



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kim Walesh

**SUBJECT:** SEE BELOW

**DATE:** November 13, 2012

Approved

Date

11/14/12

**COUNCIL DISTRICT: 6**

**SUBJECT: SALE OF A PORTION OF CITY OWNED PROPERTY ON EMORY STREET**

## RECOMMENDATION

Adopt a resolution:

- a. Declaring 28,990 square feet of vacated street on Emory Street, surplus to the needs of the City;
- b. Approving an agreement between the City of San José and Bellarmine College Preparatory (Bellarmine) for sale of the property in the amount of \$325,000; and
- c. Authorizing the City Manager or her designee to execute the sale agreement, the deed and all other documents necessary to complete the transaction.

## OUTCOME

Adoption of this resolution will allow the sale of approximately 28,990 square feet of a City-owned property on a portion of Emory Street between Laurel Street and Stockton Avenue, as described and depicted in Attachment A, to Bellarmine for an amount of \$325,000 that will be deposited to the General Fund.

## BACKGROUND

On October 16, 2012, the Council approved a resolution of intention to vacate a portion of Emory Street between Laurel Street and Stockton Avenue.

On November 6, 2012, the Council approved the adoption of a resolution vacating approximately 28,990 square feet of Emory Street. As a part of the street vacation, the City will reserve three

easements across various portions of the vacated area which include a Public Service Easement over the entire area, a 20-foot Sanitary Sewer Easement, and a 20-foot Emergency Access Easement (Reserved Easements). The existence of these Reserved Easements and the associated restrictions severely limit the development potential of the proposed street vacation.

Bellarmino (the adjacent property owner) has expressed an interest in purchasing the proposed vacated portion of Emory Street to incorporate the 28,990 square feet into their Bellarmino College Preparatory campus, located east of Stockton Avenue, in order to fulfill development conditions of Planned Development Permit (PD12-005) (Permit). The Permit proposes improvements to the existing baseball field located on a 2.3 acre portion of Bellarmino's 16.0 acre campus. The improvements to the baseball field include relocating the baseball diamond, creating batting cages, and installing bleachers alongside the field. Incorporating the vacated street into the school's campus will allow Bellarmino to meet set back requirements for the proposed baseball field bleachers. Currently, this portion of Emory Street functions as a public cul-de-sac that is the primary access for Bellarmino's designated pick up and drop off location for students; certain restrictions to maintain this use in order to limit school-related traffic on surrounding residential streets are contained in the Permit.

Staff has negotiated and Bellarmino has agreed upon a purchase price of \$325,000, which is comparable to vacant land sales in the area.

### **ANALYSIS**

This City-owned property became available for possible sale when the proposed vacation of a portion of Emory Street was approved by the Council on November 6, 2012. This piece of property is adjacent to Bellarmino College Preparatory and was a public cul-de-sac and is being used to provide access for Bellarmino's designated pick up and drop off location for students. The property has limited use since it has been blocked off on one end to limit traffic access to the adjoining parking lots. Staff has determined that this portion of Emory Street is no longer needed as a public street and that there are no other municipal purposes now or in the foreseeable future for which the property could be used and therefore no reason for the City to own and maintain the property. Bellarmino has agreed upon a purchase price of \$325,000 which is comparable to recent vacant land sales in the area. In addition, given the existence of the Reserved Easements and their associated restrictions, development potential of the proposed street vacation is severely limited. The Reserved Easements are reflected in the City's deed to Bellarmino, and Bellarmino has agreed to comply with all Permit conditions. Finally, Bellarmino has worked closely with the neighborhood owners and residents regarding the closing of former Emory Street, communicating with them that the area will be used solely for the drop off of students.

Municipal Code Chapter 4.20 permits the sale of City-owned surplus property upon Council finding and determining that the property is not needed for, nor adaptable to, municipal purposes. Further, while such sales are generally required to be undertaken on a competitive basis, Municipal Code Section 4.20.070 authorizes the sale of surplus property through direct negotiation at fair market value, and upon such other terms and conditions as Council may direct,

to the owner of property adjacent to such surplus property. The City property has been determined to not be independently developable. Staff reviewed market activity in the area prior to offering the property for sale including recent sales and properties that are currently for sale and has determined that the proposed sale price represents fair market value for the property, particularly in light of its configuration, location, and restrictions on development.

### **EVALUATION AND FOLLOW-UP**

The transfer of the subject property is anticipated to be completed within 30 days of approval by Council.

