



City of Dublin

**Office of the City Manager**

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# Memo

**To:** Members of Dublin City Council

**From:** Marsha I. Grigsby, City Manager *MIG*

**Date:** May 16, 2013

**Initiated By:** Dana L. McDaniel, Deputy City Manager/Director of Economic Development  
Philip K. Hartmann, Attorney, Ice Miller, LLP

**Re: Ordinance 44-13 – Real Estate Purchase Agreement with Invictus  
and Tuller Henderson, LLC (Vrable)**

## Background

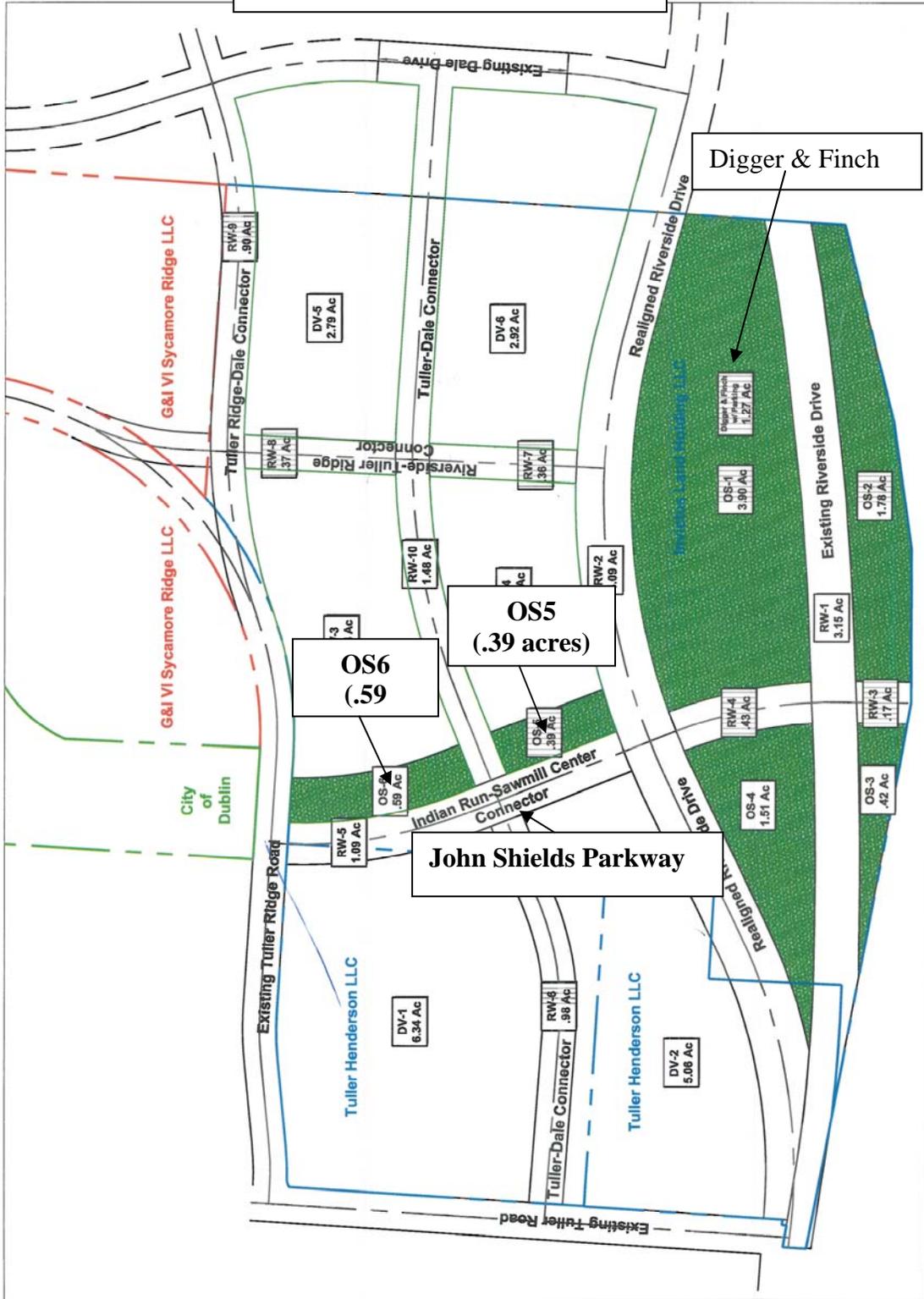
Ordinance 44-13 authorizes the City Manager to enter into a Real Estate Purchase Agreement (REPA) with Invictus Land Holding Company, LLC ("Invictus") for the purchase of a combined +/- .98 acres, generally located to the south side of the proposed John Shields Parkway, east of the Scioto River, and west of Tuller Ridge Drive as more fully described in Exhibit "A" as OS-5 and OS-6 (Exhibit A). The agreed upon price for this purchase is \$221,809. Also attached is the proposed Real Estate Purchase Agreement.

