

ORDINANCE NO. 2016 48

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO AN AGREEMENT BETWEEN THE CITY OF KENT AND GARY PHILLIP BERARDINELLI TO SELL 0.2833 ACRES OF UNIMPROVED REAL PROPERTY, KNOWN AS 1065 MASON AVENUE, KENT, OHIO FOR \$8,499.00, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent wishes to enter into an agreement with Gary Phillip Berardinelli to sell 0.2833 acres of unimproved real property, known as 1065 Mason Avenue, Kent, Ohio; and

WHEREAS, Gary Phillip Berardinelli has agreed to said sale in the amount of \$8,499.00; and

WHEREAS, time is of the essence in order for the Purchaser to be able to use the property for his landscaping business this summer.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kent, Portage County, Ohio, at least three-fourths (3/4) of all members elected thereto concurring:

SECTION 1. That Council does hereby authorize the City Manager, or his designee, to enter into a Purchase Agreement to sell 0.2833 acres of unimproved real property, known as 1065 Mason Avenue, Kent, Ohio to Gary Phillip Berardinelli in the amount of \$8,499.00 in substantial compliance with the agreement labeled as Exhibit "A" attached hereto and incorporated herein.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of this City, for which reason and other reasons manifest to this Council, this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: 06/15/2016
DATE

MAYOR AND PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2016-48 was duly enacted this 15th day of June, 2016, by the Council of the City of Kent, Ohio.

CLERK OF COUNCIL

EXHIBIT "A"

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the "Agreement") is made and is effective as of the date of the execution hereof by the last party to sign by and between the CITY OF KENT, Ohio, 319 South Water Street, Kent, Ohio 44240 (hereinafter referred to as "Seller") and GARY PHILLIP BERARDINELLI, with a mailing address of 998 Nathan Drive, Kent, Ohio 44240 (hereinafter referred to as "Purchaser").

WITNESSETH:

WHEREAS, the Seller owns two (2) parcels consisting of 0.2833 acres of real property located at 1065 Mason Avenue, Kent, Portage County, Ohio, which are more fully described in Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, the Seller desires to sell to Purchaser and Purchaser desires to buy from Seller such real estate upon and subject to the terms, provisions and conditions set forth hereinbelow.

NOW, THEREFORE, in consideration of the above Recitals and covenants and promises hereinafter set forth, and for other good and sufficient consideration, the Seller and Purchaser covenant and agree as follows:

1. **AGREEMENT TO SELL.** Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller two (2) parcels consisting of 0.2833 acres of real property, situated in Kent, County of Portage, Ohio, which are described in attached Exhibit "A", which is incorporated hereby by reference (hereinafter referred to as "the Property").

2. **PURCHASE PRICE.** The Purchaser agrees to pay to the Seller the sum of Eight Thousand Four Hundred Ninety Nine Dollars and 00/100 (\$8,499.00) for the Property which sum shall be payable in full at the closing date with the funds to be delivered to the Escrow Agent, Diamond Title Company, 4030 State Route 43, #201, Brimfield, Ohio 44240, (hereinafter referred to as the "Escrow Agent"). As additional consideration, Purchaser will sign an agreement back to Seller as described in Section 3.

3. **CONVEYANCE.** The Property shall be conveyed to Purchaser by General Warranty Deed conveying marketable title to Purchaser free and clear of all encumbrances and liens whatsoever, except easements, restrictions, reservations and conditions of record that do not, in the Purchaser's opinion, affect the use of the Property for Purchaser's intended use. The Purchaser's intended use is for a landscaping business.

As part of the consideration for this Agreement, Purchaser, upon transfer of this property to Purchaser, shall execute a Storm Sewer Easement to the City of Kent (a copy of said easement is attached hereto as Exhibit "B" and made a part hereof). The title company herein is hereby constructed to file the easement for record immediately after filing the deed transferring the 0.2833 acres to Purchaser herein.

