

RESOLUTION NO. _____

**A RESOLUTION SETTING A PUBLIC HEARING CONCERNING THE
DECLARATION OF REAL ESTATE AS SURPLUS PROPERTY AND
OFFERING SAID REAL ESTATE FOR SALE (405 VAN HORNE STREET)**

WHEREAS, the City Council of Muscatine, Iowa, is considering declaring the following described real estate in Muscatine, Iowa, to-wit:

The East Half (E ½) of Lot Five (5), in Block Two (2), of Hershey's Addition to the City of Muscatine, Iowa in Muscatine County, Iowa, according to the recorded thereof.

as surplus property and offering said real estate for sale.

WHEREAS, a public hearing must be conducted by the City Council of Muscatine prior to the as surplus property and offering said real estate for sale.

NOW, THEREFORE, BE IT RESOLVED, by the City Council for the City of Muscatine, that a Public Hearing is hereby established. Said hearing to be conducted at 7:00 p.m. on Thursday, August 15, 2019, in the City Hall Council Chambers and the attached public notice of the time and place of said public hearing shall be given by publication in the Muscatine Journal as required by the Code of Iowa

PASSED, APPROVED AND ADOPTED this 1st day of August 2019.

**BY THE CITY COUNCIL OF THE
CITY OF MUSCATINE, IOWA**

Diana L. Broderson, Mayor

Attest:

Gregg Mandsager, City Clerk



City Hall, 215 Sycamore St.
Muscatine, IA 52761-3840
(563) 262-4141
Fax (563) 262-4142

COMMUNITY DEVELOPMENT

Planning,
Zoning,
Building Safety,
Construction Inspection Services,
Public Health,
Housing Inspections,
Code Enforcement

MEMORANDUM

To: Mayor and City Council Members
From: Andrew Fangman, City Planner
Cc: Gregg Mandsager, City Administrator
Date: August 1, 2019
Re: Request to Approve a Purchase Agreement and a Resolution Setting a Public Hearing Regarding the Sale of Surplus City Property (Parcel # 0835306020), 405 Van Horne Street

The City of Muscatine has accumulated a number of parcels of land for which the continued public ownership no longer serves any useful purpose. In order to return these parcels to a useful purpose, restore them to the tax roll, and to reduce maintenance costs associated with these parcels to the City, the City Council has previously declared a number of City owned parcels as surplus and directed City Staff to actively seek the sale of these surplus properties.

City Staff has negotiated a purchase agreement Sergio A. Zamora Jr and Gloria N. Zamora, adjoining property owners, regarding the sale of a portion of surplus city owned Parcel # 0835306020, 405 Van Horne Street, which adjoins 407 Van Horne Street.

In 2011 the City of Muscatine demolished a house on this parcel as part of a nuisance abatement action. The property owner at the time did not pay the City for the cost of this demolition, as such it was added as a special assessment to the property tax owed on this property. By 2017 this special assessment and other accrued property taxes remained unpaid, and the parcel did not sell at a Sheriff's sale. Ultimately the County deeded the property over to the City.

The City of Muscatine has been taking care of this property, mowing it, shoveling the adjoining sidewalk, for a number of years, first through the contractor for the nuisance abatement program, and since the City took title to the property in December of 2017 this work has been preformed by Parks and Recreation Department staff. The continued City ownership of this parcel due to ongoing maintenance costs and forgone property tax revenue is not in the financial interest of the City.

Though this parcel did once contain a single family, the 30' width of this lot makes the construction of a new single-family home in this parcel unlikely. Even if the substandard width and size, as per this parcel's current zoning designation, were addressed through either a variance or Code Changes, provisions of the building code make this parcel an unattractive location for a new single-family home. The building code requires that all external walls located within 5' of a property line to be constructed as 1 hour rated fire walls. Which on a parcel of only 30' in width means that any structure of over 20' in width will trigger this requirement.

