

APPROVED

REPORT OF GENERAL MANAGER

OCT 3 2008

NO. 08-276

DATE October 3, 2008

BOARD OF RECREATION
and PARK COMMISSIONERS

C.D. 15

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: EAST WILMINGTON GREENBELT COMMUNITY CENTER – ACQUISITION OF PROPERTY FOR EXPANSION AND DESIGN BUILD PROCESS FOR DEVELOPMENT

R. Adams	_____	J. Kolb	_____
H. Fujita	_____	F. Mok	_____
S. Huntley	_____	K. Regan	_____
V. Israel	_____	*M. Shull	<u> </u>

John Jones

[Signature]

General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATION:

That the Board:

1. Authorize the execution of two Donation Agreements, Nos. 1794-76 and 2504-65, substantially in the form on file in the Board Office; and,
2. Authorize the General Manager to implement a Design Build Process, in consultation with the City Attorney, for the development of the parcels upon execution of the Donation Agreements.

SUMMARY:

Since mid-2005, the City has been negotiating with Union Pacific (UP) for the acquisition of two adjacent, vacant parcels across Sanford Avenue from the new East Wilmington Greenbelt Community Center. The parcels total 2.43 acres and have the address of 845 North Sanford Avenue. The Assessor Parcel Nos. are 7425-011-803 and -804. The Community Center's site is too small for sports fields or an outdoor play area, a situation that could be remedied by acquiring the UP property.

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On August 9, 2006, the Board gave preliminary approval to the acquisition (Report No. 06-223). Subsequently, and perhaps in recognition of the need for environmental remediation, UP agreed to donate the property for \$100. There were to be two Donation Agreements. Agreement No. 2504-65 involves a segment of 25-feet wide that extends along the northern border of the property; the segment has underground petroleum pipelines and above-ground equipment. UP will retain an easement over this segment and continue receiving revenue from its use by other firms. The second Agreement, No. 1794-76, concerns the rest of the adjacent UP property.

In mid-2008 after a conference call with UP, it seemed that there was enough agreement so that the acquisition could proceed. Staff sought final approval from the Board, which was obtained on June 4, 2008, by the adoption of Resolution No. 10237 (Board Report No. 08-164). Subsequently, the City's negotiating team found that an impasse developed regarding liability, indemnification and access to information on the past use and present condition of the site. This status was presented to the Board on June 18, 2008, in Board Report No. 08-189 and in an Informational Board Report on July 9, 2008. On July 23, 2008, the Board considered the acquisition in closed session in accordance with Government Code Section 54956.8. On August 20, 2008, the Board rescinded its approval, given UP's unwillingness to modify the terms of the Donation Agreements (Board Report No. 08-229).

Throughout the negotiations, the Councilmember for the Fifteenth District has strongly supported the acquisition. On September 2, 2008, the Councilmember introduced a motion pursuant to Charter Section 245 for Council to assert jurisdiction over the Board's action rescinding its prior approval to acquire the property and upon assuming jurisdiction, veto the Board's action. The motion to assert jurisdiction was adopted on September 9, 2008, and the matter was referred to the Arts, Parks, Health and Aging Committee of the Council. Two days later the City's negotiating team had a conference call with UP, during which certain additional terms were agreed upon. Based on the terms agreed upon during the conference call, the City resubmitted revisions to the Donation Agreements. UP has not yet responded. Council vetoed the Board's action rescinding approval to acquire the property on September 23, 2008 (Council File No. 08-2276).

Due to the action taken by Council, the original approval of the resolution to acquire the parcels remains. Since the terms of the Donation Agreements have changed, as is more specifically described below in this report, staff now recommends that the Board approve the Donation Agreements substantially in the form on file in the Board Office. Doing so will result in acquisition of the property, subject to the terms contained in the Agreements, upon close of escrow.

One of the City's proposed revisions involves UP's disclosing information about the site. The disclosure would aid the City in determining whether to accept unconditional liability and to indemnify UP from any present or future legal action. The revisions also include an extended escrow, up to nine months, in order to allow the City to complete certain environmental tasks before accepting title to the property. For example, during escrow the City seeks to work with regulatory

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agencies on a soil remediation plan and a groundwater testing/remediation plan. The City also seeks the ability, upon obtaining written permission from UP and its lessee, to fence and thereby restrict public access to the above-ground petroleum equipment or to the pipeline segment as a whole. On September 30, 2008, Department staff met with project staff of the Bureau of Engineering (BOE) and the Environmental Affairs Department (EAD) in order to reconfigure the scope and time line for site development. The intent is to meet a Proposition 40 "Urban Parks" deadline of March 31, 2010. By then, the amenities proposed in the grant application must be completed, with the site open to the public and all documentation filed with the State. Unless the City obtains legislative relief from this deadline, it cannot be extended.

The in-house meeting produced several action items. Since the proposed modular restrooms are not required under the Proposition 40 grant, their construction will be postponed. The security lighting and parking lot can be reconfigured for simpler installation. The drafting of remediation documents will begin soon after escrow opens. Staff also plans to present a Mitigated Negative Declaration to the Board in January 2009.

The most significant project change is to consult with the City Attorney to initiate the appropriate process for a design/build contract rather than to have the project's design completed by BOE with a bid/award process for construction. Staff plans to award a contract to a design/build team in January 2009. The tactic is expected to save over three months in development time and is not expected to increase total costs. With these revisions, project staff expects to meet the current Proposition 40 deadline.

BOE staff believes the development project, including soil remediation, to be fully funded. EAD plans to apply for a \$200,000 grant from the federal Environmental Protection Agency to offset costs of groundwater remediation. Soil remediation must precede site development, but BOE geotechnical staff believes that groundwater testing and remediation will not interfere with construction at the site. Groundwater remediation, if any, will be accomplished over a longer period in order to enable the City to identify any subsequent funding that may be needed. Omitting the modular restrooms may result in savings to apply to the remediation.

In addition to the Office of Council District Fifteen, the Assistant General Manager of Operations West and the Superintendent of Pacific Region concur with staff's recommendations.

FISCAL IMPACT STATEMENT:

The potential risks of the City's assuming total liability for the site and indemnifying UP were included in Board reports cited at the beginning of the Summary. Staff has restructured the site development and believes that the City can meet the current Proposition 40 deadline. If not, the City will be required to repay whatever grant funds were spent up to the total award of \$3,300,000.

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This report was prepared by Joan Reitzel, Senior Management Analyst in Real Estate and Asset Management, Planning and Development Division.