

BILL NO. R-19-12-05

RESOLUTION NO. _____

**A RESOLUTION APPROVING THE
PURCHASE OF CERTAIN LAND AND
IMPROVEMENTS FOR THE CITY OF
FORT WAYNE, PARKS AND
RECREATION DEPARTMENT.**

WHEREAS, the City of Fort Wayne, through its Parks and Recreation Department, desires to purchase 14.75 acres of land and improvements at 1825 E. Gump Road, Fort Wayne, Indiana, specifically described in the Purchase Agreement marked Exhibit A, attached hereto and made a part hereof; and

WHEREAS, the City of Fort Wayne, through its Parks and Recreation Department, desires to purchase the 14.75 acres of land and improvements at 1825 E. Gump Road, Fort Wayne, Indiana to become a future nature park and sanctuary area ; and

WHEREAS, the purchase price for the 14.75 acres of land and improvements at 1825 E. Gump Road, Fort Wayne, Indiana is FIVE HUNDRED EIGHTY-EIGHT THOUSAND TWO HUNDRED THIRTY-ONE AND 65/100 DOLLARS – (\$588,231.65); and

WHEREAS, Sec. 37-25 of the City of Fort Wayne Code of Ordinances, requires the Common Council approval of any purchase of real estate by the City.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON
COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**

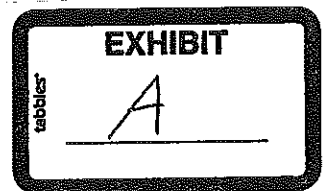
SECTION 1. The purchase of 14.75 acres of land and improvements at 1825 E. Gump Road, Fort Wayne, Indiana by the City of Fort Wayne, through its Department of Parks and Recreation is hereby approved and agreed to. The appropriate officials of the City are hereby authorized to execute all documents necessary to accomplish said purchase.

SECTION 2. This Resolution shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney



PURCHASE AGREEMENT

This Purchase Agreement is made and entered into by the Board of Park Commissioners of the City of Fort Wayne ("Buyer"), an Indiana municipal corporation, and Loren D. and J. Lizette Hahn Thomas ("Seller"). Buyer and Seller are sometimes collectively referred to herein as the "parties" and individually as a "party".

Buyer hereby agrees to purchase from Seller, and Seller hereby agrees to sell to Buyer, the real estate consisting of 15.53 acres, more or less, together with all improvements and fixtures thereon located in Allen County, Indiana less the acreage which Seller intends to sell to an adjacent property owner (the "Real Estate"), legally described as follows:

See Exhibit "A" attached hereto and made a part hereof,
final acreage to be determined by a current ALTA survey,
which shall determine the final purchase price

The Buyer's intended use of the Real Estate is a nature preserve and environmental study area, or other uses determined by Buyer not inconsistent with the applicable covenants, conditions and restrictions, for the benefit of residents of the City of Fort Wayne, Indiana.

This Purchase Agreement supersedes all prior or contemporaneous agreements, whether oral or in writing, and is made subject to the following terms and conditions:

1. Pursuant to Indiana Code §36-1-10.5-6, the purchase price for the Real Estate shall be the average of two (2) professional appraisals of the fair market value of the Real Estate performed by Neal R. Worden and Larry D. Misner less the life estate value of the acreage and improvements which Seller retains after Closing (the "Purchase Price"). The retained acreage of Seller shall be designated on a boundary survey as set forth in Section 3 of this Purchase Agreement (the "Sellers' Retained Acreage"). The cost of the appraisals shall be paid by Buyer.

The life estate value of the Sellers' Retained Acreage shall be based upon J. Lizette Hahn Thomas's date of birth.

The Purchase Price shall be based upon the determination of the factors set forth in this Section 1 and the acreage to be purchased by Buyer. If the Purchase Price exceeds Five Hundred Ninety-Nine Thousand Nine Hundred Ninety and 00/100 Dollars (\$599,999.00), this Purchase Agreement may be terminated by Buyer, in Buyer's sole discretion.

The Purchase Price shall be paid in cash at Closing.

2. The real estate taxes and assessments for the Real Estate shall be prorated between the Seller and Buyer to the date of Closing. If the tax rate or assessment for any portion of the real estate taxes used in this computation is not finalized, the last real estate taxes and assessments evidenced by the county treasurer's statements shall be used in this computation.
3. Buyer shall secure a current ALTA minimum standard detail survey for the Real Estate prepared by Apex Consulting and Surveying identifying location of corners, location of all improvements, building lines and easements, and stating whether the Real Estate is or is not in a floodplain, and said survey shall include the following Table A items 1, 2, 3, 4, 6a, 6b, 7a, 7c, 8, 9, 11, 13, 16, 17, 18, 19. The cost of this survey shall be paid by Buyer. If the survey reveals that the Real Estate cannot be used for the Buyer's intended use or if the survey reveals any other encroachments or defects, this Purchase Agreement may be terminated by the Buyer, in Buyer's sole discretion.