"I remember Muscatine for its sunsets. I have never seen any on either side of the ocean that equaled them" — Mark Twain

Given the availability of a number similar but wider parcels that would not pose this difficulty to someone to looking build a new home, it is the opinion of staff that there is low likelihood of someone constructing a new home on this parcel. As such the sale of this parcel to one of the adjoining property owners is best availed disposition of this surplus parcel.

Sergio A. Zamora Jr and Gloria N. Zamora, the adjoining property owners to the east, has made the City an offer of \$3,000 for this surplus parcel. It is staff's recommendation to accept this offer, which will allow the City recoup a portion of what the City has spent maintaining this parcel, end ongoing maintenance costs related to the continued City ownership of this parcel, and return this parcel to the tax roll.

The next steps in the sales process is for Council to approve the attached purchase agreement and pass the attached resolution to set the required public hearing on the sale of this surplus parcel.

Supporting Documents

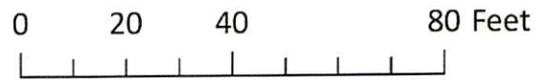
1. Purchase Agreement
2. Resolution Setting a Public Hearing
3. Public Notice



Legend

- Purchaser's Current Parcel
- Surplus Parcel Proposed for Sale
- Parcel Lines

Date Source: Muscatine Area Geographic Information Consortium and City of Muscatine
 Prepared by: Andrew Fangman,
 Assistant Community Development Director
 Date: July 26, 2019



PUBLIC NOTICE

TO THE CITIZENS OF MUSCATINE, IOWA: You are notified that the City Council of Muscatine, Iowa, is considering declaring the following described real estate (405 Van Horne Street) in Muscatine, Iowa, to-wit:

The East Half (E ½) of Lot Five (5), in Block Two (2), of Hershey's Addition to the City of Muscatine, Iowa in Muscatine County, Iowa, according to the recorded thereof, as surplus property and offering said real estate for sale.

You are further notified that oral or written statements in support of or opposition to this proposed lease may be made at a public hearing before the City Council to be held at 7:00 o'clock P.M. on August 15, 2019, in the Council Chambers in City Hall, 215 Sycamore Street, Muscatine, Iowa.

Gregg Mandsager, City Clerk

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (the "Agreement") is deemed made on the date the last of the parties executes this Agreement (the "Effective Date") by and between the City of Muscatine, Iowa, whose address for the purposes of this Agreement is 215 Sycamore Street, Muscatine, Iowa 52761 (hereafter referred to as the "Seller" or "City") and Sergio A Zamora Jr and Gloria N Zamora, whose address for the purposes of this Agreement is 407 E 3rd St, West Liberty IA Sycamore Street (collectively hereafter referred to as the "Buyer.")

RECITALS

WHEREAS, Seller is the owner of the following legally described property:

The East Half (E ½) of Lot Five (5), in Block Two (2), of Hershey's Addition to the City of Muscatine, Iowa in Muscatine County, Iowa, according to the recorded thereof.

Subject only to easements, restrictions and covenants of record (collectively referred to as the "Property");

WHEREAS, Buyer desires to purchase from Seller and Seller desires to sell to Buyer the Property;

WHEREAS, Buyer and Seller desire to set forth the obligations, restrictions, limitations, and conditions upon which the Property will be conveyed by Seller to Buyer;

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, each for the other, Buyer and Seller agree as follows:

1. Sale of Property. Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, for the Purchase Price set forth below and, on the terms, and conditions set forth in this Agreement, the Property. For purposes of this Agreement, Property shall be deemed to mean, on a collective basis: (a) the parcel of land described above, together with all rights, easements and interests appurtenant thereto; and (b) all improvements located on the land, if any.
2. Compensation. Seller, in consideration of the mutual covenants and agreements contained herein, agrees to sell to Buyer and Buyer, in consideration of the mutual covenants and agreements contained herein, agrees to purchase the Property from Seller for the following consideration:

- a. Cash in the amount of \$3,000.00 (the "Purchase Price"), and
 - b. The parties acknowledge that disposal of the Property as part of this Agreement will require a public hearing and approval of the Muscatine City Council, in addition to approval of this Agreement as a whole. If disposal of the property is not approved by the Muscatine City Council, this Agreement shall be rendered null and void.
3. Payment of the Purchase Price. The Purchase Price shall be paid by Buyer to Seller, in good and immediately available funds by wire transfer or cashier's check, at the time of Closing.
4. Abstract and Title. If the Buyer desires an abstract of title to the Property, the Buyer shall obtain said abstract at no cost to the Seller.
5. Closing. The Closing of this transaction shall occur as soon as reasonably practicable, after, as agreed in writing by the parties (hereinafter referred to as the "Closing Date"), at a location mutually agreed upon by the parties herein. Time is of the essence in this Purchase Agreement.
6. Real Estate Taxes. The Property is currently tax-exempt while owned by the City. Buyer shall pay all real estate taxes assessed against the Property for all periods following the date of Closing.
7. Special Assessments. Buyer shall be responsible for all special assessments with respect to the Property.
8. Commission. Seller and Buyer each represent and warrant to the other that no brokerage commission, finder's fee or other compensation is due and payable with respect to the transaction contemplated by this Agreement. Buyer represents to Seller that it knows of no fee, commission or payment due to any broker, finder, agent or other person or entity, in connection with the transactions contemplated. Seller represents to Buyer that it knows of no fee, commission or payment due to any broker, finder, agent or other person or entity, in connection with the transactions contemplated herein. Seller and Buyer each, one to the other, indemnify, protect, defend and hold the other harmless from and against all losses, claims, costs, expenses and damages (including but not limited to reasonable attorney fees) resulting from the claims of any broker, finder or other such party claiming, by, through or under the acts or agreements of the indemnifying party. The warranties and obligations of the parties pursuant to this paragraph shall survive the termination of the Closing. Should any third-party claim a commission is due and owing, both parties agree to cooperate in challenging such claim. Such cooperation shall not be deemed to alter the indemnifications contained in this paragraph in any manner.

9. Warranties and Representations of Seller. Seller warrants and represents to Buyer that, upon approval of the Muscatine City Council, it has the full right, power and authority to sell and convey the Property to Buyer as provided in this Agreement and to carry out the Seller's obligations hereunder. At Closing, a Groundwater Hazard Statement will be filed by Sellers regarding the following: (i) wells; (ii) solid waste disposal; (iii) hazardous wastes; and (iv) underground storage tanks located on the Property.

10. Conveyance Documents. Seller shall convey the Property to Buyer by a general quit claim deed.

11. Closing Costs. Seller shall pay any necessary transfer taxes. Buyer shall pay the recording fees in connection with the Deed conveying title to Buyer, and any financing documents encumbering or relating to the Property and other documents Buyer desires to record. Buyer shall pay the premium for issuing the Iowa Title Guaranty or title policy (if any) described herein. Each party shall be responsible for paying its own attorney fees.

12. Pending Actions. Seller has no notice of any action, litigation, proceeding, or investigation against itself, related entities, its partners, or the Property, which would affect the Property or the right of Seller to sell and convey the Property, or any action, litigation, proceeding, or investigation, including without limitation, any eminent domain proceeding which would result in any lien, claim, right, or interest in the Property in favor of any third party.

13. Notices. Neither party shall have the right to terminate this Agreement or seek any remedy for a breach hereof by the other party unless such breach continues for a period of thirty (30) days following written notice by the party seeking to pursue such remedy, specifying the occurrence and description of such default under this Agreement and unless the party given such notice shall have failed to commence to take such steps as are necessary to cure such breach or default as soon as possible (or having so commenced such steps to cure shall thereafter have failed to proceed diligently and with continuity to remedy the same). All notices, demands, writings, supplements, or other documents which are required or permitted by the terms of this Agreement to be given to any party shall be delivered in person, or shall be deposited in the United States Mail, postage prepaid, return receipt requested, addressed at the addresses specified above and shall be effective upon such deposit.