### **POLICY ALTERNATIVES**

*Alternative #1:* Reject the sale of the property and continue City ownership.

**Pros:** By retaining the property, the City retains the ability to use the property for future municipal purposes.

**Cons:** By rejecting the sale, the City will continue to incur costs for maintenance of the property and the ongoing liability for repairs and safety.

**Reason for not recommending:** Continuing ownership of the property will result in continued maintenance expenses and potential liability. No future municipal uses have been identified.

### **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)**

This action does not meet any of the above listed criteria; however it will be posted on the City's website for the December 4, 2012 Council agenda.

### **COORDINATION**

This memorandum has been coordinated with the City Manager's Budget Office, the City Attorney's Office and the Public Works Department.

**FISCAL/POLICY ALIGNMENT**

This sale is in alignment with the Mayor's March 2009 Budget Message in the Investment Strategies section, Item 1h which stated: "The city is currently undergoing a rigorous asset Management review to include the sale of non-essential and underperforming city-owned properties, restructuring of existing leases with for-profit and non-profit operators of city facilities, and leasing of city infrastructure to private or other governmental operators."

**COST SUMMARY/IMPLICATIONS**

The net proceeds from the sale of this property (\$325,000) will be deposited in the General Fund. Currently, the 2012-2013 budget for the General Fund includes a \$1,400,000 revenue estimate for the sale of surplus property. The proceeds from this property sale will help meet the budgeted estimate.

**CEQA**

Mitigated Negative Declaration, PDC07-072.

/s/

KIM WALESH  
Director of Economic Development  
Chief Strategist

For questions please contact Nanci Klein, Deputy Director, at (408) 535-8184.

Attachments

ATTACHMENT A  
DESCRIPTION OF REAL PROPERTY

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF EMORY STREET, A PUBLIC STREET 70 FEET WIDE, AS SAID STREET IS SHOWN ON THE "MAP OF UNIVERSITY GROUNDS, SANTA CLARA COUNTY, CALIFORNIA", RECORDED IN VOLUME E OF MISCELLANEOUS RECORDS AT PAGE 27, LYING WITHIN THE CITY OF SAN JOSE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF PARCEL 2, AS SAID PARCEL IS SHOWN ON THE PARCEL MAP RECORDED JUNE 15, 1976 IN BOOK 373 OF MAPS AT PAGE 17, SANTA CLARA COUNTY RECORDS, SAID CORNER ALSO BEING ON THE SOUTHEASTERLY LINE OF EMORY STREET AT THE COMMON CORNER OF LOTS 3 AND 4 OF BLOCK 27, AS SAID STREET, LOTS AND BLOCK ARE SHOWN ON SAID MAP OF UNIVERSITY GROUNDS;

THENCE ALONG THE NORTHWESTERLY LINE OF SAID BLOCK 27 AND SAID SOUTHEASTERLY LINE OF EMORY STREET NORTH 48° 54' 00" EAST, 200.00 FEET TO THE POINT OF INTERSECTION OF SAID LINE OF EMORY STREET WITH THE SOUTHWESTERLY LINE OF STOCKTON AVENUE, A PUBLIC STREET 100 FEET WIDE AS SHOWN ON SAID MAP OF UNIVERSITY GROUNDS;

THENCE ALONG SAID SOUTHWESTERLY LINE OF STOCKTON AVENUE, NORTH 41° 06' 00" WEST, 70.00 FEET TO THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF EMORY STREET, WITH SAID SOUTHWESTERLY LINE OF STOCKTON AVENUE;

THENCE ALONG SAID NORTHWESTERLY LINE OF EMORY STREET, SAID LINE ALSO BEING THE SOUTHEASTERLY LINE OF COLLEGE SQUARE AS SHOWN ON SAID MAP OF UNIVERSITY GROUNDS, 413.78 FEET;