As Council may recall, this property is intended to provide a greenway along John Shields Parkway between the proposed river front park and other properties to the east. Council was made aware of the potential purchase of this property during their December 2012 consideration of Ordinance 75-12 (purchase of Digger & Finch and adjacent property – minutes attached). The purchase of this property was delayed, pending the results of alignment studies for the proposed John Shields Parkway. The purchase of this green space will be paid for from the Bridge Street TIF Fund.

## Recommendation

Staff recommends approval of Ordinance No. 44-13 at the second reading/public hearing on June 10. Council's action to secure this property will be consistent with plans developed and discussed in support of the vision for the Bridge Street District and the previous Vrable land purchase. Please address any questions to Dana McDaniel.

# Exhibit A



# RECORD OF ORDINANCES

**44-13**

Ordinance No. \_\_\_\_\_

Passed \_\_\_\_\_, 20\_\_\_\_

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A REAL ESTATE PURCHASE AGREEMENT WITH INVICTUS LAND HOLDING COMPANY LLC (VRABLE) FOR THE PURCHASE OF 0.98 ACRES, MORE OR LESS, IN FEE SIMPLE LOCATED EAST OF RIVERSIDE DRIVE, WEST OF TULLER RIDGE, SOUTH OF TULLER ROAD AND NORTH OF DALE DRIVE.**

**WHEREAS**, the City of Dublin ("City") has been in negotiations with Invictus Holding Company LLC ("Seller") over the past several years for the purchase of real estate; and

**WHEREAS**, Seller is the owner of certain parcel of real property situated in the City of Dublin, County of Franklin and State of Ohio, such real properties being approximately 18.302 acres, more or less, known as tax parcels 273-009101, generally located east of the Riverside Drive, west of Tuller Ridge Drive, south of Tuller Road, and north of Dale Drive, which real property is more fully described in Exhibit "A" attached hereto and incorporated herein by reference; and

**WHEREAS**, Seller, together with Tuller Henderson LLC sold to the City, and the City purchased from Seller and Tuller Henderson LLC certain portions of real property described in Exhibit "A" and marked as RW-2, RW-3, RW-4, OS-1, OS-2, OS-3 and OS-4, being approximately 12.30 acres attached hereto and incorporated herein by reference pursuant to Council Ordinance 75-12; and

**WHEREAS**, Seller at the time of the sale described above desired to sell to the City, and the City desired to purchase from Seller two additional parcels, OS-5 and O-S6, which property is more fully described on Exhibit "A"; and

**WHEREAS**, the Real Property being purchased is for open space; and

**WHEREAS**, the City and Seller have come to mutually agreeable terms for the acquisition of property; and

**WHEREAS**, the City desires to execute all necessary conveyance documentation to complete the transaction between Sellers and the City.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Dublin, State of Ohio, \_\_\_\_\_ of the elected members concurring, that:

Section 1. The City Manager is hereby authorized to execute all necessary conveyance documentation to acquire the combined 0.98 acres, more or less, in fee simple, as depicted in the attached Exhibit "A."

Section 2. Seller shall be compensated for the aforementioned property interests in the amount of Two Hundred Twenty One Thousand Eight Hundred Nine Dollars and 00/100 cents (\$221,809.00).

Section 3. This ordinance shall be effective upon the earliest date permitted by law.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Mayor - Presiding Officer

ATTEST:

\_\_\_\_\_  
Clerk of Council

## **CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY**

This Contract For Sale and Purchase of Real Property (this "Agreement") is by and between the between the City of Dublin, Ohio, an Ohio municipal corporation (hereinafter referred to as the "Purchaser"), having an office at 5200 Emerald Parkway, Dublin, Ohio 43017-1006, and Invictus Land Holding Company LLC (referred to as "Seller"). Purchaser and Seller are referred to individually herein as "Party" and collectively as "Parties."

