

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes
Jane Light

SUBJECT: SEE BELOW

DATE: 01-06-11

Approved

Date

1/10/11

COUNCIL DISTRICT: 8

SUBJECT: APPROVAL OF AN AGREEMENT FOR THE PURCHASE OF REAL PROPERTY AT EVERGREEN VILLAGE SQUARE.

RECOMMENDATION

- a) Approve the purchase agreement with Shapell Industries, a Delaware corporation, in the amount of \$1,000,000 for the purchase of land located at Evergreen Village, San José, CA, (a portion of APN N. 659-56-063) for the future site of the Southeast Branch Library; and
- b) Adopt a resolution authorizing the Director of Public Works to execute the purchase agreement and all other documents necessary to complete the transaction.

OUTCOME

Acquisition of the subject property will allow for the construction of the Southeast Branch Library, the final library to be constructed in the Library Bond Program.

BACKGROUND

The City has been looking for a new branch library location since 2001 and has explored a number of possibilities. Following a comprehensive community process that centered on two potential sites, this undeveloped land at the Evergreen Village Square on Classico Avenue ("Center") has been identified as the preferred site for the new 12,000 square foot library (Exhibit A). This property is situated so that it complements the geographic area serviced by the Evergreen Branch Library. The decision to pursue this location was based on criteria designed to ensure the best fit for library users now and in the future.

The Center is an integrated development that includes residential and commercial elements with the goal of directly serving the adjoining community. As a part of this development, all properties within the Center are subject to a recorded declaration of covenants, conditions and restrictions and grant of easements ("CC&R"), which were previously established for the Center as certain reciprocal rights of access and parking, use restrictions, and consistent standards of

maintenance. Pursuant to the above documents, while areas within designated building areas are to be maintained by the respective building owners, with certain exceptions all other areas within the Center (known as "common areas") are to be maintained by Shapell Industries ("Shapell") subject to pro rata reimbursement of costs by building owners.

Adjacent to the proposed library parcel within the Center are approved developments of additional commercial and residential units. These elements complement the proposed library use and add to the attractiveness of this site.

The project will be the last of 20 branch library projects funded by the Library Bond Measure passed in 2000. The building will be designed to attain the LEED Silver rating in accordance with City Council Policy, and it is expected to open in 2013.

Staff has been in discussions with Shapell and has negotiated a mutually acceptable form of proposed purchase agreement, including certain amendments to the CC&R. Staff has also selected the architectural firm of LPA, Inc. to lead the design of this project. On June 22, 2010, the City Council authorized the City Manager to negotiate and execute an agreement with LPA, Inc. Negotiations with LPA Inc. were substantially completed before being suspended pending resolution of negotiations with Shapell; staff expects to now finalize the proposed form of agreement with LPA, Inc. to coincide with the approval of this property acquisition. The first of several community meetings about the design and public art will begin in early 2011.

ANALYSIS

The subject property is a regularly configured parcel that is part of a larger, vacant land site known as Parcel 1 (per the terms of the CC&R) in the Center. Parcel 1 measures a total of approximately 3.45 net acres out of which the City would acquire approximately 28,000 square feet. The site is improved with typical frontage improvements, including curb, gutter, and sidewalk. All typical utilities are available to the site. The Environmental Services Department ("ESD") performed a Phase I Environmental Site Assessment in December 2009 and recommended that a limited Phase II investigation be performed to sample and analyze the shallow soil for pesticides and naturally occurring asbestos. The Phase II Investigation prepared in March 2010 by ESD concluded that the samples analyzed for this project indicate that the soil at the subject property has not been adversely impacted with pesticides and asbestos. These results do not indicate any environmental or public health risk.

The property was appraised in June 2009 by Hulberg & Associates. The market value of the fee simple interest in the subject property was \$1,000,000. Subsequent negotiations with Shapell resulted in an agreed purchase price of \$1,000,000. Highlights of the proposed purchase include the following:

- **Parking:** Shapell will allocate non-exclusive use of 59 parking stalls in the Center common area for the City's building. While the nature of this integrated development is such that parking throughout is shared, this element of the transaction ensures that, should the City expand the library in the future, adequate parking is available to support that expansion.

