



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

**SUBJECT: QUITCLAIM OF PROPERTY
INTEREST TO SCHOOL DISTRICT**

DATE: 06-04-07

Approved

Katy Allen

Date

6/10/07

COUNCIL DISTRICT: Citywide

RECOMMENDATION

Approval of an agreement between the City of San José and San Jose Unified School District to quitclaim a portion of parcel 264-18-047 beneath Gardner Elementary School in order to correct a historical title irregularity.

OUTCOME

Approval of this quitclaim agreement will enable the San Jose Unified School District to obtain a construction permit and proceed with curb cuts on its property along Illinois Avenue.

BACKGROUND

From its first freeholder's charter in 1897 through 1946, the City of San José had a school department and operated the school system within the City. A Board of Education was appointed by the City Manager, and the City levied a tax to support the school system. From various Charter amendments, it appears that the City began to divest itself of operation of the schools in 1946, and by the adoption of the 1965 Charter was no longer involved in operating schools. The Board of Education became the San Jose Unified School District (the District) – a separate entity under the laws of the State of California. In the early 1970s, the City conveyed ownership of its school properties to the District.

The title discrepancy for the two lots underlying Gardner Elementary School came to light when the District sought building permits for curb cuts, and was informed that permits could not be issued because title was not in the name of the District. Apparently, the original, 95-year old, deed that conveyed ownership of the property to the City of San José (when the District was part of the City) had never been recorded.

ANALYSIS

Documents provided by San Jose Unified School District show no record of Gardner Elementary School until 1911. In 1911, minutes of the City's Board of Education indicate that the purchase, from a Mrs. Enright, of two lots adjacent to Gardner School (as it then existed) was authorized. When final payment was made, a deed from the Enrights to the City for these two lots was executed, but not recorded for reasons that are not clear. Thus a preliminary title report still shows these parcels as owned by the Enrights, even though title was deeded to the City's Board of Education back in 1912. The City's Board of Education continued to purchase parcels adjacent to the two lots at issue, and all these parcels comprise today's Gardner Elementary School. The District has now located the original unrecorded deed in its records showing that the Enrights did deed these lots to the City.

In 1972, the City of San José quit-claimed its interest in Longfellow, Grant, Washington, Horace Mann and Lowell Schools to San Jose Unified School District, indicating that the City was divesting itself of any remnants of ownership in the school system. Because every other lot that was purchased to form the modern-day Gardner School was deeded to the District, it appears that the two lots at issue were inadvertently overlooked by both parties when the transfer of the other properties occurred.

In summary, it appears there was an oversight that prevented the City from including Gardner School in the group of schools that were quit-claimed to the District in 1972. All of the original downtown schools that were operational in 1911 were properly transferred to the District. Moreover, all of the Gardner School property is properly deeded to the District, except for the unrecorded lots 43 and 44, which have now disappeared into the contiguous lot 47, APN# 264-18-047. Based on this information, staff has determined that a quitclaim of the City's interest in these lots is appropriate.

Correction of this discrepancy in title requires only that the original unrecorded deed from 1912, in which title was passed to the City from the Enrights, be recorded, and that the City quitclaim any interest it may have in those lots to the District. The District has opened an escrow and will pay for all costs of the transaction.

POLICY ALTERNATIVES

Alternative #1: To not grant the quitclaim and have the District record the actual deed in favor of the City.

Pros: This would have the property come to the City in fee and the City would be owner of two combined lots beneath a school district elementary school facility.

Cons: The effect of the City receiving fee would mean the City would now own not only the underlying fee property interests, but it would also own property directly under the physical school building. The City would then be responsible for any liability associated with an underlying fee owner of property. The District would then be an encroacher and trespasser and

the City would need to enter into a long-term lease and/or grant a permanent easement for the District's facility to continue residing thereon. This scenario could lead to legal ramifications with the District's counsel.

Reason for not recommending: The District has adequately demonstrated the intent of the City was to convey all school property to its management and jurisdiction when the District was formed. To retain or obtain the delayed conveyance of this property would be contrary to past action and support of this objective.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

While this action does not meet the \$1 million threshold under Criteria 1, this memorandum will be posted on the City's website for the June 26, 2007 Council agenda.

COORDINATION

This memorandum has been coordinated with the City Manager's Budget Office, the Planning, Building and Code Enforcement Department, and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This transfer and conveyance of property ownership conforms to the Mayor's Budget/Fiscal principles of June 2006, guiding Principles for Budget and Financial Management (Document: Mayor's 2006-2007 Revised June Budget Message, p. 9): "Respect community and neighborhood priorities, leverage resources as much as possible, and encourage and support community partnerships, engagement, and greater self-sufficiency". It also complies with the General Budget Principles (Document Mayor's 2006-2007 March Budget Message – General Budget Recommendations, p. 4.2) by focusing on protection of vital core city services for both the short-and long-term. Staff has been encouraged to be open to alternative ways to deliver

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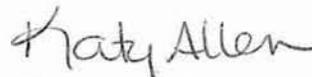
services and reduce costs through appropriate community partnerships and public-private partnerships.

COST IMPLICATIONS

There is no cost to the City except staff time associated with the transfer of property ownership to the District. The San Jose Unified School District is providing funding for escrow costs to facilitate a smooth transfer from the City to the District.

CEQA

CEQA: Mitigated Negative Declaration, File No. PP03-289.



KATY ALLEN

Director, Public Works Department

For questions please contact PHIL PRINCE, DEPUTY DIRECTOR, at (408) 535-8300.

COUNCIL DISTRICT CITYWIDE.



**GARDNER ELEMENTARY SCHOOL
UNDERLYING FEE TRANSFER**

Fee Simple - Full Ownership

Assessor's Parcel Number 264-18-047 (lots 43,44)

EXHIBIT "A"