

THE COUNCIL OF THE CITY OF WATERVLIET

ORDINANCE NO. 1963

INTRODUCED BY COUNCILMAN FOGLIA

AN ORDINANCE AUTHORIZING THE PUBLICATION ONCE A WEEK FOR THREE CONSECUTIVE WEEKS IN THE OFFICIAL NEWSPAPER OF THE CITY FOR THE PROPOSED SALE PORTION OF TWENTIETH STREET MORE PARTICULARLY DESCRIBED AS A STRIP OF LAND BEING APPROXIMATELY 50 FEET WIDE AND 103.70 FEET LONG, AS MORE PARTICULARLY DESCRIBED HEREIN, PURSUANT TO THE TERMS OF SALE SET FORTH HEREIN.

WHEREAS, the Council wishes to publish notice once per week for three consecutive weeks in the official newspaper of the proposed sale of a portion of 20th Street described as follows:

“Beginning at a point marked by a masonry nail set in a macadam parking area on the north bounds of 20th Street (originally designated as “Cayuga Street” on a subdivision map entitled “Map of West Troy”, dated 1845 by S.A Beers and recorded in the Albany County Clerk’s Office in Drawer no. 23 as Map no. 401) 140.00 feet west of the intersection of said north bounds of 20th Street with the west bounds of Broadway, said point being the southwest corner of lands now or formerly of Parker Brothers Memorial Funeral Home, Inc., a corner of lands of Pioneer Savings Bank to be conveyed to the grantee herein, Stewart’s Shops Corp. and the northeast corner of the parcel herein described; running thence across said 20th Street and through lands of the City of Watervliet at an angle of 90° to the boundaries of said 20th Street S 23° 05’ 26” W 50.00’ to a point marked by a capped iron pin on the bounds of the aforementioned lands of Pioneer Savings Bank to be conveyed to Stewart’s Shops Corp.; running thence along the bounds of said lands of Pioneer Savings Bank to be conveyed to Stewart’s the following three courses:

N 66° 54’ 34” W 103.70’ to a point;
N 23° 05’ 26” E 50.00’ to a point; and
S 66° 54’ 34” E 103.70’ to the point and place of beginning. Containing
5,185 square feet (0.119 acre) of land.”

NOW THEREFORE, the Council of the City of Watervliet, in regular session convened, ordains as follows:

SECTION I

That Jeremy A. Smith, City Clerk and Clerk to the Council, be and he hereby is authorized and directed to publish once a week for three weeks in the official newspaper of the City, pursuant to provisions of Section 30 of the City Charter, the proposed sale by the Council of the City of a portion of 20th Street being a strip of land approximately 50 feet wide by 103.70 long as reflected on Exhibit “A” hereto which map is deemed incorporated herein by this reference (the “Property”).

The General Manager of the City will sell the Property to the highest bidder, subject to a confirming ordinance of the Council approving the sale of the Property and the Purchase Contract with the Successful Bidder, on the form set forth in Section IV herein that is accepted by the General Manager at the Public Auction on the 7th day of July, 2016 at 10:00 AM in his office at City Hall, 2 Fifteenth Street, Watervliet, New York 12189.

The sale of the Property is subject to the following: (A) the Minimum Bid (as hereinafter defined), (B) the Terms of Sale (as hereinafter defined), (C) the receipt by the General Manager of the City of the fully executed and original Purchase Contract from the Successful Bidder in the form set forth in Section IV herein (the “Purchase Contract”) with the required Minimum Deposit; (D) the approval of the Council of an Ordinance accepting the Purchase Contract with the Successful Bidder, confirming the sale of the

Property to the Successful Bidder and the proposed development of the Property by such Successful Bidder; and (E) on the date of the public auction of the Property, but prior to the commencement of the sale by the General Manager and as a condition precedent to bid on the Property, all applicants will be required to submit to the General Manager their proposed development plans for the Property along with their professionally drawn building elevations and proposed site plans (the “Development Plans”).

SECTION II

That the minimum bid which will be accepted at said sale for the Property is Fifty Thousand Dollars (\$50,000.00) (the “Minimum Bid”) plus all advertising costs.

