

A RESOLUTION APPROVING A PURCHASE AGREEMENT FOR THE ACQUISITION OF REAL PROPERTY AT 1328 SPY RUN AVENUE, FORT WAYNE, INDIANA, FOR THE CITY OF FORT WAYNE, INDIANA (Approved and Executed by the Board of Public Works on August 10, 2021).

WHEREAS, the City of Fort Wayne, by and through its Division of City Utilities ("CU"), wishes to acquire Real Property at 1328 Spy Run Avenue, Fort Wayne, Indiana, (the "Real Estate"), for a security zone around and planned future expansion of the Water Filtration Plant, and to continue to improve the reliability of our City's drinking water supply; and

WHEREAS, the City of Fort Wayne, by and through its Board of Public Works, approved and executed a purchase agreement to acquire the Real Estate in the regularly-held meeting of the Board of Public Works on August 10, 2021; and

WHEREAS, the purchase price for the Real Estate is Seventy-One Thousand and 00/100 Dollars (\$71,000.00) (the "Purchase Price"); and

WHEREAS, Sec. 37.25 of the City of Fort Wayne Code of Ordinances requires the Common Council's approval of any conveyance of real estate to the City.

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

SECTION 1. The acquisition of the Real Estate by CU, the City of Fort Wayne, by and through its Board of Public Works, in the amount of the Purchase Price, and upon such other terms and conditions as CU shall determine, is hereby agreed to and approved. The appropriate officials of the City of Fort Wayne are hereby authorized to execute all documents necessary to effectuate 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

Interoffice Memo

Date: August 19, 2021
To: Common Council Members
From: Seth Weinglass, Program Manager – Capital Project Services
RE: **Purchase of 1328 Spy Run Ave, in Fort Wayne, Indiana 46808**

Council Introduction Date: August 24, 2021 - Council District #: 5

Background & supporting information:

City Utilities has an ongoing, multi-year program of purchasing lots on the south side of Wagner Street, adjacent to the north side of the Water Filtration Plant, for a security zone and planned future expansion of the Water Filtration Plant, and to continue to improve the reliability of our City's drinking water supply. City Utilities would now like to acquire 1328 Spy Run Avenue, which is located south of the southeast corner of the intersection between Spy Run and Wagner Street.

There is an unoccupied residence on this lot that the City plans to demolish. The property owners agreed to sell the land to City Utilities for \$71,000, which is lower than the average of two recent appraisals. City Utilities is now seeking to have a purchase agreement in that amount approved under City Ordinance 37.25.

As an update to Council, a map is attached to this memorandum, highlighting the properties the City has acquired has along the south side of Wagner Street to date, as well as the lot presently under consideration to be purchased.

Implications of not being approved:

Any future acquisition of this property may be at a higher price than the amount presently agreed to.

Justification if prior approval is being requested: Not applicable

Funding source: Water Revenue

Attachments:

- Map
- Purchase agreement executed by Board of Public Works on August 10, 2021

CC: Matthew Wirtz
Ben Groeneweg
Andrew Schipper
Stacy Ackerman



Although strict accuracy standards have been employed in the compilation of this map, the City of Allen does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 2004 Board of Commissioners of the County of Allen
North American Datum 1983
State Plane Coordinate System, Indiana East



Date: 9/3/2015 1" = 200'

REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities

The City of Fort Wayne ("Buyer") agrees to purchase the fee simple title to all of the following Real Property ("Property") for the consideration stated below subject to the conditions, requirements, and stipulations described in the following Purchase Agreement.