4. **TITLE COMMITMENT.** Within thirty (30) days after the date hereof, Seller shall obtain from the Escrow Agent and deliver to Purchaser a commitment to issue Purchaser an ALTA title insurance policy in the amount of the purchase price hereunder, together with a complete description of all easements, covenants, conditions, reservations and restriction of record. Purchaser shall have thirty (30) days after Purchaser's receipt of said commitment to advise Seller in writing that Purchaser either accepts the condition of title as reflected in said commitment (except for liens, if any, to be discharged by Seller at Closing) or that the condition of title is unacceptable to Purchaser. If Purchaser advises Seller that title is unacceptable due to identified exceptions to title, then Seller shall remove such exceptions from title within thirty (30) days, failing which Purchaser shall within fourteen (14) days thereafter either (a) elect to terminate the Purchase Agreement and receive the prompt return of all funds deposited hereunder by Purchaser and either party shall be liable for damages hereunder to the other, or (b) accept such title as Seller is able to convey, without any reduction in the purchase price hereunder.

5. **TITLE INSURANCE.** Seller shall furnish to Purchaser an owner's title insurance policy in the amount of the purchase price, showing title to the Property to be good in Purchaser and subject only to the approved exceptions set for in Articles 3 and 4 herein. Said title insurance shall be issued to the Escrow Agent.

6. **INSPECTION OF PREMISES.** Within thirty (30) days from the date hereof, Purchaser is granted the right to conduct inspections of the Property, including without limitation, an environmental assessment. If it should be determined by Purchaser, in Purchaser's sole judgment, that the Property is not in satisfactory condition, Purchaser may terminate this Agreement by written notice to the Seller within sixty (60) days after the date hereof and this Agreement shall be null and void, and neither party shall be liable for damages hereunder to the other and all money therefore paid by the Purchaser shall be returned to the Purchaser. If such written notice from Purchaser to Seller is not given with sixty (60) days after date hereof, the condition of the Property shall have been accepted by the Purchaser and any objection thereto shall be deemed to have been waived.

7. **SELLER'S WARRANTIES.** Seller hereby represents and warrants to Purchaser as follows:
(1) That it is the fee simple owner of the Property and is fully authorized and empowered to convey the Property as provided here;

(2) That to the best of Seller's knowledge, there are no claims or unpaid bills for labor or material furnished for repair or improvement of the Property.

8. **PURCHASER'S WARRANTIES.** Purchaser hereby represents and warrants to Seller that they are purchasing the Property based only upon their own inspections of the Property.

9. **POSSESSION OF PREMISES.** Purchaser shall be entitled to exclusive possession of the Property on the Closing Date.

10. **NON-MERGER AND RELEASE OF SELLER FROM WARRANTIES.** All the terms, agreements, covenants, warranties and representations contained in this Agreement shall be deemed to have been made on the date hereof and at Closing and shall survive the Closing and the filing of the General Warranty Deed.

11. **ESCROW AGENT.** An executed copy of this Agreement shall be delivered to the Escrow Agent to serve as its escrow instructions. The Escrow Agent is authorized to attach hereto its standard form of acceptance of escrow without further signatures, provided, however, that where said standard form is inconsistent with the provisions of this Agreement, this Agreement shall be paramount. All funds and documents pertaining to this Agreement shall be deposited with the Escrow Agent not less than five (5) days prior to Closing.

12. **CLOSING.** Unless the parties or their respective counsel on their behalf, otherwise agree in writing, this transaction shall close in escrow on or before June 15, 2016:

(A) When the Escrow Agent has received all of the funds and documents to be deposited with it hereunder and the Escrow Agent can record the General Warranty Deed and can issue an owner's title insurance policy in the full amount of the purchase price in favor of the Purchaser in accordance with provisions of Article 5 hereof.

