

MEMORANDUM

TO: City Council

FROM: Gregory E. Buckley
City Manager



DATE: November 15, 2024

SUBJECT: Agreement Between City and Wine Not LLC Pertaining to 2023 Washington St

Background:

The City acquired this property through a cooperative arrangement with Manitowoc County in April 2020. The property had been vacant and tax delinquent for over 10 years. While the County had the ability to take title to the property after three years of tax delinquency, it did not do so, out of concern for the brownfield nature of the property. (There had been a leaking underground storage tank situation, which was remediated and "closed out" by WDNR, subject to certain ongoing conditions.)

In the interest of seeing the property redeveloped, the City acquired the County's tax foreclosure rights through a "Section 75.106" agreement with WI DNR, which qualified the City for the Local Governmental Unit (LGU) exemption to environmental liability that is available to local units under Wisconsin law. Based on that agreement between the City and WDNR and the County's concurrence, the City was awarded title to the property by Manitowoc County Circuit Court in April 2020.

The property was listed for sale with a realtor in July 2020. It was the subject of a purchase agreement with TA Properties (Tim Klein) for a time--from July 2021 to November 2021. Terms included sale for \$10,000, with a \$5,000 non-refundable down payment. In November 2021, the City Council approved allowing TA Properties to terminate the agreement, with a refund of the \$5,000 deposit; the property remained in the City's ownership.

Purchase by Wine Not, LLC

In December 2021, the City issued a Request for Proposals for redevelopment of the property, indicating a willingness to sell the property for \$10,000, provided that a purchaser invest at least \$100,000 in its redevelopment. While a few parties showed some interest in the property, the only proposal received was from Wine Not LLC.

The City Council on February 7, 2022 approved a purchase agreement with Wine Not LLC; that agreement was signed by the City and Wine Not LLC in April 2022; **a copy is attached.** Principals of

Wine Not, LLC are Curt and Jean Andrews and Barry and Gina Krahn--this entity was also the developer of Cool City Brewing Company.

That February 2022 agreement provided, among other things, that Wine Not LLC would:

--Within 180 days submit plans for redevelopment of the property (by January 2023)

--By September 2023, have completed the project and provided the City with evidence of having invested at least \$100,000 in improvements to the property; to the extent such investment fell short of \$100,000, the balance would be due as a payment to the City.

Plans for the project were approved by the Plan Commission in November 2022. But, as work on the property proceeded, the developers ran into several challenges, which drove up the cost of the project considerably. They cited costs of more than \$500,000 as demolition and rebuilding of a portion of the building was found to be necessary.

Upon request of Wine Not LLC, the City Council approved two extensions of the timetable contained in the purchase/development agreement:

--In June 2023, extending completion deadline to December 31, 2023, but leaving the deadline for proof of investment of at least \$100,000 at September 2023.

--In September 2023, extending completion deadline to July 31, 2024, and extending the deadline for proof of investment of at least \$100,000 to December 31, 2023.

Wine Not ultimately made the determination that it was necessary to demolish the entire building, including the back wall. This complicates redevelopment of the site, as a new building will need to meet the Zoning Code's rear yard setback requirement of 25 feet (old building was built just about up to the property line). That said, this lot does feature 150 feet of state highway frontage, and has good potential as a redevelopment site, either by itself or as part of a larger site assembly.

Last Council Discussion was February 29, 2024

On February 29, 2024, Barry and Gina Krahn of Wine Not LLC met with the City Council in a work session and discussed the challenges of redeveloping the property. They indicated that LLC had invested about \$50,000 in the project to date. Various options were discussed to address the project and the purchase/development agreement going forward, as indicated in the **attached minutes** from that meeting.

While it was intended to bring this issue back to the City Council for some manner of action on the purchase/development agreement, I am sorry to say that has not happened to date. I apologize for the extended delay, but other projects and activities have just taken priority on my schedule, and we have been without a Community Development Director since early June.

To get this matter back "on track," there was discussion in closed session at the Council meeting on November 4, to get feedback from the City Council on this matter before re-engaging with Wine Not LLC. In follow-up to that closed session, I met with Wine Not LLC reps and have included this matter on Monday's agenda for open session consideration. Monday's agenda also provides the opportunity for further closed session discussion if the City Council deems that appropriate for negotiation purposes.

