



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Jacky Morales-Ferrand

SUBJECT: 15520 ALMADEN ROAD

DATE: November 1, 2017

Approved

D. D. S. L.

Date

11/3/17

RECOMMENDATION

It is recommended that the Rules and Open Government Committee consider and make recommendations to Council regarding the following options for the housing assets located at 15520 Almaden Road (“the Site”), which are held by the City as the housing successor to the Redevelopment Agency of the City of San José (“Redevelopment Agency”):

1. Develop the Site
2. Trade the Site for another City-owned Property
3. “Sell” the Site at the Appraised Value to a City Department
4. Sell the Site to a Third Party

BACKGROUND

The Site is a 1.42-acre property comprised of two parcels that are currently vacant. The first property is a 0.92 acre parcel that was acquired through foreclosure on February 16, 1995 at a cost of \$1,621,921. The second property is a 0.51 acre parcel which was transferred to the Housing Department by the Department of Parks, Recreation and Neighborhood Services (PRNS) in 2001, for the amount of \$750,000. The Housing Department, acting under the cooperation agreement between the City and the Redevelopment Agency expended a total of \$2,371,921 in Low and Moderate Income Housing Funds (“20% Funds”) to purchase both sites for affordable housing. The Site’s General Plan designation is Open Space and the zoning is Agricultural.

From 1991 to 2013, the Housing Department issued two Requests for Proposals (“RFP”) and engaged with three separate developers to develop the Site. Due to unanticipated fluctuations in the housing market, increased construction and insurance costs, the proposed development was deemed financially infeasible by the first two developers and they withdrew from the project.

In 2003, the Housing Department entered into negotiations with Barry Swenson Builder (“BSB”). BSB agreed to develop the site to include 32 units with 16 units price-restricted to moderate-income households. BSB did not initially pursue development of the site which was named Sycamore Terrace (“the Project”). During this timeframe, the City adopted a new riparian corridor ordinance that required a redesign of the project and resulted in a reduced number of units. BSB sought an extension of the Project’s development permit, which was approved by the City in 2007. From 2007 to 2013, the City granted BSB several additional permit extensions, culminating in a Last and Final general extension that expired on August 20, 2013. BSB also sought and the City approved an amendment to the original permit that reduced the total number of units from 32 to 27 and the total number of affordable units from 16 to 9.

The San José real estate market experienced a significant downturn starting in 2007. BSB was unable to develop the Site due to issues of financial infeasibility and physical constraints. Other factors impacted the Project’s site/development plan. These included:

1. Designation of a large sycamore tree on the Site for preservation;
2. Identification of ingress/egress issues which severely limited design options; and
3. A request from the County of Santa Clara for improvements/mitigations associated with Almaden Expressway were requested to be part of the Project.

On June 28, 2011, the Governor signed into law Assembly Bill X1 26, as subsequently amended by AB1484, which provided for the dissolution and winding down of redevelopment agencies throughout the State of California (“Dissolution Legislation”). On January 24, 2012, pursuant to the Dissolution Legislation, the City of San José elected to be the Successor Agency (“Successor Agency”) to the Redevelopment Agency to administer the dissolution and winding down of the Redevelopment Agency. On February 1, 2012, the Redevelopment Agency was dissolved and, upon dissolution, all assets, properties and contracts of the Redevelopment Agency were transferred to the Successor Agency pursuant to the terms of the Dissolution Legislation.

Upon dissolution of the Redevelopment Agency, the City elected to retain the housing assets and affordable housing functions of the Redevelopment Agency. With this election, the City assumed all the affordable housing assets. The Site was identified as a housing asset to be retained by the City, and approved as such by the state Department of Finance and is therefore subject to the provisions of the California Redevelopment Law (“CRL”) which relate to affordable housing and housing assets.