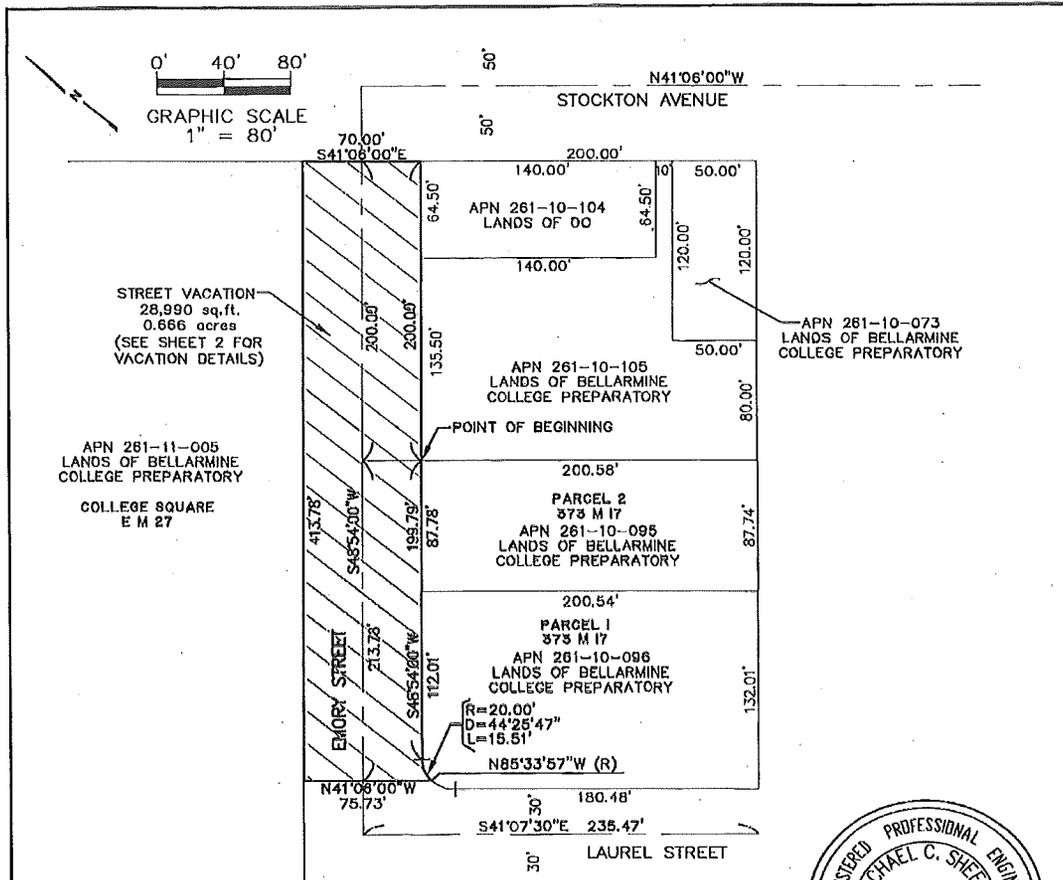
THENCE LEAVING SAID NORTHWESTERLY LINE OF EMORY STREET, SOUTH 41° 06' 00" EAST, 75.73 FEET TO THE SOUTHEASTERLY LINE OF EMORY STREET WITHIN THE RETURN OF LAUREL STREET AS SHOWN ON SAID PARCEL MAP;

THENCE ALONG SOUTHEASTERLY LINE OF EMORY STREET AND THROUGH A NON-TANGENT CURVE TO THE RIGHT OF RADIUS 20.00 FEET, A RADIAL LINE TO SAID CURVE BEARS NORTH 85° 33' 57" WEST, THROUGH A CENTRAL ANGLE OF 44° 25' 27" AND AN ARCH LENGTH OF 15.51 FEET;

THENCE CONTINUING ALONG SAID SOUTHEASTERLY LINE OF EMORY STREET, NORTH 48° 54' 00" EAST, 199.79 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

CONTAINING AN AREA OF 28,990 SQUARE FEET (0.67 ACRES) OF LAND, MORE OR LESS.

# ATTACHMENT A (cont'd) PLAT OF REAL PROPERTY



**NOTE:**  
PARCEL MAP RECORDED JUNE 15, 1976 IN BOOK 373  
OF MAPS AT PAGE 17 WAS USED AS A REFERENCE.



10/29/12

Q:\Civil\95003K\EXHIBITS\Emory St Vacation\ SH01-Emory St Plat.dwg Oct 29, 2012 - 9:16am SHEET 1 OF 2

	<b>RUTH AND GOING, INC.</b> Civil Engineering Land Surveying 2216 THE ALAVEDA SANTA CLARA, CA. 95050 (408) 236-2400		Plat to accompany <b>EMORY ST VACATION</b>
	<b>BELLARMINE COLLEGE PREP</b> City of San Jose California		
10/29/12	95003K	Drawn: RJY	
Dept.: Survey	Scale: 1" = 80'	Chkd.: DJS	

ATTACHMENT A (cont'd)  
AERIAL MAP