SECTION III

The Council approves the following Terms of Sale for the sale of the Property.

The Property will be sold under the direction of Mark Gleason, General Manager for the City of Watervliet (hereinafter referred to as the “General Manager”), pursuant to the following terms:

1. The minimum bid which will be accepted by the City for the sale of the Property is Fifty Thousand Dollars (\$50,000.00) plus all advertising costs incurred by the City in connection with the disposition of the Property.
2. Payment of the Minimum Bid by a cashier’s check or certified funds payable to the City of Watervliet must be tendered to the General Manager prior to the commencement of the sale and the payment of the Minimum Bid to the General Manager is a condition precedent to being able to bid on the Property.
3. The residue of the purchase price for the Property in excess of the Minimum Bid, if any, will be required to be paid to the General Manager at his office located at City of Watervliet, City Hall, 2 Fifteenth Street, Watervliet, New York 12189 on or before July 20, 2016.
4. The Quit Claim Deed for the Property will be tendered by the City to the successful bidder following the approval by the Council of the final Ordinance at its July 21, 2016 meeting. The TIME IS OF THE ESSENCE date for the transfer of the Property is on or before July 23, 2016 to occur at the time and place above specified. The Council or the Mayor may adjourn or modify the Closing Date. The form of the Quit Claim Deed is set forth in Section V herein.
5. By signing the Purchase Contract at the completion of the auction, the Successful Bidder understands and agrees to the TIME OF THE ESSENCE requirement. Subject to the right of adjournment in paragraph 4 above, the Successful Bidder will appear at the Office of the General Manager following the July 21, 2016 meeting but during regular business hours but before July 23, 2016 and make full payment of the balance of the Purchase Price, if any, and be in all respects ready to complete the sale transaction in accordance with the Purchase Contract.
6. The General Manager is not required to send any notice to the purchaser containing a reminder of the above obligation to complete the purchase of the Property. If the Successful Bidder neglects to call at the time and place above specified, to receive the Quitclaim Deed to the Property, the General Manager may cancel the transaction, as hereinafter described, or the General Manager may adjourn the proposed sale date, in which case interest will be charged by the General Manager on the Purchase Price from the date of the auction forward at an interest rate of nine (9%) percent per annum. Further, the General Manager shall charge, and the Successful Bidder shall pay all accrued interest at nine (9%) percent per annum on the purchase price if the sale and transfer of the Property occurs after the above “Time is of the Essence” date for any reason not the fault of the General Manager and/or the City of Watervliet.

7. The property is being sold in “as is” condition and subject to:
 - (a) Rights of the public and others in and to any part of the property that lies within the bounds of any street, alley or highway; restrictions and easements of record, including the right of the City to keep in place any and all utilities in the Property;
 - (b) Any state of facts that an accurate, currently dated survey might disclose;
 - (c) Any and all tenancies, possessory interests and/or leases affecting said premises.
 - (d) The right of redemption of the United States of America, if any.
 - (e) Any covenants, easements, reservation and restrictions of record.
 - (f) Any violations of record.
 - (g) Any zoning regulations or amendments thereto.
 - (h) Prior lien(s) of record, if any.
 - (i) A right of reverter will be placed in the Deed to the Property from the City to the Successful Bidder which provides that the title to the Property shall automatically revert to the City upon the filing by the City in the Office of the Albany County Clerk of a certificate indicating that the Successful Bidder failed to obtain all required approvals for the construction of the building improvements reflected in the Development Plans, and thereafter obtain a building permit and commenced construction of such finally approved building improvements within one hundred eighty (180) days from the date of the Closing (the “Reconveyance Event”). Upon the occurrence of the Reconveyance Event, the City, by its execution and delivery of a certificate from the Mayor indicating that a Reconveyance Event has occurred, may record such certificate in the Office of the Albany County Clerk which filing shall confirm that the title to the Property has irrevocably and permanently reverted to the City (the “Reconveyance”). Upon the Reconveyance, the Buyer understands and agrees that there shall be no return of the Minimum Bid and/or the excess of the Purchase Price over and above the Minimum Bid and that the City may retain all such payments by the Successful Bidder. Upon the completion of the construction of the building improvements by the Successful Bidder, the City’s right to the Reconveyance Event shall be deemed to have been irrevocably terminated and waived and the City will, if requested, but at the sole cost and expense of the Successful Bidder, file a cancellation of the Reconveyance Event set forth in the Quitclaim Deed conveying the Property to the Successful.
8. Title insurance, if any, shall be paid for by the Purchaser.
9. Purchaser assumes the risk of loss following its successful bid at the auction and shall be required to purchase the Property pursuant to the Contract of Sale if a loss takes place, and shall not be entitled to an abatement in the purchase price under any circumstances. The successful bidder is encouraged to insure its interest at the time of sale.
10. Prior to the commencement of the auction, each bidder shall sign and deliver to the General Manager, the Purchase Contract which will not have the final purchase price for the Property stated therein. Immediately following the completion of the public auction, the General Manger shall fill in the Purchase Price and the Successful Bidder shall initial the final Purchase Price. Upon the commencement of the auction, an executed Purchase Contract may not be withdrawn and/or cancelled under any circumstances and will be countersigned by the Mayor following the approval by the Council of the final ordinance set forth in Section I(D) herein.