On October 13, 2013, the Governor signed into law Senate Bill 341 which amended provisions of the CRL relating to the functions to be performed by housing successors. SB 341 reset the ten-year clock on the development of properties purchased by the former Redevelopment Agency. To remain compliant with California State law, the Site must be developed for affordable housing. Development activity must be initiated by March 2018 or staff must obtain an additional five-year extension. If the City decides not to pursue the development of the site, any other option must be consistent with the CRL.

On June 26, 2017, the Housing Department provided to the Community and Economic Development Committee, a comprehensive report on the number of affordable and homeless apartments and where they are located in the city. As detailed in the report, the proportion of affordable homes in each council district ranges from 1% to 12%. Council Districts 3, 5, and 7 have the highest percentages of affordable housing. Council Districts 1, 8, and 10 have the lowest proportions. Council District 10 has 616 deed restricted affordable apartments in San José which represents 2% of the total amount of affordable housing in the City.

On August 2, 2017, Councilmember Khamis issued a memorandum to the Rules Committee directing Planning Staff to rezone the Site to Open Space. Housing staff was directed to return to the Rules Committee with options for the City Council to consider that are consistent with CRL. Several of the options may impact the General Fund so the potential impacts are included as part of the analysis.

On September 12, 2017, the Housing Department received a new appraised value for the Site based on the Site's current highest and best use that is consistent with the General Plan 2040 designation. The appraiser estimated the Site's value assuming an Open Space General Plan designation to be \$1,237,000.

ANALYSIS

The Housing Department recommends the following four options for City Council consideration that are consistent with the CRL:

Option 1: Develop the Site

The Site was acquired to be developed for affordable housing, however it has historically been challenging to develop because of the prior development focus on for-sale housing and the change in development requirements as described in the background section of this memorandum. Physical constraints remain that may still render the Site challenging for residential development. These constraints are detailed below:

- The development permit expired in 2013. Thus, any future project on the Site would be subject to the City's riparian corridor ordinance. As a result, the Site's buildable area would be significantly decreased. The most recent entitlement allowed for 27 homes to be built, yet 9 of those units would now be located within the riparian buffer, thereby reducing the number of developable units to 18.
- The Site's proximity to Almaden Expressway creates challenges for the ingress and egress of vehicles to the Site. These challenges include constricted space for acceleration or deceleration and potential safety concerns at a busy intersection. A future developer of the

Site would be required to develop a mitigation plan for approval by the County of Santa Clara, which has jurisdiction over the Almaden Expressway.

- The Housing Department (or partner developer) would be required to obtain a General Plan Amendment and a Planned Development (“PD”) Zoning for the Site to develop it as residential because the development permit expired in 2013.
- In 2018, the CRL requires the City to make additional findings in order to continue pursuing development of the Site.
- The Housing Department would need to issue a new RFP for the Site since no agreements have been executed with any developer, the conditions are different, and so much time has elapsed since BSB has been engaged on the development of the Site.

Despite the challenges, both for-profit and non-profit developers have expressed interest in developing the Site. BSB continues to be interested in developing the Site because they already have a significant financial investment in predevelopment costs. There are also limited development opportunities in Council District 10. The Site provides an opportunity to build in an area of the city where there are few affordable housing options.

This option meets the CRL requirements and has no impact to the General Fund.

Option 2: Trade the Site for Another City-owned Property

In an effort to meet CRL requirements and pursue the opportunity to develop affordable housing, another option is to trade the Site for another developable City-controlled property. For this approach to work, the Housing Department would need to exchange the Site for another property that would yield the same or higher number of affordable units.

In late 2016, the Office of Economic Development notified the Housing Department that the City-owned property located at 460 Park Avenue was available for purchase. Consistent with the City’s Surplus Lands Policy, the Housing Department commissioned an appraisal of the 0.36-acre Park Avenue property. The property appraised for \$1,220,200. Due to the increased densities in the Downtown Core, the Housing Department estimates that 30-40 apartments could be developed on the Park Avenue properties.

