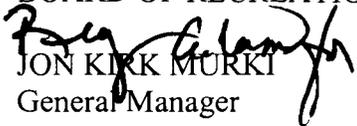


FOR INFORMATION ONLY

CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS

July 9, 2008

TO: BOARD OF RECREATION AND PARK COMMISSIONERS
FROM: 
JON KIRK MURKI
General Manager
SUBJECT: ACQUISITION TO EXPAND THE EAST WILMINGTON GREENBELT
COMMUNITY CENTER

At the special meeting of June 18, 2008, the Board President gave directions to staff concerning the acquisition. An excerpt from the minutes states that staff is “to continue negotiations with Union Pacific Railroad and to seek an agreement that will not present any current or future liabilities that will cause the Department to exceed the approximate 5.4 million dollars budgeted for this project.” This report summarizes the project’s background and describes staff activity since June 18, 2008.

Background

The Office of Council District Fifteen has strongly supported the acquisition of two vacant parcels totaling 2.43 acres across the street from the Department’s new community center at 918 North Sanford Avenue. The intent was to develop two sports fields, a play area and related amenities since the center is too small for outdoor activity. The two parcels are owned by Union Pacific (UP) and are at the southern end of a railroad right-of-way known as the East Wilmington Greenbelt (APNs 7425-011-803 and -804).

In July 2005 after the City’s initial contact concerning the parcels, UP drafted a Purchase and Sale Agreement. Three issues soon emerged: (1) UP wanted the City to assume total liability and to indemnify UP for any environmental condition, legal dispute or claim extending from the past use of the property; (2) UP wanted an easement 25 feet wide along the northern edge of the property in order to continue agreements with two other firms for their use of underground pipelines and attached, above-ground equipment; (3) UP was reluctant to provide documentation on legal actions affecting the property or on the extent of any contamination. They did not make available copies of the agreements with the two firms, yet the City was asked to assume liability for their activity within the pipeline easement. In effect, UP was unwilling to provide documentation that could assist in assessing the future liability that the City was asked to assume.

These issues persisted into 2006. Even so, staff thought that with grant funding approved and a Phase II site assessment completed, there was sufficient progress to prepare an initial report to the Board. One of the recommendations was for staff to assist UP with a lot-line adjustment or a “lot split” in order to separate the pipeline segment from the rest of the property. UP would retain ownership of the segment, which would be fenced off from public access. This seemed the best way to minimize the City’s risk concerning the pipelines and equipment. On August 9, 2006, the Board gave preliminary approval to staff’s recommendations and the acquisition (Board Report No. 06-223).

Subsequently, City geotechnical staff recommended a further Phase II assessment in order to determine more exactly the property’s condition, after which they could draft a remediation action plan. This additional assessment was completed with the results communicated to UP, as requested. The City Attorney also requested, once more, any environmental or other documentation concerning the property. UP did not respond.

In the spring of 2008, perhaps as a result of the expanded Phase II report, UP agreed to donate both parcels to the City for the nominal sum of \$100; the previously negotiated price was \$1.2 million. By then City geotechnical staff estimated that soil remediation would cost \$2.5 million. Site development was expected to cost \$2.9 million. These sums were available for the project. The lot split had been difficult to achieve, so the City was again confronted with unknown potential risks if UP retained an easement. Even so, a conference call on June 3, 2008, among the Council Office, Department staff and UP, suggested that mutually agreeable terms could be achieved. Staff then requested and received final approval from the Board on June 4, 2008 (Board Report No. 08-164, Resolution No. 10237).

Since the acquisition was no longer a sale, the transfer document was termed a “Donation Agreement”, of which UP submitted two; Agreement No. 1794-76 concerned all of the property except the pipeline easement, which was dealt with separately in Agreement No. 2504-65. On June 9, 2008, the City submitted to UP proposed revisions. One revision stated that UP was to accept liability related to groundwater contamination occurring before the City acquired the property; City geotechnical staff were becoming more concerned after UP recently disclosed that, besides being a railroad right-of-way, the property previously had on site an electrical substation, two oil wells and three above-ground petroleum storage tanks. Comprehensive groundwater testing and remediation were estimated to cost from \$730,000 to \$1,230,000, a sum not included in the \$2.5 million set aside for soil remediation. The City also included in the revisions a request for documentation relating to the property. UP rejected all of the City’s revisions the day after they were submitted.

Status

On June 10, 2008, by rejecting the City's revisions, UP was insisting on liability, indemnification and other terms they had first proposed in July 2005 and insisting on other terms that the City deemed unacceptable. Also on June 10, 2008, UP stated that these terms were nonnegotiable. Moreover, their most recent revision to the Agreements had so limited their disclosure obligations that documents on environmental conditions were excluded as well as whole categories of other, potentially relevant material. Staff concluded that the impasse warranted a further presentation to the Board. This occurred on June 18, 2008, when staff requested direction on whether to proceed with the acquisition (Report No. 08-189).

On June 25, 2008, in response to the Board President's instruction cited at the beginning of this report, the City once again submitted to UP revisions to both Agreements. UP rejected the revisions the same day, repeating the statement of June 10, 2008 that their terms were nonnegotiable. Still later, on July 3, 2008, UP repeated their rejection of the City's revised terms and conditions and restated their unwillingness to negotiate.

This report was prepared by Joan Reitzel, Senior Management Analyst in Real Estate and Asset Management, Planning and Development Division.