

1 **BILL NO. R-23-03-25**

2 **RESOLUTION NO. R-26-23**

3 **A RESOLUTION APPROVING A PURCHASE**
4 **AGREEMENT FOR THE ACQUISITION OF PART**
5 **OF THAT CERTAIN REAL PROPERTY**
6 **LOCATED AT 5200 OLD MILL ROAD, IN FORT**
7 **FORT WAYNE, INDIANA, FOR THE CITY OF**
8 **FORT WAYNE, INDIANA (Approved and**
9 **Executed by the Board of Public Works on**
10 **March 21, 2023).**

11 **WHEREAS**, the City of Fort Wayne, by and through its Division of
12 City Utilities ("CU"), wishes to acquire a part of that certain real property located at
13 5200 Old Mill Road, in the City of Fort Wayne, Indiana, (the "Real Estate"), for a
14 storm and sanitary improvement project in the area around Foster Park and the
15 Woodhurst neighborhood; and

16 **WHEREAS**, the owner of the Real Estate is Achduth Vesholom
17 Congregation (the "Seller").

18 **WHEREAS**, the City of Fort Wayne, by and through its Board of
19 Public Works, approved and executed a purchase agreement to acquire the Real
20 Estate in the regularly-held meeting of the Board of Public Works on March 21,
21 2023; and

22 **WHEREAS**, the purchase price for the Real Estate is Eleven
23 Thousand Nine Hundred Fifty and 00/100 Dollars (\$11,950.00) (the "Purchase
24 Price"); and

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

28 **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON**
29 **COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**
30

REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities

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

4 CONTACT INFORMATION and LOCATION OF PROPERTY

5 Owner(s) Name(s): Achduth Vesholom Congregation ("Seller")

6 Primary Telephone: (260) 744-4245

7 E-mail: cavadmin@templecav.org

8
9
10 Property/Mailing Address: 5200 Old Mill Road, Fort Wayne, Indiana 46807

11
12 Latest Deed of Record: Deed Book: 505, pages 326-327

13
14 Tax ID Number: 02-12-22-430-001.000-074

15
16 Land area of total parcel: 9.64 acres (inclusive of south ½ of unimproved Roxbury Dr R/W)

17
18 Land area of part being purchased: 0.305 acres, identified as "Tract 1" on attached lot split plat
19 boundary survey.

20 PURCHASE PRICE

21 The City agrees to pay to the Seller the total purchase amount of \$11,950.00 (Eleven Thousand,
22 Nine Hundred and Fifty Dollars and Zero Cents) for the Property which includes part of the
23 parcel of land. There are not any accessory buildings.

24
25
26 NOTE: The Seller certifies that no substantial changes have occurred to the Property to reduce the
27 value determined by the appraisals, as of the effective date of this Purchase Agreement.

28 EXPIRATION OF OFFER

29 This Purchase Agreement shall be returned to the City no later than 12 noon, on February 24,
30 2023, otherwise this Purchase Agreement shall be null and void and both parties shall be released
31 from the transaction.

32 APPROVALS BY BOARD OF PUBLIC WORKS and COMMON COUNCIL

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

37 CLOSING

38 Closing Date:

39 The closing date for this transaction shall be on or before April 28, 2023, or this Agreement shall
40 terminate unless an extension of time is mutually agreed to in writing. Any change in the closing date
41 shall be agreed to in writing by both parties.

42 Location of Closing:

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

REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities

Closing Fees:

All fees charged by the closing agent, including document preparation and recording fees, shall be paid by the Buyer.

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 \$100.00 (One Hundred Dollars and Zero Cents) 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.

REAL PROPERTY PURCHASE AGREEMENT

Fort Wayne City Utilities

99 BOUNDARY SURVEY

100 Buyer has obtained a boundary survey performed in accordance with I.A.C. Title 865, Rule 12,
101 for which the corner markers of the Property are established and marked, and which is reasonably
102 satisfactory to the Buyer and the Seller.

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 ten calendar days to respond to Seller in writing with regard to any such inspection,
129 following which Buyer shall have ten calendar days to request, obtain, and respond to Seller in
130 writing 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

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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.