- **Maintenance:** The City will pay its pro-rata share of maintenance and repair costs for all areas of the Center excluding designated building areas and excluding Walgreen's parcel and the adjacent proposed residential development (which are responsible for their own common areas). Subject to reimbursement by owners, Shapell will arrange for and manage all such common area maintenance and repair. Shapell has provided historic maintenance and repair costs to the City; the City will be entitled to review and approve the common area maintenance and repair budget annually. In the event the City determines it will not have sufficient funds to meet its reimbursement obligations, the City may elect to maintain its own common area. The City will be responsible for the maintenance and repair of its building.
- **Access Road:** As a part of the purchase price, Shapell will be responsible for construction of an access road over portions of the Center common area that will serve the library parcel.
- **Design:** The design of the City's improvements must be consistent with existing Center design criteria.
- **Use:** Shapell has existing obligations to other tenants in the Center to prevent duplicative uses. By acquiring the library parcel, the City will agree to restrict its use to meet Shapell's existing obligations, while those businesses are in existence under their current ownership and agreement. Additionally, irrespective of Shapell's existing obligations, by acquiring the library parcel, the City will agree that it will never permit its parcel to be used as a supermarket, department store, wholesale club store or pharmacy. Other private or public uses by the City are not affected so long as they do not violate restrictions generally applicable to the Center (e.g. nuisance or dangerous uses).

EVALUATION AND FOLLOW-UP

The transfer of this property is expected to be concluded on or about February 28, 2011.

PUBLIC OUTREACH

- 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)**

Extensive community engagement efforts were accomplished during the acquisition process for this parcel. More than 7,500 postcards about a community meeting were sent to addresses in the Meadowlands, the Estates, and Silver Creek neighborhoods and to neighborhoods surrounding Matsumoto School, Chaboya Middle School, Evergreen School, Evergreen Valley High School, Carolyn Clark School, and Evergreen Valley Square. In addition, Councilmember Herrera distributed an electronic version of the postcard to neighborhood associations and constituents on her e-mail list. Nearly 100 people attended the community meeting to hear about both sites. Some 275 comments were received about both sites, and 188 preferred the Evergreen Village Square Location. Residents learned of the options by attending the meeting, through coverage in the *Evergreen Times*, and by dissemination through several neighborhood e-mail lists.

COORDINATION

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

COST SUMMARY/IMPLICATIONS

1. AMOUNT RECOMMENDED FOR THE ACQUISITION:
 Amount of City’s purchase price to be deposited into escrow: \$1,000,000

2. SOURCE OF FUNDING: Branch Libraries Bond Projects Fund – (472)

3. OPERATING COST: This memorandum provides funding for the purchase of land. The operating and maintenance impact for the new facility are identified on page V-255 of the 2011-2015 Adopted Capital Improvement Program.

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	Total Appn.	Amt. of Recommendation	Adopted 2010-11 Capital Budget Page	Last Budget Action (Date, Ord. No.)
Funding Available						
472	6877	Land Acquisition	\$1,258,000	\$1,000,000	V-272	10/19/10, Ord. No. 28829
Total Funding for Agreement			\$1,258,000	\$1,000,000		

HONORABLE MAYOR AND CITY COUNCIL

01-06-11

Subject: Purchase of Real Property at Evergreen Village Square

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CEQA

CEQA: Addendum to the Evergreen Specific Plan EIR Resolution No. 63719, File No. PP10-008