### **Recitals**

WHEREAS, the City of Dublin ("City") has been in negotiations with Invictus Holding Company LLC ("Invictus") over the past several years for the purchase of real estate;

WHEREAS, Seller is the owner of certain parcel of real property situated in the City of Dublin, County of Franklin and State of Ohio, such real properties being approximately 18.302 acres, more or less, known as tax parcels 273-009101 generally located east of the Riverside Drive, west of Tuller Ridge Drive, south of Tuller Road, and north of Dale Drive, which real property is more fully described in Exhibit "A" attached hereto and incorporated herein by reference;

WHEREAS, Seller along with Tuller Henderson LLC sold to the City, and City purchased from Seller and Tuller Henderson LLC certain portions real property described in Exhibit A and marked as RW-2, RW-3, and RW-4, OS-1, OS-2, OS-3 and OS-4, being approximately 12.30 acres attached hereto and incorporated herein by reference pursuant to Council Ordinance 75-12;

WHEREAS, Seller at the time of the sale described above desired to sell to the City and the City desired to purchase from Seller two additional parcels, OS-5 and O-S6 which property is more fully described and depicted in Exhibit "B";

WHEREAS, the Real Property being purchased is for open space; and

WHEREAS, the City and Sellers have come to mutually agreeable terms for the acquisition of property.

NOW, THEREFORE, in consideration of the mutual promises, agreements and covenants herein contained, the Parties agree as follows:

### **Provisions**

#### **1. Price and Consideration**

Purchaser shall pay to Seller the sum of Two Hundred Twenty One Thousand Eight Hundred Nine Dollars and 00/100 cents (\$221,809.00), which sum shall constitute the entire amount of compensation due Seller for: (a) the real property described and depicted in Exhibit B which includes acquisition of property in fee and (b) Seller's covenants set forth herein.

Seller shall be exclusively responsible for all delinquent taxes and assessments, including penalties and interest, and for all other real estate taxes and assessments that are a lien as of the date on which this Agreement closes. The taxes and assessments for the current calendar year shall be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever is earlier in time.

## **2. Deed to Transfer**

Seller, upon fulfillment of all the obligations and terms of this Agreement, shall sell and convey to Purchaser, its successors and assigns, the property which is more particularly described and depicted in Exhibit B. If the rights, titles and estates described and depicted in Exhibit B constitute the fee simple in, to and of the real property, then such sale and conveyance by Seller shall be by a good and sufficient general warranty deed with, if applicable, full release of dower. In the event the rights, titles, and estates described in Exhibit B constitute something less than the fee simple of the real property, then such sale and conveyance by Seller shall be by a good and sufficient deed or other instrument regularly and ordinarily used to transfer such lesser rights, titles and estates with, if applicable, full release of dower.

## **3. Supplemental Instruments**

Seller agrees to execute any and all supplemental instruments or documents necessary to vest Purchaser with the rights, titles and interests described and depicted in Exhibit B.

## **4. Warranty of Title**

Seller shall, and hereby does, warrant that the properties described and depicted in Exhibit B are free and clear from all liens and encumbrances whatsoever, except: (a) easements, restrictions, conditions and covenants of record; (b) all legal highways; (c) zoning and building laws, ordinances, rules and regulations; and (d) any and all taxes and assessments not yet due and payable.

## **5. Elimination of Others' Interests**

Seller shall assist, in whatever manner reasonably possible under the circumstances, to procure and deliver to Purchaser releases and cancellations of any and all other rights, titles and interests in the property described and depicted in Exhibit B, such as, but not limited to, those belonging to tenants, lessees, mortgagees or others now in possession or otherwise occupying the subject premises, and all assessment claims against said property.

Seller and Purchaser agree that if a mortgagee of Seller or of a predecessor in title fails to cooperate with the efforts to obtain a release of that mortgagee's mortgage lien secured by the property described and depicted in Exhibit B, then and in that event this Agreement shall become null and void and the parties to this Agreement shall be discharged and released from any and all obligations created by this Agreement; for the purposes of this provision, the term "fails to cooperate" shall include a demand or request by any such mortgagee for a fee to process such a release of that mortgagee's mortgage lien that Purchaser, in its sole discretion, deems to be excessive.

**6. No Change in Character of Property**

Seller shall not change the existing character of the land or alter, remove, destroy or change any improvement located on the property described in Exhibit A and depicted in Exhibit B. If, prior to the date on which possession of the subject property is surrendered to Purchaser, the subject property suffers any damage, change, alteration or destruction then, and without regard to the cause thereof, Seller shall restore the subject property to the condition it was in at the time Seller executed this Agreement; in the alternative, Seller may agree to accept the abovementioned purchase price less the costs associated with such restoration. If the Seller refuses to either restore the premises or accept the decreased consideration as aforementioned, then Purchaser, at its option after discovery or notification of such damage, change, alteration or destruction, may terminate and cancel this Agreement upon written notice to Seller.

