

Agenda Date: 01/14/2014  
Agenda Item: 5.1

## STAFF REPORT

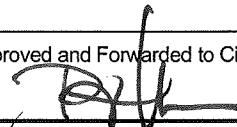
**Date:** January 14, 2014

**To:** Bryan H. Montgomery, City Manager

**From:** Cecelia Nichols-Fritzler, Economic Development Coordinator

**SUBJECT:** Designation as Surplus the undeveloped Real Property located at 1530-1580 Neroly Road, also known as Parcel 2 within the Neroly Commercial Center (APN 034-040-016), and authorizing an Invitation for Bids to Purchase the Property

Approved and Forwarded to City Council:

  
Bryan H. Montgomery, City Manager

### Summary

The Neroly Commercial Center was approved in 2007 and the anchor of the Center, the Diamond Hills Sports Club and Spa, was developed and began operations on Parcel 1 of the Center. In 2011, the City purchased Parcels 2 & 3. Both of the parcels are designated for commercial use.

In April 2013, at the direction of the City Council, Staff released an Invitation to Bid for Parcel 3 within the Neroly Commercial Center. The City received a response from Seeker Development, who intends to build a 10,000 square foot child care facility on the parcel.

There has been recent interest in the adjacent parcel on the site. Staff believes that this is a good time to release an Invitation to Bid to determine the level of interest in developing the parcel, which is approximately 201,160 square feet or 4.618 acres.

Attached is the proposed Invitation to Bid packet. As required by Title 2, Chapter 8 of the Oakley Municipal Code, the Invitation to Bid will be published in the newspaper, both the *Oakley Press* and the *Contra Costa Times*, posted on the City's website and included as part of the weekly *Oakley Outreach* email, and provided to area real estate agents and developers. In addition, concurrent to the publication of the Invitation to Bid, Staff will notify nearby public agencies in accordance with Government Code Section 54220 of the property being deemed as "surplus." If any public agency would be interested in purchasing the property, the City Council would be required to consider sale to that public agency rather than conveying to another party.

One of the key components of the Invitation to Bid will be the requirement of the bidders to propose an actual development plan, rather than submit a price for purchase. The purpose of the Invitation to Bid is to solicit a concrete development

plan as opposed to real estate speculation. While no minimum bid requirement has been set, the Contra Costa County Assessor's office has valued the land at \$1,375,929.

Bids are to be received prior to 2:00 pm on Thursday, February 20, 2014, at which time, the City Clerk will open publicly the bids received. Staff will present the outcome to the City Council at the March 25, 2014, City Council Meeting. **The Invitation to Bid document will clearly indicate that the City Council may reject any and all bids.**

#### **Fiscal Impact**

It is estimated that the City will spend approximately \$300 in publication costs.

#### **Recommendation**

Staff recommends that the City Council designate the property known as Parcel 2 within the Neroly Commercial Center (APN 034-040-016) as surplus, and authorize Staff to proceed with the Invitation to Bid. Staff further recommends that the Invitation to Bid include a specific development plan as opposed to a purchase for Real Estate speculation.

#### **Attachment**

1. Title 2, Chapter 8 of the Oakley Municipal Code
2. Invitation to Bid document

## CHAPTER 8

### DISPOSAL AND LEASE OF REAL PROPERTY

#### Article 1 SALE OF SURPLUS REAL PROPERTY

##### **2.8.102 Applicability.**

The procedure set forth in this section shall be applicable to the disposal of real property owned by the City of Oakley and determined to be surplus and excess property no longer necessary for public purposes. The provisions of these rules shall not apply to the abandonment of streets or the vacation of easements owned by the City of Oakley and governed by the statutes of the State of California, nor shall the provisions of these rules apply to the termination, rejection or abandonment of offers of dedication pursuant to Section 66477.2 of the Government Code.

##### **2.8.104 Determination of Surplus Property.**

- a. All departments within the City of Oakley shall submit to the City Manager a report showing any real property in the possession, custody or control of such department that is no longer used and is otherwise surplus and excess for the needs of the department. If the City Manager finds that such real property is not required for any other public use, he/she shall so report to the City Council and the City Council may declare it surplus and cause to be prepared a written estimate of its market value.
- b. Prior to disposal of surplus real property by public sale, the City Manager shall provide written notice to public agencies in the manner prescribed by Section 54220 et seq. of the Government Code.
- c. The following procedures apply if the property is not purchased by a public agency pursuant to Section 54222 et seq. of the Government Code.