Buyer shall also secure a boundary survey and legal description prepared by Apex Consulting and Surveying specifically identifying Sellers' Retained Acreage including the existing dwelling and detached barn. The cost of this survey shall be paid by Buyer.

4. Buyer shall obtain, at Buyer's expense, a title insurance commitment ("Title Commitment") from Titan Title ("Title Company") for an owner's policy of title insurance for the full amount of the purchase price, providing for the following:
- (a) that Seller shall convey good and marketable title to the Real Estate, free and clear of all liens and encumbrances;
 - (b) that all standard exceptions to the title insurance shall be deleted;
 - (c) that all easements to be granted to Buyer, including, but not limited to, easements for utilities and access, shall be insured and shall be conveyed to Buyer free and clear of all liens and encumbrances; and,
 - (d) that the Title Commitment shall be down-dated to the time of closing and the recording of the deed and other conveyance documents.

If the Title Commitment is not as stated herein, this Purchase Agreement may be terminated by the Buyer, in Buyer's sole discretion. Notwithstanding the foregoing, Seller shall be obligated to remove all mortgage liens and may, at Sellers' option, remove the same by application of the purchase money paid at Closing.

5. Seller's title to the Real Estate shall be (and Seller hereby represents and warrants to Buyer that the same is) good, merchantable and marketable fee simple title, free and clear of any liens, encumbrances, highways, rights-of-way, easements, licenses, restrictions, leases, tenancies, mineral leases, reservations or severances, agreements, covenants, conditions and limitations, except for the lien of the then current taxes which are not delinquent and street rights-of-way and utility easements which Buyer, in its sole discretion, may elect to approve after examination of title as hereinafter provided. If the title to the Real Estate is not as stated herein, this Purchase Agreement may be terminated by the Buyer, in Buyer's sole discretion.
6. All improvements on the Real Estate shall be located entirely within the bounds of the Real Estate, there shall be no encroachments upon the Real Estate, and there shall be no existing violations of zoning ordinances or other laws, ordinances or restrictions applicable to the Real Estate. In the event there are any conditions on or related to the Real Estate that violate this Section 6, this Purchase Agreement may be terminated by the Buyer, in Buyer's sole discretion.
7. There shall be no federal, state or local laws, ordinances, rules, regulations, codes or orders and no covenants or restrictions affecting or running with the Real Estate which would, in Buyer's judgment, prohibit, prevent, delay, interfere with, or make undesirable or infeasible, Buyer's use, development and improvement of the Real Estate for Buyer's intended uses and purposes; and, that there are no proceedings or actions pending against Seller or the Real Estate before any court or governmental agency or authority which would, in Buyer's judgment prevent, prohibit, delay, interfere with or make undesirable or infeasible, Buyer's use, development and improvement of the Real Estate for its intended uses and purposes. In the event there are any conditions on or related to the Real Estate that violate this Section 7, this Purchase Agreement may be terminated by the Buyer, in Buyer's sole discretion.
8. There shall be no claims, demands, liabilities or actions pending or threatened against Seller or the Real Estate (including, without limitation, no pending or threatened condemnation proceedings by any public or governmental agency or authority) which constitute or might ripen into a lien or claim against the Real Estate or which could prevent, prohibit, delay or interfere with Buyer's use, development and improvement of the Real Estate for its intended uses and purposes or which

could otherwise deprive Buyer of any portion of the Real Estate. In the event there are any conditions on or related to the Real Estate that violate this Section 8, this Purchase Agreement may be terminated by the Buyer, in Buyer's sole discretion.

9. Buyer shall have a period of thirty (30) days following receipt of both the title commitment and survey (calculated from the date the second of the two documents is received) in which to examine the same and notify Seller in writing of any title or survey objections or further requirements. Seller shall then have a period of fifteen (15) days after receipt of such notice from Buyer in which to correct any such objections to title or survey and satisfy any further title and survey requirements of Buyer. If Seller is unable to correct Buyer's title and survey objections to Buyer's reasonable satisfaction and satisfy Buyer's further title and survey requirements within fifteen (15) days after receipt of written notice thereof, then Buyer shall thereafter have the right at any time, at its election, to cancel and terminate this Purchase Agreement or to waive such title and survey objections and requirements. It is understood and agreed that Buyer shall have, and does hereby reserve, the absolute and unconditional right to reject the title and survey as Buyer shall see fit, in its discretion.