11. If the Purchaser does not thereafter acquire the Property pursuant to the Purchase Contract, then such Successful Bidder shall be liable for any deficiency there may be between the sum for which said Property shall be subsequently sold and also for costs and expenses occurring on such resale. Such default shall not be a waiver of any rights of the City of Watervliet to seek and obtain additional damages from the defaulting bidder pursuant to the Purchase Contract. The General Manager reserves the right to sell to the second highest bidder if the purchaser defaults.
12. All recording fees and costs, including but not limited to, fees and costs for the filing of the deed, RP 5217 form, TP 584 form, and transfer tax shall be borne and paid for by the purchaser. No abstract of title, no title insurance policy, and no survey will be furnished. All Abstracts of Title and continuation and all other charges related to the transfer are to be paid by the Purchaser.
13. The Purchaser must execute and deliver the Purchase Contract set forth in Section IV herein.
14. The Successful Bidder acknowledges and agrees that the conveyance of the Property is subject and conditioned upon the approval of an Ordinance by the Council confirming and approving both the Development Plans and the execution and delivery of the Purchase Contract with the Successful Bidder. The Council's approval of the Development Plans does not eliminate or waive any other required and/or necessary municipal and/or other governmental approvals, including site plan approval and/or any other zoning approvals.
15. If the sale to the Successful Bidder is not approved by the Council in its sole and absolute discretion, then the sale of the Property will not occur and the Minimum Bid will be returned to the Successful Bidder

On June 29, 2016 at 7:00 PM this Council will hold a Public Hearing at the J. Leo O'Brien Senior Citizen Center, Watervliet, New York concerning the proposed sale of the Property at which time all persons interested may be heard in opposition to or in favor of such proposed sale of the Property, and thereafter, pursuant to Section 30 of the City Charter, the Council shall consider the approval and/or disapproval of an Ordinance for the sale of the Property by the General Manager at Public Auction, subject to the Minimum Bid (the "Approving Ordinance of the Council").

SECTION IV

PURCHASE CONTRACT

This Purchase and Sale Contract dated as of July 7, 2016 (the "Contract") by and between the CITY OF WATERVLIET having an address of City Hall, 2 15th Street, Watervliet, New York 12189, as Seller (the "City" or "Seller")) and _____, a _____ having an address for the transaction of business at _____, as the buyer (the "Purchaser").

WHEREAS, on or about July 7, 2016, the General Manager conducted a sale of certain property being a portion of 20th Street being a strip of land approximately 50 feet wide by 103.70 long as reflected on Exhibit "A" hereto which map is deemed incorporated herein by this reference (the "Property").

WHEREAS, on July 21, 2016, the Council by Ordinance will consider the approval of the sale of the Property pursuant to this Contract and the proposed Development Plans (as hereinafter defined) for the Property and the passage of the Ordinance is a condition precedent to the willingness of the City to sell the Property (the "Subsequent Ordinance").