163

164 Title Insurance Fees:

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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**.

167

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

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171 Type of Deed:

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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

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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.

180

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

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185 PRORATIONS for PUBLIC UTILITIES and SPECIAL ASSESSMENTS

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186 Utilities and Garbage Services:

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

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190 Shutting Off Utilities for Buildings to be Demolished:

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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:

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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

249 **BUYER:**

250

251 **BOARD OF PUBLIC WORKS**

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253 Date: _____

254

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256 BY: _____

257 Shan Gunawardena, Chair

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259

260 BY: _____

261 Kumar Menon, Member

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263

264 BY: _____

265 Chris Guerrero, Member

266

267

268 ATTEST: _____

269 Michelle Fulk-Vondran, Clerk

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described in Document No. 20543 Deed Book 505, page 326-7 within the Southeast Quarter of Section 22 and the Southwest Quarter of Section 23, Township 30 North, Range 12 East of the Second Principal Meridian in Wayne Township, Allen County, Indiana, and being depicted as Tract 2 on the Plat, more particularly described as follows:

Beginning at a 5/8 inch rebar with a cap stamped "Abonmarche Firm #0050" and being the northeast corner of the grantor's tract lying on the west right-of-way of Old Mill Road and designated as 301 in said Plat; thence along grantor's north line and the centerline of vacated Roxbury Drive, South 88 degrees 12 minutes 42 seconds West, (bearings based upon the Indiana State Plane Coordinate System, East Zone, NAD 83(2011)) a distance of 260 feet, to a point on the extended east right-of-way of Southwood Avenue and designated as 210 in said Plat; thence south along grantor's line and said extended right-of-way, South 01 degree 32 minutes 28 seconds East, a distance of 30 feet to a point designated as 207 in said Plat; thence west along grantor's north line and said right-of-way, South 88 degrees 12 minutes 42 seconds West, a distance of 233 feet to a 5/8" iron pin set with a cap stamped "A&Z ENG LLC FIRM #0115" and being the northeast corner of Tract 1 and designated as 201 in said Plat; thence South 01 degrees 32 minutes 19 seconds East, a distance of 97 feet to a 5/8" iron pin set with a cap stamped "A&Z ENG LLC FIRM #0115" and designated as 203 in said Plat; thence South 88 degrees 12 minutes 42 seconds West, a distance of 137 feet to a 5/8" iron pin set with a cap stamped "A&Z ENG LLC FIRM #0115" and lying on the west line of the grantor's land and designated as 206 in said Plat; thence along grantor's west line, S 01 degree 32 minutes 28 seconds East, a distance of 537.60 feet to a point being the southwest corner of the grantor's land and designated as 209 in said Plat; thence along grantor's south line, North 88 degrees 35 minutes 04 seconds East, a distance of 630 feet to the southeast corner of the grantor's land, lying on the west right-of-way of Old Mill Road and designated as 213 in said Plat; thence along grantor's east line and west right-of-way of Old Mill Road, North 01 degrees 32 minutes 28 seconds West, a distance of 668.70 feet to the POINT OF BEGINNING of this Tract described herein and containing 9.08 acres (395,599.72 S.F.), more or less.

An Administrative code, the following opinion is given as a result of:

the following inconsistencies in the lines of

the parcel as a result of:

A)