Based on that closed session discussion with the Council and a follow-up meeting with representatives of Wine Not LLC I would still recommend giving that entity a formal, written extension to allow them to pursue marketing/redevelopment of the property, under a new or amended Agreement with the following key terms, consistent with the Council's discussion back in February:

- Wine Not and the City must first agree on the amount of Wine Not's documented investment in the Property (represented to be \$50,000).
- Give Wine Not, LLC until December 31, 2025 to sell the property or to develop it; require that the property be listed within 30 days of signing the new/amended Agreement.
- Provide that the City has a right of first refusal to match any bona fide offers received by Wine Not LLC during the above period.
- If Wine Not LLC sells the property during the above period, allow Wine Not LLC to retain 100 percent of sale proceeds in an amount up to its mutually agreed-upon, documented investment in the property (not to exceed \$50,000); any proceeds in excess of that amount will be split between the City (2/3 of such excess) and Wine Not LLC (1/3 of such excess).
- If Wine Not LLC has not sold the property by December 31, 2025, then the City will have a one-month option period (January 1 to January 31, 2026) during which it can exercise an option to purchase the Property from Wine Not LLC for \$10,000. Closing to take place within 60 days of the exercise of such option.
- If the property has not been sold by December 31, 2025 and the City has not exercised its option to purchase by January 31, 2026, then neither the City nor Wine Not LLC has any remaining obligations under the Agreement.

If the City Council directs that these or other key terms be included in a new/amended agreement, I will proceed to work with our City Attorneys to work up a full agreement to bring back to the Council. If this matter needs further review, I suggest a referral to the Personnel and Finance Committee.

AGREEMENT FOR SALE OF REAL ESTATE

Agreement for Sale of Real Estate made this 28th day of April, 2022, by and between the City of Two Rivers, Wisconsin, ("the City") and Wine Not LLC, ("the Buyer").

1. **Property Sold.** The City agrees to sell and the Buyer agrees to buy on the terms set forth in this Agreement the real property located in the City of Two Rivers, Manitowoc County, Wisconsin, being parcel number 053-000-037-060.09, more particularly described as follows: Original Plat, Lot 6, Block 37 in the City of Two Rivers, Manitowoc County, Wisconsin.
2. **Price and Terms.** The Purchase price of the Property shall be \$10,000.00, of which \$10,000.00 is paid at the time of the Buyer's signing of this Agreement by cashiers or certified check. This payment of \$10,000.00 shall be non-refundable.
3. **Conveyance.** Conveyance is to be made by warranty deed.
4. **Contingencies.** Sale of the Property is subject to the following conditions:
 - A. Approval of this Agreement by the Two Rivers City Council.
 - B. Subject to and conditioned on compliance with the terms of the agreement the City and the WDNR entered into pursuant to Wis. Stat. § 75.106, a copy of which is attached hereto as Exhibit A and made a part hereof, and compliance with the terms of that statute. Buyer acknowledges the Property has been the subject of environmental contamination. [attach s. 75.106 agreement]
 - C. Within 180 days from the execution of this Agreement, the Buyer shall submit Site and Architectural Plans, per Section 11-1-11 of the City's Municipal Code, to the Plan Commission for review and approval.
 - D. By September 30, 2023, the Buyer shall provide to the City documentation reasonably satisfactory to the City that the Buyer invested \$100,000 in the Property. Such documentation can include contractor invoices, architect invoices, material and equipment costs or other documents establishing an investment of at least \$100,000 in value has been made by Buyer to the Property, to the City's reasonable satisfaction. Such investment may include Buyer's expenditures for materials and equipment necessary for Buyer's redevelopment of the property, and Buyer's expenditures for any contractor work done on the property by contractors *in which neither the Buyer nor any member of the Buyer has an ownership interest nor by which any member of the Buyer is employed.* Any "in-kind" work done by the Buyer or by businesses in

which the Buyer or any member of the Buyer has an ownership interest or by which any member of the Buyer is employed shall not be counted toward such investment. Also, Buyer's purchase of the Property shall not be counted toward such investment.

5. **No Representations/ "As Is" Condition.** EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, BUYER ACCEPTS THE PROPERTY IN "AS IS" CONDITION, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE CONDITION OF THE PROPERTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE, AND INCLUDING BUT NOT LIMITED TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY OR WHETHER IT CONTAINS ANY UNLAWFUL AMOUNTS OF ASBESTOS OR ANY OTHER HAZARDOUS SUBSTANCES AS DEFINED IN FEDERAL OR STATE LAW. BUYER HAS MADE ALL INSPECTIONS OF THE PROPERTY IT DEEMS NECESSARY TO SATISFY BUYER REGARDING THE CONDITION OF THE PROPERTY FOR THE USE INTENDED BY BUYER, AND IS FULLY SATISFIED AND RELIES SOLELY ON THE RESULTS OF ITS OWN INVESTIGATION IN PURCHASING THE PROPERTY DESCRIBED IN THIS AGREEMENT.

