




Agenda Date: 04/25/2017
Agenda Item: 5.2

STAFF REPORT

Date: April 25, 2017
To: Bryan H. Montgomery, City Manager
From: Dwayne Dalman, Economic Development Manager

Approved and Forwarded to City Council:


Bryan H. Montgomery, City Manager

SUBJECT: **Designation as surplus the undeveloped real property known as Parcel B (APN 034-040-028) within the Neroly Commercial Center, and authorizing an Invitation for Bid to purchase the property**

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 (see attached map). 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 for the City. The two parcels consisted of Parcel 2 (4.6 acres) and Parcel 3 (2.36 acres)

In May of 2014 staff released an Invitation to Bid for Parcel 2 within the Neroly Commercial Center. A bid was received and accepted from Glenn & Robin Moffatt of East Bay Workwear to purchase the southern portion of the parcel, (24,960 square feet) to develop a 6,000 square foot building with associated parking. The Moffatt's subdivided the property into two parcels (A & B) to accommodate their project, which was built on Parcel A. The remaining Parcel B (APN 034-040-028) contains 3.980 acres (see attached map).

In September of 2015 staff released an Invitation to Bid for Parcel 3 within the Center. The bid was received and accepted from Cemo Commercial to build a child care center and accompanying playground. In addition to the child care facility, Cemo is proposing to develop the remaining land into a medical/professional office building(s). Cemo recently closed on their purchase of the land are set to begin construction by May.

There has recently been development interest for a portion of the remaining Parcel B in the center. As such, staff believes that this is a good time to release an Invitation to Bid.

Fiscal Impact

It is estimated that the City will spend approximately \$350 in publication costs.

Recommendation

Staff recommends that the City Council designate the property known as Parcel B as surplus, and authorize staff to proceed with the Invitation to Bid.

Attachment

1. Resolution
2. Title 2, Chapter 8 of the Oakley Municipal Code
3. Invitation to Bid packet
Exhibit A. Site/Parcel Map

RESOLUTION NO. __-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY DESIGNATING AS SURPLUS THE UNDEVELOPED 3.980 ACRES OF LAND (APN 034-040-028) LOCATED WITHIN THE NEROLY COMMERCIAL CENTER AND AUTHORIZING AN INVITATION FOR BIDS TO PURCHASE THE PROPERTY

WHEREAS, the City purchased property in the Neroly Commercial Center to help facilitate the development of the site and the economic development goals of the City; and

WHEREAS, the City has sold property within the center to East Bay WorkWear for a retail development and to Cemo Commercial for a child care and office project; and

WHEREAS, 3.98 acres of this property has been set aside for future commercial development; and

WHEREAS, staff has recently received development interest in this portion of the property and believes that this is a good time to release an Invitation for Bids; and

NOW, THEREFORE, BE IT RESOLVED, for the City Council of the City of Oakley to designate as surplus the undeveloped 3.98 acres of land located in the Neroly Commercial Center and authorizing an Invitation for Bids to purchase the property.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 25th of April, 2017 by the following vote:

AYES:
NOES:
ABSENT:
ABSTENTIONS:

APPROVED:

Sue Higgins, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date

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)

Article 2 UNCLAIMED PROPERTY

2.8.202 Disposition of Property – Generally.

All property found in this City whose ownership is unknown or unclaimed shall be delivered to, and held and disposed of by the City Manager, as herein provided.

2.8.204 Retention Period.

All such unclaimed property described above shall be held by the City for a period of at least four months, except that unclaimed bicycles shall be held for a period of at least three months.

2.8.206 Restoration to Owner.

The Chief of Police shall attempt to ascertain the owner of such property and shall restore the same to him/her, if found, upon proof of ownership satisfactory to the Chief and payment of costs herein provided.

2.8.208 Storage Charges.

The City Manager shall establish a schedule of storage charges for property held as herein provided, based upon the amount of space and care required to preserve the property, but small articles held for short periods may be restored to their owner without charge. Record shall be kept of the actual cost of locating the owner of such property, including advertising costs, if any. Such charges and costs shall be paid to the City by the owner as provided in Section 2.8.206.

2.8.210 Disposition of Automobiles.

Any unclaimed automobiles shall be disposed of as provided in the California Vehicle Code Section 22851.2 et seq.

2.8.212 Disposition of Stolen or Embezzled Property.

All property described in Section 1411 of the California Penal Code which comes into the possession of the Chief of Police shall be disposed of by the Chief of Police in the manner provided in this article.

2.8.214 Public Auction.

If within four months (or three months, in the case of bicycles) such property remains unclaimed or the charges thereon have not been paid, the City Manager may sell the same at public auction to the highest bidder for cash in lawful money of the United States. The Chief of Police shall give notice of the time and place of sale, describing the property, by publishing such notice one time in the official newspaper of the City or if there is no such official newspaper, the posting of said notice in at least three public places in the City, at least five days before the time fixed for the sale. Any property remaining unsold after being offered at such public auction may be destroyed or otherwise disposed of by the City Manager. If the City Manager determines that any such property is needed for public use, such property may be retained by the City and need not be sold.

2.8.216 Proceeds of Sale.

All proceeds from such sales shall be deposited in the general fund of the City.

Article 3 ALTERNATE LEASING PROCEDURE

2.8.302 Resolution of Intention.

- a. Except as otherwise provided in this section, before ordering the lease of any real property belonging to the City, the City Council shall, in a regular open meeting by a two-thirds vote of all its members, adopt a resolution declaring its intention so to lease and calling for bids thereon.
- b. The resolution shall:
 - 1) Describe the property sufficiently to identify it;
 - 2) Specify either the terms of the lease, including minimum rent, or refer to a proposed form of lease filed in the City Clerk's office containing that information; and
 - 3) Fix a time, at least three weeks thereafter, for a public meeting of the Council at its regular place of meeting, for receipt and consideration of sealed proposals for the lease.

