



## STAFF REPORT

**Date:** Tuesday, October 14, 2014  
**To:** Bryan H. Montgomery, City Manager  
**From:** Dwayne Dalman, Economic Development Manager  
**SUBJECT:** **Authorization to Execute a Purchase Agreement for the Sale of Portion of Property at 1530–1580 Neroly Road, also known as Parcel 2 within the Neroly Commercial Center**

Approved and Forwarded to City Council:

  
Bryan H. Montgomery, City Manager

### Summary and Background

The Neroly Commercial Center was approved in 2007 and anchored by the Diamond Hills Sports Club and Spa, which was developed on Parcel 1. In 2011, the City purchased the two remaining parcels in the Center to help facilitate the development of the site and the economic development goals of the City. The two parcels consisted of Parcel 3 (2.36 acres) and Parcel 2 (4.6 acres).

In April 2013, Staff released an Invitation to Bid for Parcel 3 within the Center. A bid was received and accepted from Seeker Development to purchase part of the site to develop a 10,000 square foot child care facility with associated play area.

On May 23, 2014 Staff released an Invitation to Bid for the subject Parcel 2, located at 1530-1580 Neroly Road. On June 17, 2014 the City Clerk opened publicly the sole bid packaged received, which was from Glenn & Robin Moffatt of East Bay Workwear. At the June 30<sup>th</sup> City Council meeting, the Council approved the bid from Glenn & Robin Moffatt to purchase the southern portion of the parcel (24,960 square feet) for \$170,000, or approximately \$6.81 per square foot. This price corresponded to the assessed value of the property as determined by the County Assessor.

Subsequent to the Council approval of the bid, it was determined that the real property is subject to a recorded Project Labor Agreement (PLA) dated September 21, 2004 between three unions (Electrical, Plumbing & Sheet metal) and Pulte Homes. The PLA has remained with the property through numerous sales transactions, including the following: the sale of portions of the property from Pulte Homes to Neroly Sports Club Investors (Diamond Hills Sports Club); the sale of portions of the property from Neroly Sports Club Investors to the Catlin Company; and the sale of portions of the property from Catlin Company's lender to the City of Oakley. At the time of the Invitation to Bid and the subsequent acceptance of the bid

from East Bay Workwear, City staff was not aware that Parcel 2 was subject to the PLA.

As the property is subject to the PLA, additional costs will be incurred to pay prevailing wages for the work performed by the three unions. The Moffat's were not aware of these costs when they prepared the proforma for the subject property, which included the purchase price of \$170,000.

The cost breakdown provided by the Moffat's shows a total cost of \$150,060 for the electrical, plumbing and HVAC (sheet metal) work. Discussions with union representatives and the City Public Works department indicate a potential increase of 25% using union labor for these three jobs. As such, the project costs could increase by up to \$40,000. To accommodate for these additional costs, the Real Property Purchase Agreement (Purchase Agreement) reflects a \$40,000 (25%) reduction in the purchase price from \$170,000 to \$130,000.

In addition to the change in the purchase price, the Purchase Agreement ties the Moffat's into specific time frames. The Moffat's have twelve (12) months from the date of the Purchase Agreement to obtain all necessary planning and building approvals and permits needed to commence construction. The Moffat's will have an additional twelve (12) months to complete construction and receive their Certificate of Occupancy.

### **East Bay Workwear**

East Bay Workwear ([www.eastbayworkwear](http://www.eastbayworkwear)) was founded by Glenn & Robin Moffatt and is located in Concord. The company sells a variety of work wear attire and accessories ranging from men's work boots to medical scrubs. The Moffatts desire to expand into East Contra Costa County and feel that Oakley will be an excellent location. Their nearest competition in East County is a Work World store in Pittsburg.

They anticipate building a 6,000 square foot building on the site and occupying approximately 4,000 feet. Economic Development staff will work with the Moffatts to identify potential tenants to fill the additional 2,000 square feet and have already identified parties that have shown an interest in expanding into Oakley.

The Moffatts noted in their submittal that the offer is contingent upon the City of Oakley completing a parcel map of the site to create a separate parcel for them to purchase and build upon. The remaining Parcel 2 land would remain vacant and ready for development and/or future solicitations for bid.

### **Fiscal Impact**

The City will realize \$130,000 in sales proceeds as revenue to the General Fund. In addition, it is anticipated that the new development will provide a catalyst to stimulate further development in the Center. The improvements to the parcel are anticipated to

be valued at approximately \$1.0 million. With these improvements, there will be an increase in property tax revenue of \$10,000 per year; additional sales tax will be generated as well. The new work wear store and the additional tenant(s) will also provide local employment opportunities.

**Recommendation**

Staff recommends that the Council adopt the resolution approving the Real Property Purchase Agreement for the sale of 24,960 square feet of Parcel 2 within the Neroly Commercial Center (APN 034-040-016) to Glenn & Robin Moffatt.

**Attachments**

- 1) Resolution
- 2) Real Property Purchase Agreement

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY  
APPROVING AN AGREEMENT FOR THE SALE OF A PORTION OF  
1530-1580 NEROLY ROAD, OAKLEY, CALIFORNIA (APN 034-040-016)  
TO GLENN AND ROBIN MOFFATT, DBA EASTBAY WORKWEAR**

**BE IT RESOLVED** by the City Council of the City of Oakley that the Real Property Purchase Agreement attached hereto as Exhibit A is hereby approved and the City Manager is hereby authorized to execute this Agreement.