6. **Failure to Comply with Contingencies in Section 4.** If any contingency is not satisfied, this Agreement shall be voidable by the City on written notice given to the Buyer by personal delivery to Wine Not LLC or sent to the following email addresses: curt@sc3keys.com.

7. **Date of Closing.** Closing will take place within 60 days of the execution of this agreement. Closing will occur at the Two Rivers City Hall.

8. **Date of Completion.** The development of the Property is consistent with Site and Architectural Plans as approved by the City Plan Commission and is in compliance with any Building Permits or other permits required for such development shall be completed by September 30, 2023.

If that does not take place, title to the property may revert to the City based on the failure to complete such development. Title to the Property shall revert to the City upon written notice to the Buyer given in the manner set forth in Section 6 of this Agreement, and upon such notice Buyer shall promptly sign and deliver to the City a warranty deed to the Property free of any lien or encumbrance. If Buyer shall fail to do so, it is agreed that the City may obtain a court judgment assigning title to the City and injunctive relief compelling delivery of an appropriate deed if needed. Buyer agrees that if the City is required to take

legal action to enforce reversion of title Buyer shall be responsible for reimbursement to the City of its reasonable expenses and attorney's fees incurred in such legal action. This Section of the Agreement shall survive the closing of the sale of the Property to the Buyer.

Not later than September 30, 2023, Buyer shall provide the City with documentation, to the City's reasonable satisfaction, of expenditures made in satisfaction of the investment requirements stated in Section 4.D of this Agreement. Should such documented investment total less than \$100,000, the Buyer shall be required to pay to the City a sum equal to the difference between \$100,000 and the amount of said documented investment, such sum to be paid within 30 days following written demand by the City.

9. Inability to Perform. If a Buyer is unable to perform any of its obligations under the Offer for reasons beyond the control of the Buyer, the Buyer may terminate the Offer if the Buyer provides written notice of termination to the City/Seller at least 60 days prior to the Date of Completion, September 30, 2023, or Buyer may request in writing an extension of time regarding this Agreement at least 60 days prior to the Date of Completion. The City may grant or deny any request for extension in its sole discretion. Buyer's notice shall specify the cause related to its inability to perform its obligation(s). If the Agreement is terminated as provided in this Section, then title to the Property shall revert to the City as provided in Section 8.

10. Closing Costs and Title Insurance. The Buyer shall be responsible for payment of any real estate taxes on the Property which are levied and assessed after the date of closing. The City, at its expense, shall obtain a title commitment, which shall be available to the Buyer at least 10 days prior to the date of closing. If such commitment shows the existence of any defects in title, the Buyer shall advise the City of the same within 10 days of Buyer's receipt of the commitment, and the Seller shall then have 10 days to remedy any such defect, and closing shall be extended accordingly. If such defect cannot be cured, then this Agreement is voidable at the option of the Buyer. Buyer is responsible for payment of any transfer tax payable, and fees associated with the recording of the Property.

11. Possession. The Buyer will have legal possession and occupancy of the Property as of the date of closing.


12. Survival. The provisions of this Agreement which by their terms extend beyond the date of closing will survive closing.

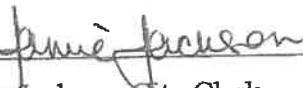
13. Entire Agreement. This Agreement contains the entire agreement of the parties regarding this transaction. All prior negotiations and discussions have been merged into this Agreement.

- 14. Authority.** The undersigned represent and warrant that they have full authority to sign and enter into this Agreement on behalf of City and the Buyer, and that the actions necessary to grant them such authority have been duly taken by the City and the Buyer.
- 15. Legal Counsel.** This Agreement has been drafted by the attorney for the City acting solely on behalf of the City. If the Buyer desires legal counsel regarding this Agreement or the conveyance contemplated in the Agreement, the Buyer will retain a separate attorney.
- 16. Binding Agreement.** This Agreement, as approved by the City Council on February 7, 2022, shall bind, and inure to the benefit of the parties, the City, hereto, the legal representatives, successors and assigns.