NOW THEREFORE, in consideration of Ten Dollars and other good and valuable consideration the receipt and sufficiency of which is approved by the Parties, the Parties agree that the following shall be the terms, covenants and conditions for the conveyance of the Property as follows:

1) Property to be Conveyed. Beginning at a point marked by a masonry nail set in a macadam parking area on the north bounds of 20th Street (originally designated as “Cayuga Street” on a subdivision map entitled “Map of West Troy”, dated 1845 by S.A Beers and recorded in the Albany County Clerk’s Office in Drawer no. 23 as Map no. 401) 140.00 feet west of the intersection of said north bounds of 20th Street with the west bounds of Broadway, said point being the southwest corner of lands now or formerly of Parker Brothers Memorial Funeral Home, Inc., a corner of lands of Pioneer Savings Bank to be conveyed to the grantee herein, Stewart’s Shops Corp. and the northeast corner of the parcel herein described; running thence across said 20th Street and through lands of the City of Watervliet at an angle of 90° to the boundaries of said 20th Street S 23° 05’ 26” W 50.00’ to a point marked by a capped iron pin on the bounds of the aforementioned lands of Pioneer Savings Bank to be conveyed to Stewart’s Shops Corp.; running thence along the bounds of said lands of Pioneer Savings Bank to be conveyed to Stewart’s the following three courses:

N 66° 54’ 34” W 103.70’ to a point;
N 23° 05’ 26” E 50.00’ to a point; and
S 66° 54’ 34” E 103.70’ to the point and place of beginning.
Containing 5,185 square feet (0.119 acre) of land.”

2) Purchase Price. The Purchase Price for the Property is the sum of _____ (\$_____).

3) Terms of Sale. The conveyance of the Property is subject to the following terms, covenants and conditions.

- a) The minimum bid which will be accepted by the City for the sale of the Property is Fifty Thousand Dollars (\$50,000.00) plus all advertising costs incurred by the City in connection with the disposition of the Property.
- b) Payment of the Minimum Bid by a cashier’s check or certified funds payable to the City of Watervliet must be tendered to the General Manager prior to the commencement of the sale and the payment of the Minimum Bid to the General Manager is a condition precedent to being able to bid on the Property.
- c) The residue of the purchase price for the Property in excess of the Minimum Bid, if any, will be required to be paid to the General Manager at his office located at City of Watervliet, City Hall, 2 Fifteenth Street, Watervliet, New York 12189 on or before July 20, 2016.
- d) The Quit Claim Deed for the Property will be tendered by the City to the successful bidder following the approval by the Council at its July 21, 2016 meeting. The TIME IS OF THE ESSENCE date for the transfer of the Property is on or before July 23, 2016. Notwithstanding the foregoing, the Council or the Mayor may adjourn and/or modify the July 23, 2016 Time is of The Essence Closing Date.
- e) By signing the Purchase Contract at the completion of the public auction, the Purchaser understands and agrees to the TIME OF THE ESSENCE requirement for Closing. Subject to the provisions of Section 3(d) herein, that the Purchaser will appear at the Office of the General Manager following the July 21, 2016 meeting of the Council but during regular business hours but before July 23, 2016 and make full payment of the balance of the Purchase Price, if any, and be in all respects ready to complete the sale transaction in accordance with the Purchase Contract.
- f) The General Manager is not required to send any notice to the purchaser containing a reminder of the above obligation to complete the purchase of the Property. If the Purchaser neglects to call at the time and place above specified, to receive the Deed to the Property, the General Manager may cancel the transaction, as hereinafter described, or the General Manager may adjourn the proposed sale date, in which case interest will be charged by the General Manager on the Purchase Price from the date of the auction forward at an interest rate of nine (9%) percent per annum. Further, the General Manager shall charge, and the Purchaser shall pay all accrued interest at nine

(9%) percent per annum on the purchase price if the sale and transfer of the Property occurs after the above “Time of the Essence” date for any reason not the fault of the General Manager and/or the City of Watervliet.

g) The property is being sold in “as is” condition and subject to:

- (1) Rights of the public and others in and to any part of the property that lies within the bounds of any street, alley or highway; restrictions and easements of record, including the right of the City to keep in place any and all utilities in the Property;
- (2) Any state of facts that an accurate, currently dated survey might disclose;
- (3) Any and all tenancies, possessory interests and/or leases affecting said premises.
- (4) The right of redemption of the United States of America, if any.
- (5) Any covenants, easements, reservation and restrictions of record.
- (6) Any violations of record.
- (7) Any zoning regulations or amendments thereto.
- (8) Prior lien(s) of record, if any.
- (9) A right of reverter will be placed in the Deed to the Property from the City to the Successful Bidder which provides that the title to the Property shall automatically revert to the City upon the filing by the City in the Office of the Albany County Clerk of a certificate indicating that the Purchaser failed to obtain all required approvals for the construction of the building improvements reflected in the Development Plans, and thereafter obtain a building permit and commenced construction of such finally approved building improvements within one hundred eighty (180) days from the date of the Closing (the “Reconveyance Event”). Upon the occurrence of the Reconveyance Event, the City, by its execution and delivery of a certificate from the Mayor indicating that a Reconveyance Event has occurred, may record such certificate in the Office of the Albany County Clerk which filing shall confirm that the title to the Property has irrevocably and permanently reverted to the City (the “Reconveyance”). Upon the Reconveyance the Purchaser understands and agrees that there shall be no return of the Minimum Bid and/or the excess of the Purchase Price over and above the Minimum Bid and that the City may retain all such payments by the Successful Bidder. Upon the completion of the construction of the building improvements by the Purchaser, the City’s right to the Reconveyance Event shall be deemed to have been irrevocably terminated and waived and the City will, if requested, but at the sole cost and expense of the Purchaser, file a cancellation of the Reconveyance Event set forth in the Quitclaim Deed conveying the Property to the Successful.
- (10) Title insurance, if any, shall be paid for by the purchaser.
- (11) Purchaser assumes the risk of loss following its successful bid at the auction and shall be required to purchase the Property pursuant to the Contract of Sale if a loss takes place, and shall not be entitled to an abatement in the Purchase Price under any circumstances. The Purchaser is encouraged to insure its interest at the time of sale.

- (12) Prior to the commencement of the auction, each prospective and qualified bidder shall sign and deliver to the General Manager the Purchase Contract which will not have the final purchase price for the Property completed. At the conclusion of the public auction, the General Manager will complete the Purchaser Price resulting from such auction but not less than the Minimum Bid. Upon the commencement of the auction, the final Purchase Contract may not be withdrawn and/or cancelled under any circumstances and such Purchase Contract will only be countersigned by the Mayor following the approval by the Council of the Subsequent Ordinance.
- (13) If the Purchaser does not thereafter acquire the Property pursuant to the Purchase Contract, then the Purchaser shall be liable for any deficiency there may be between the sum for which said Property shall be subsequently sold and also for costs and expenses occurring on such resale. Such default shall not be a waiver of any rights of the City of Watervliet to seek and obtain additional damages from the defaulting Purchaser pursuant to this Purchase Contract.
- (14) All recording fees and costs, including but not limited to, fees and costs for the filing of the deed, RP 5217 form, TP 584 form, and transfer tax shall be borne and paid for by the Purchaser. No abstract of title, no title insurance policy, and no survey will be furnished. All Abstract of Title continuation and all other charges related to the transfer are to be paid by the Purchaser.
- (15) The Purchaser acknowledges and agrees that the conveyance of the Property is subject and conditioned upon the approval by the Council of the Subsequent Ordinance confirming and approving both the Development Plans and the execution and delivery of the Purchase Contract with the Purchaser and the conveyance of the Property to the Purchaser. The Council's approval of the Development Plans does not eliminate or waive any other required and/or necessary municipal and/or other governmental approvals, including site plan approval and/or any other zoning approvals.
- (16) If the sale to the Purchaser is not approved by the Council in its sole and absolute discretion, then the sale of the Property to the Purchaser will not occur and the Minimum Bid will be returned to the Successful Bidder.

