

TO: Mayor and City Council

FROM: Gary Holm

DATE: January 21, 2021

RE: Ordinance 21-11
Approving Purchase of Real Property
Permanent Index Numbers: 12-18-100-012; 12-18-100-013; 12-18-100-023 (PU)

The City of Batavia owns and operates a potable water treatment plant on W. Fabyan Parkway in unincorporated Kane County. The plant is located on the south side of Fabyan, west of Wenmoth Rd. The plant was originally constructed in the 1990's and last underwent major improvements in 2007. The plant is scheduled to undergo further upgrades and expansion later this year. It is anticipated that the City will continue to operate the plant for decades into the future.

The City's water utility is overseen and regulated by the Illinois Environmental Protection Agency (IEPA). IEPA has the authority to revise water treatment processes or implement new processes at any time (following Federal regulations).

The water treatment plant sits on property that was originally included as part of the Mill Creek subdivision. There is very limited vacant space on the property for expansion or alteration of our current facilities to accommodate new or revised treatment processes that may be implemented by the IEPA in future years.

The subject parcels are located to the north of and immediately adjacent to the water treatment plant site. Acquisition of the parcels would give the City's water utility the ability to alter or expand the treatment plant if needed in the future.

The water utility currently owns a parcel of property on W. Main Street. The Main St. parcel was originally purchased with the intent that it could serve as the site of a remote treatment plant. Acquisition of the subject parcels would render the Main St. parcel obsolete and it could be declared surplus and sold for development.

Staff is recommending passage of Ordinance 21-11 approving purchase of real property comprised of approximately 6.6 Acres; Identified by permanent index numbers of 12-18-100-012, 12-18-100-013 and 12-18-100-023 in Kane County, Illinois.

**CITY OF BATAVIA, ILLINOIS
ORDINANCE 21-11**

**ORDINANCE APPROVING PURCHASE OF REAL PROPERTY COMPRISED OF
APPROXIMATELY 6.6 ACRES; IDENTIFIED BY PERMANENT INDEX NUMBERS OF
12-18-100-012, 12-18-100-013 AND 12-18-100-023 IN KANE COUNTY, ILLINOIS**

**ADOPTED BY THE
MAYOR AND CITY COUNCIL
1ST DAY OF FEBRUARY, 2021**

Published in pamphlet form
by authority of the Mayor
and City Council of the City of Batavia,
Kane & DuPage Counties, Illinois,
This ____ day of _____, 2021

Prepared by:
Kevin G. Drendel
City of Batavia
100 N. Island Ave.
Batavia, IL 60510

**CITY OF BATAVIA, ILLINOIS
ORDINANCE 21-11**

**ORDINANCE APPROVING PURCHASE OF REAL PROPERTY COMPRISED OF
APPROXIMATELY 6.6 ACRES; IDENTIFIED BY PERMANENT INDEX NUMBERS OF
12-18-100-012, 12-18-100-013 AND 12-18-100-023 IN KANE COUNTY, ILLINOIS**

WHEREAS, the property comprised of approximately 6.6 acres and identified by permanent index numbers of 12-18-100-012, 12-18-100-013 and 12-18-100-023 is located north of and immediately adjacent to the City's potable water treatment plant on Fabyan Parkway; and,

WHEREAS, the City intends to continue operating its water treatment plant into the foreseeable future; and,

WHEREAS, the City's water treatment plant is subject to oversight and regulation by the Illinois Environmental Protection agency and said Agency has the authority to require the City to modify its water treatment processes, or implement new processes, to meet any revised or new regulations; and

WHEREAS, the City's water treatment plant currently occupies a majority of the buildable area of the parcel upon which it is sited and there is minimal opportunity for expansion of the plant to accommodate revised or new treatment processes; and

WHEREAS, the City has determined that it is in its best interest to acquire additional real property immediately adjacent to the water treatment plant site so that any potential future expansion needs can be met; and

NOW THEREFORE, BE IT HEREBY ORDAINED by the Mayor and City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

SECTION 1. The recitals set forth above are incorporated herein as the material findings of the Mayor and City Council.

