final Fox Knoll Plat for the Property and adjacent areas approved on February 22, 2022 under Resolution Enactment No. RES-22-00143, File I.D. No. 68697.

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Madison hereby authorizes the execution of a Purchase and Sale Agreement ("Agreement") between the City of Madison Water Utility ("Seller") and Hawthorn & Stone Development, Inc. and/or assigns ("Seller"), for the sale of the Property on substantially the following terms and conditions:

1. Property. The Developer shall purchase, and the City shall sell and convey by Warranty Deed (the "Deed"), fee simple ownership of Parcel A, including all improvements located thereon and all appurtenances thereto, free and clear from all liens and encumbrances, excepting the following: the aforementioned Outlot 3, pursuant to the amended Fox Knoll Final Plat as shown in Exhibit A; municipal and zoning ordinances; and the "Permitted Exceptions" as defined in Paragraph 9.
2. Project. The Developer shall develop Parcel A together with the property Developer controls immediately to the south at 621 Pioneer Road ("Parcel B" or "Schiller Parcel" as shown on the attached Exhibit A) as part of the larger Fox Knoll subdivision ("the Project"), consisting of approximately 33.216 acres (1,446,892 total square feet) and 74 total lots, of which approximately 18.561 acres (808,525 square feet) shall be developed for single-family residential. The remainder of the platted area (approximately 14.655 acres or 638,367 square feet) shall be dedicated to the public for right-of-way and stormwater management purposes.
3. Effective Date. The "Effective Date" shall be the later date of execution of this Agreement by the City or the Developer, as indicated on the signature page.
4. Purchase Price.
  - a. The purchase price for the City's interest in Parcel A is One Million One Hundred Forty Six Thousand Dollars and no/100 (\$1,146,000.00) subject to reductions based on calculations described in in this Section 4 (the "Developer's Purchase Price"). The Developer's Purchase Price shall be payable in cash at closing, subject to the adjustments and prorations herein provided.
  - b. The City and Developer acknowledge that the Developer's Purchase Price reflects a discount of Two Hundred Ninety Two Thousand and Five Hundred Dollars (\$292,500) from the third-party appraised value of Parcel A (the "Discount"). The Discount is provided in exchange for Developer facilitating and partially rebating the costs of construction for certain green energy features installed by individual homebuyers ("Builder Green Energy Credit") as described in Paragraph 6. The Discount shall be converted into the Letter of Credit defined in Section 6(c), and shall be adjusted based on the calculation therein. For clarity, the Discount and the amount of the Letter of Credit are the same number.
  - c. In the event that the actual square footage of Parcel A to be acquired by Developer as determined by the approved Plat for the Project varies from the estimated terms detailed in Paragraph 2, City and Developer acknowledge and agree that the Purchase Price shall be adjusted according to the following formula: number of square feet to be acquired by Developer per the Plat times Two and 41/100 Dollars (\$2.41) per square foot, or One Hundred Five Thousand Dollars (\$105,000) per acre. In the event of an amendment to the Purchase Price as provided herein, City and Developer shall execute an amendment to this Agreement or the Offer to Purchase, whichever is in place, to confirm the revised Purchase Price.
5. Earnest Money. Within five (5) days of the fully executed Purchase & Sale Agreement, Developer shall deposit with the Madison office of First American Title Insurance Company ("Title Company") the amount of Twenty Five Thousand Dollars (\$25,000) as "Earnest Money," which will be non-refundable except as otherwise provided by this Agreement, and shall be applied toward the Purchase Price at

Closing.

