

CITY OF OAKLAND

AGENDA REPORT

OFFICE OF THE CITY CLERK
CITY OF OAKLAND

2006 AUG 30 PM 2:17

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Public Works Agency
DATE: September 12, 2006

RE: **Report on Schilling Gardens (222-19th Street)**

SUMMARY

On July 13, 2006, the Rules and Legislation Committee scheduled this staff report at the request of Councilmember Nadel, to address the following issues: (1) an approximate evaluation of the land value, (2) an explanation of why the issue of Schilling Gardens as a potential donation of considerable value was not brought to the City Council for a discussion, (3) presentation of a legal opinion regarding whether this issue should have been brought to City Council, (4) options as to whether the City of Oakland can still accept this donation.

The City Attorney will prepare a separate report to address any matters of a legal nature.

FISCAL IMPACT

This report has no fiscal impact.

BACKGROUND

In July 2005, a representative of the owner of the property known as Schilling Gardens (222-19th Street) contacted the Community and Economic Development Agency (CEDA), Real Estate Division, offering a possible donation of the property to the City. Schilling Gardens is the last remaining vestige of the Schilling Estate located on Lake Merritt. The garden property is located in the rear of 244 Lakeside Drive (a thirteen story, 22-unit apartment building) adjacent to Snow Park. The property contains approximately 31,827 square feet of landscaped garden including a potting shed, greenhouse and remnants of the arbor dating to the Schilling ownership. The tenants of 244 Lakeside Drive used the garden property exclusively as their back yard. The property is listed on the City of Oakland Local Register of Historical Resources, is eligible for Landmark designation and is recorded in the State Historic Resources Inventory as eligible for the National Register.

Offer of Donation:

The written offer of donation of the Schilling Gardens parcel to the City was subject to conditions that the property must be accepted by the Natural Heritage Preservation Act Board at

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their November meeting and that title to the property must be transferred to the City before the end of 2005. In a subsequent meeting with Mr. Guinnane, one of the owners, it was stated that the property must remain a "private" closed off park area only accessible to the public for scheduled events. The current owner made it clear that the park could not be incorporated into the existing Snow Park which abuts the property to the west.

CEDA Real Estate has a standard practice for offers of real estate donations. The custodial agency must identify a program and program funding for the donation before the property can be considered. Once that is accomplished, staff performs its due diligence on the property. In instances where the City does not have a program or use for the property and/or due diligence demonstrates that the property will carry operational, maintenance or liability problems, for example requiring expensive procedures to clear title or removal of hazardous materials, staff rejects such offer without Council review. If staff determines the donation is feasible, they then proceed to Council with a recommendation and Ordinance to accept the property.

CEDA Real Estate staff contacted the Office of Parks and Recreation (OPR), Public Works Agency (PWA), CEDA Historic Preservation/Planning, and the City Administrators ADA Programs Division to determine the feasibility of accepting such a donation, potential uses and costs associated with ongoing maintenance and upgrades required to use the property for public benefit. The staff representing the above City Departments toured the property and conducted follow-up research and analysis to inform and advise Real Estate in the negotiation process.

In view of the owner's restrictions on public use of the property, the Office of Parks and Recreation determined the property could be used as a revenue-generating enterprise facility. This would include uses such as weddings, corporate banquets, and "high-end" receptions, luncheons and gatherings.

Staff determined that in order for the property to be used by the public, certain capital improvements were required as well as identification of an ongoing funding source for maintenance and utilities. The park's designation as a Historic Resource would necessitate a high level of gardening maintenance.

In its current state, the park is a beautiful private garden, however, to make the property suitable for a public park, the grounds required significant restoration and improvements, including restrooms for the public that are ADA compliant, accessible egress and ingress, EBMUD water service and irrigation/planting restoration, and restoration of the pathways throughout the gardens to eliminate safety hazards. An estimate of the required capital improvements and restoration were in the range of \$760,000. Annual maintenance costs for upkeep of the gardens as a public park were estimated at \$178,000.

In response, this information was communicated to Real Estate for use in the negotiations as the property owner had indicated a willingness to consider funding maintenance costs.

Real Estate received a counter offer by phone of a \$100,000 maintenance fund or ongoing maintenance by the owners for a period of five years. The counter offer did not address the necessary capital funds requested by City. The counter offer was circulated to key City staff for

review and comments. On October 4, 2005, in an e-mail to the owner's representative, the City noted that without the capital funds necessary for improvements, the parcel would not be usable as a public park.