IN WITNESS WHEREOF, the City and the Purchaser have executed and delivered this Contract as of the day and year set forth above

CITY OF WATERVLIET, as Seller

By: _____
Michael P. Manning, Mayor

, as Purchaser

SECTION V

FORM OF QUITCLAIM DEED

THIS INDENTURE, made the _____ day of July, 2016, by and between CITY OF WATERVLIET, a municipal corporation organized under the laws of the State of New York and situated in the County of Albany, New York, having an office at 2 15th Street, Watervliet, New York 12189 (the "Grantor") and _____ having an address for the transaction of business at _____ (the "Grantee").

WITNESSETH, the Grantor, in consideration of **ONE AND 00/100 DOLLAR (\$1.00)** lawful money of the United States and other good and valuable consideration paid by the Grantee, does hereby remise, release and quitclaim unto the Grantee, its successors and assigns forever:

ALL THAT CERTAIN TRACT, PIECE OR PARCEL OF LAND situate in the City of Watervliet, County of Albany and State of New York and more particularly described as follows:

Beginning at a point marked by a masonry nail set in a macadam parking area on the north bounds of 20th Street (originally designated as "Cayuga Street" on a subdivision map entitled "Map of West Troy", dated 1845 by S.A Beers and recorded in the Albany County Clerk's Office in Drawer no. 23 as Map no. 401) 140.00 feet west of the intersection of said north bounds of 20th Street with the west bounds of Broadway, said point being the southwest corner of lands now or formerly of Parker Brothers Memorial Funeral Home, Inc., a corner of lands of Pioneer Savings Bank to be conveyed to the grantee herein, Stewart's Shops Corp. and the northeast corner of the parcel herein described; running thence across said 20th Street and through lands of the City of Watervliet at an angle of 90° to the boundaries of said 20th Street S 23° 05' 26" W 50.00' to a point marked by a capped iron pin on the bounds of the aforementioned lands of Pioneer Savings Bank to be conveyed to Stewart's Shops Corp.; running thence along the bounds of said lands of Pioneer Savings Bank to be conveyed to Stewart's the following three courses:

N 66° 54' 34" W	103.70' to a point;
N 23° 05' 26" E	50.00' to a point; and
S 66° 54' 34" E	103.70' to the point and place of beginning.

Containing 5,185 square feet (0.119 acre) of land." (the "Property")

THIS CONVEYANCE IS EXPRESSLY SUBJECT TO all enforceable covenants, conditions, restrictions and easements of record, if any, affecting the premises described hereinabove.

THIS CONVEYANCE IS EXPRESSLY SUBJECT TO THE FOLLOWING RIGHT OF REVERTER IN FAVOR OF THE GRANTOR

Title to the Property shall automatically revert to the City upon the filing by the City in the Office of the Albany County Clerk of a certificate indicating that the Grantee failed to obtain all required approvals for the construction of the building improvements reflected in the Development Plans tendered to the City pursuant to the Purchase Contract by and between the Grantor and Grantee dated _____, 2016, and thereafter obtain a building permit and have commenced construction of such finally approved building improvements within one hundred eighty (180) days from the date of the Closing (the "Reconveyance Event"). Upon the occurrence of the Reconveyance Event, the City, by its execution and delivery of a certificate from the Mayor indicating that a Reconveyance Event has occurred, may record such certificate in the Office of the Albany County Clerk which filing shall confirm that the title to the Property has irrevocably and permanently reverted to the City (the "Reconveyance"). Upon the completion of the construction of the building improvements by the Successful Bidder, the City's right to the Reconveyance Event shall be deemed to have been irrevocably terminated and waived and the City will, if requested, but at the sole cost and expense of the Successful Bidder, file a cancellation of the Reconveyance Event set forth in the Quitclaim Deed conveying the Property to the Successful.

I hereby approve the foregoing Ordinance of this Council.

Dated: June 2, 2016

Michael P, Manning
Mayor

Introduced by: **COUNCILMAN FOGLIA**
Moved by: **COUNCILMAN FOGLIA**
Seconded by: **MAYOR MANNING**

Adopted by the following vote:

Ayes---	2
Nays---	0
Abstain---	1

June 2, 2016