

1 BILL NO. R-21-07-01

2 RESOLUTION NO. R-37-21

3  
4 A RESOLUTION APPROVING A PURCHASE  
5 AGREEMENT FOR THE ACQUISITION OF  
6 UNDEVELOPED REAL PROPERTY AT 1334  
7 SPY RUN AVENUE, FORT WAYNE, INDIANA,  
8 FOR THE CITY OF FORT WAYNE, INDIANA  
(Approved and Executed by the Board of  
Public Works on June 22, 2021).

9 WHEREAS, the City of Fort Wayne, by and through its Division of  
10 City Utilities ("CU"), wishes to acquire undeveloped Real Property at 1334 Spy Run  
11 Avenue, Fort Wayne, Indiana, (the "Real Estate"), for a security zone around and  
12 planned future expansion of the Water Filtration Plant, and to continue to improve  
13 the reliability of our City's drinking water supply; and

14  
15 WHEREAS, the City of Fort Wayne, by and through its Board of  
16 Public Works, approved and executed a purchase agreement to acquire the Real  
17 Estate in the regularly-held meeting of the Board of Public Works on June 22,  
18 2021; and

19 WHEREAS, the purchase price for the Real Estate is Six Thousand  
20 Five Hundred and 00/100 Dollars (\$6,500.00) (the "Purchase Price"); and

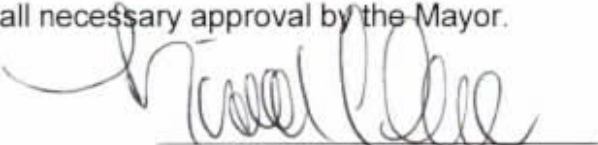
21  
22 WHEREAS, Sec. 37.25 of the City of Fort Wayne Code of Ordinances  
23 requires the Common Council's approval of any conveyance of real estate to the  
24 City.

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

27  
28  
29  
30

1                   **SECTION 1.** The acquisition of the Real Estate by CU, the City of  
2 Fort Wayne, by and through its Board of Public Works, in the amount of the  
3 Purchase Price, and upon such other terms and conditions as CU shall determine,  
4 is hereby agreed to and approved. The appropriate officials of the City of Fort  
5 Wayne are hereby authorized to execute all documents necessary to effectuate  
6 said purchase.  
7

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

10   
11 \_\_\_\_\_  
12 Council Member

13 APPROVED AS TO FORM AND LEGALITY

14  
15   
16 \_\_\_\_\_  
17 Carol Helton, City Attorney

18  
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Interoffice Memo

Date: June 29, 2021  
To: Common Council Members  
From: Seth Weinglass, Program Manager – Capital Project Services  
RE: Purchase of 1334 Spy Run Ave, in Fort Wayne, Indiana 46808

**Council Introduction Date: July 13, 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 1334 Spy Run Avenue, which is located at the southeast corner of the intersection between Spy Run and Wagner Street.

This is an undeveloped property adjacent to a residential area. As a corner lot zoned I1, it has a minimum 25' building setback, which limits any development possibilities of this 30' wide parcel. The property owners were contacted by City Utilities, and agreed to sell the land for the tax assessor's valuation of \$6,500. That amount is well below the statutory threshold where appraisals would be required for an acquisition of real property under IC 36-1-10.5, sections 1(b)(1), 5, and 6. 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. As this property is likely not developable by private owners, it can be expected to become unattended over time if not acquired by the City.

Justification if prior approval is being requested: Not applicable

Funding source: Water Revenue

Attachments:

- Map
- Purchase agreement executed by Board of Public Works on June 22, 2021

CC: Matthew Wirtz  
Jill Helfrich



# Wagner Street Properties - Buy-outs



1334 Spy Run Ave

City-Owned Properties

Although every inventory standards have been employed in the compilation of this map, Alex's Century does not warrant or guarantee the accuracy of the information mentioned herein and disclaims any and all liability resulting from any error or omission in this map.