The City received a letter dated October 6, 2005, communicating the donor's understanding that the City would entertain the donation offer if the capital and maintenance costs were covered. No further negotiations or communications ensued. At some time during 2005, the property owners filed for a Condominium Project on the parcel. In 2006, there was a change in ownership of the Schilling Gardens property. The new owner has not made contact with City regarding donating Schilling Gardens.

KEY ISSUES AND IMPACTS

Property Valuation

Sales History:

The Real Estate Division ascertained the following sales history and valuation of the property.

The Schilling Gardens property located at 222- 19th Street and the 22 unit apartment building parcel located at 244 Lakeside Dr were sold together. The two properties were acquired by the potential donor in January 2005 for \$10,800,000. In May 2006, there was a change of ownership of the Schilling Gardens vacant property to David and Kari O'Keefe for approximately \$2,000,000. The price was calculated from the County Documentary Transfer Taxes paid.

Appraisal:

As part of the proposed donation, the property owner submitted a real estate appraisal dated June 21, 2005. CEDA Real Estate reviewed the appraisal and noted several issues that were problematic in the valuation. Valuation of the garden property was made based on the Highest and Best Use for multi-family residential development with 233 units. The appraisal opined the value of the parcel at \$8,000,000. The valuation did not address the fact that the property is a historically significant parcel, eligible for landmark designation, is recorded in the State of California Historic Resources inventory and is on the Oakland Local Register of Historical Resources. These facts if considered in the appraisal would have negatively impacted the valuation analysis and the final opinion of market value. The fact that the issue was not addressed is considered an oversight within the appraisal. In addition just four months earlier, both parcels were acquired for a total of \$ 10,800,000. Based upon that sale the proposed donation parcel could not be worth \$ 8,000,000.

In the appraisal practice the Highest and Best Use is defined as that use that is 'reasonably probable', found to be physically possible, appropriately supported, and financially feasible. The determination of the Highest and Best Use takes into account the contribution of a specific use to the community and the City's community development goals. The appraisal should have analyzed the probability of community approval of the change in the present land-use (open space) for residential development with 233 units. That analysis was not found in their appraisal.

Real Estate completes a separate formal written appraisal or determines a value of the property only for potential property purchases but not for donation offers. However, Real Estate did perform a Highest and Best Use analysis of the subject property and determined that the most 'probable use' would most likely remain as 'open- space' despite the lands present zoning. Under this assumption the land would have a nominal value and not the \$8 million value estimate determined by the owner's appraiser. An interest in the parcel, without building entitlements, was subsequently transferred for approximately \$2,000,000 in May 2006.

Presenting The Donation Offer To Council:

Regarding proposed donations of real property, the City's standard practice is to recommend that Council accept such donations only when staff has found a program to use the property and a budget to maintain that program and the property. When the City accepts property, it becomes tax exempt and an Operation & Maintenance obligation that carries liability. Only after program funds are identified can staff perform due diligence on the property. Staff performs its due diligence and researches the soil conditions, deed restrictions, title exceptions and outstanding liens against the property such as Internal Revenue Service liens. Once staff completes its due diligence on the property, staff then proceeds to Council with a recommendation and Ordinance to accept the property. In instances where the City does not have a program or use for the property and/or due diligence demonstrates that the property will carry operational, maintenance or liability problems, for example requiring expensive procedures to clear title or removal of hazardous materials, staff rejects such offer without Council review. In the case of the subject property, program funds were not identified and the due diligence process did not commence. How the property would be used for public benefit and how it would be maintained in the future are key considerations for assessing real estate donations to the City. The fact that it did not provide restroom facilities and it was not ADA compliant were major concerns since without resolution of those two items the property could not be put to public use.

In correspondence from the owner representative, the offer was effectively withdrawn as there was no intention by the owner to pay for \$750,000 in capital improvements, garden restoration and environmental testing required on the property prior to the City accepting the offer of donation.

Options For Accepting The Donation Offer:

At this time there is no offer to donate the property to the City. The property is now in Plan Review with the City Planning Department, and given the ownership change in May of 2006, the new owners have not extended the offer of donation to the City.

DISABILITIES AND SENIOR CITIZEN ACCESS

Without significant capital outlay, the Schilling Garden parcel would not be ADA compliant and would have limited access to the disabled and senior citizens.

RECOMMENDATION AND ACTION REQUESTED

Staff recommends that the City Council accept this informational report.

Respectfully submitted,



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APPROVED AND FORWARDED TO THE
PUBLIC WORKS COMMITTEE



Office of the City Administrator