



Agenda Date: 06/28/2016
Agenda Item: 5.2

STAFF REPORT

Date: June 28, 2016
To: Mayor and City Councilmembers
From: William R. Galstan, Special Counsel *William R. Galstan*
Cc: Bryan Montgomery, City Manager; Derek Cole, City Attorney; Kevin Rohani, City Engineer
Subject: Approval of Real Property Purchase Agreement for 3530 Main Street, Oakley

Summary and Recommendation

Staff recommends that the City Council pass a motion approving the attached Real Property Purchase Agreement, 3530 Main Street, Oakley, APN 037-150-023.

Fiscal Impact

The costs identified in the Agreement are included in the budget for the next phase of the Main Street improvement project.

Background and Analysis

The City Council will recall that several weeks ago, a Resolution was adopted authorizing eminent domain proceedings to acquire the parcel and commercial building located at 3530 Main Street for the next phase of the Main Street improvement project. The commercial building, which has historic interest, was partially in the way of the new street alignment and improvements. Based upon the Resolution, our office prepared and filed an eminent domain action.

The eminent domain case was filed with the understanding that negotiations would continue with the property owners to see if a voluntary agreement could be reached. I am happy to report that, due primarily to the efforts of City Engineer Kevin Rohani and the cooperation of the property owners, a voluntary agreement has been reached, see the attachment. Approval of this agreement will allow the eminent domain action to be dismissed.

The property owners, pursuant to the California Eminent Domain law, obtained a "second appraisal" for the property from an appraiser in Walnut Creek who is "MAI certified"¹. The City has used this appraiser in the past and has confidence in his opinions. Thus the agreed-upon purchase price for the property will be \$195,000.00, based on the two appraisals and also recognizing that a voluntary agreement will avoid costs to the City for litigation as well as the uncertainties of litigation results.

As Council will recall, the property owners were interested, if possible, in saving the building. The agreement has been crafted so that this possibility remains an option for them. Following is a summary of the terms of the Agreement:

- The land will be divided into three parcels, as shown on the map attached to the Agreement. The parcel with blue hashmarks will be the right-of-way area and will be retained by the City for the street improvements. The area with yellow hashmarks will be conveyed to the property owners for purposes described herein. The area with orange hashmarks will be owned by the City for future train platform/public uses. If those uses do not become reality, the City will offer the property owners a right of first refusal to re-acquire that parcel at a cost proportional to what the City paid for the entire piece.
- At close of escrow, the City will dismiss the eminent domain action. Nothing will be done in the case pending the close of escrow.
- The owners will remove, at their cost, the front of the building back to the right-of-way line not later than August 31, 2016 so that the street construction can proceed on schedule. If the front of the building is not removed by the deadline, the Agreement gives the City the right to demolish the entire building without any additional compensation to the owners.
- Assuming that the owners remove the front of the building not later than August 31, they will immediately, at their cost, place a temporary front onto the building and install a new permanent front not later than 180 days from that date. If the new front is not constructed by that deadline, the City has abatement powers to require completion or proceed to demolish the remaining structure.
- The owners may apply for a façade improvement grant under our program, but no guarantees are made about whether the grant will be approved or not. The decision will be based on what the owners wish to construct.
- The owners have the right to decide to demolish the entire building at their cost. If they take that action, the "yellow" parcel will continue to be owned by them and is a buildable lot available for a new commercial building to be constructed thereon.

¹"MAI" = Member Appraisal Institute, the "gold standard" for appraiser qualifications and ethics.

- A credit will be given to the property by the City for any impact fees that would apply in the future.
- This is a summary of the important parts of the Agreement.

Conclusion

The property owners are to be thanked for their willingness to work with the City and respect our construction schedule. The opportunity is presented to save a part of downtown Oakley history. The hard work of Kevin Rohani and Bryan Montgomery in bringing this Agreement to fruition has been extremely important. It has been a pleasure of the City Attorney's office to work on this project. The City will avoid further litigation costs and the uncertain results that are part of any contested lawsuit.

Attachment

Real Property Purchase Agreement, 3530 Main Street, Oakley APN -150-023

REAL PROPERTY PURCHASE AGREEMENT**3530 Main Street, Oakley, California****APN 037-150-023**

THIS AGREEMENT is entered into this ____ day of _____, 2016 by and between the City of Oakley, a municipal corporation ("CITY") and Frederick J. Del Barba and Shirley Ann Del Barba, as trustees, or successor trustees, of the Del Barba Family Trust U/D/T October 24, 1996, as to an undivided one-half interest; Victoria Louse Mann, Julie Ann Favalora, Cynthia N. Del Barba, Dino L. Del Barba, Vicki Mann and Juli Del Barba-Favalora, Co-Trustees of the Dino Del Barba Living Trust, Juli Ann Del Barba-Favalora, as their interest may appear, as to an undivided one-half interest (collectively, "OWNERS").