10. This transaction shall be closed on or before December 31, 2019 ("Closing"). Upon payment of the Purchase Price, Seller shall deliver a properly executed general warranty deed acceptable to Buyer conveying to Buyer the Real Estate, in substantially its present condition, usual wear and tear excepted. At Closing, Seller shall also deliver to Buyer, an affidavit of Seller stating that the Real Estate is free and clear of all liens, leases, tenancies, occupancies, easements and security interests; that no improvements, repairs or other work have been made to the Real Estate by Seller within ninety (90) days of the date of Closing for which payments have not been made; that there are no unrecorded easements against the Real Estate; and containing such other statements as may be necessary for the Title Company to issue the owner's policy of title insurance provided for herein.

At Closing, Seller shall also execute a Life Estate Deed for Sellers' Retained Acreage. Unless otherwise agreed to by the parties, Seller shall have and hold Sellers' Retained Acreage for and during the life of Loren D. Thomas and J. Lizette Hahn Thomas, and upon the death of the last, Sellers' Retained Acreage shall automatically revert to Buyer.

11. Possession of the Real Estate shall be delivered at Closing.

Unless otherwise agreed to by the parties in writing, Buyer's possession of Sellers' Retained Acreage shall be upon the death of the last of Loren D. Thomas and J. Lizette Hahn Thomas. If Buyer's possession is upon the death of the last of Loren D. Thomas and J. Lizette Hahn Thomas, Buyer shall allow his or her heirs no more than eight (8) months from the date of death to vacate the dwelling house and detached barn.

12. Until Closing, the risks of ownership and loss of the Real Estate shall be borne solely by Seller. Seller's insurance coverage currently in place in respect of the Real Estate shall be maintained through the Closing. If prior thereto the Real Estate is damaged by fire or other casualty or is taken in whole or in part by condemnation or other exercise of the power of eminent domain, or any notice thereof is given, Seller shall promptly notify Buyer in writing. Either party shall have fifteen (15) calendar days after the date of Seller's written notice within which to elect to terminate this Purchase Agreement.

13. This Purchase Agreement includes all improvements and permanent fixtures used in connection with the Real Estate and Sellers' Retained Acreage, including, but not necessarily limited to the following: all electrical, gas, central heating, central air conditioning, and plumbing fixtures, including water softener, built-in appliances, all screens, screen doors, storm windows, shades, Venetian blinds, attached carpeting, garage door openers, and landscaping, the cost of which shall be fully paid, all of which shall be free of any and all liens or security interests and shall be in good working order and condition at the time of Closing and/or possession by Buyer as set forth in Section 11, normal wear and tear expected.

The parties further agree that Seller and Sellers' heirs may retain Sellers' personal effects located within the existing dwelling and detached barn including, but not limited to, the interior chandelier hanging in the kitchen and the interior chandelier hanging in the master bedroom with adjacent sitting area. Seller and Sellers' heirs may also take other mutually agreed upon property including plants, decorative stone and birdbaths.