SECTION 2. The Contract attached hereto and incorporated herein by reference to purchase the Property for the value stated therein is hereby approved, and the City staff and City Attorney are hereby authorized and directed to take whatever actions are necessary and appropriate to close on the transaction of the purchase of the Property to cause the City to take title to and possession of the Property.

SECTION 3. This Ordinance shall be in full force and effect upon its presentation, passage and publication according to law.

CITY OF BATAVIA, ILLINOIS ORDINANCE 21-11

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this 1st day of February, 2021.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 1st day of February, 2021.

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Baerren				
2	Callahan					Wolff				
3	Meitzler					Chanzit				
4	Malay					Knopp				
5	Uher					Beck				
6	Cerone					Russotto				
7	McFadden					Miller				
Mayor Schielke										
VOTE: ___ Ayes ___ Nays ___ Absent ___ Abstentions Total holding office: Mayor and 14 aldermen										

ATTEST:

Ellen Posledni, City Clerk

REAL ESTATE CONTRACT

1. THE PARTIES:

Buyer(s) The City of Batavia

Address 100 North Island Avenue Batavia, IL 60510

Seller(s) Kent Shodeen c/o State Bank of Geneva Trust # 859

Address _____

Buyer and Seller are hereinafter collectively referred to as the "Parties".

2. THE REAL ESTATE: For the purposes of this Contract, Real Estate shall be defined to include the real property and all improvements thereon. Seller agrees to convey to Buyer or to Buyer's designated grantee, the Real Estate comprised of approximately 6.60 acres; identified by permanent index numbers of 12-18-100-012, 12-18-100-013 & 12-18-100-023; commonly known as open space parcels on Fabyan Road, Batavia, IL and legally described as follows: (Permission to attach hereto at any time hereafter).

~~**3. FIXTURES AND PERSONAL PROPERTY:** Seller agrees to transfer to Buyer by a Bill of Sale, all heating, central cooling, ventilating, electrical, lighting and plumbing systems, fixtures and equipment together with the following, if any; storm windows, storm doors and screens, if any; draper rods, curtain rods, if any; fencing, if any; attached outside antenna, if any; water softener (except rental units), if any; all planted vegetation; ceiling fans, if any; automatic garage door system and all related remote hand held units, if any; and specifically including the following items of personal property now on the premises;~~

~~All of the Fixtures and Personal Property stated herein above are owned by Seller and to Seller's best knowledge are in operating condition on Date of Contract, unless otherwise stated herein.~~

4. PURCHASE PRICE of \$125,000 shall be paid, as adjusted by prorations, at the closing by certified or cashier's check or check from the title company.

5. CONTINGENCIES: This Contract is contingent upon the formal approval by the Batavia City Council. Buyer shall have the right to perform any due diligence the Buyer deems appropriate, and Buyer shall have the right terminate the Contract for any reason or no reason at all. Buyer Shall provide Seller a copy of the fully unredacted appraisal obtained by the Buyer.

6. CLOSING shall be within thirty (30) from the date Buyer provides notice that it is satisfied with the due diligence and ready to close, but in no event later than January 29, 2021, at Chicago Title Company in Geneva or Seller's attorney's office in Batavia or as otherwise agreed. Possession shall be tendered at time of closing. **THE CLOSING AND POSSESSION DATE IS LEGALLY SIGNIFICANT TO BUYER AND SELLER. THE PARTIES UNDERSTAND THAT WHEN THIS CONTRACT IS SIGNED BY BOTH BUYER AND SELLER THE CLOSING AND POSSESSION DATE MAY ONLY BE CHANGED BY MUTUAL AGREEMENT OF PARTIES.**

7. REAL ESTATE BROKER'S COMMISSION: Each party represents and warrants to the other party that real estate brokers have been involved in the sale of the property and no real estate brokers are entitled to a fee or

commission in relation to the sale of the property, and each party shall indemnify and hold harmless the other party from and against any claims for a broker's commission or fee.

