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OFFICE OF THE CITY CLERK
OAKLAND

2009 MAY 14 PM 4:22

CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: May 26, 2009

RE: **An Ordinance Authorizing the City Administrator to Negotiate and Execute a Purchase and Sale Agreement to Sell Approximately Two Thousand (2000) Square Feet of City-Owned Surplus Real Property Located Along the Westerly Edge of Dimond Park adjacent to 4689 and 4683 Benevides Avenue to Shay and Olivia Harting, the Adjoining Property Owners, for the Total Fair Market Value of Forty-Five Thousand Dollars (\$45,000.00)**

SUMMARY

Approval of the City Council is requested for the sale of a City-owned surplus property located at the terminus of Benevides Avenue and along the westerly edge of Dimond Park to the adjoining property owners at its fair market value. The Real Estate Division continues its efforts to generate additional revenue and reduce the City's maintenance expenses through the proactive identification and disposal of surplus property. Approximately 2,000 square feet of the City-owned property located at the westerly edge of Dimond Park has been declared surplus property and available for disposal.

In January of 2009, the Park and Recreation Advisory Committee reviewed the proposed disposition and approved the request from the City to negotiate with the adjacent owners for the sale of the small parcel of land.

Shay and Olivia Harting, the adjoining property owners, initiated discussions with the City for the purchase of this City-owned surplus property. A legal description was developed which determined that the irregular shaped surplus property contains approximately two thousand (2,000) square feet, as shown in *Exhibit A* to the Ordinance. After further negotiations, an agreement was reached to sell the surplus property at the appraised market value of \$45,000.00.

FISCAL IMPACT

Sale proceeds of \$45,000.00 will be placed in General Purpose Fund (1010), Real Estate Services Organization (88639), Surplus Property Account (48111), Surplus Property Disposition Project (P47010), Real Estate Program (PS32). The sale of this property will help meet the surplus property revenue requirements in the Fiscal Year 2008-09 adopted budget.

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In addition, the City will receive its share of the future property taxes once the property is returned to the property tax rolls and will save the ongoing maintenance costs associated with the upkeep of the property. The purchaser will be responsible for all escrow and closing costs and liability exposure.

BACKGROUND

The City-owned property is a vacant irregular shaped parcel containing approximately 2,000 square feet. The parcel is located in Dimond Park, along the western edge, adjacent to the easterly edge of the Purchaser's property at 4689 Benevides Avenue. The proposed area is improved as a driveway with brick pavers, and has been in such condition for a significant number of years. The City and Purchasers have discussed the Purchasers' claim that they had established an easement by prescription across the proposed subject property for use as access prior to the City's acquisition of the property for park land. The City does not agree with the Purchasers' assessment. However, although the sale of the Property to the Purchasers is not designed to address their contention, it will nonetheless satisfy their need for control of driveway access to their properties.

On October 3, 2006, the City Council adopted Ordinance No. 12767 C.M.S., which allowed the Purchasers the right to lease the 2,000 square feet for access into their property. The Purchasers now want to acquire the property from the City to obtain total site control for their access to their property.

KEY ISSUES AND IMPACTS

Approving the sale will eliminate the Purchaser's claims and potential threat of litigation to secure an easement. The proposed sale area does bear a significant impact on the adjacent property of the Purchaser because the Property provides access to their garages. The impact of the sale on the use of the balance of Dimond Park is insignificant. Additionally in December 2008, the City initiated the acquisition of three parcels from the Alameda County Tax Collectors Office, immediately adjacent to Diamond Park which compensates for the loss of open space in this transaction.

This property presently burdens the City with maintenance and liability concerns. Selling this property will maximize the City's economic and non-economic return by returning the property to the property tax rolls, thereby generating additional property tax revenue to the City, eliminating ongoing maintenance, and reducing future litigation exposure.

PROJECT DESCRIPTION

Although the Property is technically located in Dimond Park, it is physically separated from the rest of the Park, and not used recreationally. Despite its separation, the Property is currently public open space, and the sale of the Property to a private entity necessitates replacement of the

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open space with similar property. On December 9, 2008, the City of Oakland initiated the acquisition of three landlocked parcels off Leimert Boulevard adjacent to Diamond Park (Ordinance No. 12907 C.M.S.). The purchase of the three lots with a total of over ½ acre in land area will satisfy the no net loss requirement for open space in the City of Oakland.

