



SUPPLEMENTAL

COUNCIL AGENDA: 03-20-07

ITEM: 2.15

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Katy Allen
Albert Balagso

SUBJECT: SEE BELOW

DATE: 03-15-07

Approved

Katy Winer

Date

3/15/07

COUNCIL DISTRICT: 3

SNI AREA: Five Wounds/
Brookwood Terrace

Supplemental Memo

SUBJECT: APPROVAL OF AN ORDINANCE ESTABLISHING A PORTION OF SELMA OLINDER PARK AS A PUBLIC WAY

REASON FOR SUPPLEMENTAL

To provide the Mayor and City Council with further information surrounding the status of a retroactive right-of-entry agreement (RROEA) which is being drafted as a result of KB Home South Bay ("Developer") entering onto the City's properties at Selma Olinder Park and Martin Landfill. While City staff supports the waterline configuration which the Developer installed, it is important to inform the Mayor and Council that this was performed without City authorization and the Developer will not be allowed to activate the waterline unless the second reading of the ordinance is approved by Council.

BACKGROUND AND ANALYSIS

KB Home South Bay ("Developer") is currently constructing Tract No. 9644 (PDC03-098), which is an approved 105 single-family detached residential-unit development located on the south side of William Street west of McLaughlin Avenue on a former Union Pacific Railroad right-of-way. The Developer is constructing a new public street, South 22nd Street, as a cul-de-sac, which will extend from William Street south approximately 3,000 feet. In order to provide the necessary water flows and water pressure to the new subdivision, the Developer and San Jose Water Company, the water retailer who will serve the subdivision, have developed a proposal to loop a new water line within the subdivision to the existing water mains located on Forestdale Avenue and Woodborough Place. This will require the Developer to loop their water lines through Selma Olinder Park (to get to Woodborough Place) and Martin Landfill (to get to Forestdale Avenue). Both of these are City owned properties.

The Developer has three alternatives to provide needed water flow and pressure requirements. First, the Developer could negotiate and purchase easements from private property owners. Second, the Developer could pay or construct system upgrades to the San Jose Water Company system in order to

provide adequate water flow and pressure in the area. Last, the Developer is proposing to loop its water lines through Selma Olinder Park and the Martin Landfill sites to provide needed water pressure and flow for its subdivision. The last option is the Developer's preference for what are most likely timing, cost and feasibility reasons. However, this last option would require the City to comply with the City Charter restrictions on use of parklands with regard to the Selma Olinder Park site, while the Martin Landfill site is subject to special restrictions under both state and federal law for landfill closure and maintenance including required permits for any disturbance of the landfill site and notification of workers under Prop. 65.

In approximately August 2006, as staff was determining whether it was possible to provide the Developer and San Jose Water Company with sites for water lines across these City-owned properties, the Developer entered onto the City's properties at Selma Olinder Park and Martin Landfill without City authorization and installed cap waterlines for future connection by San Jose Water Company. On February 2, 2007, City staff became aware of this unauthorized entry and began working with the Developer on a Retroactive Rights-of-Entry Agreement (RROEA) for both the Selma Olinder Park and the Martin Landfill Site impacted by the existing cap water lines, which also includes a proposal that will be considered by the Council in the near future to grant the Developer an easement for the water lines across Martin Landfill. The RROEA and the easement will require the Developer to fully indemnify and hold harmless the City for its installation, maintenance and replacement activities within the landfill and require compliance with all applicable laws.

Staff originally requested that the City Council approve an ordinance establishing a portion of Selma Olinder Park as public way to facilitate the installation of the water lines on February 27, 2007, prior to discovering that the Developer had entered onto City property. As a result, staff asked that the Council's consideration of the ordinance be deferred until staff had an opportunity to review what the Developer had done and to develop a corrective action plan, which includes the RROEA.

As a pre-condition of presentation of the Selma Olinder public way designation to Council, staff has required the Developer to execute the RROEA with the City so that any liability from the water line work that could be imputed to the City will be shifted appropriately to the Developer. The provisions of the RROEA that pertain to the Selma Olinder Park property shall begin retroactively on August 1, 2006 and shall terminate the earlier of June 30, 2007 or the effective date of the Council's final determination as to whether to designate a portion of the Park as public way. The provisions of the RROEA that relate to the Martin Landfill shall begin retroactively on August 1, 2006 and shall terminate the earlier of June 30, 2007 or the date of recordation of a Council approved grant of easement for water line purposes to the Developer.

The indemnity and hold harmless provisions contained in the RROEA will survive the termination of the RROEA. The Developer is in the process of reviewing that Agreement and staff anticipates that the RROEA will be executed by the Developer prior to approval of the ordinance establishing a public way which is now scheduled for March 20, 2007. As a result, staff recommends that the ordinance be approved at the March 20, 2007 City Council meeting.

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The Martin Landfill water line connection between South 22nd Street and Forestdale Avenue and the EVA route are still being reviewed by the California Integrated Waste Management Board through the Local Enforcement Agency (LEA) who have enforcement jurisdiction over landfill sites. The Developer has indicated to staff that the waterline connection between South 22nd Street and Forestdale Avenue is required in order to provide the minimum fire flow to the hydrants. Once clearance is provided by the State agency, then the City Council will be asked on a future agenda to determine whether it desires to enter into an easement agreement with San Jose Water Company for the water line connection between South 22nd Street and Forestdale Avenue, approximately 150 linear feet.



KATY ALLEN
Director, Public Works Department



ALBERT BALAGSO
for Director, Parks, Recreation and
Neighborhood Services Department

For questions please contact Matt Cano, PRNS Division Manager, at (408) 535-3580.