14. Prior to and as a condition to Closing, Buyer shall have received satisfactory evidence that zoning is appropriate for Buyer's intended use of the Real Estate and that all necessary land use and development plan approvals have been issued by those governmental bodies having jurisdiction over the same. In this regard, Buyer shall have the right to approve any and all conditions on or restrictions and limitations to any such approvals and permits; and, if not to Buyer's satisfaction, this Purchase Agreement may be terminated by the Buyer, in Buyer's sole discretion.
15. Prior to Closing, Buyer shall have determined that there is available to the Real Estate, or necessary easements are reasonably obtainable to provide, natural gas, water, electricity, telephone, sanitary sewers, fire protection and adequate drainage, all in a capacity reasonably and customarily necessary to serve Buyer's intended use of the Real Estate; and, if not, this Purchase Agreement may be terminated by Buyer, in Buyer's sole discretion.
16. Prior to Closing, Buyer shall have determined that there is available to the Real Estate road access and traffic controls adequate to accommodate the proposed use; and, if not, this Purchase Agreement may be terminated by the Buyer, in Buyer's sole discretion.
17. Prior to Closing, Buyer and its agents shall have the right to enter upon the Real Estate to conduct inspections and tests as to the feasibility and suitability of the Real Estate for Buyer's intended use. Such tests may include building inspections, soil bores, surveys, Phase I and any Phase II or other follow-up environmental site assessments, and all tests normally performed for the determination of the suitability of real estate and improvements thereon. All such tests are to be made at Buyer's expense. Seller agrees to permit Buyer, or Buyer's agents, to enter upon the Real Estate with 48-hour notice to Seller for the purpose of making such tests. In performing such inspections and investigations, Buyer will seek to minimize any interference with Seller's use of the Real Estate. If Buyer determines, in its sole discretion, that such tests reveal that the Real Estate is not suitable for Buyer's intended use, this Purchase Agreement may be terminated by Buyer.
18. Buyer and Seller shall each have the right but not an obligation to terminate this Purchase Agreement in the event that a Phase III environmental investigation or any other work involving environmental remediation of the Real Estate is recommended by Buyer's agents. If neither party terminates this Purchase Agreement in accordance with this Section 18, the fees and costs of a Phase III investigation or any other work involving environmental remediation to the Real Estate shall be paid by Buyer.
19. Buyer's obligation to close the purchase of the Real Estate is conditioned upon Buyer's receipt of all permits required by Buyer to utilize the Real Estate as it intends and also upon Buyer's receipt of all governmental approvals for said purposes. If said permits and governmental approvals are not so received prior to Closing, this Purchase Agreement may be terminated by Buyer, in Buyer's sole discretion.
20. The Buyer and Seller represent that there is no broker involved in this transaction and, consequently, no commission shall be due as a result of this transaction.
21. Seller hereby makes the following representations and warranties:
 - 1) To the best knowledge of Seller, based on an inquiry of those persons directly responsible for gathering the information, there does not currently exist any actual or potential

contamination of the soil, subsoil, ground water, or any portion of the Real Estate by any hazardous or toxic substance or any constituent thereof; and,

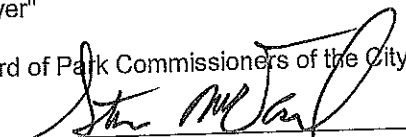
- 2) To the best knowledge of Seller, based on an inquiry of those persons directly responsible for gathering the information, the Seller has complied at all times, and has not received a notice or claim to the contrary, with all applicable federal, state and local environmental laws and regulations, including without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Resource Conservation and Recovery Act of 1976; the Toxic Substance Control Act of 1976; any of the regulations thereunder; and any other federal statute, state statute, or municipal ordinance creating liability for treatment, storage, disposal, or the arranging thereof, or the existence on the real estate, of any hazardous or toxic substance, including any constituent thereof, and shall indemnify and hold Buyer harmless, from violations therefore, including reasonable attorney's fees; and,
 - 3) On and after the date of this Purchase Agreement and extending through the Closing, Seller shall not convey, mortgage or otherwise encumber the Real Estate or any part thereof or any interest therein, without the prior written consent of Buyer, which consent may be withheld by Buyer for any reason whatsoever in Buyer's sole and absolute discretion; and,
 - 4) The Seller has the full right and authority to enter into and perform its obligations under this Purchase Agreement, and under all agreements, instruments and documents to be executed in connection herewith all of which will be binding upon Seller; and,
22. Seller agrees to indemnify, defend, and hold Buyer harmless from and against any claims, demands, liabilities, or actions by any third parties which arise out of (a) Seller's breach of any of the representations and warranties contained in Section 21 hereof, (b) a breach of any covenant or obligation contained in this Purchase Agreement, and (c) the condition of the Real Estate prior to the date of Closing.
- Buyer agrees to indemnify, defend, and hold Seller harmless from and against any claims, demands, liabilities, or actions by any third parties which arise out of Buyer's breach of any covenant or obligation contained in this Purchase Agreement.
23. Buyer's obligation to complete the purchase of the Real Estate pursuant to the terms of this Purchase Agreement shall be specifically conditional upon the approval of this Purchase Agreement by the Board of Park Commissioners for the City of Fort Wayne, Indiana, the Common Council for the City of Fort Wayne, Indiana, and, the Mayor of the City of Fort Wayne, Indiana. If approval is not obtained by each of these three (3) bodies, this Purchase Agreement may be terminated by Buyer.
24. Rights of Access. The parties acknowledge that Seller will continue to own a portion of land situated upon the Real Estate, previously defined herein as Sellers' Retained Acreage, and that it will be necessary for Seller to enter onto the Real Estate to access Sellers' Retained Acreage at the main point of entry off East Gump Road once this transaction is complete. Accordingly, Buyer agrees to grant a permanent ingress-egress easement over a portion of the Real Estate in the location depicted and described in Exhibit "B", which is incorporated by reference herein.
25. The representations, warranties and agreements contained in this Purchase Agreement and in any notices, schedules, or statements delivered pursuant hereto shall survive consummation of the transactions contemplated by this Purchase Agreement, and shall remain in full force and effect, regardless of any investigation made by or on behalf of any party hereto, but subject to all limitations and other provisions contained in this Purchase Agreement.