and plats; C) inconsistencies in the lines of

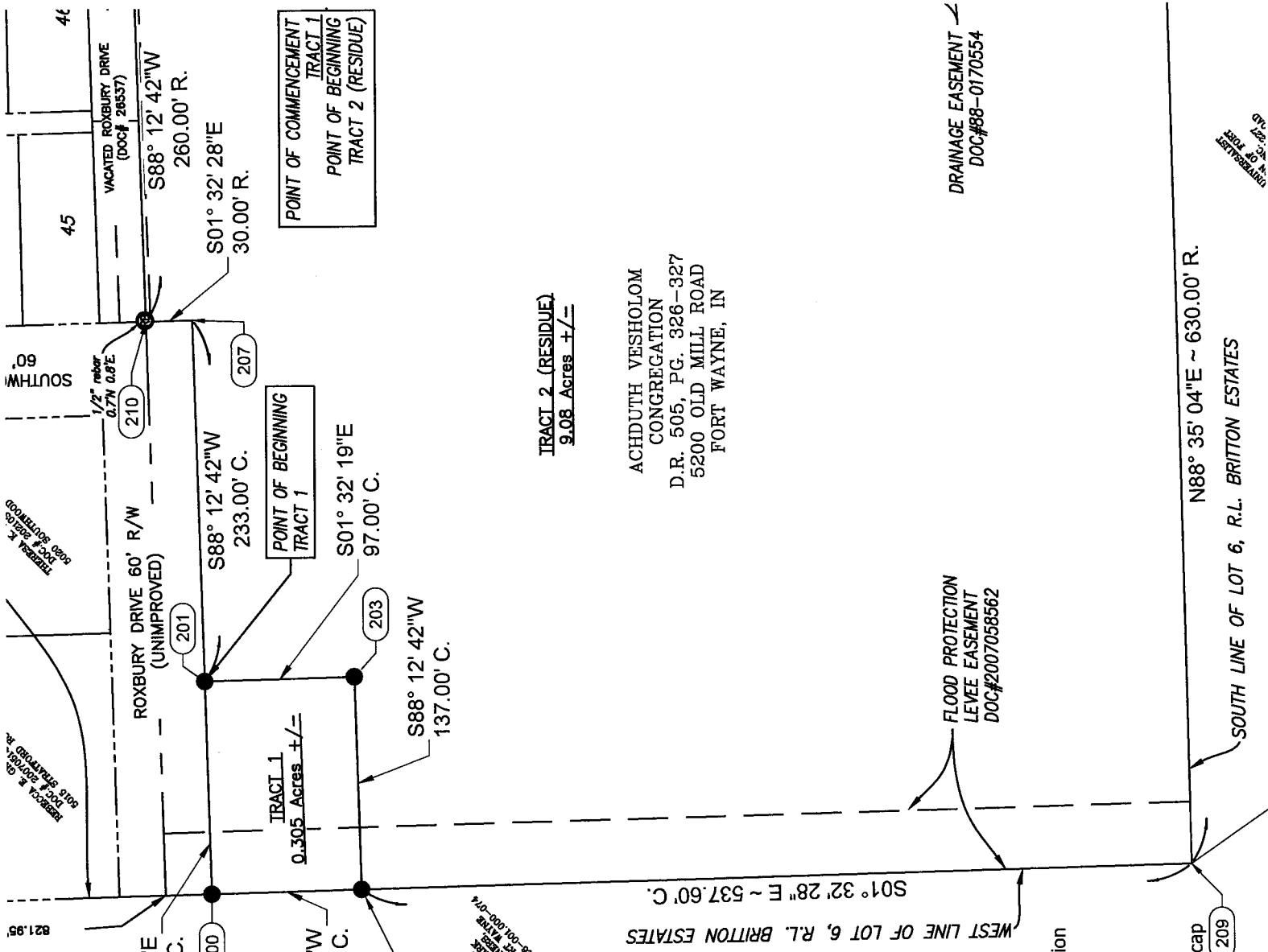
the parcel as a result of:

the parcel as a result of:

(2011)

lines.

the following inconsistencies in the lines of



TRACT 2 (RESIDUE)
9.08 Acres +/-

ACHDUTH VESHLOM
CONGREGATION
D.R. 505, P.G. 326-327
5200 OLD MILL ROAD
FORT WAYNE, IN

DRAINAGE EASEMENT
DOC#88-0170554

FLOOD PROTECTION
LEVEE EASEMENT
DOC#2007058562

LEGEND

- C. = calculated dimension
- R. = record dimension
- S.F. = square feet
- Ac. = acres
- Ⓜ = rebar found
- Ⓟ = iron pipe found
- = rebar set w/ A&Z cap
- = Road R/W Line
- - - = Road Centerline

N88° 35' 04" E ~ 630.00' R.