Rather than purchasing the Park Avenue property with 20% Funds as intended, City Council could consider directing staff to initiate actions needed to transfer ownership of the Park Avenue property to the Housing Department in exchange for the Site. The Park Avenue property could then be developed into affordable apartments, and the City could determine the Site’s future use. The Park Avenue site is located in District 3. District 3 has 3,746 or 11% of the total amount of deed restricted apartments in San José. It has the second highest number of affordable developments in the City. To meet the CRL requirements, the Housing Department would still

need to be reimbursed for the difference in the value of the two sites, estimated to be approximately \$17,000.

Impact to the General Fund

The negative financial impact to the General Fund would be approximately \$1.24 million, consisting of foregone revenue from the Park Avenue property of \$1.22 million – revenue built into the current year’s General Fund revenue projections – and the additional \$17,000 that Housing Department funds would need to be reimbursed. The City could try to sell the Site as surplus land as described in Option 4.

Option 3: “Sell” the Site at the Appraised Value to a City Department

Under the CRL, the Site cannot be given to another City department to be used for a non-affordable housing use and therefore it must be sold. A new appraisal value of the Site was completed on September 12, 2017, based on the Site’s current highest and best use. Consistent with the General Plan 2040 designation, the appraiser estimated the Site’s value assuming an Open Space General Plan designation to be \$1,237,000. The Housing Department could transfer the Site to another City Department in exchange for the appraised value, consistent with the requirements of the CRL and the proceeds would be deposited in the LMIHAF.

There have been internal discussions with PRNS regarding the use of this site as a future park or open space area. This site is directly across the street from Almaden Lake Park so while this immediate area is not lacking in open space, adding to the open space inventory for this area would provide flexibility to add needed recreational amenities in the future. Additionally, a trail extension along the Guadalupe River underneath Coleman Road is currently under construction so this property will soon be connected to Almaden Lake Park through an easily accessible trail. If funding were available, PRNS would support adding this to the open space and parkland inventory. However, at this time, sufficient funding for this purchase is not available in the PRNS capital budget unless other projects and priorities are defunded or delayed. In addition, any resources to maintain the new parkland will likely be limited in the coming years due to anticipated General Fund deficits.

Option 4: Sell the Site to a Third Party

The sale of the Site outside the City would need to comply with the CRL requirements and the applicable requirements of City’s surplus lands policy. The property would be sold for the Site’s current highest and best use and all funds from such sale would be returned to the LMIHAF. The Site’s Open Space General Plan designation would likely impact the value of the site. The Housing Department may be challenged to replace the lost units because of the decreased value of the property.

Surplus Property Sales Process

If the City acquires the property as a result of the trade described in Option 2, the City could offer the Site for sale consistent with the Surplus Property Policy. On April 30, 2013, the Council approved amendments to the Surplus Property Policy (City Council Policy 7-13) that establishes the procedures for selling city-owned real property. City staff would notify the City Council via an information memorandum of their intent to sell the Site. If no City use was identified for the Site, staff would then provide a written notification letter with an offer to sell the property to a "Preferred Entity" for the development of affordable housing, parkland, recreational use, or open space purposes; or for a school facility. Because the Site is zoned A – Agriculture, if more than one Preferred Entity makes an offer to purchase the site, under the surplus lands policy the City does not have to give priority to the Preferred Entity that complies with the affordable housing requirements in that policy.

Impact to the General Fund

The open space designation likely limits the potential pool of buyers to government entities or private entities that are organized to maintain open space, which could result in a lower sale price than the appraised value of \$1.22 million. As described earlier in this memorandum, the total potential negative impact to the General Fund is \$1.24 million minus the funds received from the sale.

COORDINATION

This memorandum has been coordinated with the Office of the City Attorney, Office of Economic Development, Parks, Recreation, and Neighborhood Services and the City Manager's Budget Office.

/s/

JACKY MORALES-FERRAND
Director of Housing

For questions please contact Jacky Morales-Ferrand, Director, Housing Department at (408) 535-3855.