



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 11-13-07

Approved

Date

11/18/07

COUNCIL DISTRICT: 6

SUBJECT: FINDING AND DETERMINING THE PUBLIC INTEREST AND NECESSITY FOR CONDEMNING REAL PROPERTY OWNED BY CLEAR CHANNEL OUTDOOR FOR PURPOSES OF CONSTRUCTION OF THE BASCOM COMMUNITY CENTER AND BRANCH LIBRARY PROJECT AND AUTHORIZING THE ACQUISITION OF THIS INTEREST BY EMINENT DOMAIN

RECOMMENDATION

Adoption of a resolution determining that the public interest and necessity require the acquisition of a billboard owned by Clear Channel Outdoor ("CCO") located at 1000 South Bascom, San José, CA (APN Numbers 282-29-002, 003, and 004) and authorizing the City Attorney to file suit in eminent domain to acquire such property interest, to apply for an order for possession before judgment, and to prosecute the action to final judgment, and authorizing the deposit of money in court for possession of the property from the funds lawfully available.

OUTCOME

Staff is requesting that the City utilize its power of eminent domain under Sections 1240.010, 1240.110, and 1240.120 of the California Code of Civil Procedure, all of which authorize the City to acquire the subject property from CCO.

If a Resolution of Necessity is adopted, the City Attorney will then file the necessary papers with the court to commence an eminent domain action. Upon the filing of an eminent domain action, a deposit of probable compensation may be made. A request for an Order for Prejudgment Possession may also be made which would allow the City to take possession of the billboard before the issue of just compensation is determined.

BACKGROUND

In June 2005, City Council approved a resolution determining that the public interest and necessity required the acquisition of vacant land owned by Donati Bascom Building, LLC, located at 1000 South Bascom Avenue in San José for purposes of construction of the Bascom Community Center and Branch Library Project and authorized the City Attorney to file suit in

eminent domain to acquire such property interest. The City took possession of this property on November 6, 2006. The City acquired this property subject to Clear Channel Outdoor's billboard lease. The City as the new landlord is subject to all existing terms of the lease. The term of the lease, stipulates that upon expiration the lease continues for successive like terms. The annual rent due to the City under the lease is \$2,400. The current lease ends August 1, 2010. The lease is thereafter automatically renewed unless a 90 day notice is given prior to the end of the term. The location of the billboard on the city-owned property greatly restricts and limits the current design of the building.

The plans for the Bascom Library and Community Center include a 40,000 square foot two story building. The attached Exhibit C and D (proposed site plans) show the building footprint near the adjacent building on the north side of the property, where the existing billboard is located. The project is currently at 50% construction documents and it is expected to go out to bid in February 2008, with construction to commence in the spring/summer of 2008.

ANALYSIS

Acquisition

An independent appraisal, completed on January 23, 2007, valued the Billboard at \$57,000. The subject billboard is an illuminated double-faced 30-sheet poster panel with advertising faces measuring 12' x 25'. The billboard's faces show to north and south-bound traffic on South Bascom Avenue in San José.

An initial offer in that amount was sent to CCO on March 27, 2007 together with a copy of the appraisal report. The property owner responded on April 17, 2007 asking the City to consider the option that Clear Channel Outdoor will remove the billboard located at the subject property and waive any claims to compensation upon the City's agreement to allow CCO to modernize two structures to add illumination as well as additional south oriented advertising facing signs at 1605 Industrial Avenue and 1533 Las Plumas Avenue. These billboards are not located on City-owned property. Real Estate staff met with representatives of the City Attorney's office and the Planning Department to discuss CCO's proposal. After careful review and consideration of the proposal, the City is not prepared to further explore any alternative other than the offer presented to CCO on March 27, 2007. A final offer to purchase letter was sent to CCO on September 7, 2007. CCO responded stating they are not accepting our final offer. Efforts to resolve these issues with CCO have not been successful to date and staff does not believe that further attempts at negotiation will be fruitful.

Keeping the billboard in place is in violation of City Council Policy 6-4, adopted June 28, 1971, which states that all existing billboards on City-owned land shall be removed.