6. Builder Green Energy Credit.

- a. In exchange for the Discount stated in Paragraph 4.b. above, Developer shall inform all prospective homebuyers of an available cash rebate of up to \$7,500 per home ("Credit") for the implementation of a Green Energy Incentive Program encouraging the installation of solar or other alternative residential energy generation systems during construction. Such installations that in aggregate meet a minimum 50% of the standard daily energy needs of an average single-family home in the Alliant Energy service area shall qualify for the Credit.
- b. Developer shall require that all homebuyers requesting the Credit, as part of the architectural design review, submit documentation to Developer and City from a contractor detailing that the alternative energy system(s) meets the requirements of the program, and the total installation costs of such system(s). Compliance with the rebate threshold shall be reviewed and certified for each eligible home by the City of Madison Building Inspection Division prior to issuance of Credit(s) by Developer. Developer shall issue credit(s) by drawing down on the letter of credit. Developer may occasionally be asked to provide evidence of credit payments to homebuyers, and shall furnish any payment records upon city's written request within ten (10) working days.
- c. Developer shall provide City with a letter of credit in the amount of \$7,500 multiplied by the number of lots located on Parcel A (the "Letter of Credit") from its primary lender to secure substantial participation in the Green Energy Incentive Program. In the event that the Developer discontinues the Green Energy Incentive Program or otherwise substantially completes the Project without issuing Credits totaling at least the total amount of the letter of credit, the City reserves the right to draw upon the letter of credit in an amount not to exceed the difference between the total amount of the letter of credit and the total of all Credits issued to homeowners.

7. Limited Representations and Warranties; AS-IS Condition. Except as otherwise provided herein, the Developer shall purchase Parcel A in "AS-IS, WHERE-IS" condition and "with all faults," and shall agree that it relied upon no warranties, representations or statements by the City, its agents or employees, in entering into this Agreement or in closing the transaction described herein. Except as provided below, the Developer's closing on the acquisition of Parcel A shall constitute conclusive evidence that the Developer is satisfied with the condition of and title to Parcel A and has waived or satisfied the Developer's due diligence, as generally described in Paragraph 10 below.

8. Delivery of Documents. Within ten (10) days of the Effective Date and throughout the Due Diligence Period as described in Paragraph 10, the City will reproduce at its expense and send, either electronically or by hard copy, to the Developer, copies of any and all environmental studies, reports, permits, applications and remediation plans or assessments of the Property.

9. Title Insurance. The City shall provide to the Developer, at the City's expense, within ten (10) days of the Effective Date 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 Developer's Purchase Price upon the recording of proper documents, together with a gap endorsement. The commitment shall show title to Parcel A as of a date no more than fifteen (15) days before such title proof is provided to the Developer, to be in the condition called for in this Agreement, and further subject only to liens which will be paid out of the proceeds of the closing and to any exceptions accepted in writing by the Developer ("Permitted Exceptions"). The Developer shall notify the City of any valid objection to title relative to Parcel A, in writing, within thirty (30) days of its actual receipt of the title commitment. The City shall have a reasonable time, but not exceeding fifteen (15) days after receipt of such objection, to remove the objection(s) and closing shall be extended as necessary for this purpose. Should the City be

unable or unwilling to carry out this Agreement by reason of a valid legal defect in title which the Developer is unwilling to waive, this Agreement shall become null and void.

10. Due Diligence Period.

- a. Developer shall have one hundred eighty (180) calendar days following the Effective Date ("Due Diligence Period") to perform the following: (i) obtain, at Developer's sole cost, acceptable financing and appraisal; (ii) secure and record the Fox Knoll subdivision plat as amended and approved by the Common Council on February 22, 2022 for development of the Project;; (iii) conduct any physical and/or environmental tests, studies, or investigations deemed necessary by Developer, and (iv) confirm that Developer is able to obtain any and all municipal, state, and federal approvals, permits, licenses, consents of use, and zoning approvals from all governmental or private bodies/agencies having jurisdiction over Developer's intended use of Parcel A.
- b. Within the Due Diligence Period, the Developer shall enter into a development agreement with the City of Madison Engineering Division detailing the extent of infrastructure and development to take place upon Parcel A ("Phase 1") including, but not limited to, sanitary and storm sewer, water lines, ingress/egress, and stormwater management elements. The final issuance of construction plans for Phase 1 of the Fox Knoll Final Plat by the City of Madison ("Phase 1 Final Engineering") is expected within six (6) months of development agreement execution, pursuant to Plat approval as enacted by the Common Council on February 22, 2022.
- c. If within the Due Diligence Period Developer determines, in its sole discretion and with or without cause, that it does not desire to purchase Parcel A, Developer must provide written notice to City of such desire to terminate this Agreement, and the Earnest Money shall be refunded to Developer no later than five (5) days thereafter and the parties shall have no further obligation or liability under this Agreement, except for any which survive the Closing or early termination of this Agreement.
- d. Developer shall keep Parcel A free of all liens in connection with its inspection of Parcel A, and shall cause all such liens to be removed immediately upon being notified of the same.
- e. If Developer does not provide written notice to City terminating this Agreement on or prior to the end of the Due Diligence Period, this Agreement shall remain in full force and effect. Developer shall accept Parcel A as-is, and the parties shall proceed to close the transaction as provided herein.
- f. Should Developer desire to close prior to the end of the Due Diligence Period, Developer may provide City with written notice of its intent to do so. The provision of such notice by Developer shall not affect the terms contemplated in this Agreement, except that the closing date shall occur on or before thirty (30) days from the date City receives such notice, unless the parties agree in writing to another date.