##### **2.8.106 Manner of Disposal.**

- a. The City Manager may dispose of any surplus real property which has an estimated market value of less than \$5,000 without advertising for bids.
- b. If the surplus real property has an estimated market value of \$5,000 or more, the City Manager shall dispose of the property in the manner set forth herein and shall require City Council approval for final agreement of the sale.
- c. If the parcel which is surplus real property is an uneconomic remnant such that it is not buildable by itself under the current zoning, then the City Manager may renegotiate a sale price with the adjoining property owner(s) without advertising for bids.
- d. If the parcel which is surplus real property is a buildable parcel under the current zoning, and the combining of the parcel to an adjacent parcel would provide better development from a planning perspective than development of the surplus property by itself, then the City Manager may negotiate a sale with the adjoining property owner(s). If an acceptable price (to the City) is not reached, then the City shall dispose of the property in the manner set forth herein.

### **2.8.108 City Personnel Prohibited.**

No City official, officer or employee shall bid or be financially interested in any bid for surplus real property sold in accordance with these rules.

### **2.8.110 Sale Procedures.**

The conveyance of surplus real property by the City shall be made to the highest responsible bidder who most closely meets the terms and conditions of the notice inviting bids pursuant to the following procedures:

- a. A notice inviting bids shall be published at least once ten (10) days before the opening of the bids in a newspaper of general circulation in the City printed and published within Contra Costa County. The notice inviting bids shall include a legal description of the subject property, a vicinity map showing the general location of the subject property, the time and place of opening bids, and the terms and conditions for bids.
- b. Sealed bids, including a bid deposit of ten percent (10%) of the bid price, but not exceeding \$10,000, shall be submitted to the City Clerk. Said bid deposit shall be in the form of cashier's check, certified check or bidder's bond executed by an authorized surety company.
- c. At the time and place fixed in the notice to bidders, all sealed proposals which have been received shall be publicly opened, examined and declared by the City Clerk. Of the proposals submitted which conform to all terms and conditions of the sale, the proposal which is the highest shall be referred to the City Council unless a higher oral bid is received or the City Manager rejects all bids, or if the Council determines that a lower bid is more responsive for the reasons specified in subsection (e) of this section.
- d. The City Manager may set a minimum acceptable bid amount and may reject any and all bids presented.
- e. In cases where the City wishes the surplus property to be developed or used in a manner to support specified economic development, retail, industrial or housing goals and policies, the notice inviting bids shall require bidders to specify end-uses for the property and the City may specify deadlines for the accomplishment of the end-use. Preference shall be given to the bid with the highest monetary purchase price which most closely accomplishes the end-use goals. As to all cases, the City and the purchaser shall enter into a purchase agreement approved by the City Council.
- f. After opening bids, the City Clerk shall call for oral bids from those bidders tendering written proposals. If, upon the call for oral bidding, any responsible person offers to purchase the property, upon the terms and conditions specified and for a price exceeding the highest written proposal by at least five percent, then the responsible oral bid shall be received for presentation to the City Council if it meets the after-use criteria specified in subsection (e) of this section. Final receipt by the City Clerk shall not be made, however, until the oral bid is reduced to writing and signed by the offeror and an additional deposit in the amount of ten percent (10%) over the offeror's original written bid is tendered, though not to exceed an additional \$10,000. This reduction of the bid to writing and submittal of deposit shall be completed

within one business day (banking) after determination of the highest bidder has been announced by the City Manager, or the offeror shall forfeit his/her bid deposit.

- g. Unless otherwise specified in the notice to bidders, sale of surplus property shall be completed in an escrow of the City's choice. All successful bids shall be incorporated into a sale and purchase agreement to be approved by the City Council.
- h. The successful bidder shall close escrow as specified in the purchase agreement.

- i. All bidders' deposits shall be retained until escrow closes. If the apparent purchaser fails to complete the transaction and to close escrow, then the City may enter into a purchase agreement with the next lowest monetary bidder who most closely meets the requirements of subsection (e) of this section and retain the original apparent purchaser's deposit.