© 2014 Board of Commissioners of the County of Allen  
 North American Datum 1983  
 North Plane Coordinate System, Indiana East



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

**REAL PROPERTY PURCHASE AGREEMENT**  
**Fort Wayne City Utilities**

1       The City of Fort Wayne ("Buyer") agrees to purchase the fee simple title to all of the following  
2 Real Property ("Property") for the consideration stated below subject to the conditions, requirements, and  
3 stipulations described in the following Purchase Agreement.  
4

5       **CONTACT INFORMATION and LOCATION OF PROPERTY**

6  
7       Address of Property to be sold: 1334 Spy Run Ave. Fort Wayne, IN 46805

8  
9       Owner(s) Name(s): Raymond F Dever Jr & Betty J Dever ("Seller")

10       Primary Telephone: (260) 422-5253

11       E-mail: RABEEVER@JUNO.com

12       Mailing Address: 429 E. Dupont Rd., Suite 228, Fort Wayne, IN 46825

13  
14       Latest Deed of Record:

15  
16       Document Number: 880037795

17  
18       Platted Parcel:

19       Tax ID Number: 02-12-02-233-001.000-074  
20  
21

22       **PURCHASE PRICE**

23       The City agrees to pay to the Seller the total purchase amount of **\$6,500.00 (Six Thousand,**  
24 **Five Hundred Dollars and Zero Cents)** for the Property which includes the entire parcel of land.  
25 There are not any accessory buildings.

26  
27       NOTE: The Seller certifies that no substantial changes have occurred to the Property to reduce the  
28 value determined by the appraisals, as of the effective date of this Purchase Agreement.  
29

30       **EXPIRATION OF OFFER**

31       This Purchase Agreement shall be returned to the City no later than **12 noon, on June 30, 2021,**  
32 otherwise this Purchase Agreement shall be null and void and both parties shall be released from the  
33 transaction.  
34

35       **APPROVALS BY BOARD OF PUBLIC WORKS and COMMON COUNCIL**

36       This transaction is subject to approval by both the Board of Public Works and the Common  
37 Council of the City of Fort Wayne, Indiana. In the event that either body does not approve this  
38 transaction, the transaction shall be terminated and both parties shall be released from this Purchase  
39 Agreement.  
40

41       **CLOSING**

42       Closing Date:

43       The closing date for this transaction shall be on or before **October 1, 2021,** or this Agreement  
44 shall terminate unless an extension of time is mutually agreed to in writing. Any change in the closing  
45 date shall be agreed to in writing by both parties.  
46

47       Location of Closing:

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

**REAL PROPERTY PURCHASE AGREEMENT**  
**Fort Wayne City Utilities**

49  
50 Closing Fees:

51 All fees charged by the closing agent, including document preparation and recording fees shall be  
52 paid by the **City of Fort Wayne (City is the Buyer)**.  
53

54 **EARNEST MONEY**

55 The **City** as a policy does not pay earnest money.  
56

57 **METHOD OF PAYMENT**

58 The entire amount shall be paid in **cash**.  
59

60 Both parties agree that all funds delivered to the closing agent's escrow account shall be such that  
61 the closing agent shall be able to distribute all funds in accordance with I.C. 27-07-3.7-1 through 27-  
62 07-3.7-1-10, inclusive. Furthermore, all funds sent from one source, when the amount is **\$10,000.00**  
63 or greater, shall be sent in the form of an irrevocable wire transfer to the escrow account of the  
64 closing agent, and all funds under **\$10,000.00** from one source shall be guaranteed to be "Good  
65 Funds" as defined by the aforesaid Indiana Code.  
66

67 **POSSESSION**

68 Possession of the Property shall be given to the Buyer at closing. If the **Seller** does not grant  
69 possession by the date and time stated above, the **Seller** shall pay the **Buyer** the amount of **\$10 (Ten**  
70 **Dollars)** per day as liquidated damages until possession is delivered to the **Buyer**. The **Buyer** shall  
71 have all other legal remedies available for use against the **Seller**, to the extent allowed by law.  
72