11. Plat of Survey. Developer will be responsible to obtain an amended subdivision Plat for Parcels A and B at its own cost along with all required application materials for submittal to and approval by the City of Madison Planning Commission and Common Council. Notwithstanding the conceptual Project parameters detailed in Paragraph 2, the Plat shall detail the proposed residential lots shown in Exhibit A; related stormwater management outlots ("Outlots 1 and 2"); and Outlot 3. The Plat must be prepared by a professional land surveyor who is licensed in Wisconsin and will comply with the provisions of Chapter 236 of the statutes of the state of Wisconsin and Chapter 37 of the City of Madison general ordinance in surveying, dividing and mapping. The City of Madison will cooperate as necessary with the platting process as long as City maintains owner status.

12. Environmental Remediation. Provided Developer has elected to proceed with the purchase of Parcel A following the waiver or satisfaction of Developer's Due Diligence as provided in Paragraph 10, Developer shall be responsible for the remediation of any environmental contamination on Parcel A to the extent required by applicable federal and state laws and regulations. The City will cooperate with Developer in seeking federal, State, County, and City funds available to apply to the cost of remediation.
13. Closing.
- a. Closing shall occur no later than sixty (60) days after completion of Phase 1 Final Engineering by the City of Madison Closing is to take place at the office of the title insurance company issuing the commitment for title insurance, unless the parties agree in writing to another date or place (the "Closing Date").
  - b. The City agrees to execute and deliver to Developer at closing the Deed conveying Parcel A to Developer 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 municipal services; recorded building and use restrictions and covenants, and any other encumbrances accepted by Developer pursuant to its review of title as described in Paragraph 9 above.
  - c. Developer shall pay all recording/filing fees except that the City shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to Parcel A to be in the condition called for by this Agreement.
  - d. All real estate taxes or any PILOT with respect to Parcel A shall be prorated between the City and Developer as of the date of closing based upon the latest known assessment and latest known mil rate or the PILOT in effect as of the date of closing.
  - e. The City 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 Parcel A as of the date of closing.
14. Access to Property. Developer and Developer's authorized agents, engineers, consultants, appraisers, and contractors shall be permitted access to Parcel A for the purpose of conducting the inspections and testing during the Due Diligence Period including, but not limited to, a Phase 1 or 2 environmental assessment of Parcel A and/or a physical inspection of Parcel A at reasonable times with at least twenty-four (24) hours' prior written notice to City. Developer's and Developer's authorized agents, engineers, consultants, appraisers, and contractors seeking access to, and inspection of, Parcel A shall be at Developer's sole risk and expense, and City shall have no responsibility therefor. Developer shall, at Developer's sole cost, repair all damage caused by its inspections or testing so that the condition of Parcel A is returned to the same or similar condition that existed prior to the inspections or testing.
15. Assignment. The Developer shall have the right to assign this Agreement without the City's prior written consent only to an entity owned or controlled by Developer. or its principals. All other assignments shall require the City's prior written consent, which may not be unreasonably withheld in the City's sole discretion. If this Agreement is assigned by the Developer, the Developer shall cause any permitted assignee to acknowledge in writing that it will be bound by all of the terms and conditions of this Agreement, with said acknowledgement set forth in a form subject to the City's reasonable approval.
16. Brokers. The parties mutually warrant and represent to one another that neither has authorized any broker to act on its behalf in respect of the transactions contemplated hereby. Each party shall provide a statutory lien waiver with respect thereto, if requested by the Title Company, at Closing.

BE IT FURTHER RESOLVED that the Mayor and Clerk, or, with the approval of the City Attorney, the Real Estate Manager, are hereby authorized to sign, accept, and record any and all documents and legal instruments required to complete the transaction contemplated in this resolution, on a form and in a manner that has been approved by the City Attorney