The property is less than 2500 square feet and is not required to have a planning review. Ordinance No. 11602 C.M.S., Section 6 (c) authorizes a negotiated sale of remnant parcels to the adjoining property owner if such sale is in the best interest of the City. Here, the adjacent property owners have approached the City to purchase the subject property to maintain the driveway for access to their property. Sale of the property to the adjacent property owners will relieve the City of on-going liability and maintenance costs and will return the property back to the tax rolls.

The adjoining property owners have agreed to purchase the surplus property at its appraised fair market value of \$45,000.00. There are no City subsidies involved in the sale of the surplus property.

SUSTAINABLE OPPORTUNITIES

Economic: The sale of this property will take an underutilized site and produce increased tax revenue for the City.

Environmental: Private ownership of the property will relieve City of ongoing issues of weed abatement and fire suppression.

Social Equity: No social equity issues have been identified.

DISABILITIES AND SENIOR CITIZEN ACCESS

Adoption of this Ordinance will have no direct impact on disabled and senior citizen access.

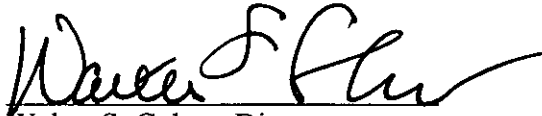
RECOMMENDATION AND RATIONALE

Staff recommends that the City Council approve an Ordinance authorizing the City Administrator to enter into a Purchase and Sales Agreement to sell, to the adjoining property owner, approximately 2,000 square feet of City owned surplus real property located along the westerly edge of Diamond Park for the fair market value of \$45,000.00.

ACTION REQUESTED OF THE CITY COUNCIL

Council is requested to adopt the Ordinance authorizing the City Administrator to enter into a Purchase and Sale Agreement, to sell to the adjoining property owner, City-owned surplus real property located along the westerly edge of Dimond Park for the total fair market value of \$45,000.00.

Respectfully submitted,



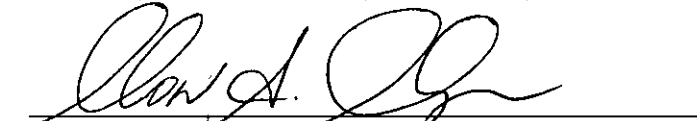
Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by: Gregory Hunter, Deputy Director
Economic Development and Redevelopment

Reviewed by: Frank Fanelli, Manager
Real Estate Services Division

Prepared by: Barbara James
Real Estate Agent

APPROVED FOR FORWARDING TO THE
FINANCE AND MANAGEMENT COMMITTEE:


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Approved as to Form and Legality

A. Lewis

CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C. M. S.

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A PURCHASE AND SALE AGREEMENT TO SELL APPROXIMATELY TWO THOUSAND (2,000) SQUARE FEET OF CITY-OWNED SURPLUS REAL PROPERTY LOCATED ALONG THE WESTERLY EDGE OF DIMOND PARK ADJACENT TO 4689 AND 4683 BENEVIDES AVENUE TO SHAY AND OLIVIA HARTING, THE ADJOINING PROPERTY OWNERS, FOR THE TOTAL FAIR MARKET VALUE OF FORTY-FIVE THOUSAND DOLLARS (\$45,000.00)

WHEREAS, the City of Oakland ("City") owns a small strip of land located at western edge of Dimond Park which is physically detached from the body of the Park ("the City Parcel"), and is adjacent to 4689 and 4683 Benevides Avenue, Assessor's Parcel Number 024-0551-001, owned by Shay and Olivia Harting; and

WHEREAS, the City Parcel has been used as a driveway to access the homes of the Hartings and other Benevides Avenue residents in properties adjacent to the City's parcel, and access for the residents must be maintained; and

WHEREAS, the Parcel is not needed by the City for public purposes; and

WHEREAS, the Open Space, Conservation and Recreation Element of the Oakland General Plan recommends that the City allow no net loss of open space within Oakland's urban park system, so that the City must seek to replace open space that is sold to private entities; and

WHEREAS, a legal description has been developed and more fully described in Exhibit A, that indicates the property is approximately 2,000 square feet in area; and

