



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh
Jacky Morales-Ferrand
Angel Rios, Jr.

SUBJECT: SEE BELOW

DATE: January 12, 2015

Approved

Date

1/21/15

COUNCIL DISTRICT: 8

**SUBJECT: VARIOUS ACTIONS REGARDING CITY FUNDING FOR
IMPROVEMENTS AT BOYS AND GIRLS CLUB PROPERTY ON
CUNNINGHAM AVENUE**

RECOMMENDATION

Adopt a resolution authorizing the Director of Housing to:

1. Negotiate and execute a partial reconveyance of the City's deed of trust on the Boys and Girls Club (BGC) of Silicon Valley's clubhouse property located at 2293 Cunningham Avenue, reducing the amount of debt secured from \$875,000 to \$80,380.
2. Negotiate and execute a public use easement for the BGC clubhouse property to allow public access to outdoor spaces after hours and on weekends.
3. Subordinate the City's deed of trust to commercial lenders from whom BGC may borrow funds in the future.
4. Remove the City's deed of trust and public use easement from the City-owned soccer field parcel located behind 2293 Cunningham Avenue.
5. Record a covenant on the title to the City's soccer field located behind the clubhouse property to document the Community Development Block Grant (CDBG) requirement that a CDBG-eligible use of the site be maintained until 2021.

OUTCOME

Approval of the recommended actions will clean-up title on property owned by the City and BGC and will facilitate and ease future transactions between the City and BGC.

BACKGROUND

In 2003, the City Council made a \$750,000 award of Community Development Block Grant funds to the Boys and Girls Club of Silicon Valley to construct an artificial-turf soccer field and make other ancillary improvements (primarily repaving and security lighting of outdoor recreation facilities) to its clubhouse property located at 2293 Cunningham Avenue. The soccer field was to be constructed at the rear of the property behind the BGC clubhouse building and associated paved outdoor recreation area. When BGC subsequently put the project out to bid, it was discovered that the CDBG grant was insufficient to fund the scope of the project. Consequently, in 2005, the City Council approved an additional grant of \$125,000 from the Construction and Conveyance (C&C) Tax fund to cover the gap. The project as built spent \$794,620 on the soccer field improvements and \$80,380 on the other improvements. A deed of trust for the benefit of the City was recorded against the entire property in 2003 to secure the original \$750,000 grant and the deed of trust was subsequently amended in 2005 to add the additional \$125,000 for a total amount secured by the deed of trust of \$875,000.

The C&C Tax regulations require that expenditure of these funds on private property be accompanied by the recordation of a public use easement (PUE); the PUE ensures that the general public will have access to the facilities funded from this source for a period of 15 years. On October 18, 2005, a PUE was recorded on the BGC property to guarantee public access to the soccer field (but not the paved recreational areas) during certain hours when it would not be in use for BGC programs.

In 2006, BGC found itself in financial difficulty and offered to sell the soccer field to the City. On October 3, 2006, the City Council approved a Purchase and Sale Agreement to purchase the soccer field in an amount up to \$1,000,000 and acceptance of an easement for ingress and egress over the residual BGC parcel to allow public access to the soccer field. The sale was consummated in December of that year.

ANALYSIS

At the time the City purchased the soccer field in 2006, a partial reconveyance of the City's deed of trust should have been recorded, which would have removed the lien against the soccer field and allocated a smaller portion of the amount owed against the residual BGC property to reflect the fact that only a small portion of the joint CDBG-C&C Tax grant was spent on that property. Consequently, the Housing Department has, on several occasions, had to seek City Council approval to subordinate the City's deed of trust to commercial lenders providing lines of credit to

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BGC for its operations. Based on the current existing documentation, it appears that the Deed of Trust secures a repayment obligation by the BGC of \$875,000. However, the amount allocated to the residual BGC property based on the CDBG and C&C funds used should only be \$80,380. Therefore, staff recommends that the Director of Housing be authorized to negotiate and execute a partial reconveyance of the City's deed of trust on the BGC property to reflect the actual expenditure of public funds on that site.

In researching the history of this transaction, it was discovered that the PUE currently recorded on title to the BGC property requires public access to the soccer field which BGC no longer owns. However, the PUE does not address the paved outdoor recreational facilities on the BGC property. Therefore, it is recommended that the Director of Housing be authorized to negotiate and execute an easement to be recorded against the BGC site, with an expiration date of October 18, 2020 (the expiration of 15 years following the grant of C&C Tax funds in 2005), which will provide the public with access to the paved outdoor recreational facilities located on the BGC property. The maintenance and operations of the outdoor recreational areas will remain the responsibility of the BGC.

Additionally, the City's deed of trust and PUE remain on title to the City-owned soccer field, both of which are effectively meaningless. Staff recommends that these encumbrances on title be removed from this City-owned site.

The expenditure of CDBG funds on private property requires that the funded improvements remain in use for 15 years per City Council policy (longer than the five-year use restriction required by the U.S. Department of Housing and Urban Development [HUD]). Thus, when the City acquired the CDBG-funded improvements to the soccer field site, the City assumed the obligation to maintain this or another CDBG-eligible use through 2021. Staff recommends that a covenant be recorded on title to the soccer field property acknowledging this fact.

The actions recommended in this memorandum will clear up the title to both the BGC- and City-owned properties.

EVALUATION AND FOLLOW-UP

Staff anticipates that the actions recommended in this memorandum will be completed in the first quarter of calendar 2015. The Housing Department will continue to monitor the investment of CDBG funds on the BGC clubhouse parcel for the remainder of the 15-year term of the PUE.

PUBLIC OUTREACH

This report will be posted on the City Council Agenda Website for the February 3, 2015 meeting.

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COORDINATION

Preparation of this memorandum was coordinated with the City Manager's Budget Office and the Office of the City Attorney.

CEQA

Exempt, File No. PP14-089.

/s/

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Director of Economic Development

/s/

JACKY MORALES-FERRAND

Interim Director of Housing

/s/

ANGEL RIOS, JR.

Interim Director of Parks,

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For questions, please contact Jacky Morales-Ferrand, Interim Director of Housing, at (408) 535-3855.