ADDITIONAL CONDITIONS

8. PLAT OF SURVEY: Prior to closing, Buyer may obtain, at Buyer's expense, a Plat of Survey prior to the date of closing.

9. NOTICE: All notices required pursuant to this Contract shall be in writing and signed by Seller or Buyer or their attorney or agent and shall be given by; (a) certified or registered mail, return receipt requested, and sent to the Parties at the addresses recited herein, which notice shall be effective on the date of post mark in the U.S. Mail or (b) personally served on the Seller or Buyer, and a receipt obtained with the date and time of service, which notice shall be effective upon the date of receipt, or (c) transmission of notice between the parties and/or their attorneys via facsimile or email shall be sufficient, provided that the notice transmitted shall be sent on ordinary business days (Monday through Friday, excluding weekends and legal holidays), during ordinary business hours (9:00 a.m. to 5:00 p.m.) and the original of the document transmitted via facsimile or email shall be sent contemporaneously to the receiving party, postage prepaid first class mail or (d) personal service upon Seller or Buyer, in accordance with the Civil Practice Act of the State of Illinois. Notice to any one of a multiple person party shall be sufficient notice to all. **THE FAILURE OF ANY PARTY TO PROVIDE THEIR ADDRESS HEREIN SHALL BE DEEMED A WAIVER OF THE RIGHT TO RECEIVE NOTICE.**

10. THE DEED. Seller shall convey or cause to be conveyed to Buyer by a recordable Special Warranty Deed or Trustee's Deed, if the Real Estate is in a land trust, conveying good, marketable and merchantable title to the Real Estate and subject only to the following permitted exceptions described herein, if any, (none of which shall impair the use of the Real Estate as a residence): (a) general Real Estate taxes accrued, but not yet payable at the time of closing, (b) special assessments confirmed after this Contract date, (c) building set-back lines and use or occupancy restrictions, (d) covenants, conditions and restrictions of record provided they are not violated nor contain a reverter or the right of re-entry, (e) zoning laws and ordinances, (f) easements for public utilities, provided they do not underlie existing improvements except fences and portable sheds, (g) drainage ditches, feeders, laterals and drain tile, pipe or other conduit; and (h) the property shall be limited to public use, with twenty-five foot (25') building setback lines on all sides, a limitation of forty feet (40') in height for all buildings, unless necessary to allow water to be provided to the Mill Creek development, and the exterior building materials shall be consistent with the predominant building materials on the site.

11. TITLE. Prior to closing, Buyer may obtain at Buyer's expense, a Commitment for Title Insurance issued by a title insurance company licensed to do business in the State of Illinois, to issue an owner's title insurance policy of Buyer's determination, including at a minimum coverage over Schedule B General Exceptions in the amount of the purchase price covering the date hereof, subject only to the following (a) permitted exceptions as set forth in Paragraph No. 10, (b) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount, which may be removed by the payment of money at the time of closing (an amount sufficient to secure the release of such title exceptions shall be deducted from the proceeds of sale due Seller at closing, if necessary), and (c) acts done or suffered by or judgments against Buyer, or those claiming by, through or under Buyer. If the title commitment discloses unpermitted exceptions, or if the Plat of Survey shows any encroachments which are not acceptable to Buyer, then Seller shall have thirty (30) days from the date of delivery thereof to have said exceptions removed, or to have the title insurer commit

to insure against loss or damage that may be caused by such exceptions or encroachments and the closing date shall be delayed, if necessary, to allow time to have said exceptions waived. If Seller fails to have unpermitted exceptions waived, or in the alternative, to obtain a commitment for insurance as specified above as to such exceptions, within the specified time, Buyer may terminate the Contract between Parties, or may elect, upon notice to Seller within ten (10) days after the expiration of the 30 day period, to take the title as it then is, with the right to deduct from the purchase price prior encumbrances of a definite or ascertainable amount. If Buyer does not elect to accept the Real Estate as provided above, THIS CONTRACT SHALL TERMINATE AND BE OF NO FURTHER FORCE AND EFFECT, AND THE EARNEST MONEY SHALL BE REFUNDED TO BUYER.