2.8.304 Notice.

- a. Notice for the resolution and meeting shall be given by posting certified copies of the resolution in at least three public places in the City for at least 15 days before the meeting's date and by publishing notice of the call for bids for at least two weeks in a newspaper of general circulation published in the City.
- b. Notice shall also be mailed or delivered at least 15 days prior to accepting offers to lease pursuant to this section to any person who has filed a written request for notice with either the City

Clerk of the City Council or with any other person designated by the Council to receive such requests.

c. The notice required by this section shall describe the property proposed to be leased, the term of the lease, the location where offers to lease the property will be accepted, the location where leases will be executed, and any City officer authorized to execute the lease.

2.8.306 Written and Oral Bids.

At the time and place fixed, in open session, the City Council shall open and examine all sealed written proposals and declare those that are from responsible bidders and that conform to the terms and conditions in the resolution. The Council shall then call for similar oral bids exceeding by at least 5% in rent the highest such written proposal.

2.8.308 Final Acceptance or Rejection.

At the same meeting or at any adjourned session thereof, the Council shall consider all such proposals and bids and shall by resolution either accept the highest bid or reject them all and withdraw the property from lease.

2.8.310 Execution of Lease Authorized By Resolution.

Any Council resolution accepting any bid shall authorize and direct the Mayor to execute a lease and to deliver it upon lessee's performance of and compliance with all the terms or conditions of the contract to be preformed concurrently therewith.

2.8.312 Exclusion From Bidding Procedure.

a. Any proposed lease of not more than five years, nonrenewable duration, and having an actual monthly rental not exceeding \$1,000 is excluded from the bidding procedure required by this section, except that notice shall be given pursuant to Government Code Section 6061, posted in the office of the City Clerk. Additionally, if the lease involves residential property, notice shall be given to the housing sponsors as defined by Sections 50074 and 50074.5 of the Health and Safety Code.

b. The notice required by this section shall describe the property proposed to be leased, the term of the lease, the location where offers to lease the property will be accepted, the location where leases will be executed and any City officer authorized to execute the lease.

2.8.314 Exceptions.

This section provides an alternative leasing procedure only for real property that otherwise must be leased in accordance with Government Code Sections 25526 to 25535; it does not apply to real property leased pursuant to Government Code Section 25536.

Article 4 ALTERNATIVE REAL PROPERTY PURCHASE AND ACCEPTANCE PROCEDURE

2.8.402 Authority of Public Works Director.

The Board of Supervisors authorizes the City Manager or his or her designee to perform all acts necessary to approve and accept for the City the acquisition of any interest in real property where the purchase price for such interest does not exceed \$25,000. Such acquisitions shall only be approved and done in accordance with current appropriated budget accounts and applicable

regulations. The City Manager shall report quarterly to the Council on acquisition(s) done pursuant to this section, including the interest acquired, its price, area and necessity for the purchase.

2.8.404 Recording.

For purposes of this chapter, if the real property interest to be accepted is in the form of a recordable document, the City Manager or his or her designee deputy shall accept the real property interest for recordation pursuant to California Government Code Section 27281 and shall promptly file such real property interest with the County Recorder for recording.

OAKLEY



CALIFORNIA

INVITATION TO BID
for the real property described as

Parcel B

(APN 034-040-028)

Neroly Commercial Center
Oakley, California 94561

INVITATION TO BID

The City of Oakley invites sealed bids for the purchase of real property located in the Neroly Commercial Center in Oakley, Contra Costa County, California. The property is described as Parcel B (APN 034-040-028) adjacent to the Diamond Hills Sports Club. The property includes 3.980 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 Dwayne Dalman, Economic Development Manager , at dalman@ci.oakley.ca.us

Bids must be received at 3231 Main Street, Oakley, CA 94561 **no later than 2:00 pm. May 24, 2017,** 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 all or a portion of 3.98 acres located in the Neroly Commercial Center, adjacent to 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 034-040-028 (see Exhibit "A").

Site improvements

The vacant parcel is a part of the Neroly Commercial Center site that has frontage improvements including curb, gutter, sidewalk and landscaping improvements fronting Neroly Road and Empire Avenue. A site visit to the property is strongly encouraged.

Utilities

Sewer utilities have been stubbed to the property. Water and the dry utilities (gas, electricity, phone, cable) are in very close proximity to the site. 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>.

Project Labor Agreement

The subject property is subject to a Project Labor Agreement (PLA) that requires the use of union labor for plumbing, electrical and sheet metal work performed on the site. The terms of the PLA may lead to higher labor costs for those particular trades. A copy of the Project Labor Agreement will be provided upon request.

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 May 24, 2017.** 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: Dwayne Dalman
3231 Main Street, Oakley, CA 94561
Invitation to Bid: "Neroly Commerical Center, Parcel B"

While no minimum bid is set forth, the Contra Costa County Assessor has valued the land at approximately \$7.11 per square foot, 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 one that submits a conceptual development plan that closest meets the City's expectations of quality economic development.

Questions and Information

Questions must be submitted by email to dalman@ci.oakley.ca.us by May 10, 2017. Responses will be distributed to those who requested bid packets by May 17, 2017.

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 034-040-028 located in the Neroly Commercial Center in Oakley, Contra Costa County, California, which is approximately 3.98 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 conceptual 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 Parcel B, as follows:

APN: 034-040-028

Site Map