CONTACT INFORMATION and LOCATION OF PROPERTY

Address of Property to be sold: 1328 Spy Run Ave. Fort Wayne, IN 46805

Owner(s) Name(s): Eric Todd Rhodes & James Bowman ("Seller")

Primary Telephone: (260) 637-4115

E-mail: jamesbowman64@gmail.com; toddrhodes@outlook.com

Mailing Address: 13710 Lima Rd, Fort Wayne, IN 46818-9504

Latest Deed of Record:

Document Number 205036714

Platted Parcel:

Tax ID Number 02-12-02-233-003.000-074

PURCHASE PRICE

The City agrees to pay to the Seller the total purchase amount of \$71,000.00 (Seventy-One Thousand Dollars and Zero Cents) for the Property which includes the entire parcel of land and all improvements thereon.

NOTE: The Seller certifies that no substantial changes have occurred to the Property to reduce the value determined by the appraisals, as of the effective date of this Purchase Agreement.

EXPIRATION OF OFFER

This Purchase Agreement shall be returned to the City no later than 9am on August 5, 2021, otherwise this Purchase Agreement shall be null and void and both parties shall be released from the transaction.

APPROVALS BY BOARD OF PUBLIC WORKS and COMMON COUNCIL

This transaction is subject to approval by both the Board of Public Works and the Common Council of the City of Fort Wayne, Indiana. In the event that either body does not approve this transaction, the transaction shall be terminated and both parties shall be released from this Purchase Agreement.

CLOSING

Closing Date:

The closing date for this transaction shall be on or before November 5, 2021, or this Agreement shall terminate unless an extension of time is mutually agreed to in writing. Any change in the closing date shall be agreed to in writing by both parties.

Location of Closing:

The closing shall be held at TBD located at TBD, Fort Wayne, Indiana.

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Closing Fees:

All fees charged by the closing agent, including document preparation and recording fees shall be paid by the **City of Fort Wayne (City is the Buyer)**.

EARNEST MONEY

The **City** as a policy does not pay earnest money.

METHOD OF PAYMENT

The entire amount shall be paid in **cash**.

Both parties agree that all funds delivered to the closing agent's escrow account shall be such that the closing agent shall be able to distribute all funds in accordance with I.C. 27-07-3.7-1 through 27-07-3.7-1-10, inclusive. Furthermore, all funds sent from one source, when the amount is **\$10,000.00** or greater, shall be sent in the form of an irrevocable wire transfer to the escrow account of the closing agent, and all funds under **\$10,000.00** from one source shall be guaranteed to be "Good Funds" as defined by the aforesaid Indiana Code.

POSSESSION

Possession of the Property shall be given to the Buyer at closing. If the **Seller** does not grant possession by the date and time stated above, the **Seller** shall pay the **Buyer** the amount of **\$10 (Ten Dollars)** per day as liquidated damages until possession is delivered to the **Buyer**. The **Buyer** shall have all other legal remedies available for use against the **Seller**, to the extent allowed by law.

PROPERTY MAINTENANCE

Lawn Mowing:

The **Seller** shall keep the lawn mowed so as to not violate tall grass/weed ordinances, and shall mow the grass within two (2) calendar days of possession by the **Buyer**, when the **Buyer** takes possession between April 1st and November 15th, subject to any drought conditions that may be present.

Notice of Defective Conditions:

The **Seller** certifies that no governmental agency has served notice ordering the repair or correction of any defective conditions.

The **Seller** shall maintain the Property in its present condition until the **Buyer** takes possession. The **Buyer** may inspect the Property prior to closing to determine whether there is compliance with this clause. The **Seller** shall remove all rubbish and personal property.

LOSS OR DAMAGE PRIOR TO CLOSING

In the event the Property is damaged by fire, flooding, storm, vandalism, earthquake, or any other cause, prior to the closing, the parties to this Purchase Agreement shall proceed as follows:

In the event any damage or destruction occurs, prior to closing, the **Seller** shall make all necessary repairs to return the Property to the condition it was in prior to the damage or destruction. The **Seller** shall maintain adequate property casualty insurance on the Property, and shall also be responsible for the payment of any and all insurance deductible(s). If the Property is not fully repaired prior to closing, the **Buyer**, at its choosing, may terminate this Agreement and the **Seller** shall return the earnest money, if any earnest money was given, to the **Buyer** within thirty (30) calendar days.