**7. Offer to Sell**

If Seller executes this Agreement prior to Purchaser, then this Agreement shall constitute and be an offer to sell by Seller that shall remain open for acceptance by Purchaser for a period of sixty (60) days immediately subsequent to the date on which Seller delivers such executed Agreement to Purchaser. Upon Purchaser's acceptance and execution of this Agreement within said period of twenty days, this Agreement shall constitute and be a valid Contract For Sale and Purchase of Real Property that is binding upon the Parties.

**8. Closing Date**

The consummation and closing of this Agreement shall occur at such time and place as the Parties may agree, but no later than thirty (30) days after Purchaser notifies Seller in writing that Purchaser is ready to consummate and close this Agreement. Provided, however, in no event shall such consummation and closing occur more than one hundred twenty (120) days after the last date on which one of the Parties executes this Agreement.

**9. Binding Agreement**

Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective heirs, executors, administrators, successors and assigns.

**10. Multiple Originals**

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

**11. Entire Agreement**

This instrument contains the entire agreement between the Parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations

whatsoever, either express or implied, other than herein set forth, shall be binding upon either Seller or Purchaser.

**12. Amendments and Modifications**

No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement and is signed by Seller and Purchaser.

**13. Governing Law**

This Agreement shall be governed by the laws of the State of Ohio, and the venue for any claim relating to said Agreement shall be an applicable Court in Franklin County, Ohio.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated immediately below their respective signatures.

**PURCHASER**

THE CITY OF DUBLIN, OHIO

\_\_\_\_\_  
Marsha I. Grigsby, City Manager

STATE OF OHIO :  
: ss.  
COUNTY OF \_\_\_\_\_ :

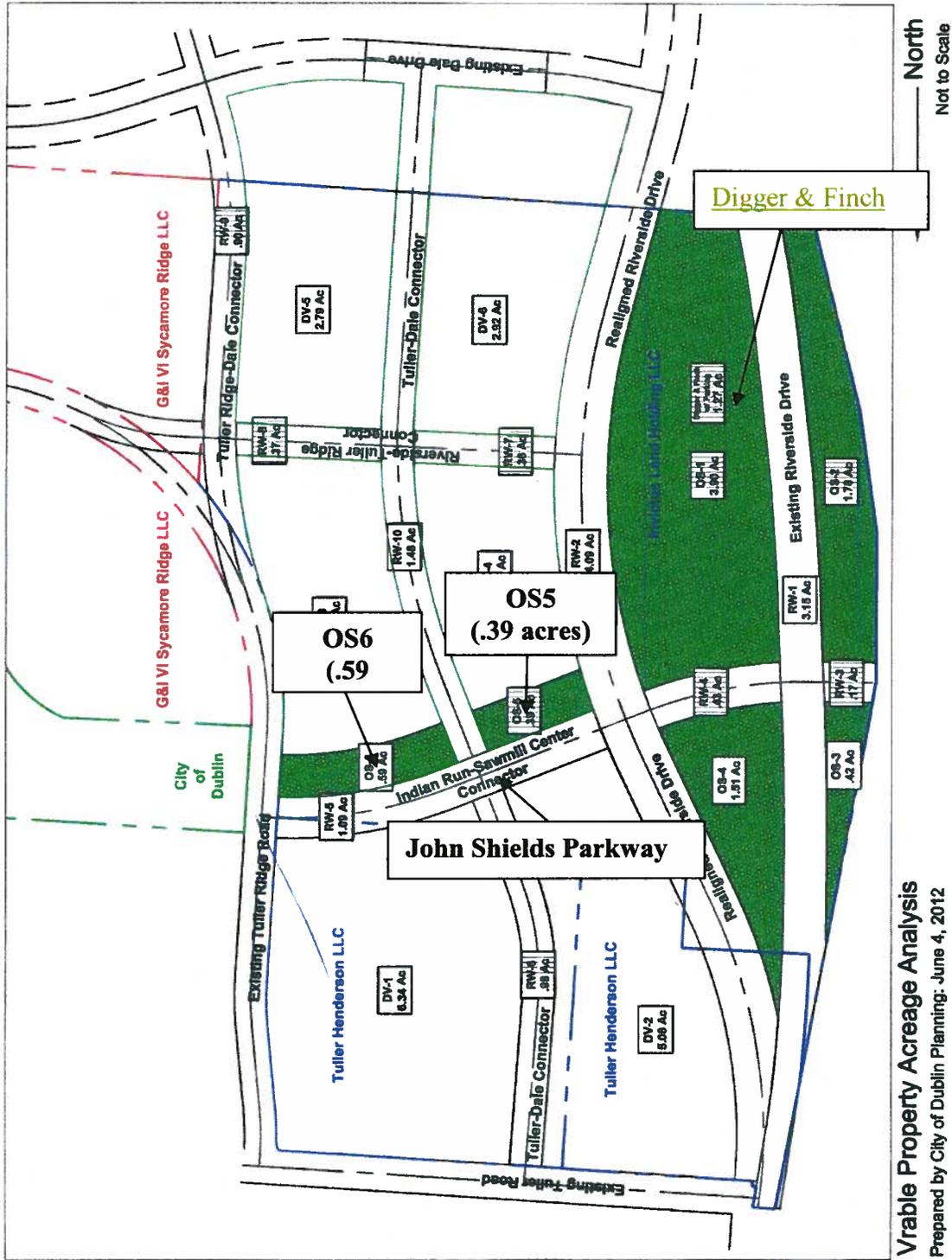
BE IT REMEMBERED, that on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, the subscriber, a Notary Public in and for said state, personally appeared Marsha I. Grigsby, City Manager of the City of Dublin, Ohio, an Ohio municipal corporation, the Purchaser in the foregoing Agreement, and acknowledged the signing thereof to be his/her voluntary act and deed for and on behalf of the City of Dublin, Ohio.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