(Sec. 2, Ordinance No. 02-12, adopted May 8, 2012)

**2.8.112 Deed – Additional Costs.**

(Repealed by Ordinance No. 02-12, on May 8, 2012)

**2.8.114 Funds.**

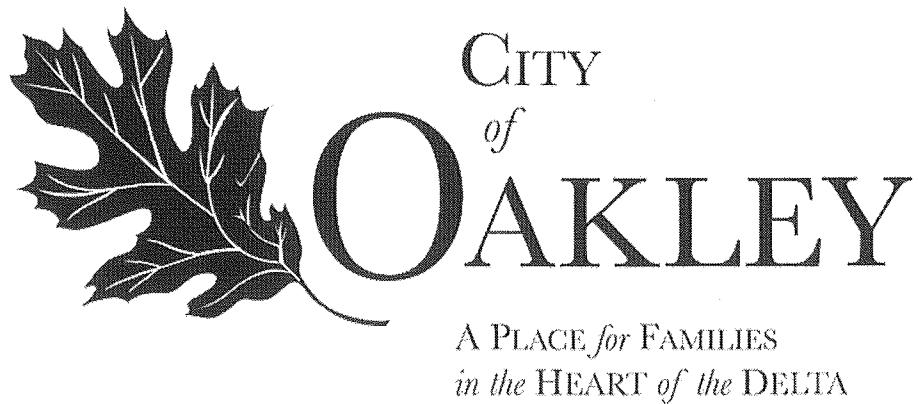
(Repealed by Ordinance No. 02-12, on May 8, 2012)

**2.8.116 Effect On Validity.**

(Repealed by Ordinance No. 02-12, on May 8, 2012)

**2.8.118 Forms.**

(Repealed by Ordinance No. 02-12, on May 8, 2012)



INVITATION TO BID  
for the real property located at

1530-1580 Neroly Road  
Oakley, California 94561

(APN 034-040-016)

## **INVITATION TO BID**

The City of Oakley invites sealed bids for the purchase of real property located at 1530-1580 Neroly Road in Oakley, Contra Costa County, California (APN 034-040-016) adjacent to the Diamond Hills Sports Club. The property includes 4.618 acres and is designated for commercial use. **Bids may be for all or part of the parcel.**

The bid packet can be obtained by emailing Cecelia Nichols-Fritzler, Economic Development Coordinator, at [fritzler@ci.oakley.ca.us](mailto:fritzler@ci.oakley.ca.us)

Bids must be received at 3231 Main Street, Oakley, CA **94561 no later than 2:00 pm.**  
**February 20, 2014**, at which time they will be opened publicly by the City Clerk.

**The City of Oakley, at its sole discretion, reserves the right to reject any and all bids.**

## **DESCRIPTION OF THE PROPERTY**

The City of Oakley offers for purchase up to 4.618 acres located at 1530-1580 Neroly Road, north of the Diamond Hills Sports Club and Spa, in Oakley, Contra Costa County, California. The subject property is identified in the Contra Costa County Tax Assessor's Records as APN 034-040-016 (see Exhibit "A").

### **Site improvements**

The vacant parcel is a part of the Neroly Commercial Center site that has adjacent frontage improvements including curb, gutter, sidewalk and landscaping improvements on the west, north and east sides. The southern portion of the property has some asphalt parking and storm drainage improvements (see Exhibit "B" for water, sewer and storm drain information). A site visit to the property is strongly encouraged.

### **Utilities**

All utilities and services including water, sewer, electricity, natural gas, and telephone are available on or adjacent to the site (see Exhibit "C"). Coordination with the specific utilities is recommended to determine what final connections, extensions and development fees would be required for the bidder's project.

### **Zoning**

The parcel is within a P-1 Planned Unit Development (The Neroly Commercial Center) with the uses conditioned to follow the "commercial" regulations of the zoning code. At the time of approval of the Commercial Center, the Retail Business (RB) District was considered the "best fit" commercial district and the RB District regulations can be found at the following link:

<http://www.codepublishing.com/CA/Oakley/html/Oakley09/Oakley091.html#9.1>.

