



## Legislation Text

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**File #:** 12-0310, **Version:** 1

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Resolution to Approve the Purchase of Property at 215 and 219 W. Kingsley St., Ann Arbor in Fee Title for \$185,000.00 **(8 Votes Required)**

Attached for your review and action is a resolution to approve the purchase of adjacent properties 215 W Kingsley St. (0.07-acre) and 219 W Kingsley St. (0.06-acre) owned by Blackhawk Associates, LLC.

On Nov. 15, 2010 City Council passed resolution R-10-412 which accepted a Pre-Disaster Mitigation (PDM) Grant from the Federal Emergency Management Agency (FEMA). As stated in R-10-412 grant funds have been awarded to (1) purchase properties 215 & 219 W. Kingsley St., Ann Arbor (one vacant and the other with a structure); (2) conduct demolition of structure, foundation and the impervious surfaces on the sites; and, (3) grade and stabilize the site. Separate from the FEMA Grant (4) a rain garden will be installed at the site with Stormwater Utility Funds that have been identified in the City's Capital Improvements Plan. Approval of this resolution will allow the City to pursue step 1 of the process: properties purchase.

The properties contain one structure: a vacant house that is within the regulatory floodway of Allen Creek. Having undergone previous flood damage and being subject to further flood damage, the building is an obstruction to the natural flow of flood waters. Purchasing the property, deed restricting the site as permanent open space, and removing the building now, while vacant, prevents the risk that it be renovated or redeveloped into a different use. Following approval of this resolution the City will immediately pursue ownership of the properties and demolition of the structure.

Also noted in R-10-412 is that City Council approved a Flood Mitigation Plan in 2007, which recommends opening up the floodway by preventing new structures and removing existing structures from the floodway to create greenways. Acquisition of the parcels is consistent with the City's Flood Mitigation Plan.

A Phase I Environmental Site Assessment has been completed on the property. The assessment has revealed no evidence of "recognized environmental conditions" RECs in connection with the subject property. A Pre-Demolition Building Survey (Asbestos and Lead-based paint) has also been conducted on the property. As might be anticipated based on the age of the building, the survey found that lead-based paint (LBP) and regulated asbestos containing materials (RACM) are present at the Kingsley Street Property building. The survey includes recommendations for proper notifications and necessary actions for the demolition contractor to complete prior to beginning demolition at the site.

PDM Grant funds will cover 75% of the total project expense, including property purchase; match funds from the Stormwater Utility Fund are available for the remaining 25%. Resolution R-10-412 City Council accepted and appropriated grant funds to the Stormwater Utility Fund.

The combined purchase price for the properties (0.13-acres) is \$185,000. A Seller's verification of duplication of benefits was performed by FEMA which confirms no deduction for duplication of

benefits is required to the stated purchase price.

The resolution approves the combined purchase price of \$185,000 based on a fair market appraisal of the properties, conducted consistent with Chapter 14, Section 1:320 and the terms of the grant. FEMA has reviewed and accepted the appraisal and the established pre-disaster fair market value purchase price for the property.

Resolution R-10-412 established a Project Budget which included the cost of acquisition of the Property. The total cost of acquisition, including due diligence and closing costs is \$194,495.00 (breakdown below) funded from the Major Grants Fund (00MG-073-0262-7088-5125).

Acquisition Costs

Purchase Price	\$185,000.00
Est. Closing Costs	\$ 2,680.00
<u>Due Diligence Expenses</u>	<u>\$ 6,815.00</u>
Total Acquisition Costs	\$194,495.00

Due Diligence costs have already been paid and reimbursement received from FEMA. The remainder of the acquisition costs will be submitted post-closing for reimbursement in accordance with the grant award.

