



ST. CHARLES
SINCE 1834

AGENDA ITEM EXECUTIVE SUMMARY

Title: Recommendation to Approve Land Donation at 807 Illinois Ave. to the City of St. Charles

Presenter: James Bernahl

Please check appropriate box:

<input type="checkbox"/>	Government Operations	X	Government Services 04.23.12
<input type="checkbox"/>	Planning & Development		City Council

Estimated Cost:	\$20,000 - (Demolition of Structure and Grading of Lot)	Budgeted:	YES	X	NO	
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If NO, please explain how item will be funded:

Executive Summary:

Currently the property located at 807 Illinois Avenue is owned and maintained by the lending institution Wells Fargo. Staff was contacted by a real-estate agent representing the bank with interest to donate this property to the City based on flooding damaged caused to the property from past large rainfall events, and the anticipated modification to the Federal Floodplain Maps.

Currently this property is vacated and has had an environmental inspection of the property performed by Huff and Huff Associates. The results of that investigation have determined that no hazardous conditions currently exist. City ownership of this property would allow this land to be used as either open space or enhancement adjacent to the 7th Avenue Creek. Staff is currently working with representatives of the Federal Emergency Management Association (FEMA) on the modifications to the Floodplain maps within this property limits.

Staff believes that the acquisition of this property would allow for the future improvement of the storm water conveyance in this area and the potential for the modification of the 7th Avenue Creek to improve overall flood control.

Attachments: *(please list)*

- Copy of Project Location Map
- Copy of Ordinance for 807 Illinois Avenue
- Copy of Donation Agreement
- Copy of Addendum for Agreement

Recommendation / Suggested Action *(briefly explain):*

Staff recommends approving the Ordinance and Subsequent Agreements for the Acceptance of the Land Donation of the Property at 807 Illinois Avenue from Wells Fargo.

<i>For office use only:</i>	<i>Agenda Item Number: 5.h</i>	
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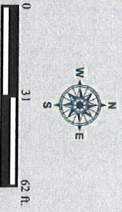
City of St. Charles, Illinois
 1 Two East Main Street, St. Charles, IL 60174-1994
 Phone: 681-577-4400 Fax: 681-577-4440 - www.architectural.gov

Precision GIS

DONALD P. DEWITTE Mayor
BRIAN TOWNSEND City Administrator



Data Source:
 City of St. Charles, Illinois
 DuPage County, Illinois
 Projection: Transverse Mercator
 North American Datum 1983
 North American State Plane East
 Federal Acre & N. 2011 121318 194 037



Notes: 807 Illinois Avenue Property Location Map

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ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF THE DONATION OF CERTAIN PROPERTY BY THE CITY OF ST CHARLES – 807 ILLINOIS AVENUE

WHEREAS, the City of St. Charles is authorized, pursuant to 65 ILCS 5/11-61-1.5, to acquire real property by gift for any purpose authorized under the Illinois Municipal Code as its corporate authorities deem proper; and

WHEREAS, the City has determined that it is necessary and in the best interests of the residents of the City to accept the donation of certain real property located at 807 Illinois Avenue for corporate purposes.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, as follows:

SECTION ONE: That the Mayor be and the same is hereby authorized to execute a Donation Agreement and Addendum to Donation Agreement (collectively, the “Donation Agreement”), in substantially the form attached hereto as Exhibit "A", and, by this reference, incorporated herein.

SECTION TWO: That the Mayor and City Clerk of the City be and the same are hereby authorized to execute and attest all other documents necessary to effectuate the purpose of the Donation Agreement.

SECTION THREE: This Ordinance shall be in full force and effect from and after its passage and approval in the manner provided by law.

Presented to the City Council of the City of St. Charles, Illinois this ____ day of _____, 2012.

Passed by the City Council of the City of St. Charles, Illinois this ____ day of _____, 2012.

Approved by the Mayor of the City of St. Charles, Illinois this ____ day of _____, 2012.