Recitals

- A. OWNERS own real property described as 3530 main Street, Oakley, California, being APN 037-150-023 ("the property"). This property is improved with a commercial building.
- B. CITY desires to improve Main Street, and a portion of the commercial building will have to be removed to make room for the new right-of-way.
- C. CITY has filed an eminent domain action in Contra Costa Superior Court in order to obtain immediate possession of the property and to demolish the commercial building.
- D. The parties desire to reach an agreement, as specified herein, in lieu of the CITY proceeding with the eminent domain action.

WHEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. The parties will open an escrow agreement with First American Title Company for the purchase of the entire lot comprising 3530 Main Street. The purchase price for the property will be One Hundred Ninety-five Thousand Dollars (\$195,000.00). OWNERS shall deliver fee simple title clear and free of all liens and encumbrances. OWNERS shall retain the mineral rights for the entire parcel.
- 2. The CITY, at its cost and expense, shall prepare and approve legal descriptions which shall create three parcels on the property. The parcels to be created are as depicted on Exhibit "A" attached hereto. The parcel delineated with blue hashmarks, consisting of approximately 1450 square feet, shall constitute the right-of-way for Main Street and shall remain in CITY ownership. The parcel delineated with yellow hashmarks, consisting of approximately 1772 square feet, shall be conveyed by the CITY to OWNERS by grant deed at no cost to OWNERS. The parcel delineated with orange hashmarks, consisting of approximately 2819 square feet, shall continue in the CITY's ownership and to be used in conjunction with a planned railroad passenger platform/station/other public uses. If the train platform/station program/public improvements

does not proceed, CITY will offer OWNERS a first right of refusal to repurchase that lot. The price to be paid to the CITY for such lot shall be Ninety Thousand (\$90,000.00) Dollars.

3. OWNERS shall be responsible, at their sole cost and expense, for removing the front part of the commercial building clear of the new right-of-way so that no part of the building will intrude into the "blue" parcel by not later than August 31, 2016. Within five (5) calendar days of the date of this Agreement, CITY shall mark the right-of-way line on the building. If the front part of the building is not removed by August 31, 2016, CITY shall have the right, without further compensation to OWNERS, to demolish the entire building. If the OWNERS do timely remove the front part of the building, they shall install, at their own cost and expense, a temporary cover for the front of the building for security and appearance not later than August 31, 2016. OWNERS shall continue to maintain the temporary front until a permanent façade is installed. OWNERS shall have a new permanent front installed on the building no later than 180 calendar days after removal of the old front portion of the building. If they do not do so, the unfinished building shall be subject to abatement by CITY which may include demolition. OWNERS shall be responsible for abatement costs.
4. OWNERS will, at their own cost and expense, apply for and obtain all permits necessary from CITY for the rehabilitation/remodeling of the remainder of the commercial building. OWNERS shall also, at their own expense, obtain a simple demolition permit from CITY prior to removing the front of the building. Detailed architecture plans shall not be necessary for the demolition permit. OWNERS shall have access to the building for demolition and reconstruction work from CITY-owned property for all the time periods specified in this Agreement. OWNERS shall have the same access for deliveries as is afforded to other commercial properties in the vicinity on Main Street.
5. The parties understand that the CITY has a façade improvement program whereby grants may be approved by the City Council for properties in the downtown area to help pay for façade improvements. OWNERS may apply for a façade improvement grant, but no determination can be made at this time as to whether the CITY will approve such application until further information is provided by OWNERS as to the type of façade that will be proposed.
6. OWNERS shall have a credit from CITY from all impact fees imposed by the CITY for future development of the rehabilitated commercial building and any other development which they may propose for the property. This credit shall extend to any future owners on the OWNERS' parcel. Building inspection, plan check, and other fees associated with review and approval of new or rehabilitated buildings are not waived. CITY warrants that the parcel designated with yellow hashmarks is a "buildable parcel" meeting the minimum lot size for a commercial building at that location.
7. CITY shall be responsible to pay all title and escrow fees associated with this transaction.
8. Upon close of escrow, CITY shall dismiss the eminent domain action for the acquisition of the property.
9. The CITY makes no representation about the viability of the concept of rehabilitating the commercial building or its commercial viability thereafter, nor regarding the commercial viability of the "yellow" or potential "orange" parcels. OWNERS rely upon their own information and judgment as to those matters.

10. Both parties have had the opportunity to comment upon the terms of this Agreement, and thus no interpretation shall be given which would favor or disfavor the drafter of this Agreement.
11. This Agreement is intended to be the entire agreement among the parties and is the entire and sole compensation that OWNERS will receive as a result of the Main Street improvement project. Both parties hereby waive and release each other for any other claims or demands for additional compensation.

OWNERS:

Frederick J. Del Barba

Shirley Ann Del Barba

Victoria Louise Mann

Julie Ann Favalora

Cynthia N. Del Barba

Dino L. Del Barba

CITY:

Bryan M. Montgomery, City Manager