\_\_\_\_\_  
Notary Public



EXHIBIT A – Legal Descriptions Pending



Vrable Property Acreage Analysis  
Prepared by City of Dublin Planning: June 4, 2012

**EXHIBIT B**  
**SURVEYS**  
**(To be Provided)**

# RECORD OF PROCEEDINGS

Held \_\_\_\_\_

20 \_\_\_\_\_

Ms. Mumma stated that this is the final appropriation amendment request for 2012. Staff is requesting that Council dispense with the public hearing so that the ordinance is effective immediately.

Mr. Keenan moved to dispense with the public hearing.

Vice Mayor Salay seconded the motion.

Vote on the motion: Ms. Chinnici-Zuercher, yes; Vice Mayor Salay, yes; Mayor Lecklider, yes; Mrs. Boring, yes; Mr. Gerber, yes; Mr. Keenan, yes; Mr. Reiner, yes.

Vote on the Ordinance: Mr. Gerber, yes; Vice Mayor Salay, yes; Mrs. Boring, yes; Mr. Reiner, yes; Mr. Keenan, yes; Mayor Lecklider, yes; Ms. Chinnici-Zuercher, yes.

## **Ordinance 73-12**

### **Establishing Appropriations Based on the 2013 Operating Budget of the City of Dublin, State of Ohio, for the Fiscal Year Ending December 31, 2013.**

Vice Mayor Salay introduced the ordinance.

Ms. Mumma noted that this ordinance establishes the appropriations based on the 2013 operating budget. Staff is requesting that Council dispense with the public hearing.

Mr. Keenan moved to dispense with the public hearing.

Ms. Chinnici-Zuercher seconded the motion.

Vote on the motion: Mr. Gerber, yes; Mr. Reiner, yes; Vice Mayor Salay, yes; Mrs. Boring, yes; Mayor Lecklider, yes; Mr. Keenan, yes; Ms. Chinnici-Zuercher, yes.

Vote on the Ordinance: Mrs. Boring, yes; Ms. Chinnici-Zuercher, yes; Mr. Gerber, yes; Mr. Reiner, yes; Vice Mayor Salay, yes; Mayor Lecklider, yes; Mr. Keenan, yes.

## **Ordinance 75-12**

### **Authorizing the City Manager to Enter into a Real Estate Purchase Agreement with Tuller Henderson LLC and Invictus Land Holding LLC, and Declaring an Emergency.**

Vice Mayor Salay introduced the ordinance.