73 **PROPERTY MAINTENANCE**

74 Lawn Mowing:

75 The **Seller** shall keep the lawn mowed so as to not violate tall grass/weed ordinances, and shall  
76 mow the grass within two (2) calendar days of possession by the **Buyer**, when the **Buyer** takes  
77 possession between April 1<sup>st</sup> and November 15<sup>th</sup>, subject to any drought conditions that may be  
78 present.  
79

80 Notice of Defective Conditions:

81 The **Seller** certifies that no governmental agency has served notice ordering the repair or  
82 correction of any defective conditions.  
83

84 The **Seller** shall maintain the Property in its present condition until the **Buyer** takes possession.  
85 The **Buyer** may inspect the Property prior to closing to determine whether there is compliance with  
86 this clause. The **Seller** shall remove all rubbish and personal property.  
87

88 **LOSS OR DAMAGE PRIOR TO CLOSING**

89 In the event the Property is damaged by fire, flooding, storm, vandalism, earthquake, or any other  
90 cause, prior to the closing, the parties to this Purchase Agreement shall proceed as follows:  
91

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

**REAL PROPERTY PURCHASE AGREEMENT**  
**Fort Wayne City Utilities**

99  
100 **BOUNDARY SURVEY**

101  
102 X The requirement for a survey is **waived**.

103  
104 **FLOOD HAZARD AREA**

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

107  
108 **OTHER USE LIMITATIONS**

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

112  
113 **INSPECTIONS**

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

117  
118 The **Buyer reserves its right** to conduct independent inspections. All inspections are at the  
119 **Buyer's** expense and shall be performed by licensed independent inspectors or qualified independent  
120 contractors that shall be chosen by the **Buyer**, and paid for their services by the **Buyer**.

121  
122 The **Seller** shall make arrangements so that all areas of the Property, including any buildings, are  
123 open and accessible for inspection.

124  
125 Inspections and Response Periods:

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

131  
132 If the Buyer does not respond in writing to Seller within the above time periods with regard to a  
133 problem revealed in a report, or timely request a reasonable extension of time in writing, then the  
134 Property shall be deemed to be acceptable. Should either party fail to respond to an inspection  
135 response from the other within five calendar days, or timely request a reasonable extension of time in  
136 writing, then that inspection response is deemed accepted. Making a timely written request for an  
137 extension of time does not constitute acceptance of an inspection response, whether or not the request  
138 is granted.

139  
140 In the event that Buyer reasonably believes that an inspection has revealed a defect with the  
141 Property, not disclosed by Seller prior to entering into this Purchase Agreement (and excluding  
142 routine maintenance and minor repair items), and the Seller fails to remedy the defect to the Buyer's  
143 reasonable satisfaction before closing, then Buyer may terminate this Purchase Agreement.  
144 Alternatively, Buyer may waive the right to have the defect cured prior to closing, or Buyer and Seller  
145 may agree to have the defect remedied following closing.

146  
147 (Under Indiana law, a "defect" means a condition that would have a significant adverse effect on  
148 the value of the Property, that would significantly impair the health or safety of future occupants of

## REAL PROPERTY PURCHASE AGREEMENT

### Fort Wayne City Utilities

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

151

#### 152 DISCLOSURES

153

154 The "Lead-Based Paint Certification and Acknowledgment" form is **Not Applicable**.

155

#### 156 TITLE WORK and DEED

157

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

164

#### 164 Title Insurance Fees:

165

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

168

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

171

#### 171 Type of Deed:

172

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

174

#### 175 REAL PROPERTY TAXES

176

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

181

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

184

#### 185 PRORATIONS for PUBLIC UTILITIES and SPECIAL ASSESSMENTS

186

#### 186 Utilities and Garbage Services:

187

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

189

#### 190 Shutting Off Utilities for Buildings to be Demolished:

191

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

193

#### 194 Special Assessments for Public Improvements:

195

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

198

**REAL PROPERTY PURCHASE AGREEMENT**  
**Fort Wayne City Utilities**

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 # NONE.

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

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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.