SIGNED AND DATED EFFECTIVE AS OF THE DATE SET FORTH ABOVE:

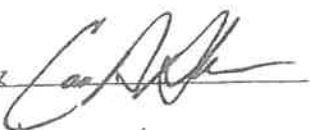
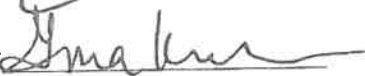
The City of Two Rivers



By: 
Gregory E. Buckley, City Manager

By: 
Jamie Jackson, City Clerk

Date: 04/28/2022

Buyer(s):

By: 
By: 

By: 


Date: MAY 3rd 2022



MINUTES

1. CALL TO ORDER

Council President Wachowski called the meeting to order at 6:00 PM.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Councilmembers: Jeff Dahlke, Bill LeClair, Darla LeClair, Tracey Koach, Tim Petri, Bonnie Shimulunas, Adam Wachowski. Absent and Excused: Scott Stechmesser.

ALSO PRESENT: Gina and Barry Krahn, Wine Not LLC; Elizabeth Runge, Community Development Director/City Planner; Matthew Heckenlaible, Public Works Director; Brian Dellemann, Electric Utility Director; and Greg Buckley, City Manager.

4. DISCUSS STATUS OF PROPERTY AT 2023 WASHINGTON STREET WITH REPRESENTATIVES OF WINE NOT, LLC; CONSIDER ACTIONS GOING FORWARD

City Manager Greg Buckley gave a summary of the redevelopment agreement including the timeline deadline.

Gina and Barry Krahn, representatives of Wine Not, LLC gave a status update on the property, which they purchased from the City for \$10,000 subject to an agreement that required Wine Not, LLC to complete a redevelopment project and spend at least \$100,000 in improvements to the property. The Krahns described the problems that they have encountered in working to redevelop the property, including structure problems that required complete demolition of the former convenience store building that they had planned to renovate and encountering a filled basement beneath part of the property.

Following extensive discussion, Council members indicated support by consensus to consider an amendment to the purchase agreement with Wine Not, LLC that would:

--Give a twelve-month extension to Wine Not, LLC to sell or redevelop the property.

--Provide that, if the property sells for more than \$50,000, Wine Not LLC will retain \$50,000 of sale proceeds; if the property sells for more than \$50,000, the City and Wine Not, LLC will split the excess proceeds, with the City is to recoup two dollars for every one dollar recouped by Wine Not, LLC

--Provide that Wine Not, LLC may sell the property back to the City, as-is, for the return of its \$10,000 purchase price. Prior to City Council action of the proposed amendment, City staff is to check with WI DNR to determine whether the City would still be eligible for the "local governmental unit (LGU) exemption to environmental liability that was affirmed by WI DNR when the City acquired this property.

City Manager Buckley stated that staff would work to bring a draft amendment back for the City Council's consideration at its meeting of March 18.

The City Manager also noted that this property is located in TID No. 13, whose Project Plan allows for possible redevelopment assistance for this property.

5. CONSIDERATION OF PROCEEDING TO FILL NEW POSITIONS FUNDED IN 2024 CITY BUDGET

- A. Geographic Information System (GIS) Technician
- B. Public Works Maintenance Worker

City Manager Greg Buckley reported he is very supportive of the positions but recommends tabling the positions to mid-summer or 2025 budget sessions, due to the overtime and comp time being used for the current police search/investigation for Elijah Vue.

Matthew Heckenlaible, Public Works Director reported he had information to present to the Council regarding the new positions but concurs with Mr. Buckley to support putting the positions on hold. He reported that the following staff are in support of the GIS position, Police Chief Ben Meinnert; Elizabeth Runge, Community Development Director/City Planner; Brian Dellemann, Electric Utility Director and Andrew Sukowaty, Water Director. There was no action on this matter.

6. CONSIDERATION OF APPOINTMENTS TO AD HOC COMMITTEE ON COMMUNITY AQUATICS

City Manager Greg Buckley reviewed seven proposed appointments, adding that he would like to have two more members from the general public on the committee. A list of nine proposed appointees will be represented for consideration at the City Council meeting on March 4.

7. ADJOURNMENT

Motion to dispense with the reading of the minutes of this meeting and adjourn this meeting at 7:12 PM.

Motion carried with a voice vote.

Motion made by Dahlke, seconded by B. LeClair.

Voting Yea: Dahlke, Koach, B. LeClair, D. LeClair, Petri, Shimulunas, Wachowski.

Respectfully submitted,

Lisa M. Kuehn, Deputy City Clerk