/s/

DAVID SYKES
Acting Director, Public Works Department

/s/

JANE LIGHT
Library Director

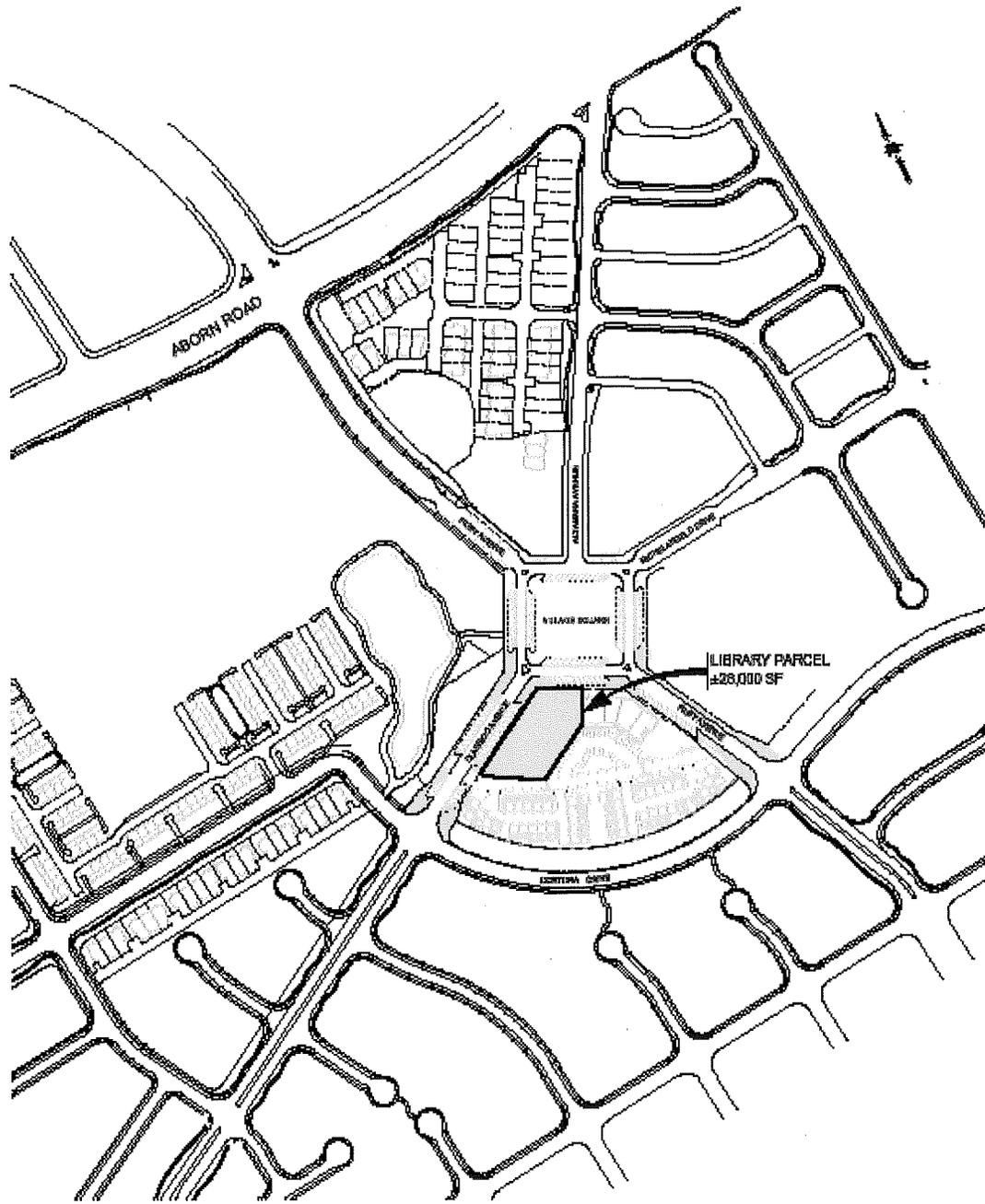
For questions please contact MATT MORLEY, DEPUTY DIRECTOR, PUBLIC WORKS DEPARTMENT, at 535-1298.

Exhibit:

A - Real Property Description

EXHIBIT A
Real Property Description

SOUTHEAST BRANCH LIBRARY
City of San Jose



SITE CONTEXT EXHIBIT

Not to Scale

Source: GIS Department, 11