

ORDINANCE NO. 104-02

By: John B. Rohyans

*and*  
*appropriate*

An Ordinance to approve, and ratify the execution of, a contract on behalf of the City for the purchase of approximately 1.7 acres of undeveloped real property within the City (more particularly described as Lot 55, Plat Book 14, Page 28), to ~~transfer \$100,000.00 from the Budget Stability Fund to the unencumbered General Fund, with the intention of repaying said transfer from future revenue on or before December 31, 2006, and to appropriate said amount from the unencumbered General Fund to pay the purchase price of the property and related acquisition costs.~~

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:**

**Section 1.** That the contract for the purchase of approximately 1.7 acres of undeveloped real property within the City (more particularly described as Lot 55, Plat Book 14, Page 28), in the form attached to this Ordinance as Exhibit A, is hereby approved and that the execution of the contract by the Mayor and Auditor is hereby ratified by and on behalf of the City.

**Section 2.** That \$100,000.00 is hereby ~~transferred from the Budget Stability Fund to the unencumbered General Fund, with the intention of repaying said transfer from future revenue on or before December 31, 2006, and that said amount is hereby appropriated from the Unencumbered General Fund~~ <sup>*appropriated*</sup> for the purpose of paying the purchase price and related acquisition expenses under the contract authorized by Section 1 above.

**Section 3.** That this Ordinance shall go into force and effect from and after the earliest period allowed by law.

Passed: \_\_\_\_\_, 2002

\_\_\_\_\_  
President of Council

Attest: \_\_\_\_\_  
Clerk of Council

*12/10/02 First reading*  
*12/17/02 Second reading*  
*1/14/03 Third reading Tabled*  
*4/8/03 Removed from table*  
*and withdrawn*  
*by unanimous consent*

Approved: \_\_\_\_\_, 2002

\_\_\_\_\_  
David H. Madison, Mayor



It is recommended that all parties  
 be represented by legal counsel and a Realtor®

Date 11/22, 2002

1. PROPERTY DESCRIPTION: the undersigned Buyer offers to purchase from the Seller ~~through Broker(s)~~, the following described real estate including, without limitation, all improvements, fixtures, appurtenant rights privileges, and easements located in the County of Franklin, and the State of Ohio known as:

See Exhibit "A" attached hereto and incorporated herein.

2. PRICE AND TERMS: The purchase price is One hundred thousand dollars  
 Dollars (\$ 100,000.00 ) payable as follows: Cash at closing

3. CONTINGENCIES:

Prior to Closing,

(a) Environmental Inspection: ~~(This paragraph 3(a) not applicable if number of days not inserted within xxxxxxxx days prior to the acceptance hereof. Seller agrees to permit the Buyer, Buyer's lender and the qualified, professional environmental consultant of either of them to enter the premises to conduct, at the expense of the Buyer, an environmental site assessment. Buyer agrees to indemnify and hold Seller harmless from any injury or damage caused by such inspection. If such assessment is obtained and the consultant recommends further inspection to determine the extent of suspected contamination or recommends remedial action, the Buyer, at Buyer's option, may notify the Seller in writing, within the above specified period, that the contract is null and void.~~

Prior to Closing, Seller agrees to permit

(b) Property Inspection: ~~(This paragraph 3(b) not applicable if number of days not inserted, Buyer, at Buyer's expense, shall have xxxxxxxx days after the acceptance hereof to have the property and all improvements, fixtures and equipment inspected. Seller shall cooperate in making the property reasonably available for such inspection(s). Buyer agrees to indemnify and hold Seller harmless from any injury or damage caused by such inspection(s). If Buyer is not, in good faith, satisfied with the condition of the property as disclosed by such inspection(s), Buyer may terminate this contract by delivering written notice of such termination to Seller, along with a written copy of such inspection report(s), within the time period specified above, such notice and report(s) shall specify the unsatisfactory conditions. Failure of Buyer to so deliver written notice and copy of inspection report(s) within such time period shall constitute a waiver of Buyer's right to terminate pursuant to this provision.~~

(c) Other Contingencies: See Exhibit "B", attached hereto and incorporated herein.