12. AFFIDAVIT OF TITLE: Seller shall furnish Buyer at closing an Affidavit of Title covering the date of closing, subject only to those permitted exceptions set forth in Paragraph No. 10, and unpermitted exceptions, if any, as to which the title insurer commits to extend insurance in a manner specified in paragraph No. 11. In the event that this Contract calls for title to be conveyed by a Land Trustee's Deed, the Affidavit of Title required to be furnished by Seller shall be signed by either the trustee or the beneficiaries of said Trust.

13. PRORATIONS: The general Real Estate taxes shall be prorated (**at 105%**) as of the date of closing on the basis of the tax assessor's latest assessment, multiplied by the latest known tax rate, and latest known equalization factors. Proratable items shall include, without limitation: premiums for insurance policies or accrued interest on any mortgage assumed. All prorations shall be prorated as of the date of closing and shall be final unless otherwise agreed in writing between Seller and Buyer.

14. INTERNAL REVENUE CODE REQUIREMENTS: Parties agree to furnish, execute and deliver all documentation and information to comply with the reporting requirements of Section 6045(e) and Section 1445 of the Internal Revenue Code.

15. PERFORMANCE AND DEFAULT: Time is of the essence in this Contract. If Buyer fails to perform in accordance with this Contract, then at the option of Seller, and upon the written notice to Buyer, the earnest money shall be forfeited by Buyer as liquidated damages and this Contract shall thereupon terminate, or Seller may refuse to accept the earnest money as liquidated damages, and pursue any and all legal remedies that may be available in law and equity against Buyer. If Seller fails to perform in accordance with this Contract, then the earnest money shall be refunded to Buyer and Buyer may pursue any and all legal remedies against Seller that are available in law and equity. In addition, the non-prevailing Party shall pay all reasonable attorney fees and costs incurred by the prevailing Party in enforcing the terms and provisions of this Contract, including forfeiture or specific performance or any other remedy, or in defending any proceeding to which Buyer or Seller is made a party as a result of any act or omission of the other Party.

16. DAMAGE OF REAL ESTATE PRIOR TO CLOSING: If prior to delivery of the deed hereunder, the Real Estate shall be destroyed or materially damaged by fire or other casualty, or the Real Estate is taken by condemnation, then Buyer shall have the option of terminating this Contract and receiving a refund of earnest money or of accepting the Real Estate as damaged or destroyed, together with the proceeds of any insurance payable as a result of the destruction or damage, which proceeds Seller agrees to assign to Buyer. In no event shall Seller be obligated to repair or replace damaged improvements. The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Contract, except as modified in this paragraph.

17. SELLER REPRESENTATIONS: Seller, or its beneficiaries, or agents, warrant that no notice has been received from any state or local governmental authority of any zoning, building, fire or health code violations, or of any pending rezoning, or of any special assessment proceedings affecting the Real Estate. All Fixtures and Personal Property to be conveyed with the Real Estate, and which are identified in Paragraph No. 3, shall be in operating condition on the day and time of closing, except as otherwise provided elsewhere in this contract.