26. It is understood and agreed that all of the conditions precedent contained in this Purchase Agreement are for the exclusive benefit of Buyer and that Buyer shall have the right to waive any of said conditions precedent, as and when Buyer shall see fit in its sole discretion.
27. This Purchase Agreement shall bind, and inure to the benefit of, the parties and their heirs, personal and legal representatives, successors and assigns.
28. This Purchase Agreement is governed by the laws of the State of Indiana and venue shall be in any state or federal court located in Allen County, Indiana.
29. No earnest money will be required.
30. In the event Buyer fails to complete the sale as agreed in this Purchase Agreement and Buyer does not have the authority to terminate this Purchase Agreement pursuant to the terms hereof, the Seller shall be entitled to all remedies at law or in equity, including specific performance and to recover all reasonable costs, including attorney fees, incurred by Seller in enforcing Buyer's obligations.
31. In the event Seller fails to complete the sale as agreed in this Purchase Agreement and Seller does not have the authority to terminate this Purchase Agreement pursuant to the terms hereof, the Buyer shall be entitled to all remedies at law or in equity, including specific performance, and to recover all reasonable costs, including attorney fees, incurred by Buyer in enforcing Seller's obligations.
32. The following expenses shall be paid at Closing by the respective parties: Seller shall pay (a) all cost of releasing existing loans and recording the releases; (b) any unpaid taxes due and owing and prorated taxes; and (c) other expenses stipulated to be paid by Seller under this Purchase Agreement. Buyer shall pay (a) any Closing fees; (b) expenses stipulated by this Purchase Agreement to be paid by Buyer; (c) recording fees other than releases of Seller's loan documents; (d) all survey work performed by Apex Consulting and Surveying; and (e) cost of inspections and assessments commissioned by Buyer.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the latest date indicated below (the "Effective Date").

"Buyer"

Board of Park Commissioners of the City of Fort Wayne, Indiana

BY: 

ITS: Director of Fort Wayne Parks & Recreation Department

DATE: September 16, 2019

"Seller"

Loren D. and J. Lizette Hahn Thomas

BY: Loren D. Thomas

BY: J. Lizette Hahn Thomas

DATE: 9-16-19 @ 2:00 P

EXHIBIT "A"

EXHIBIT "B"



MEMORANDUM

To: City Council Members, City of Fort Wayne
From: Steve McDaniel
CC: File
Subject: Council approval for purchase of property at 1825 E. Gump Road
Date: December 3, 2019

The Board of Park Commissioners is proposing to purchase approximately 14.75 acres of land and improvements adjacent to land it owns at 1825 E. Gump Road. The Parks and Recreation Department has been very blessed with generosity of individuals within our community. In 1997, Loren and his first wife, Janis, Thomas donated 17.107 acres of their land on Gump Road to the Board of Park Commissioners. A little over 2 years ago we started talking with Loren and Liz Thomas about their future plans and about the remaining acreage they owned. They liked the idea of the Parks and Recreation Department purchasing the property and continuing the park / nature area that started with their donation 20 years before.

We engaged the services of two appraisers to determine the value of the buildings and property. Because we are looking at the future, we are not at the point to develop the property into a park and nature sanctuary. So we offered Mr. and Mrs. Thomas "life estate" as we did with the Salomon Family at Salomon Farm Park. This gives them the option to remain in the house and on the land as long as they want. The average of the two appraisals factoring in their respective life estate equals \$588,231.65.

Once the Thomas's vacate the property, then we will start the process of programming. As part of the proposed sale of land, we have modified the terms of the deed restrictions that were originally set with the donation of land. The basic terms are that this land will stay natural and not have active recreation like ball diamonds or athletic fields.

Funding Source: Parks Cumulative Capital Fund and Parks Trust.

We respectfully request your approval so that we may purchase the land and improvements at a cost of \$588,231.65. If you have any questions, please feel free to contact me at 427-6407 or Chuck Reddinger at 427-6009. We will also be available at the Council meeting to answer any of your questions.

Thank you in advance.

Steve McDaniel
Director, Fort Wayne Parks and Recreation