Mayor

Attest:

City Clerk

Council Vote:

Ayes: _____

Nays: _____

Abstain: _____

Absent: _____

DONATION AGREEMENT

This is a Donation Agreement (the "Donation Agreement") for certain real property located at **807 ILLINOIS AVE, SAINT CHARLES, IL 60174** ("Property"), dated and effective as of this 8 day of FEBRUARY, 2012, between **Wells Fargo Bank, N.A.**, a national banking association ("Donor") and **CITY OF SAINT CHARLES**, a ("Donee").

RECITALS

This Donation Agreement is made and entered into on the basis of the following facts and understandings of the parties hereto:

- A. Donor acquired the Property(ies) identified on Exhibit A through the foreclosure process.
- B. Donor did not originally construct any of the improvements forming part of any Property. Donor has not occupied any Property for its own use.
- C. Due to Donor's lack of familiarity with the Properties, Donor is unwilling to make any representations or warranties whatsoever regarding the Properties and Donor is only willing to grant Donee the Properties on an "**as is, where is**" and "**with all faults**" basis.
- D. Donee has been given a full and complete opportunity to conduct its own investigation as to any matter, fact or issue that might influence Donee's decision to accept the Property from Donor. Accordingly, Donee is willing to accept the Property from Donor without any representations or warranties whatsoever regarding the Property and on an "**as is, where is**" and "**with all faults**" basis.

AGREEMENT

1. DONATION.

- 1.1 **Closing Costs.** Donor shall pay all costs associated with the transfer of the Property, including but not limited to attorney's fees, agents fees and recording costs ("Closing Costs").
- 1.2 **Transfer.** Donor agrees to donate the Property to Donee and Donee agrees to accept the Property from Donor on the terms and conditions set forth herein. In consideration of Donor's transfer of the Property to Donee, Donee shall perform all of Donee's obligations hereunder including but not limited to the release and indemnity set forth in Section 2.2 of this Donation Agreement.
- 1.3 **Title.** Title shall be transferred on the Closing Date via a quit claim deed or its equivalent.

- 1.4 **Further Assurances.** Donee and Donor agree to execute all instruments and documents and to take all actions reasonably necessary and appropriate to consummate the transfer and donation of the Property and shall use their best efforts to close in a timely manner.

2. **ACKNOWLEDGMENTS, RELEASE AND INDEMNITY.**

2.1 **DONEE'S ACKNOWLEDGMENTS.** DONEE ACKNOWLEDGES THAT DONEE IS ACCEPTING THE PROPERTY SOLELY IN RELIANCE ON DONEE'S OWN INVESTIGATION, AND THE PROPERTY IS IN "AS IS, WHERE IS" CONDITION WITH ALL FAULTS AND DEFECTS, LATENT OR OTHERWISE. DONEE EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENT OF DONOR HEREIN, AND EXCEPT AS OTHERWISE SPECIFIED HEREIN, DONOR MAKES AND HAS MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY AS TO CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, WITH RESPECT TO ANY PROPERTY OR ANY MATTER RELATED THERETO, OR (WITHOUT LIMITATION) TO ANY OF THE FOLLOWING MATTERS:

- (a) Soils, Etc. Soils, seismic, hydrological, geological and topographical conditions and configurations.
- (b) Artifacts. Archeological, prehistoric and historic artifacts, remains and relics.
- (c) Endangered Species. Endangered plant, animal and insect species.
- (d) Hazardous Materials. Hazardous Materials and other environmental conditions, including without limitation, lead-based paint, asbestos and mold.
- (e) Physical Defects. Physical and mechanical defects in or on any Property, including without limitation, the plumbing, heating, air conditioning and electrical systems and the roof, floor, ceilings, walls and other internal structural components of any buildings or improvements.
- (f) Land and Floor Area. The area of the land and the square footage contained in any buildings or improvements.
- (g) Utilities, Schools, Etc. Availability of adequate utilities, water, schools, public access, and fire and police protection.
- (h) Assessment Districts. The status and nature of any assessment districts and the amount of any assessment liability.