18. CONDITION OF REAL ESTATE AND INSPECTION. Seller agrees to leave the Real Estate in broom clean condition. All refuse and Personal Property which is not being conveyed to Buyer shall be removed from the Real Estate at Seller's expense before the date of possession. Seller agrees to deliver possession of the Real Estate and transfer the items of Fixtures and Personal Property, which are identified in Paragraph No. 3 of this Contract to Buyer in substantially the same condition as it was on the date of this Contract, with normal or ordinary wear and tear excepted. Buyer shall be permitted a reasonable inspection of the Real Estate, Fixtures and Personal Property prior to closing. Buyer is requested to make a preliminary inspection at least 10 days prior to closing and thereafter promptly to serve written notice upon Seller of any substantial change in the condition of the Real Estate, Fixtures or Personal Property since the date of this contract as hereinabove provided and Seller shall remedy same, at Seller's expense before the closing. A final inspection of the Real Estate, Fixtures and Personal Property shall be made, if requested, at any time prior to the day and time of closing. Nothing contained in this paragraph shall be construed to mean that the Real Estate, Fixtures and Personal Property shall remain in good repair after the date of closing. **IN THE ABSENCE OF WRITTEN NOTICE OF ANY DEFICIENCY FROM BUYER PRIOR TO CLOSING, IT SHALL BE CONCLUDED THAT THE CONDITION OF THE REAL ESTATE, FIXTURES AND PERSONAL PROPERTY IS SATISFACTORY TO BUYER; AND SELLER SHALL HAVE NO FURTHER RESPONSIBILITY WITH REFERENCE THERETO AFTER THE CLOSING.**

19. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974: The Buyer and Seller will comply with the Real Estate Settlement Procedures Act of 1974, as amended, and will furnish all information required for compliance therewith.

20. ESCROW CLOSING: At the election of Parties, not less than 5 days prior to the closing, this sale shall be closed through an escrow with the lending institution or the title company in accordance with the provisions of the usual form of Deed and Money Escrow Agreement as agreed upon between Parties, with provisions inserted in the Escrow Agreement as may be required to conform with this Contract. Upon the creation of such an escrow, anything herein to the contrary notwithstanding, the payment of the purchase price and delivery of deed and other documents required to be delivered by this Contract, shall be made through the escrow, provided that Buyer shall, in addition, deposit in the escrow, a Quit Claim Deed to Seller reconveying the subject Real Estate. The cost of the escrow shall be paid by the party requesting the escrow.

21. FLOOD PLAIN: Buyer shall obtain flood insurance if the Real Estate is located within a designated flood plain as determined by the Flood Plain Maps of the Department of Housing and Urban Development, and if said insurance is required by the Buyer's lender.

22. COSTS & ATTORNEYS FEES. Buyer shall be solely responsible to pay for the fees of its own attorney to prepare the Contract, the cost of a survey, title costs, all closing costs, including the escrow closing fee (if any), all recording fees and transfer fees, costs associated any due diligence, including environmental assessments, zoning, consulting, and county application costs, provided that Buyer shall not be responsible Seller's legal fees to Seller's attorney.

23. DATE OF THE CONTRACT AND SIGNATURES: The date of the Contract shall be deemed to be the date of acceptance. Facsimile signatures shall be sufficient for purposes of executing, negotiating and finalizing this Contract.

THE PRINTED MATTER OF THIS CONTRACT HAS BEEN PREPARED BY THE FOX VALLEY ASSOCIATION OF REALTORS AND THE TRI-CITY ATTORNEYS COMMITTEE OF THE KANE COUNTY BAR ASSOCIATION. THIS FORM IS APPROPRIATE IN MANY BUT NOT ALL

CIRCUMSTANCES, THEREFORE YOU MAY WISH TO CONSULT AN ATTORNEY BEFORE SIGNING. THIS IS A LEGALLY BINDING CONTRACT WHEN SIGNED BY THE PARTIES.

Date of Offer _____

Date of Acceptance 1-9-21

Buyer _____

Seller: Willie Felt

Federal Tax I.D. # _____

Federal Tax I.D. # _____

Attorneys for the respective Parties will be:

Buyer's Attorney:

Seller's Attorney:

Kevin G. Drendel
DRENDEL & JANSONS LAW GROUP

111 Flinn Street
Batavia, IL 60510-6808

PH: _____

PH: (630) 406-5440

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