Mr. McDaniel stated that the following:

- This ordinance authorizes a real estate purchase agreement with Tuller Henderson LLC and Invictus Land Holding LLC for land and site improvements generally in the vicinity of the Digger and Finch restaurant. The area is depicted in the staff report (shown on the screen). He shared a slide of the site and surrounding area.
- The purchase of these properties is intended to secure green space along the Scioto riverfront to provide the option to develop a park and/or allow the potential relocation of Riverside Drive. Council's action to secure this property would be consistent with the vision for the Bridge Street Corridor.
- The land acquisition proposed consists of 12.30 +/- acres, as depicted on the graphic. This land acquisition consists specifically of OS1, 2, 3, 4 and also includes right-of-way 3, 4 and the Digger and Finch location of 1.27 acres. Right-of-way 2 is referenced as well as part of the purchase as realigned Riverside Drive, should Council decide to relocate the road in the future.
- The purchase price of the land itself is \$2,318,191 and the land price paid per acre is about seven percent above the appraised value of \$180,000 per acre. This purchase will be paid from the Parkland Acquisition Fund.
- The right-of-ways are noted as RW1 through 10. Certain rights-of-way will be dedicated by developers at this time, including rights-of-way 4, 5, 6, 7, 8, 9 and 10. Those are generally associated with future development. (He pointed these out on the slide.) Staff anticipates keeping Council fully advised of these right-of-way dedications as they move forward.
- The topography on the site includes a 35-40 foot drop from existing Tuller Ridge Drive to the existing Riverside Drive. Therefore, the right-of-way dedications relative to the interior of the future development would be discussed as part of any proposed future development. Right-of-way 9 is to be dedicated as part of this agreement. Right-of-way 6 was included as part of the preliminary development plan for the skilled nursing facility and will be

# RECORD OF PROCEEDINGS

Held \_\_\_\_\_

20 \_\_\_\_\_

discussed as part of the final development plan when that is brought forward. He cautioned that this right-of-way as well is under discussion relative to the final engineering and site design of the skilled nursing facility. There may be some flexing as details go forward.

- The acquisition also includes the purchase of the restaurant itself with associated land totaling approximately 1.27 acres. The purchase price of the restaurant is \$1,210,000, which is 10 percent above the City's appraised value of \$1,100,000. This portion of the property would be paid for by the Capital Improvements Tax Fund. The disposition of this property would be determined by Council at a later date as it contemplates short-term and long-term uses and timing of these uses relative to development of the site and associated adjacent sites.
- The total purchase price authorized by this legislation is therefore \$3,528,191.
- The sellers are also agreeable to selling to the City OS5 and OS6. There is agreement in concept, but the purchase will be delayed as plans come forward for the adjoining development to the south. Staff is not certain of the location of the potential entrance road from the connector. Therefore, staff has committed to the owner the purchase of this land at a later date. If the development proposed to the south wants to develop closer to the roadway, they could purchase this land as well. At a minimum, staff would bring this back to Council at a later date to secure the greenway from the river further to the east.
- The emergency nature of this ordinance relates to the ongoing safety issues that are under consideration as a part of any change to Riverside Drive and associated intersections that currently exist or may exist in the future. Also, the sellers are agreeable to this real estate purchase at the agreed upon price, but only if the closing takes place by the end of 2012.
- There are also several pending opportunities for economic development.
- Staff is requesting passage by emergency tonight. The seller reserves the right to cancel the contract should the closing not occur by the end of the year.
- Staff continues to develop conceptual plans and ideas, together with the consultants and potential developers, and will bring those forward to Council.

He offered to respond to questions. He recognized Mr. Vrable, who is present tonight, and acknowledged his cooperation in this process.

Mr. Vrable and Mr. Muckle indicated they do not plan to testify tonight.

Mr. Keenan stated that after years of visioning and discussion, this is the first visible acquisition in the Bridge Street District. He is very pleased and excited about this opportunity. He acknowledged Mr. McDaniel for his work and Mr. Vrable for his cooperation.

Mrs. Boring stated that she generally does not support emergency action at the first reading, but in this case, there is only one December meeting of Council. She echoed Mr. Keenan's comments, noting this is an important step in achieving the vision. She therefore will support the emergency action.

Ms. Chinnici-Zuercher moved to dispense with the public hearing and treat this as emergency legislation.

Mr. Keenan seconded the motion.

Vote on the motion: Mayor Lecklider, yes; Mrs. Boring, yes; Vice Mayor Salay, yes; Mr. Reiner, yes; Mr. Gerber, yes; Mr. Keenan, yes; Ms. Chinnici-Zuercher, yes.

Vote on the Ordinance: Mr. Reiner, yes; Mayor Lecklider, yes; Ms. Chinnici-Zuercher, yes; Mr. Keenan, yes; Mr. Gerber, yes; Mrs. Boring, yes; Vice Mayor Salay, yes.