Resolution of Necessity

On November 16, 2007, a notice was sent to Clear Channel Outdoor, the owner of record, notifying Clear Channel Outdoor, that a hearing is scheduled on December 4, 2007 before the City Council to consider the adoption of a Resolution of Necessity determining the following issues:

- 1. Whether the public interest and necessity require the proposed acquisition and removal of the billboard and if this action planned in a manner that would be most compatible with the greatest public good and the least private injury.**

City Council approved the acquisition of land at 1000 South Bascom Avenue as the best option available to design and build a joint facility. The design and construction of the facility requires that the billboard be removed. The area of the project site is 88,234 square feet. The minimum program area required by PRNS and the Library Departments is 40,000 square feet. To construct a facility of this size and provide as much parking as possible a two story design was required. In order to maintain visibility of the billboard the new facility would need to be placed at least 60 feet back from Bascom Avenue. This could have been accomplished by locating the facility along the east side of the site and parking along the west, Bascom Avenue, side of the site. This configuration was one of several options presented to PRNS and the Library Departments and the community for their review. Two notable concerns related to this design were the appearance from Bascom. First, it was aesthetically unpleasing, making the facility “look like a strip mall.” Second, the two story, 36 foot high wall was immediately adjacent to the residential neighborhood. Additionally this design placed the front of the facility facing due west resulting in a full exposure to the afternoon sun throughout the year. While this was the only design presented to the community which could have allowed the billboard to remain others were considered but were not further developed due to their required reduction in parking capacity.

Among the reasons for selecting the current layout were the maximization of parking area and the ability to step the building design down as it approaches the residential side of the site. Also the current design allows the facility to have a southern exposure which has allowed the project to receive LEED Green Building points going towards achieving a LEED Silver Certification as mandated by the Council. This orientation also provides for a better civic presence as viewed by the adjacent drivers along Bascom.

The City’s schedule for the issuance of construction bids is February 2008. It is anticipated that construction will begin in early summer of 2008. If the billboard is not removed by February 2008, it may cause construction delays and additional costs to the project.

After analyzing the different options regarding the acquisition and removal of the billboard, staff determined that the most viable solution for the design and construction of the Bascom Branch Library and Community Center Project, which is also consistent with the greatest public good and the least private injury, is to acquire and remove the billboard.

2. Whether the removal of the billboard is necessary for the project.

The entire property located at 1000 South Bascom Avenue is necessary for the project because the 40,000 square foot library and community center building, the 90-car parking lot, and the associated landscaping will occupy the entirety of the parcel (See site plan Exhibit C). The location of the billboard is within the planned foot-print of the building. As set forth in the preceding section, there is no other available site that will better accommodate the joint library-community center project.

3. Whether the offer required by Section 7267.2 of the Government Code has been made to the owners of record.

A copy of the lease shows the owner of record as “Clear Channel Outdoor.” Staff entered into negotiations with Clear Channel Outdoor, in early 2007. In compliance with Government Code section 7267.2, an offer was sent to Clear Channel Outdoor on March 27, 2007 together with a copy of the appraisal report. This offer of \$57,000 was for the full leasehold interest value, inclusive of goodwill and structure. CCO rejected the offer on September 28, 2007 and countered with a proposal to modernize and illuminate 2 other billboards in exchange for removing the billboard located on the Bascom property. Subsequent negotiations have failed to narrow the gap between the parties.

Based on the course of discussions between City staff and CCO, staff does not believe that a purchase agreement can be reached. Accordingly, a notice of the December 4, 2007 hearing was sent to CCO on November 16, 2007.

EVALUATION AND FOLLOW-UP

The project is currently within budget and on schedule with a projected completion in 2010. The construction award for this project is expected to be brought to the Council for approval in February 2008.

POLICY ALTERNATIVES

Alternative #1: Do not remove the billboard

Pros: Construction of the project may proceed without waiting for the outcome of the public interest and necessity hearing. The City will save the money that would have been paid for the acquisition and removal of the billboard. In addition, the City would receive \$200 a month in rent.