Upon Closing, the Escrow Agent:

(A) File the Grantee Statement, pay the Ohio State property transfer tax on the conveyance fee and charge the cost thereof, if any, to Seller;

(B) File the General Warranty Deed for record, charge the cost of recording to Purchaser and deliver the General Warranty Deed to Purchaser when available;

(C) Cause the title insurance to be issued and charge the cost of such examination, title commitment and the premium to the Seller;

(D) Charge the cost of the survey, if any, to Purchaser;

(E) Charge one-half (1/2) of its escrow fee to Seller and one-half (1/2) of its escrow fee to Purchaser;

(F) Pro-rate real estate taxes between the parties as of the date of closing;

(G) Disburse the balance of funds and documents in escrow to Seller and Purchaser as the respective interest appear.

(H) Purchaser shall be responsible for any costs associated with the preparation and filing of any mortgage deed.

13. **PLACE/TIME OF CLOSING.** The delivery of all papers and funds and the place of closing of this transaction shall be at the offices of the Escrow Agent.

14. **BROKERAGE COMMISSION.** Each party represents and warrants to the other party that the warranting party has not had any contract or dealing regarding the Property, nor any communication in connection with the subject matter of this transaction, through or with any licensed real estate broker or other person who can claim a right to a commission or to a finder's or similar fee as a procuring cause of the sale contemplated herein.

15. **ENTRY OF PURCHASER PRIOR TO CLOSING.** Prior to Closing, Purchaser, its agents and employees shall have the right to go upon the Property to make such inspections and surveys as Purchaser shall deem advisable upon reasonable advance notice to Seller.

16. **NOTICES.** The Parties may contact each other at the following addresses:

TO SELLER:

City Manager
City of Kent
319 South Water Street
Kent, Ohio 44240

Finance Director
City of Kent
930 Overholt Road
Kent, Ohio 44240

WITH COPY TO: James R. Silver
Law Director
City of Kent
319 South Water Street
Kent, Ohio 44240

PURCHASER: Gary Phillip Berardinelli
998 Nathan Drive
Kent, Ohio 44240

The above addresses may be changed from time to time by giving written notice thereof as herein provided.

17. CONSTRUCTION. This Agreement shall be interpreted under and in accordance with the laws of the State of Ohio.

18. INTEGRATED AGREEMENT. This Agreement represents the entire, complete and exclusive understanding by and between the parties and reduces to writing all prior oral agreements and negotiations of the parties and may not be altered, amended or otherwise changed unless in writing signed by both parties.

19. HEADNOTES. The headnotes are inserted only as a matter of convenience and as a matter of reference and in no way define, limit or describe the scope or intent of this Agreement nor in any manner affect this Agreement.

20. BINDING EFFECT. All covenants and conditions herein contained shall extend to and be binding upon the heirs, successors, assigns and legal representatives of the parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hand with the intent to be legally bound as of the date set below their respective signatures.

SIGNED IN THE PRESENCE OF:

SELLER: CITY OF KENT, OHIO

By: _____
David Ruller, City Manager

Date: _____

**PURCHASER:
GARY PHILLIP BERARDINELLI**

By: _____
Gary Phillip Berardinelli

Date: _____

APPROVED AS TO FORM:

James R. Silver, Law Director
City of Kent

STATE OF OHIO)
) SS
PORTAGE COUNTY)

BEFORE ME, a Notary public in and for said County, personally appeared DAVID RULLER, as City Manager, respectively, of the City of Kent, Ohio, who acknowledged that he did sign the foregoing Purchase Agreement and that the same is his free act and deed and the free act and deed of the City of Kent.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Kent, Ohio, which ____ day of _____, 2016.

Notary Public

STATE OF OHIO)
) SS
PORTAGE COUNTY)

BEFORE ME, a Notary public in and for said County, personally appeared GARY PHILLIP BERARDINELLI, who acknowledges that he did sign the foregoing Purchase Agreement and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Kent, Ohio, which ____ day of _____, 2016.

Notary Public