4. POSSESSION: Possession shall be given, subject to tenants' rights as tenants, upon closing.
5. RENTALS AND OTHER PRORATIONS AND SECURITY DEPOSITS: Rents and operating expenses shall be prorated and security deposits shall be transferred to Buyer, as of the date of closing.
6. FIXTURES AND EQUIPMENT: The consideration shall include all fixtures owned by Seller including, but not limited to: built-in appliances; heating, ventilating, air conditioning (HVAC) and humidifying equipment and their control apparatus; stationary tubs; pumps; water softening equipment; roof antennae; attached wall-to-wall carpeting and attached floor coverings, curtain rods and window coverings including draperies and curtains; attached mirrors; light, bathroom and lavatory fixtures; storm and screen doors and windows, awnings, blinds and window air conditioners, whether now in or on the premises or in storage; garage door openers and controls; attached fireplace equipment; security systems and controls; smoke alarms; satellite TV reception system and components; all exterior plants and trees; and the following: (None if left blank) \_\_\_\_\_
7. DAMAGE OR DESTRUCTION OF PROPERTY: Risk of physical loss to the real estate and improvements shall be borne by Seller until closing, provided that if any property covered by this contract shall be substantially damaged or destroyed before this transaction is closed, Buyer may (a) proceed with the transaction and be entitled to all insurance money, if any, payable to Seller under all policies covering the property, or (b) rescind the contract and thereby release all parties from liability hereunder by giving written notice to Seller and Broker within ten (10) days after Buyer has written notice of such damage or destruction. Failure by Buyer to so notify Seller and Broker shall constitute an election to proceed with the transaction.
8. CONDITION OF IMPROVEMENTS: Seller agrees that upon delivery of deed, the improvements constituting part of the real estate shall be in the same condition as they are on the date of this offer, reasonable wear and tear expected.
9. EVIDENCE OF TITLE: Seller shall furnish and pay for an owner's title insurance commitment and policy [ALTA Form B (1992 REV. 10-17-92)] in the amount of the purchase price. The title evidence shall be certified to within thirty (30) days prior to closing with endorsement not before 8:00 a. m. on the business day prior to the date of closing, all in accordance with the standards of the Columbus Bar Association, and shall show in Seller marketable title in fee simple free and clear of all liens and encumbrances except: (a) those created by or assumed by Buyer; (b) those specifically set forth in this contract; (c) zoning ordinances; (d) legal highway and (e) covenants, restrictions, conditions and easements of record that do not unreasonably interfere with present lawful use, (or Buyer's intended use which is a Public Service Facility). Buyer shall pay any additional costs incurred in connection with mortgage title insurance issued for the protection of Buyer's lender. If Buyer desires a survey, Buyer shall pay the cost thereof. If title to all or part of real estate is unmarketable, as determined by Ohio law with reference to the Ohio State Bar Association's Standards of Title Examination, or is subject to liens, encumbrances, easements, conditions, restrictions or encroachments other than those excepted in this contract, Seller shall, within thirty (30) days after a written notice thereof, remedy or remove any such defect, lien, encumbrance, easement, condition, restriction or encroachment or obtain title insurance without exception thereof. In the event Seller is unable to remedy to insure against the defect within the thirty (30) day period, the Buyer may declare this contract null and void. At closing, Seller shall sign an affidavit with respect to off-record title matters in accordance with the community custom.
10. CONVEYANCE AND CLOSING: At closing, Seller shall pay transfer taxes and deed preparation and shall convey, at closing, marketable title (as described in paragraph 9) to the real estate by deed of general warranty (or appropriate fiduciary deed if seller is a fiduciary) in fee simple, with release of dower, if any. The date of closing shall be: February 21, 2003

11. TAXES / ASSESSMENTS: At closing, Seller shall pay or credit on purchase price all delinquent taxes, including penalty and interest; and assessments that are a lien on the date of contract and all agricultural use tax recouplements for years prior to the year of closing. At closing, Seller shall also pay or credit on purchase price all other unpaid real estate taxes that are a lien for years prior to closing and a portion of such taxes and agricultural use tax recouplements for year of closing, prorated through date of closing and based on a 365-day year and, if undetermined, on most recent available tax rate and valuation, giving effect to applicable exemptions, recently voted millage, change in valuation, etc., whether or not certified. With regard to further assessments, Seller warrants that, as of the acceptance hereof, no improvements or services to the site or area have been installed or furnished that would result in the costs being assessed against the real estate, and no written notification has been received by Seller from public authority or owner's association of future improvements that would result in costs being assessed against the real estate. Real estate taxes and assessments are subject to retroactive change by governmental authority. The real estate taxes for the property for the current tax year may change as a result of the transfer or as a result of a change in the tax rate.

~~XX BUYER'S EXAMINATION: BUYER IS RELYING SOLELY UPON HIS OWN EXAMINATION OF THE REAL ESTATE AND INSPECTIONS HEREIN REQUIRED, IF ANY, FOR ITS PHYSICAL CONDITION, CHARACTER, AND SUITABILITY FOR BUYER'S INTENDED USE AND IS NOT RELYING UPON ANY REPRESENTATIONS BY THE BROKER(S), EXCEPT FOR THOSE MADE BY BROKER(S) DIRECTLY TO THE BUYER IN WRITING.~~

~~XX INDEMNITY: Seller agrees to defend, indemnify and hold harmless Broker(s), and their agents and employees for any cost or liability that may be incurred by or imposed on Broker(s) for any breach by Seller of any representation of warranty or for any misrepresentation or concealment of fact by Seller in connection with the property.~~

~~XX ENVIRONMENTAL DISCLAIMER BY BROKER: Buyer and Seller acknowledge that Broker(s) have made no independent investigation to determine whether hazardous materials exist in, on or about the property. Buyer and Seller understand that any such determination requires the expertise of a specialist in hazardous materials, the retaining of which is the responsibility of Buyer and/or Seller and not that of the Broker.~~