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BOUNDARY SURVEY

The requirement for a survey is **waived**.

FLOOD HAZARD AREA

The Buyer **may not** cancel this Purchase Agreement if the Property is located in a flood hazard zone.

OTHER USE LIMITATIONS

The Buyer **may not** terminate this Agreement if the Property is subject to building or use limitations defined by local zoning ordinances which materially affect the Buyer's intended use of the Property.

INSPECTIONS

The Buyer acknowledges that it has the right to obtain independent inspections disclosing the condition of the Property, including any buildings, and has been given the opportunity to order those inspections as a part of its due diligence efforts prior to concluding the transaction.

The Buyer **reserves its right** to conduct independent inspections. All inspections are at the Buyer's expense and shall be performed by licensed independent inspectors or qualified independent contractors that shall be chosen by the Buyer, and paid for their services by the Buyer.

The Seller shall make arrangements so that all areas of the Property, including any buildings, are open and accessible for inspection.

Inspections and Response Periods:

All inspections that Buyer intends to undertake shall be ordered by the Buyer immediately following the execution of this document. In the event that the presence of a defect is revealed, Buyer shall have 5 calendar days to respond to Seller in writing with regard to any such inspection, following which Buyer shall have 5 calendar days to request, obtain, and respond to Seller in writing with regard to any supplementary reports.

If the Buyer does not respond in writing to Seller within the above time periods with regard to a problem revealed in a report, or timely request a reasonable extension of time in writing, then the Property shall be deemed to be acceptable. Should either party fail to respond to an inspection response from the other within five calendar days, or timely request a reasonable extension of time in writing, then that inspection response is deemed accepted. Making a timely written request for an extension of time does not constitute acceptance of an inspection response, whether or not the request is granted.

In the event that Buyer reasonably believes that an inspection has revealed a defect with the Property, not disclosed by Seller prior to entering into this Purchase Agreement (and excluding routine maintenance and minor repair items), and the Seller fails to remedy the defect to the Buyer's reasonable satisfaction before closing, then Buyer may terminate this Purchase Agreement. Alternatively, Buyer may waive the right to have the defect cured prior to closing, or Buyer and Seller may agree to have the defect remedied following closing.

(Under Indiana law, a "defect" means a condition that would have a significant adverse effect on the value of the Property, that would significantly impair the health or safety of future occupants of

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the Property, or that if not repaired, removed, or replaced, would significantly shorten or adversely affect the expected normal life of the premises.)

DISCLOSURES

The Buyer has waived the "Seller's Residential Real Estate Sales Disclosure" form.

The Buyer has waived "Lead-Based Paint Certification and Acknowledgment" form.

TITLE WORK and DEED

Before closing, the Buyer shall be furnished with a title insurance commitment using the most current and comprehensive ALTA Owner's Title Insurance Policy available in an amount equal to the purchase price. In order to proceed with the transaction, the Seller shall have marketable title to the Real Property in the Seller's name. The Seller shall convey the fee simple title to the Property free and clear of any encumbrances and title defects, with the exception of any restrictions or easements of record not substantially interfering with the Buyer's planned use of the Property.

Title Insurance Fees:

The premium for the title insurance policy and all fees charged to prepare an Owner's Title Insurance Policy shall be paid by the Buyer.

The costs to resolve any title issues affecting the Property so that marketable title can be conveyed shall be paid by the Buyer.

Type of Deed:

The conveyance of the Property shall be accomplished with a Warranty Deed, subject to easements, restrictive covenants, other encumbrances of record, and taxes.

REAL PROPERTY TAXES

All real property taxes that have been assessed for any prior calendar year that have not been paid shall be paid by the Seller. Real property taxes that have been assessed for the present year, that are due and payable in the year after closing, shall also be paid by the Seller prorated up to the day immediately prior to the closing date.