14. Assignment; Agreement Binding on Successors; Survival of Provisions. This Agreement may not be assigned or transferred by any of the parties without the express written consent of the other. This Agreement, and amendments, if any, and all representations, warranties, indemnification obligations, rights and duties hereunder, shall survive the Closing and shall be fully binding at all times against Seller, and Buyer as well as any and all of its or their successors in interest, assigns or transferees.

15. Default; Remedies of the Parties.

16.1 Buyer's Remedies for Seller's Default. If (a) each of the conditions precedent set forth in this Agreement have been satisfied or waived prior to the Closing Date and (b) Seller fails or refuses to timely convey the Property to Buyer in accordance with the terms and conditions of this Agreement, except on account of a default hereunder by Buyer, Buyer may elect one of the following remedies: (a) be entitled to terminate Buyer's obligations under this Agreement by written notice to Seller; (b) be entitled to specific performance of this Agreement; or (c) any other remedies available at law or equity.

16.2. Seller's Remedies for Buyer's Default. If (a) each of the conditions precedent set forth in this Agreement have been satisfied or waived prior to the Closing Date and (b) Buyer fails or refuses to timely purchase the Property and Close in accordance with the terms and conditions of this Agreement, except on account of a default hereunder by Seller, Seller may elect one of the following remedies: (a) be entitled to terminate Seller's obligations under this Agreement by written notice to Buyer; (b) be entitled to specific performance of this Agreement; or (c) any other remedies available at law or equity.

16. Time. Time is of the essence in the performance of each party's obligations hereunder.

17. No Waiver. Subject to the deemed approvals under this Agreement, no waivers by any party of the performance or satisfaction of any covenant or condition shall be valid unless in writing, nor shall it be considered to be a waiver by such party of any other covenant or condition hereunder.

18. Entire Agreement. This Agreement contains the entire agreement between the parties regarding the Property and supersedes all prior agreements, whether written or oral, between the parties regarding the same subject. This Agreement may only be modified by subsequent written agreement signed by the party to be charged.

19. Counterparts and Effectiveness. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement, and this Agreement shall only be effective if a counterpart is signed by both Buyer and Seller and approved by the Muscatine City Council.

20. Severability. In the event any provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

21. Survival of Warranties. Any warranties, covenants and representations contained in this document shall survive the execution of this Agreement and any other documents, including the Quit Claim Deed given by Seller to Buyer to consummate this transaction, shall not be merged into such documents.

22. Attorney Fees. In the event of default by either party pursuant to any of the terms of this Agreement, the prevailing party in any litigation or enforcement action shall be entitled to reimbursement by the defaulting party for any of the prevailing party's reasonable attorney fees, court costs, and other associated costs of enforcement.

23. Governing Law; Construction. This Agreement shall be construed pursuant to the laws of the State of Iowa. Wherever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid. If any such provision of this Agreement shall be determined to be invalid or unenforceable, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating or otherwise affecting the remaining provisions of this Agreement.

24. Headings. Article and section headings used in this Agreement are for the convenience of the parties only and shall not affect the construction of this Agreement.

25. Further Assurances. At or after Closing, the parties shall prepare, execute and deliver at their respective expense, such additional instruments and other documents and shall take or cause to be taken such other action as is reasonably requested by the other party at any time or from time to time in order to effectuate and comply with all the terms of this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

Seller

City of Muscatine, Iowa

By: _____
Gregg Mandsager, City Clerk

Date: _____

By: _____
Diana L. Broderson, Mayor

Date: _____

Buyer

By: _____
Sergio A Zamora Jr

Date: _____

By: _____
Gloria N Zamora

Buyer

Date: _____