- (i) Planning and Zoning. Present, past or future conformity of any Property with planning, building, zoning, subdivision and development statutes, ordinances, regulations and permits, the general plan and the specific plan.
- (j) Development Fees. The character and amount of any fee, charge or other consideration which must be paid by Donee to develop any Property.
- (k) Title. The condition of title to any Property, including but not limited to the existence of any easement, license or encroachment whether or not a matter of public record, and whether or not visible upon inspection of such Property.
- (l) Taxes. The status of any general or special real property taxes or assessments or personal property taxes or any other taxes and assessments applicable to the Property.
- (m) Owner's Association. The financial condition of any owner's association, including, without limitation, the adequacy of any reserves held by any owner's association.
- (n) Other Matters. Any other matter relating to any Property or to the development or operation of any Property, including, but not limited to, value, feasibility, cost, governmental permissions or entitlements, marketability and investment return.

2.2 RELEASE AND INDEMNITY.

- (a) **RELEASE. DONEE FULLY RELEASES AND DISCHARGES DONOR FROM AND RELINQUISHES ALL RIGHTS, CLAIMS AND ACTIONS THAT DONEE MAY HAVE OR ACQUIRE AGAINST DONOR WHICH ARISE OUT OF OR ARE IN ANY WAY CONNECTED WITH THE CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION (A) ANY MATTER SET FORTH IN SECTION 2.1 ABOVE, (B) THE PRESENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT ANY PROPERTY (INCLUDING BUT NOT LIMITED TO ANY UNDISCOVERED HAZARDOUS MATERIALS LOCATED BENEATH THE SURFACE OF THE PROPERTY) AND (C) VIOLATIONS OF ANY HAZARDOUS MATERIALS LAWS PERTAINING TO THE PROPERTY OR THE ACTIVITIES THEREON. THIS RELEASE APPLIES TO ALL DESCRIBED RIGHTS, CLAIMS AND ACTIONS, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, PRESENT OR FUTURE.**

(b) **MEANING.** FOR PURPOSES OF THIS SECTION 2.2, ALL REFERENCES TO "DONOR" SHALL INCLUDE: (A) DONOR'S PARENT, SUBSIDIARY AND AFFILIATE CORPORATIONS, (B) DONOR'S DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES AND AGENTS, AND (C) THE HEIRS, SUCCESSORS, PERSONAL REPRESENTATIVES AND ASSIGNS OF DONOR'S DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES AND AGENTS.

(c) **EFFECTIVENESS.** THE PROVISIONS OF THIS SECTION 2 SHALL BE EFFECTIVE AS OF THE CLOSING DATE AND SHALL SURVIVE THE CLOSING DATE OR TERMINATION OF THIS DONATION AGREEMENT.

3. **CLOSING DATE.** IF THE CLOSING DATE DOES NOT TIMELY OCCUR DUE TO THE DEFAULT OF DONEE, (A) DONEE SHALL HAVE NO FURTHER RIGHT TO RECEIVE THE PROPERTY AND (B) DONOR SHALL BE FREE TO DISPOSE OF THE PROPERTY IN ANY WAY IT SEES FIT.

4. **GENERAL PROVISIONS**

4.1 **Successors and Assigns.** This Donation Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties. Notwithstanding the foregoing, Donee may not transfer, assign or encumber Donee's rights under this Donation Agreement without Donor's prior written approval.

4.2 **Entire Agreement.** This Donation Agreement contains the entire agreement between the parties concerning the Donation and sale of the property, and supersedes all prior written or oral agreements between the parties to this Donation Agreement. No addition to or modification of any term or provision shall be effective unless in writing, signed by both Donor and Donee.

