

APPROVED
AUG 14 2013

REPORT OF GENERAL MANAGER

BOARD OF RECREATION
& PARK COMMISSIONERS

NO. 13-211

DATE August 14, 2013

C.D. 10

BOARD OF RECREATION AND PARK COMMISSIONERS
SOUTH

SUBJECT: 1138 AND 1144[✓] ST. ANDREWS PLACE – RESCISSION OF PREVIOUS BOARD ACTION FOR THE ACQUISITION OF TWO PARCELS BY CONDEMNATION FOR THE DEVELOPMENT OF A PARK AND EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

R. Adams	_____	K. Regan	_____
H. Fujita	_____	*M. Shull	<i>M. Shull</i>
V. Israel	_____	N. Williams	_____

as amended

[Signature]
General Manager

Approved _____ Disapproved _____ Withdrawn _____

RECOMMENDATIONS:

That the Board:

1. Rescind its prior action of October 3, 2012 (Board Report No. 12-275) authorizing the Department of Recreation and Parks (RAP) to initiate the process for the acquisition of two parcels, each measuring 6,185 square feet or 0.14 acre in size and located at 1138 and 1144 South St. Andrews Place, Los Angeles, California 90019 (County of Los Angeles Assessors Parcel Number (APN) 5080-003-001 and 5080-003-002);
2. Authorize staff to coordinate the necessary activities with the Department of General Services (GSD), and the City Attorney's Office to request City Council to repeal the Resolution of Necessity (Ordinance No. 182630) which was approved by City Council on July 3, 2013;
3. Approve a new Resolution, substantially in the form on file with the Board Office, and request that City Council instruct the Department of Public Works to draft an Ordinance rescinding/repealing the original Resolution of Necessity (Ordinance No. 182630, adopted on July 3, 2013) authorizing condemnation of 1138 and 1144 South St. Andrews Place, Los Angeles, CA 90019; and,
4. Find the adoption of the new Resolution herein is exempt from the California Environmental Quality Act (CEQA).

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SUMMARY:

On October 3, 2012, the Board of Recreation and Parks Commissioners (Board), through Board Report No. 12-275), authorized the acquisition by condemnation of two parcels located at 1138 and 1144 South St. Andrews Place, Los Angeles, CA 90019 (APN 5080-003-001 and 5080-003-002) for the development of a park. On July 3, 2013, the City Council concurred with the Board's recommendation and adopted Ordinance No. 182630 which authorized the subject acquisition via condemnation. The Ordinance was approved by the Mayor on July 11, 2013 and is scheduled to become effective on August 24, 2013.

At the time of the Board's approval, the subject vacant property had been a nuisance for the last few years and the community supported the acquisition of the site to be developed into a park. The City and the property owner, Mr. Isaac Davidi, President of Aldo Services, Inc., had tried to negotiate for the purchase of the property but could not agree to the purchase price. Since Mr. Davidi could not come to terms with the City he proceeded with the development of custom residential houses on the property. He obtained all of the required building and development permits and approvals on his plans to develop and construct two 3,000 to 4,000 square foot custom houses with garages. At the time of City Council's approval, foundations had been laid and framing was just about to commence.

In early July 2013, community meetings had been held with area stakeholders, including the Country Club Drive Neighborhood Association. It was at this time that the homeowners, residents, and other stakeholders made it clear that while a new park would have been a welcomed addition to their neighborhood, they also liked the potential for a positive impact on their property values if the new custom homes were constructed on the subject property.

Since the foundations had been laid and framing had commenced and the homeowners and community have made it clear to RAP that they would rather see the construction complete on the custom homes instead of the proposed park, RAP staff is recommending that the Board abandon the proposed acquisition and park development project and that the Board authorize staff to work with the various City entities to have City Council rescind the condemnation action.

Under State Law, a public entity may rescind a previously adopted action authorizing condemnation without being subject to an action for damages by the owner of the property which was the subject of a condemnation action, provided certain requirements are met.

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“A public entity may rescind a Resolution of Necessity as a matter of right at any time before the property owner commences an action under this section (damages for inverse condemnation), if the public entity ... rescinds the resolution of necessity before the property owner commences an action under this section, the property owner may not thereafter bring an action under this section.” California Code of Civil Procedure, Section 1245.260 (c), (emphasis added.)

Under Code of Civil Procedure Section 1245.260(a), the property owner cannot file an action in inverse condemnation earlier than six months after the adoption of the Resolution of Necessity. We are within that six month period given the adoption of the original ordinance by Council on July 3, 2013. It is unclear if the affected property owner intends to file an inverse condemnation action against the City. However, if he did, the City would argue that the property owner has not been damaged at all given the prompt notification which was provided to him on July 22, 2013, the date which RAP informed GSD and the City Attorney’s Office of its decision to abandon the Project. The Project’s cancellation should have no adverse impacts on the owner. The adoption of the original Resolution of Necessity was approved on July 3, 2013 and on July 23, 2013 the owner was advised in writing that the project would be cancelled. City staff believes that it would be difficult for the owner to establish that the actions taken by the City were a detriment to his position given the short twenty (20)-day period.

To the extent that the owner submits a claim for attorney fees, interference or delay in his construction and/or marketing of the completed custom homes, the City Attorney has advised that the City would consider any such claimed damages. If they are deemed reasonable under Code of Civil Procedure Section 1268.610, the City would be obligated to pay such reasonable amounts. At this time, the owner has made no threat of litigation or intention to submit a claim for any damages.

When the Board approved the acquisition of the subject properties on St. Andrews Place, this Board action was subject to the California Environmental Quality Act (CEQA) because it approved a project which had the potential to cause a change in the environment. Adoption of the attached resolution to repeal the previously adopted resolution would not constitute a “project” as defined by CEQA because it will not have the potential to cause a physical change to the environment. Therefore, adoption of the proposed resolution is exempt from CEQA under the City’s CEQA Guidelines, as amended July 31, 2002, Article II, Section 1, General Exemption.

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FISCAL IMPACT STATEMENT:

At this time, the City has incurred costs for its due diligence work which includes Environmental Phase I Site Assessment Work and Appraisal costs. It is estimated that these costs do not exceed \$15,000.00. As described above, the City is obligated to pay any reasonable damages incurred by the owner from this process. However, at this time, the owner has made no threat of litigation or intention to submit a claim for any damages. Therefore, aside from due diligence related work, there are no other known costs to the RAP's General Fund. Should this situation change, staff will inform the Board.

This report was prepared by Cid Macaraeg, Sr. Management Analyst II, Real Estate and Asset Management Section.