## **SPECIAL CONDITIONS**

1. The subject property will be sold "as is."
2. Sale of less than the entire parcel will require a parcel map or lot line adjustment to create a separate parcel for the subject property and this work must be done at Buyers' expense.
3. The City will pay no broker's fee, finder's fee, commission, or other compensation to any party claiming to counsel or represent any proposer regarding the sale of the subject property or consummation of the lease hereinafter described.
4. No representations will or have been made by the City that the subject property meets all the ordinances, regulations or laws governing bidders' proposed development of the property.
5. Any use of the subject property will be in compliance with all relevant laws and regulations, including Title VI of the Federal Civil Right Act of 1964, as amended, i.e., without discrimination as to race, color, or national origin.
6. No billboard, sign, or other outdoor advertising devices shall be erected upon the subject property other than those indicating ownership or on-premise advertising and shall be subject to reasonable restrictions with respect to number, size, location, and design by regulation of the City of Oakley, subject to local zoning ordinances.
7. Any public utilities or municipalities having facilities under, over, or through the subject property as of the date of its conveyance to the selected bidder shall have the right and easement to continue to maintain, operate, and renew their facilities within the subject property.
8. Any use is subject to the Covenants, Conditions and Restrictions document recorded November 14, 2007 as Instrument No. 2007-314770 of Official Records in Contra Costa County.
9. This invitation to Bid is based upon the requirements of Title 2 Article 8 of the Oakley Municipal Code.
10. Sale of this property is subject to and contingent upon the execution of a Purchase Agreement with the City of Oakley.
11. Eventual owner of the property will be subject to common area maintenance (CAM) charges that include the upkeep and maintenance of the parking lot, landscaping and lighting.
12. The development plan proposed in the winning bid must be substantially complete within 18 months of closing on the property.

## **INSTRUCTIONS TO BIDDERS**

### **General**

Sealed bids will be accepted no later than 2:00 pm. on February 20, 2014. Emailed or faxed bids will not be accepted. All bids must be delivered in a sealed envelope and clearly marked as follows:

City of Oakley  
Attn: Cecelia Nichols-Fritzler  
3231 Main Street, Oakley, CA 94561  
Invitation to Bid: "Neroly Commerical Center, Parcel 2"

While no minimum bid is set forth, the Contra Costa County Assessor has valued the land at approximately one million three hundred seventy five thousand, nine hundred twenty nine dollars (\$1,375,929), which is believed to be considerably below market value due to its location and the existing improvements. It should be noted that if a bid is for only a portion of the parcel, the location of the desired portion would justify a higher per square foot bid than if the entire parcel is purchased. The City reserves the right to reject any and all bids and for any reason.

### **Bid Surety and Closing**

The bid must be accompanied by the enclosed Offer to Purchase form, duly executed, and a cashier's or certified check in the amount of Ten Thousand Dollars (\$10,000) made payable to the "City of Oakley" as a good faith deposit to be credited towards the final purchase price. This check will be forfeited if the winning bidder fails to execute a Purchase and Sales Agreement with the City of Oakley within sixty (60) days from the date the winning bidder is notified in writing that the bid was accepted by the City Council. Should the City Council reject the bids, the bidders' deposit checks will be promptly returned.

### **Development Plans and Timeline for Improvements**

In addition to the proposed purchase price, the City shall evaluate and consider the bid and proposal that best meets the City's desire for a successful, attractive development at the property after the sale. The purpose of this sale is not for buyers' land speculation, but for some near-term (within 18 months) vertical development. Restated, the City Council intends on awarding a contract to the bidder with the highest price offered but also that closest meets the City's expectations of quality economic development.

### **Questions and Information**

Questions must be submitted by email to fritzler@ci.oakley.ca.us by February 1, 2014. Responses will be distributed to those who requested bid packets by February 14, 2014.

## OFFER OF PURCHASE FORM

On this date and in accordance with the terms and conditions set forth in the Invitation to Bid, this offer is submitted to purchase all or a portion of the real property known as APN 034-040-016 located at 1530-1580 Neroly Road in Oakley, Contra Costa County, California, which is approximately 201,160 square feet or 4.618 acres.

Purchase Amount	
Written Amount	
Square Footage of Proposed purchase	

Also, as required by the terms of the offering, a bid surety in the amount of Ten Thousand Dollars (\$10,000) in the form of a cashier's or certified check made payable to "The City of Oakley" is enclosed.

**REQUIRED:** *Attach to this form a description of no more than five (5) pages that details what your plans are to further develop the property and that outlines a timeline for those improvements. You may include company information and references and any other information that demonstrate your capacity to successfully complete your development proposal.*

This offer is made and surety submitted on behalf of:

Proposers Name \_\_\_\_\_  
Business Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Email Address \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

## **WITNESS**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

Real property in the City of Oakley, County of Contra Costa, State of California, described as follows:

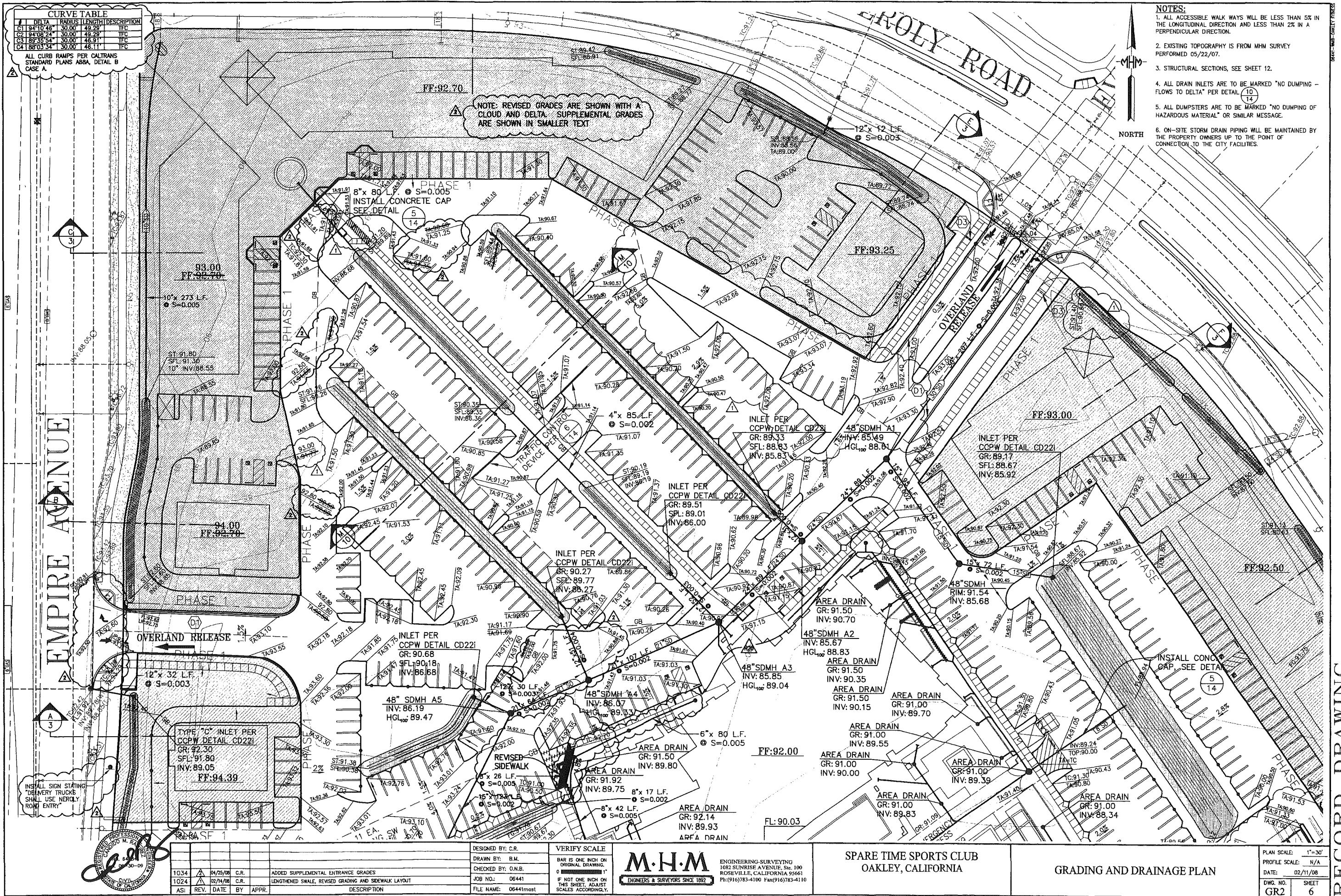
PARCEL 2 IS THE 4.618 ACRE PARCEL AS SHOWN ON THE PARCEL MAP MS 507-96, FILED NOVEMBER 14, 2007, IN BOOK 201 OF PARCEL MAPS PAGE 28, CONTRA COSTA COUNTY RECORDS.

EXCEPTING THEREFROM ALL OIL, GAS AND MINERALS RIGHTS 500 FEET BELOW THE SURFACE OF THE PROPERTY, WHICH RIGHTS ARE RESERVED BY APRICOT LAND COMPANY, A CALIFORNIA GENERAL PARTNERSHIP AND SHALL EXCLUDE THE RIGHT OF SURFACE ENTRY AS RESERVED IN DEED RECORDED DECEMBER 28, 2004 AS INSTRUMENT NO. 2004-0497318 OFFICIAL RECORDS.

APN: 034-040-016

**EXHIBIT B**  
**WATER, SEWER AND STORM DRAIN INFORMATION**

## RECORD DRAWING



**EXHIBIT C**  
**UTILITIES**

## RECORD DRAWING