WHEREAS, the Property is to be sold in "AS-IS" condition and the City makes no representations regarding land use or other permitting issues that may affect the property; and

WHEREAS, the Property is not developable as a separate parcel; and

WHEREAS, the parcel is less than 5,000 square feet and considered a substandard lot, and its location is adjacent to a parcel of land owned by the Purchaser, the Property is not subject to the California Surplus Lands Act (California Government Code 54220-5432), but is subject to City Ordinance No. 11602, C.M.S., covering sales of surplus City-owned property; and

WHEREAS, information regarding the surplus property was circulated pursuant to Government Code requirements and the Property may be sold through a negotiated sale; and

WHEREAS, an independent appraisal established the Property's fair market value at \$45,000.00; and

WHEREAS, Shay and Olivia Harting, the owners of the abutting property, have tendered an offer to purchase the Property in the amount of \$45,000.00; and

WHEREAS, Shay and Olivia Harting have deposited with the City the total amount of the sale price and additional administrative fees for the subject property; and

WHEREAS, after the Property is sold to Shay and Olivia Harting, the City will receive property taxes and will save the cost of maintaining the Property; and

WHEREAS, the requirements of the California Environmental Quality Act of 1970 ("CEQA"), the CEQA Guidelines as prescribed by the Secretary of Resources, and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Council finds and determines that the herein-described real property is not needed for any public purpose, is surplus to the needs of the City, and the City is not required to put the property out for competitive bidding.

Section 2. The sale of the Property to the abutting property owner is in the City's best interests as it returns a property to the tax rolls and removes the Property from City maintenance responsibility.

Section 3. The City Administrator, or his designee, is authorized to negotiate and execute the Offer to Purchase and Sales Agreement from Shay and Olivia Harting the adjoining property owners, for the sum of \$45,000.00, and to execute a Quitclaim Deed conveying the Property, and any and all other documents necessary to effectuate the sale of the Property. The sales proceeds will be placed in General Purpose Fund (1010), Real Estate Services Organization (88639), Surplus Property Account (48111), Surplus Property Disposition Project (P47010), Real Estate Program (PS32). The sale of this Property will help meet the surplus property revenue requirements in the Fiscal year 2008-09 budget.

Section 4. Pursuant to Ordinance No. 11602 C.M.S., the City Administrator may conduct a negotiated sale of the surplus Property because such sale is in the best interest of the City.

Section 5. The city has acquired three (3) lots, totalling over one-half acre in size, adjacent to Dimond Park, which shall serve as replacement for the open space sold to the Hartings.

Section 6. The City Council has independently reviewed and considered this environmental determination, and the City Council finds and determines, based on the information in the staff report accompanying this Ordinance, that it can be seen with certainty that there is no possibility that the conveyance of the Property by the City to the Purchaser may have a significant effect on the environment, and therefore this action complies with CEQA because this action on the part of the City is exempt from CEQA pursuant to Section 15312(Surplus Government Property Sales) of the CEQA guidelines;

Section 7. The City Administrator, or his designee, shall cause to be filed with the County of Alameda a Notice of Exemption and an Environmental Declaration (California Fish and Game Code Section 711.4) for this action.

Section 8. The Manager, Real Estate Services is hereby authorized to take any and all actions necessary, consistent with this Ordinance, to complete the sale of the Property.

Section 9. The Purchase and Sales Agreement for the purchase of this property shall be approved as to form and legality by the City Attorney's Office and a copy shall be filed with the Office of the City Clerk.

Section 10. This Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise, it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