SOUTH LINE OF LOT 6, R.L. BRITTON ESTATES

49
202
31
11
OF
PAGES
12/15/2011

Interoffice Memo

Date: March 22, 2023
To: Common Council Members
From: Seth Weinglass, Program Manager – Capital Project Services – Telephone: 427-1330
RE: **Purchase of Vacant Land From Achduth Vesholom Congregation**

Council Introduction Date: March 28, 2023 - Council District #: 5

Background & supporting information:

City Utilities is undertaking a storm and sanitary improvement project in the area around Foster Park and the Woodhurst neighborhood. The project will help with neighborhood drainage issues during wet weather and high river level events, as well as diverting combined sewer overflows to the Three Rivers Protection and Overflow Reduction Tunnel, in furtherance of the City's obligations under its Consent Decree and Long Term Control Plan. The project will necessitate constructing a new stormwater pump station, to improve flood protection behind the existing flood wall.

City Utilities has reached an agreement with Achduth Vesholom Congregation, to purchase a 0.305-acre area of vacant land that they own, on the present northwest corner of the site of their synagogue facility. The agreed-upon purchase price for this new lot is \$11,950, based on two independent appraisals of the land. The map attached to this memo shows the area of land that will be purchased.

Implications of not being approved:

If this land purchase is not approved, the project will need to be redesigned, causing delays to the flood and CSO relief that the project is intended to bring about, and necessitating the purchase of different properties, all at additional cost, as well as potential consequences for any noncompliance with the Consent Decree.

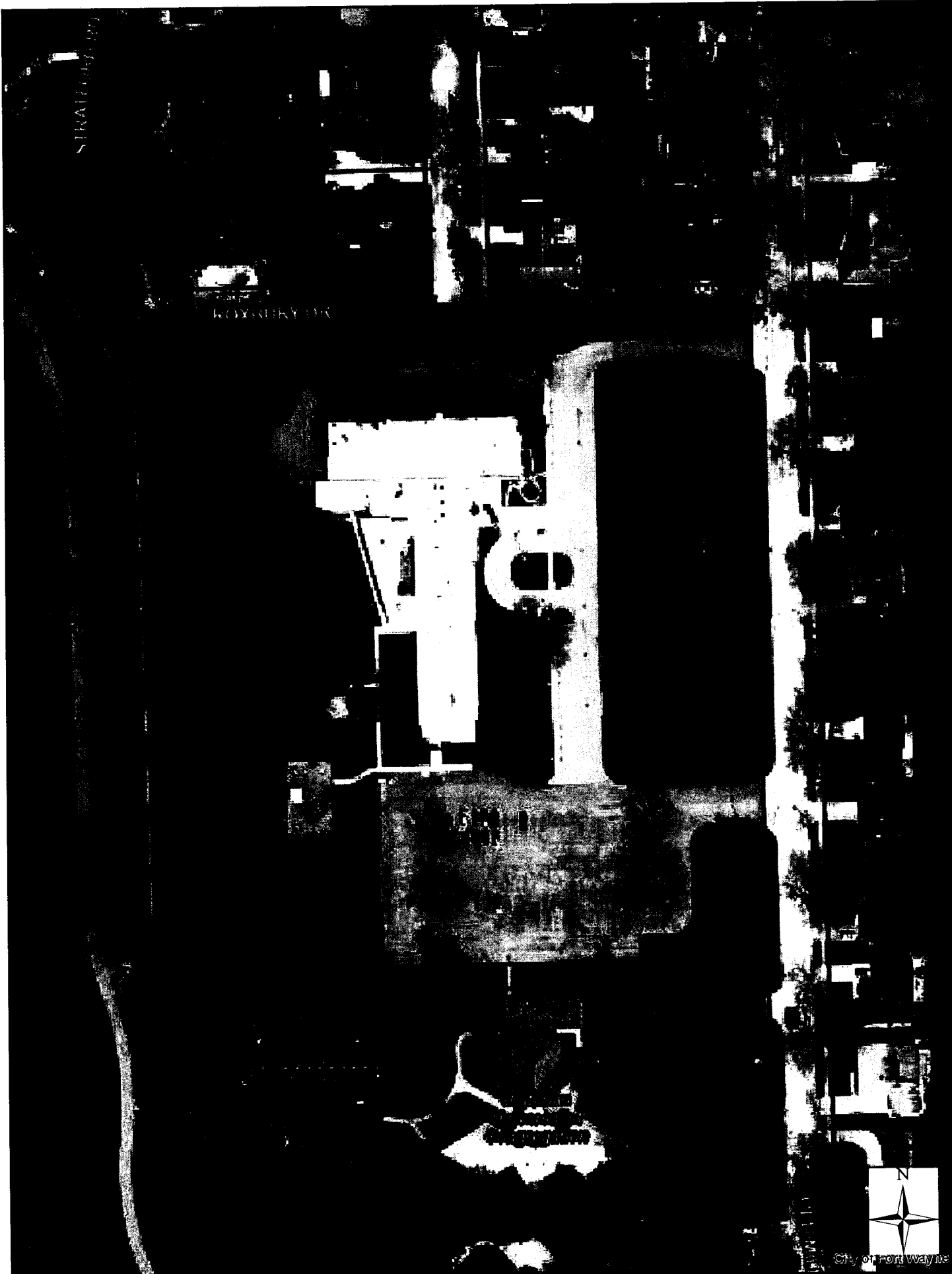
Justification if prior approval is being requested: Not applicable