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.

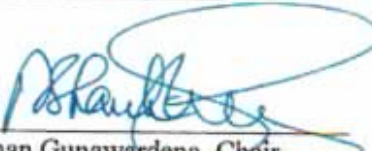
**SELLER APPROVAL and SIGNATURE(S):**


This Purchase Agreement is X **ACCEPTED**      **REJECTED**.

245	<u>Raymond F Dever Jr</u>	<u>RAYMOND F DEVER JR</u>	Date: <u>06/14/2021</u>
246	Signature	Raymond F. Dever, Jr.	
247	<u>Betty J Dever</u>	<u>Betty J Dever</u>	Date: <u>6/14/2021</u>
248	Signature	Betty J. Dever	
249			

**BOARD OF PUBLIC WORKS**

Date: 6.22.2021

BY:   
Shan Gunawardena, Chair

BY:   
Kumar Menon, Member

BY:   
Chris Guerrero, Member

ATTEST:   
Michelle Fulk-Vondran, Clerk

**REPORT OF COMMITTEE ON CITY UTILITIES**

**July 13, 2021**

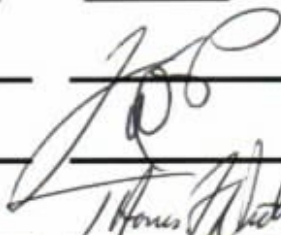


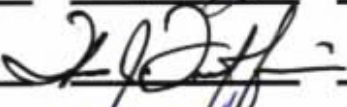
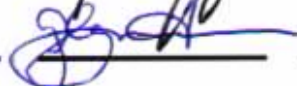
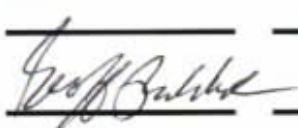

***Michelle Chambers Chair***

***Thomas Didier Co-Chair***

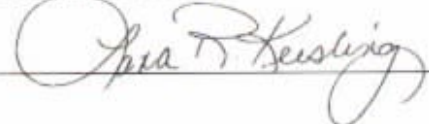
***All Council Members***

A Resolution approving a purchase agreement for the acquisition of undeveloped real property at 1334 Spy Run Avenue, Fort Wayne, Indiana, for the City of Fort Wayne, Indiana - *Involving a total cost of \$6,500.00*

**COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance**

<u>COUNCIL MEMBER</u>	<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>
ARP			
CHAMBERS			
DIDIER			
ENSLEY			
FREISTROFFER			
HINES			
JEHL			
PADDOCK			
TUCKER			

**LANA R. KEESLING  
CITY CLERK**



Public Hearing Date: N/A

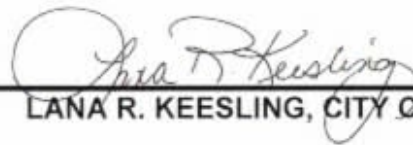
Read the first time in full and on motion by Councilperson Didier.

Read the second time by title and referred to the City Utilities Committee.

Read the third time in full and on motion by Councilperson Chambers, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CHAMBERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TUCKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: July 27, 2021



LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

Resolution No. R-21-07-01 on the 27th day of July, 2021

ATTEST:

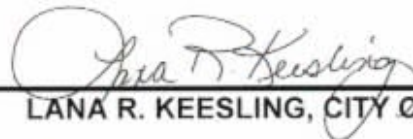


LANA R. KEESLING  
CITY CLERK



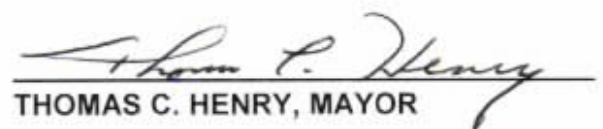
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th of July 2021, at the hour of 10:15 o'clock A.M. E.S.T.



LANA R. KEESLING, CITY CLERK

Approved and signed by me this 29<sup>TH</sup> day of JULY 2021, at the hour of 9:00 o'clock AM E.S.T.



THOMAS C. HENRY, MAYOR