4.3 **Time of Essence.** Donor and Donee hereby acknowledge and agree that time is strictly of the essence with respect to each term and condition of this Donation Agreement and that the failure to timely perform any of the terms and conditions by either party shall constitute a breach and default under this Donation Agreement by the party failing to so perform.

4.4 **Partial Invalidity.** If any portion of this Donation Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Donation Agreement and the remaining parts shall remain in full force as fully as though the invalid, illegal or unenforceable portion had never been part of this Donation Agreement.

- 4.5 **Governing Law.** The parties intend and agree that this Donation Agreement shall be governed by and construed in accordance with the laws of the state in which the Property is located.
- 4.6 **No Third Parties Benefits.** No person other than Donor and Donee, and their permitted successors and assigns, shall have any right of action under this Donation Agreement.
- 4.7 **Waivers.** No waiver by either party of any provision shall be deemed a waiver of any other provision or of any subsequent breach by either party of the same or any other provision.
- 4.8 **Captions.** The captions and Section numbers of this Donation Agreement are for convenience and in no way define or limit the scope or intent of the Sections of this Donation Agreement.
- 4.9 **Counterparts.** To facilitate execution, this Donation Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.
- 4.10 **No Presumption.** All the parties hereto and their attorneys have had full opportunity to review and participate in the drafting of the final form of this Donation Agreement and all documents attached as exhibits. Accordingly, such documents shall be construed without regard to any presumption or other rule of construction whereby any ambiguities within this Donation Agreement would be construed or interpreted against the party causing the document to be drafted.
- 4.11 **Notices.** Any notices or other communication required or permitted under this Donation Agreement shall be in writing, and shall be (a) personally delivered, or (b) sent by certified or registered United States mail, postage prepaid, return receipt requested, or (c) by overnight delivery by a reputable courier to the address of the party set forth in this Section or (d) telecopied to the Fax number of the party set forth in this Section. Such notice or communication shall be deemed given (i) if sent by personal delivery or by overnight courier, when delivered in person, (ii) if sent by telecopier, when evidence of successful transmission by telecopier has been received by sender or, (iii) in the case of mailed notice, forty-eight (48) hours following deposit in the United States mail. Notice of change of address shall be given by written notice in the manner detailed in this Section.

If to the Donee: **CITY OF SAINT CHARLES**

If to the Donor:

Wells Fargo Bank, N.A.
1 Home Campus
Des Moines, Iowa 50328-0001
Attention: Whitney Tenboer , MAC# X2301-049

With a copy to:

Wells Fargo Bank, N.A.
1 Home Campus
Des Moines, Iowa 50328-0001
Attention: General Counsel, MAC X9903-03K

- 4.12 **Joint and Several.** If more than one person or entity has executed this Donation Agreement as Donee, the obligations of all such persons or entities hereunder shall be joint and several.

[Signatures on the next page]

DONEE:

CITY OF SAINT CHARLES

Signature: _____

Print Name: _____

Title: _____

DONOR:

WELLS FARGO BANK, N.A.

Signature: _____

Print Name: _____

Title: _____

EXHIBIT "A"

PROPERTY ADDRESS

807 ILLINOIS AVE
SAINT CHARLES, IL 60174

LEGAL DESCRIPTION

Part of the Southeast quarter of Section 27, Township 40 North, Range 8 East of the 3rd P.M. described as follows: Commencing at the Northeast corner of Block 17 of Minard, Person and Hunt's First Addition to St. Charles, Kane County, Illinois, thence North 64 degrees 0 minutes East along the said South line of Illinois Avenue, in the said City of St. Charles, 382 feet for a place of beginning; thence North 64 degrees 0 minutes East along the said South line of Illinois Avenue, 38.8 feet; thence South 24 degrees 0 minutes East, 102 feet; thence South 64 degrees 0 minutes West parallel to the said South line of Illinois Avenue, 158 feet the West bank of a creek; thence Northeasterly, 160 feet to the place of beginning, in the City of St. Charles, Kane County, Illinois.