The foregoing resolution was adopted at a regular joint meeting of the Oakley City Council/ Oakley City Council acting as the Successor Agency to the Oakley Redevelopment Agency held on the \_\_\_\_ day of October, 2014, by Councilmember \_\_\_\_\_, who moved its adoption, which motion being duly seconded by Councilmember \_\_\_\_\_, was upon voice vote carried and the resolution adopted by the following vote:

AYES:

NOES:

ABSTENTION:

ABSENT:

APPROVED:

\_\_\_\_\_  
Randy Pope, Mayor

ATTEST:

\_\_\_\_\_  
Libby Vreonis, City Clerk

\_\_\_\_\_  
Date

**REAL PROPERTY PURCHASE AGREEMENT**

**Portion of 1530-1580 Neroly Road, Oakley, California**

**Portion of APN 034-040-016**

**THIS AGREEMENT** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between the City of Oakley, a municipal corporation ("SELLER") and Glenn and Robin Moffatt, dba Eastbay Workwear ("BUYERS").

*Recitals*

- A. SELLER owns property generally described as 1530-1580 Neroly Road, Oakley, California, being APN 034-040-017-5. This property is surplus to the SELLER's needs and SELLER has published an Invitation to Bid for the purchase of a portion of the real property, a copy of which is attached hereto as Exhibit "A" and made a part hereof.
- B. BUYERS wish to purchase approximately 24,960 square feet of the property, including existing parking lot, generally as depicted on BUYERS' Offer to Purchase Form, a copy of which is attached hereto as Exhibit "B" and made a part hereof.
- C. BUYERS wish to purchase the stated real property and to construct thereon a retail building of approximately 6,000 square feet in size.

**WHEREFORE, the parties agree as follows:**

- 1. The purchase price of the subject portion of the property shall be One Hundred Thirty Thousand (\$130,000.00) Dollars (the parties having agreed to a lower purchase price than the one specified in Exhibit "B"). The Ten Thousand Dollar (\$10,000.00) deposit made by BUYERS shall be a credit against the purchase price, and thus the purchase price needed to close escrow shall be One Hundred Twenty Thousand (\$120,000.00) Dollars.
- 2. The parties will open an escrow account with a title company mutually acceptable to them.
- 3. SELLER shall commission the preparation of a parcel map to create the parcel contemplated by the parties herein. BUYERS understand that the process of considering and approving a parcel map is a public process and that SELLER may determine, in the exercise of its legislative prerogative, not to approve such parcel map. If SELLER does not approve the parcel map, then this Agreement shall become null and void, and in that instance BUYERS shall be entitled to a refund of their \$10,000.00 deposit.
- 4. BUYERS shall be responsible for all escrow fees and closing costs of this transaction.
- 5. BUYERS have had an opportunity to inspect the property and have determined to proceed with the purchase. SELLER is not aware of any hazardous materials or contamination on

the property. BUYERS hold the SELLER harmless from any cost, claim or liability associated with any hazardous materials or contamination that may exist.

6. SELLER does not warrant the suitability of the property for its intended use and BUYERS rely upon their own judgment regarding the suitability of the property and its economic viability when developed with a retail building. SELLER does represent that the General Plan and zoning designations for the subject property allow a retail development as proposed by BUYERS. Design approval of the building(s) is subject to the discretionary approval of SELLER. BUYERS shall be subject to all customary and required permits and fees.
7. There is no broker, attorney, or real estate commission due or payable to any person or entity as part of this Agreement.
8. Prior to close of escrow, BUYERS shall obtain all necessary City of Oakley planning and building approvals and permits necessary to commence construction of the project, including building permits and design approval. If such permits and approvals are not received within twelve (12) months of the date of this Agreement, then this Agreement may be rescinded at the written option of either party, in which case the \$10,000.00 deposit shall be forfeited to the SELLER.
9. The real property is the subject of a recorded Project Labor Agreement dated September 21, 2004. BUYERS shall be bound by the terms of said Agreement and comply with its requirements. BUYERS shall hold SELLER harmless from any liability associated with their noncompliance with the Project Labor Agreement. This clause shall be binding upon any successor(s) in interest to BUYERS. BUYERS shall notify any such successor(s) of the requirement of this paragraph.
10. SELLER shall deliver to BUYERS good and clear title, with no encumbrances, deed of trust, or liens. Any assessments attributable to the property shall be paid in the proportion then due by SELLER. The property is currently exempt from real property taxation, but will become subject to property taxes upon the completion of this transaction, which shall become the responsibility of BUYERS.
11. BUYERS shall use reasonable good faith efforts to complete construction of the project and receive a Certificate of Occupancy no later than twelve (12) months after close of escrow. If no construction has commenced prior to twelve (12) months after close of escrow, BUYERS shall convey title of the subject property back to SELLER and SELLER shall refund to BUYERS the purchase price, less the \$10,000.00 deposit, which shall be forfeited.
12. Both parties have had the opportunity to have this Agreement reviewed by their attorneys, who have had the opportunity to comment upon the drafting and wording of this Agreement. Therefore, no interpretation shall be given to the terms of the Agreement which favor or disfavor the drafter of the Agreement.

13. Neither the Oakley City Council, nor its officers, agents or employees shall have any personal liability associated with this transaction.

SELLER

BUYER

City of Oakley, a municipal corporation

By: \_\_\_\_\_  
Bryan H. Montgomery  
City Manager

\_\_\_\_\_  
Glenn Moffatt, individually and dba  
Eastbay Workwear

ATTEST:

\_\_\_\_\_  
Libby Vreonis  
City Clerk

\_\_\_\_\_  
Robin Moffatt, individually and dba  
Eastbay Workwear

APPROVED AS TO FORM:

\_\_\_\_\_  
Derek P. Cole  
City Attorney