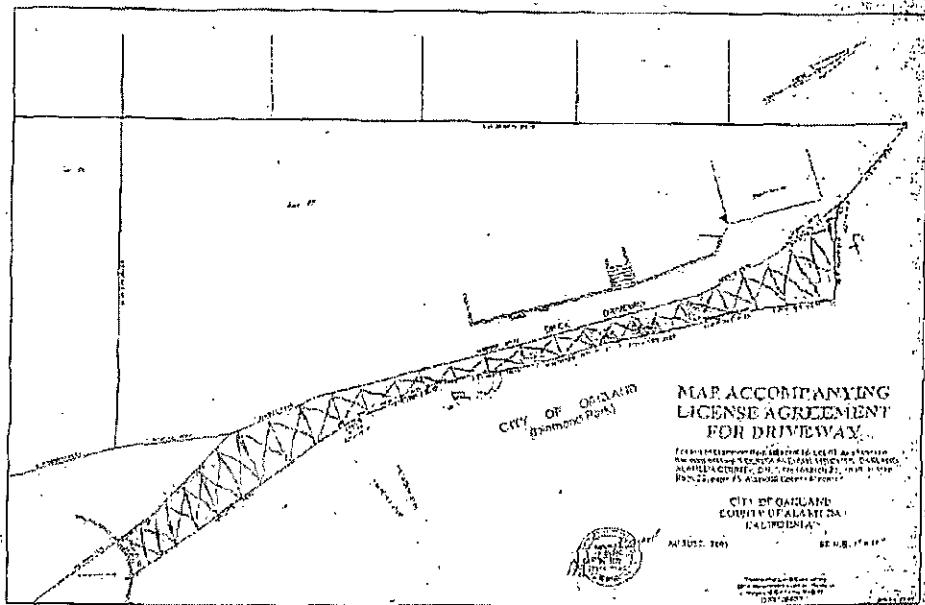
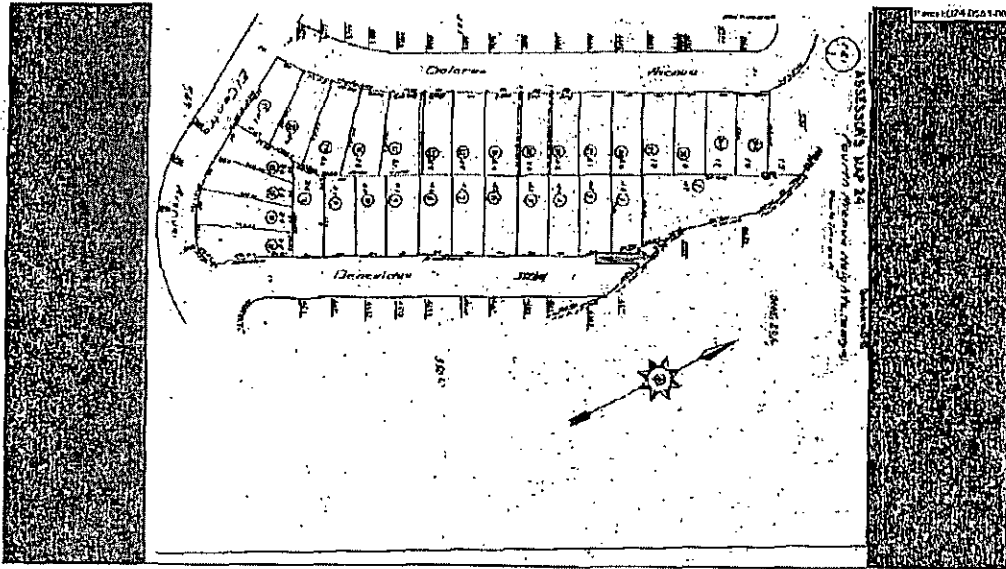
ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

EXHIBIT "A"



NOTICE AND DIGEST

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A PURCHASE AND SALE AGREEMENT TO SELL APPROXIMATELY TWO THOUSAND (2,000) SQUARE FEET OF CITY-OWNED SURPLUS REAL PROPERTY LOCATED ALONG THE WESTERLY EDGE OF DIMOND PARK ADJACENT TO 4689 AND 4683 BENEVIDES AVENUE TO SHAY AND OLIVIA HARTING, THE ADJOINING PROPERTY OWNERS, FOR THE TOTAL FAIR MARKET VALUE OF FORTY FIVE THOUSAND DOLLARS (\$45,000.00)

An Ordinance has been prepared authorizing the City Administrator to sell surplus City-owned property to the adjoining property owners at 4689 and 4683 Benevides Avenue, Oakland.

The City-owned property is a narrow irregular shaped property containing approximately Two Thousand (2,000) square feet. It is located at the terminus of Benevides Avenue and along the western edge of Dimond Park; adjacent to parcels owned by the purchaser. The parcel is surplus to the City. There are no City subsidies involved in the sale of this surplus property.