OFAC CERTIFICATE

Pursuant to the Bank Secrecy Act and requirements specified by the Department of the Treasury's Office of Foreign Assets Control ("OFAC"), Wells Fargo Bank, N.A. will not engage in any transactions with any individual or entity that either appears on the list of Specially Designated Nationals and Blocked Persons, Specially Designated Terrorists, Specially Designated Narcotics Traffickers or that Wells Fargo Bank, N.A. suspects to be involved in a suspicious transaction or one in violation of federal law. Therefore, the following information must be provided. If Buyer fails to provide this information, Wells Fargo Bank, N.A. will not consider your offer. This information will only be used for the sole purpose of screening against OFAC and WorldCheck lists.

Please provide the following information:

Buyer 1

First Name:	Middle Name:	Last Name:	
Address:	City:	State:	Zip:
Country:	DOB:	Phone #:	

Buyer 2

First Name:	Middle Name:	Last Name:	
Address:	City:	State:	Zip:
Country:	DOB:	Phone #:	

Buyer 3

First Name:	Middle Name:	Last Name:	
Address:	City:	State:	Zip:
Country:	DOB:	Phone #:	

Buyer's Agent Information

First Name:	Last Name:	Company:	
Address:	City:	State:	Zip:
Email:	Phone #:	Fax # :	

Buyer's Company/Corporation/Partnership

If buyer is a Company/Corporation/Partnership or is not purchasing as an individual, buyer must provide full company/ corporation name and Articles of Incorporation and signing authority. **Full Name of Company/ Corporation and Address:**

List All Principal Owners of Partnership or LLC. Include individual tax ID, address and dates of birth for each. If the buyer is a non-profit organization, please list all signer's names (including non-board members) as well as all individuals with principal ownership or financial interest in the non-profit organization.:

Corporation Tax ID:

If Wells Fargo Bank, N.A. finds in its sole and absolute discretion that any purchaser meets the criteria as described above, the offer, purchase agreement or other documents executed in connection with the purchase of the property shall be of no effect, and shall be immediately cancelled. No party shall be liable to the other party in any way, for any claims whatsoever. Any earnest money shall be returned.

ADDENDUM TO DONATION AGREEMENT

PROPERTY ADDRESS: 807 ILLINOIS AVE, SAINT CHARLES, IL 60174

DATE OF PURCHASE AND SALE AGREEMENT 2.8.2012

PURCHASER CITY OF SAINT CHARLES

SELLER WELLS FARGO BANK, N.A

Closing date to be extended to on or before _____

Adjusted sales price to be _____

Other: **A new Section 1.5 should be added, as follows:**

"1.5 Closing conditions. In addition to all other terms and conditions set forth herein, the Donee's agreement to accept the Property from Donor shall be contingent upon the following:

(a) Donor shall provide, at its cost, an ALTA survey of the Property dated no less than six (6) months prior to the Closing Date, showing no encroachments onto the Property from any adjacent property and no encroachments by or from the Property onto any adjacent property.

(b) An ALTA Owner's Title Insurance Policy ("Policy") issued by Chicago Title Insurance Company insuring that Donee has fee simple title to the Property, subject only to the general exceptions of the Policy, and any other exceptions Donee has elected to accept. Donee shall be responsible for the cost of the Policy.

(c) General and special real estate and other ad valorem taxes and assessments and other state of city taxes, fees, charges and assessments affecting the Property shall be prorated as of the Closing Date on the basis of one hundred six percent (106%) of the most recent ascertainable amounts of, or other reliable information in respect to, each such item, and the net credit to Donee shall be paid in cash at the Closing.

(d) Donor shall provide evidence that all outstanding utility bills have been paid as of the Closing Date.

SELLER:
WELLS FARGO BANK, N.A

DONEE:
[Donee's Name]

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____