~~XX DEPOSIT: Buyer has deposited with the Broker the sum recited below, which shall be returned to Buyer, upon Buyer's request, if no contract shall have been entered into. Upon acceptance of this contract by both parties, Broker shall deposit such amount in its non-interest-bearing trust account to be disbursed, subject to collection by Broker's depository, as follows: (a) deposit shall be applied on purchase price or returned to Buyer when transaction is closed; (b) if Seller fails or refuses to perform, or any contingency is not satisfied or waived, the deposit shall be returned; (c) if Buyer fails or refuses to perform, this deposit shall be paid to Seller. If the parties are unable to agree upon the disposition of the deposit, then upon the request of either Buyer or Seller for the return or payment of the deposit, the Broker holding the deposit shall give written notice to the other party of such request, and shall advise the other party that such deposit shall be returned or paid in accordance with such request unless the other party delivers written objection thereto within 20 days after receipt of such notice. If the Broker does not receive any written objection within such 20-day period, then the Broker shall return or pay such deposit in accordance with such request. If the other party objects in writing within such 20-day period, Broker shall retain the deposit until (i) Buyer and Seller have settled the dispute; (ii) disposition has been ordered by a final court order; or (iii) Broker deposits said amount with a court pursuant to applicable court procedures. The return or payment of such deposit shall not in any way prejudice the rights of Seller, Buyer or Broker(s) in any action for damages or specific performance.~~

16. MISCELLANEOUS: This contract constitutes the entire agreement and no oral or implied agreement exists. Any amendments to this contract shall be in writing, signed by Buyer(s) and Seller(s) and copies provided to them. This contract shall be binding upon the parties, their heirs, administrators, executors, successors and assigns. If this contract involves seller financing, it may not be assigned. Time is of the essence of all provisions of this contract. All provisions of this contract shall survive the closing. In compliance with fair housing laws, no party shall in any manner discriminate against any Buyer or Buyers because of race, color, religion, sex, familial status, handicap or national origin. Paragraph captions are for identification only and are not part of this contract.

17. EXPIRATION AND ACCEPTANCE: This offer shall remain open for acceptance until 6:00 p.m. Columbus, Ohio time on December 3, 2002 and a signed copy shall be returned to all parties upon acceptance.

18. BROKER'S ACKNOWLEDGEMENT FEE: Seller and Buyer acknowledge that there are no other Broker(s) involved in this transaction, except as follows:

Buyer hereby makes the foregoing offer this 22nd day of November, 2002.

The City of Bexley \_\_\_\_\_

(Buyer) \_\_\_\_\_ (Buyer) David H. Madison, Mayor

Address 2241 East Main Street Phone 614-235-8694

Bexley, Ohio 43209 \_\_\_\_\_

(Buyer) Gary W. Qualmann, Auditor

Deed to: The City of Bexley

Name of Buyer's Attorney C.H. Waterman, Esq., Vorys, Sater, Seymour and Pease LLP

Seller agrees to and accepts the foregoing offer this 2<sup>nd</sup> day of December, 2002

(Seller) \_\_\_\_\_ (Seller) \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name of Seller's Attorney \_\_\_\_\_

NOTE: AGENCY DISCLOSURE STATEMENT: Buyer and Seller acknowledge having reviewed and signed the attached Agency Disclosure Statement as required by Ohio law.

ALL PARTIES TO THIS CONTRACT MUST BE PROVIDED WITH A COPY.

Broker acknowledges receipt of the sum \$ \_\_\_\_\_ by cash/check, which shall be held, deposited and disbursed pursuant to paragraph 15 above.  
By \_\_\_\_\_

**Exhibit A**

A Vacant Lot located on Sheridan Avenue in the City of Bexley, being more fully described as:

Being Lot Number Fifty-Five (55) in Bexley Drive Subdivision Number Three (3), as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 14, Pages 28 and 29, Recorder's Office, Franklin County, Ohio.

Tax Parcel Identification Number: 020-000159-00

Prior Instrument Number: 199710200122782

**Exhibit B**

- (i) The inspections anticipated by Paragraphs 3(a) and 3(b) of this Agreement shall include a Phase 1 environmental site assessment and a geotechnical/soils suitability analysis.
- (ii) Preliminary Site Plan: Prior to closing, Seller agrees to permit Buyer to perform any and all tasks necessary for Buyer or Buyer's agents to complete a preliminary site plan for the premises. If Buyer is not, in good faith, satisfied with the results, projected costs, or practical or economic feasibility of moving forward with said preliminary site plan, Buyer may terminate this Purchase Contract by delivering written notice of such termination to Seller within the above specified period.
- (iii) City Approval: This Purchase Contract shall be contingent upon the passage, by the Bexley City Council, on or before January 31, 2003, of an ordinance approving and ratifying this Purchase Contract.

~~(iv) In the event that this Purchase Contract is not executed, and regardless of the reason therefore, Seller agrees to reimburse Buyer for all costs for, and incidental to, all environmental assessments and geotechnical/soils suitability analyses.~~

*AK*  
*12/7/02*