Prepared By: Jerry Hancock, Stormwater and Floodplain Coordinator and Mary Joan Fales, Senior Assistant City Attorney

Sponsor: Council member Smith

Whereas, Council passed R-10-412 on Nov. 15, 2010 accepting a Pre-Disaster Mitigation Grant Funding award from the Federal Emergency Management Agency (FEMA);

Whereas, The property is within the regulatory floodway of Allen Creek and the existing structure is an obstruction to the natural flow of flood waters;

Whereas, Obtaining these properties, as well as removing the existing structure, advances the attainment of reduced flood losses, minimizes damage to public and private property and protection of public health and safety;

Whereas, The properties have been appraised as required by Section 1:320 of the Ann Arbor City Code and the combined Purchase Price for the properties established in the amount of \$185,000.00;

Whereas, FEMA has reviewed the appraisal and accepted the Purchase Price as the pre-disaster fair market value of the properties and completed the required Seller's verification of duplication of benefits which confirms no deduction for duplication of benefits is required to the stated Purchase Price;

Whereas, There are sufficient funds in the Major Grants Fund (00MG-073-0262-7088-5125) to cover the purchase price and closing costs;

Whereas, Under the terms of the Stafford Act, Federal program requirements consistent with 44 C.F.R. 206.434(e), the FEMA Grant Agreement, and the State-local Agreement require that the City of Ann Arbor, as Grantee, agree to conditions that restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values, specifically;

- 1 a. Compatible uses. The Property shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, and other uses consistent with Pre-Disaster Mitigation Grant Guidance for open space acquisition.
- b. Structures. No new structures or improvements shall be erected on the Property other than:
  - (i) A public facility that is open on all sides and functionally related to the open space use;
  - (ii) A public rest room; or
  - (iii) A structure that is compatible with the uses described in Paragraph 1(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure.
  - (iv) Any structures built on the Property according to this paragraph shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.
- c. Disaster Assistance. No disaster assistance from any Federal source for any purpose may be sought, nor will such assistance be provided;
- d. Transfer. The Grantee agrees that it shall convey any interest in the Property only if the Regional Director of FEMA gives prior approval of the transferee in accordance with this paragraph. The Grantee may only convey an interest in the Property to another public entity or to an organization with conservation purposes qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable implementing regulations. However, the Grantee may convey an easement or lease to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a), above, including agriculture, with the prior approval of the Regional Director.

If title to the Property is transferred to a public entity other than a qualified state or federal agency with a conservation mission, it must be conveyed subject to a Conservation Easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth herein, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

- i. The Grantee shall convey, in accordance with section (d), above, a conservation easement to someone other than the title holder, or
- ii. At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.

2. Inspection. FEMA, its representatives, and assigns, including the State of Michigan, shall have the right to enter upon the Property, at reasonable times and with reasonable notice, for the purpose of inspecting the Property to ensure compliance with the terms of the grant.

3. Monitoring and Reporting. Every three years on the date specified by FEMA, the Grantee, through the State of Michigan, shall submit to the FEMA Regional Director a report certifying that the Grantee has inspected the subject Property within the month preceding the report,

and that the Property continues to be maintained consistent with the provisions of the grant.

4. Enforcement. If the subject Property is not maintained according to the terms of the grant, the Grantee, the State of Michigan, and FEMA, its representatives, and assigns are responsible for taking measures to bring the Property back into compliance.

a. The State will notify the Grantee in writing and advise the Grantee that it has 60 days to correct the violation.

b. If the Grantee fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

c. FEMA, its representatives and assigns may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to the following:

- i. Requiring transfer of title in accordance with Paragraph 1(d). The Grantee shall bear the costs of bringing the Property back into compliance with the terms of the grant; or
- ii. Bringing an action at law or in equity in a court of competent jurisdiction against the State or the Grantee. ; and

Whereas, All of these restrictions have been reviewed by the Stormwater and Floodplain Coordinator for the City and will be incorporated in the deed transferring title to the City;

RESOLVED, That Council approve the purchase of the properties at 215 and 219 W Kingsley St. in the amount of \$185,000.00 for removal of one residential structure from the floodway, creation of additional flood storage, and creation of permanent open space by deed restricting the property as stated in this Resolution;

RESOLVED, That the Mayor and City Clerk be authorized and directed to execute the purchase and sales agreement after approval as to form by the City Attorney; and

RESOLVED, That the City Administrator, or designee, be authorized and directed to implement this resolution, including the execution of necessary closing documents specified in the purchase and sale agreement after approval as to form by the City Attorney.