Funding source: Storm Revenue

Attachments:

- Map
- Purchase Agreement approved by Board of Public Works on March 21, 2021

CC: Jill Helfrich
Matthew Wirtz
Chris Ravenscroft



STRATFORD

ROYALTY DR

WALKER



City of Fort Wayne

BILL NO. R-23-03-25

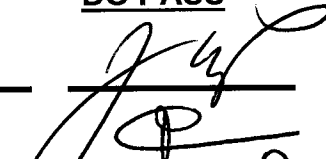
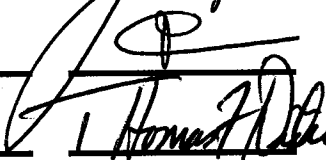
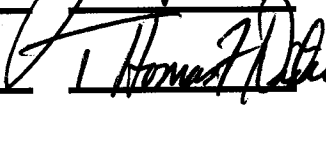
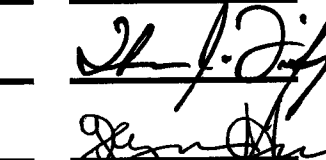
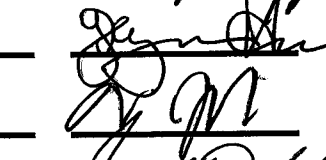
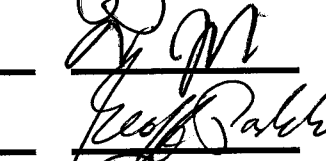
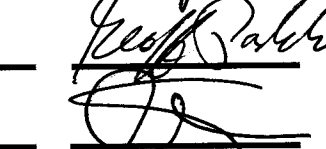

REPORT OF COMMITTEE ON CITY UTILITIES

April 11, 2023

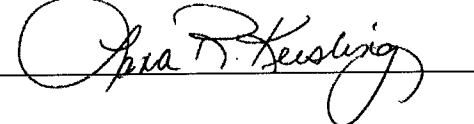
Paul Ensley Chair
Russ Jehl Co-Chair
All Council Members

A Resolution approving a purchase agreement for the acquisition of part of that certain real property located at 5200 Old Mill Road, in Fort Wayne, Indiana, for the City of Fort Wayne, Indiana

Purchase price of \$11,950.00 for 0.305 acres

<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 Ensley.

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

Read the third time in full and on motion by Councilperson Ensley, 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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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: April 11, 2023



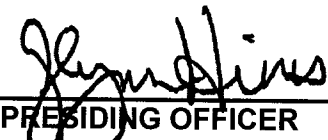
 LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as
 Special Ordinance No. R-23-03-25 on the 11th day of April, 2023

ATTEST:



 LANA R. KEESLING
 CITY CLERK



 PRESIDING OFFICER


Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th
 of April 2023, at the hour of 11:05 o'clock A.M. E.S.T.



 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 13TH day of APR 12 2023, at the
 hour of 11:00 o'clock AM E.S.T.

FORT WAYNE, INDIANA
RECEIVED
 APR 13 2023
 LANA R. KEESLING
 CITY CLERK



 THOMAS C. HENRY, MAYOR