For the purpose of determining the amount to be credited for accrued but unpaid taxes, the taxes shall be assumed to be the same as the most recent year for which taxes were billed based upon the certified tax rates. This settlement shall be final.

PRORATIONS for PUBLIC UTILITIES and SPECIAL ASSESSMENTS

Utilities and Garbage Services:

The Seller shall pay for all public utility and garbage service charges up to the last day of possession.

Shutting Off Utilities for Buildings to be Demolished:

The Seller shall cancel the accounts for all public utilities and garbage services no later than the last day of possession, and shall have the utilities shut off by the appropriate utility.

Special Assessments for Public Improvements:

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The Seller shall pay any special assessments assessed against the Property for public improvements previously made by a governmental unit that benefit the Property. The Seller certifies that it has no knowledge of any proposed improvements which may result in assessments.

Public improvements that will benefit the Property that are not completed as of the closing date, but will result in an assessment against the Property shall be paid by the Buyer.

LEGAL JURISDICTION

This Purchase Agreement shall be interpreted under and according to the laws of the State of Indiana and shall be binding upon the Buyer and Seller, their respective heirs, successors, assigns administrators, executors, and legal representatives. All rights, duties and obligations of the parties shall survive the passing of title to, or an interest in, the Property.

LEGAL FEES

A party to this Purchase Agreement who prevails in any legal proceeding against any other party brought in regard to this Purchase Agreement or associated transaction shall be allowed to recover court costs and reasonable attorney's fees from the other party, to the extent permitted by law.

SAVINGS CLAUSE

If any provision contained in this Agreement is found to be illegal or unenforceable in any respect, that determination shall not affect any other provision of this Purchase Agreement.

OTHER STIPULATIONS

- A. All funds payable in this transaction shall be paid at the closing.
- B. This Agreement constitutes the only agreement between the parties, supersedes any prior arrangements, understandings, or written or oral agreements between the parties with regard to this transaction, and cannot be changed without the written consent of each party.
- C. The Seller certifies that the Seller is not a "Foreign Person" (pertains to an individual entity) and, therefore, is not subject to the "Foreign Investment in Real Property Tax Act."
- D. Buyer discloses that it does not hold an Indiana Real Estate License.
- E. The Seller discloses that it holds Indiana Real Estate License #_____.

ADDITIONAL CONDITIONS (List and attach at the end of this Purchase Agreement):

This Purchase Agreement may be executed concurrently in two or more counterparts, each of which shall be considered as an original document, but all of which altogether shall be one and the same document. The parties stipulate that this Purchase Agreement may be transmitted between them by U.S. Postal Service, other service such as FedEx, courier, facsimile, or e-mail. The parties acknowledge that digitally or electronically transmitted signatures shall be considered as original signatures and are binding on the parties. The City shall keep possession of the original of the Purchase Agreement.

[EXECUTIONS ON FOLLOWING PAGES]

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By signing below, the parties to this transaction acknowledge receipt of a copy of this Purchase Agreement, and agree to the conditions, requirements, and stipulations as stated.

SELLER APPROVAL and SIGNATURE(S):

This Purchase Agreement is X ACCEPTED _____ REJECTED.

Eric Todd Rhodes

Signature

ERIC TODD RHODES

Eric Todd Rhodes

Date: 8-3-21

James M. Bowman

Signature

JAMES M. BOWMAN

James Bowman

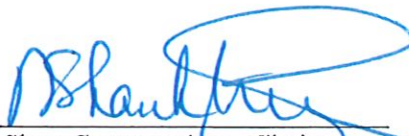
Date: 8-3-21

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Fort Wayne City Utilities

Approval of Real Property Purchase Agreement
1328 Spy Run Avenue

BOARD OF PUBLIC WORKS

Date: 8-10-2021

BY: 
Shan Gunawardena, Chair

BY: ABSENT
Kumar Menon, Member

BY: 
Chris Guerrero, Member

ATTEST: 
Michelle Fulk-Vondran, Clerk