Cons: The project design would have to be amended and the construction of the joint facility would have to be delayed at a significant cost to the City.

Reason for not recommending: A substantial reduction in the size and use of the building would be required to preserve the billboard and its visibility. Furthermore, leaving the billboard on the site would be inconsistent with the public interest, as explained above.

Alternative #2: Relocate the billboard to specific locations

Pros: Billboard would be relocated at no cost to the City. Proposal includes adding a second billboard and lighting at two other locations in the City already owned by CCO.

Cons: Title 23 of the San Jose Municipal Code, Sign Ordinance 23.02.1010 prohibits the display of among other signs, billboards.

Reason for not recommending: City does not want to set a precedent of allowing billboard arrangements as proposed by CCO, as this would be inconsistent with City policies.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 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)**
- Criterion 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)**

This memo does not meet any of the above listed criteria; however it will be posted on the City's website for the December 04, 2007 Council agenda.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office the Departments of Parks, Recreation, and Neighborhood Services, Planning, Building and Code Enforcement and Library.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy Economic Recovery section in that it will spur construction spending in our local economy.

COST SUMMARY/IMPLICATIONS

1. AMOUNT RECOMMENDED FOR THE ACQUISITION:
Amount of City's offer to be deposited with filing of condemnation in court: \$57,000
(Note: Total cost may vary depending on outcome of court proceedings)
2. SOURCE OF FUNDING:
Fund 472: Branch Libraries Bond Projects Fund
Fund 375: Subdivision Park Trust Fund

3. OPERATING COSTS: Upon completion in the summer of 2010, the operating and maintenance costs for the Bascom Community Center are estimated at \$768,000 on an annual basis. The operating and maintenance costs for the Bascom Branch Library are estimated at \$1,358,000 on an annual basis. These costs will be considered during future budget processes.

BUDGET REFERENCE

The table below identifies the fund and appropriation proposed to fund the contract recommended as part of this memorandum and remaining project costs, including project delivery, construction, and contingency costs.

Fund #	Appn #	Appn. Name	RC #	Total Appn	Amt. for Contract	Adopted Budget (Page)	Last Budget Action (Date, Ord. No.)
Current Funding Available							
472	6877	Land Acquisition	120472	\$983,000*	\$28,500	V-263	10/16/2007, Ord. # 28143
375	4694	Bascom Community Center-Multi Service	124922	\$382,000**	\$28,500	V-657	10/16/2007, Ord. # 28143
Total Funding for Projects				\$1,365,000	\$57,000		

*The 2007-2008 appropriation for this project totals \$983,000; however, only \$28,500 has been allocated for the billboard acquisition and removal.

**The 2007-2008 appropriation for this project totals \$382,000; however, only \$28,500 has been allocated for the billboard acquisition and removal.

CEQA

CEQA: Exempt, File No. PP05-0126

Katy Allen

KATY ALLEN
Director, Public Works Department

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

Attachments

EXHIBIT A

DATED AS OP: September 27, 2004 AT 7:30 A.M. ORDER NUMBER: 123336 - MJC

LIABILITY: \$5,000.00

FEE: \$ 500.00

1. Name of Party:

City of San Jose
Monica C. Kavanaugh
170 W. San Carlos Street
San Jose, California 95113

2. The Interest referred to in the Application is:

A FEE

3. The Land referred to in the Application is described as follows:

All that certain Real Property in the City of San Jose, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

Portion of Lot 169, as shown on that certain Map of Tract No. 1367 Sherman Oaks Addition Unit No. 3, which Map was filed for record March 1, 1955 in Book 54 of Maps, pages 50 and 51, in the Office of the Recorder of the County of Santa Clara, State of California, said portion being more particularly described as follows:

Beginning at that Southwesterly corner of that certain 0.717 acre tract of land described in the deed from Dan Caputo, et ux, to Frank J. Quement, et ux, dated July 30, 1962, recorded August 9, 1962 in Book 5677 Official Records, page 238, Santa Clara County Records, in the Easterly line of San Jose-Los Gatos Road, as said road is shown upon the Map above referred to; thence from said point of beginning, S. 0 degrees 36' 30" E. along said easterly line of San Jose-Los Gatos Road for a distance of 130.00 feet; thence leaving said last mentioned line and running N. 89 degrees 38' 42" E. and parallel with the dividing line between Lots 169 and 170, as said Lots are shown upon the Map above referred to for a distance of 240.00 feet to a point in the Westerly line of Del Mar Avenue, as said Avenue is shown upon the map above referred to; thence N. 0 degrees 36' 30" W. along said last

mentioned line for a distance of 130.00 feet to the Southeasterly corner of said 0.717 acre tract above referred to; thence S. 89 degrees 38' 42" W. and parallel with the said dividing line between Lots 169 and 170 for a distance of 240.00 feet to the Point of Beginning.

PARCEL TWO:

Portion of Lots 169 and 170, of "Tract No. 1367 Sherman Oaks Addition Unit No. 3", as said Lot and Tract are shown upon Map recorded March 1, 1955 in Book 54 of Maps, pages 50 and 51, in the Office of the Recorder of the County of Santa Clara, State of California, said portion being more particularly described as follows:

Commencing at a point in the Easterly line of the San Jose-Los Gatos Road, as said Road is shown on the Map of Tract 1367 Sherman Oaks Addition No. 3 hereinabove referred to, said point being S. 0 degrees 36' 30" E. along the Easterly line of said San Jose-Los Gatos Road, 200.00 feet from the Southwest corner of that certain parcel conveyed by Dan Caputo, ex to Hazel Welker, et al, by deed recorded July 3, 1961 in Book 5218 of Official Records, Page 18, Santa Clara County Records; thence N. 89 degrees 41' 30" E. parallel to the Northerly line of said Lot 170, 240.00 feet to the Westerly line of Del Mar Avenue, as said Avenue is shown on said Map; thence S. 0 degrees 36' 30" E. along the Westerly line of Del Mar Avenue, 130.00 feet to a point; thence S. 89 degrees 41' 30" W. parallel to the Northerly line of Lot 170, 240.00 feet to a point on the Easterly line of said San Jose-Los Gatos Road; thence N. 0 degrees 36' 30" W. along the Easterly line of Said San Jose-Los Gatos Road 130.00 feet to the point of beginning.

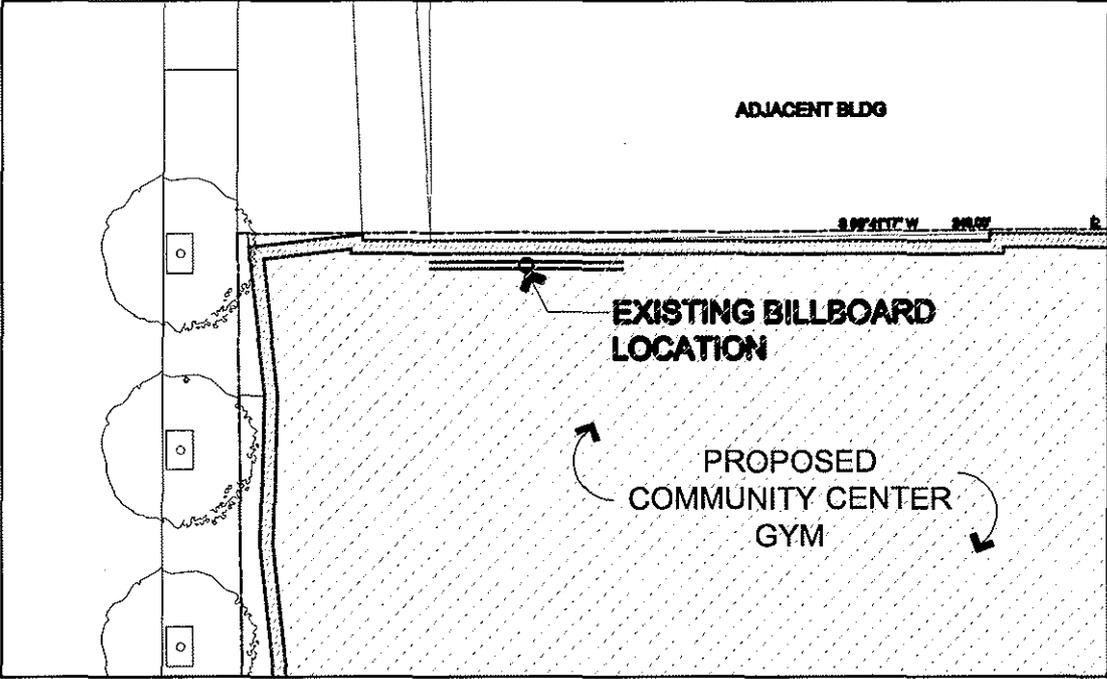
PARCEL THREE:

Portion of Lot 170, of "Tract No. 1367 Sherman Oaks Addition Unit No. 3", as said Lot and Tract are shown upon Map recorded March 1, 1955 in Book 54 of Maps, pages 50 and 51, in the Office of the Recorder of the County of Santa Clara, State of California, said portion being more particularly described as follows:

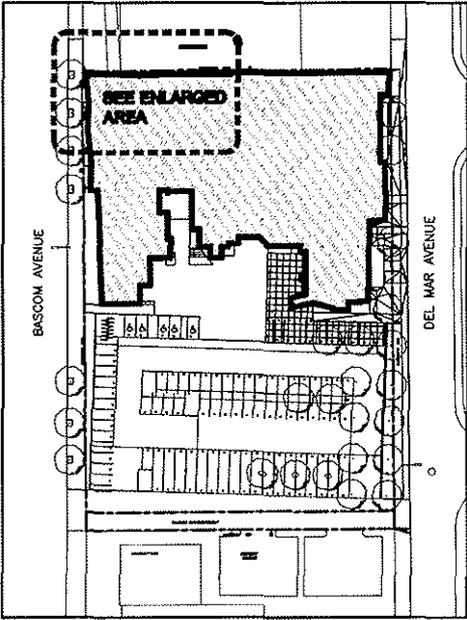
Commencing at a point in the Easterly line of the San Jose-Los Gatos Road, as said Road is shown on the Map of Tract 1367 Sherman Oaks Addition No. 3, hereinabove referred to, said point being South 0° 36' 30" East along the Easterly line of said San Jose-Los Gatos Road, 100.00 feet from the Southwest corner of that certain parcel conveyed by Dan Caputo, et ux, to Hazen Welker, et al, by Deed recorded July 3, 1961 in Book 5218 of Official Records, page 18, Santa Clara County Records; thence South 0° 36' 30" East along the Easterly line of the San Jose-Los Gatos Road (and the Westerly line of said Lot 170), 100.00 feet; thence North 89° 41' 30" East, parallel to the Northerly line of said Lot 170, 240.00 feet to the Westerly line of Del Mar Avenue, as said Avenue is shown on said Map; thence North 0° 36' 30" West along the Westerly line of Del Mar Avenue, 100.00 feet to a point which an iron pipe at the intersection of the monument line of Del Mar Avenue and the center line of Roenoke Way bears North 89° 41' 30" East 35.00 feet, and South 0° 36' 30" East 34.40 feet; thence South 89° 41' 30" West, parallel to the Northerly line of said Lot 170, 240.00 feet to the point of commencement.

Excepting therefrom the underground water, as granted in the Deed from San Jose Abstract & Title Company, a Corporation, to San Jose Water Works, a California Corporation, dated January 19, 1953 and recorded January 21, 1953 in Book 2566 of Official Records, page 173, and as granted in the Deed from Sherman Oaks Development Co., a Corporation, to San Jose Water Works, a California Corporation, recorded April 12, 1955 in Book 3139 of Official Records, page 454.

EXHIBIT C



DRAWING NOT TO SCALE



DRAWING NOT TO SCALE

BASCOM
BRANCH LIBRARY AND COMMUNITY CENTER