



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein
Matt Cano
Robert Sapien Jr.

**SUBJECT: ACQUISITION OF PROPERTY
AT 1138 OLINDER COURT**

DATE: May 24, 2021

Approved

Date

5/27/2021

COUNCIL DISTRICT: 7

RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute a Purchase and Sale Agreement with Roderick F. Miller and Donna R. Miller for the purchase by the City of approximately 1.1 acres (47,916 square feet) of land located at the northeast corner of Olinder Court and Felipe Avenue, identified as Assessor's Parcel Number 472-10-108 ("Property"), for a price of \$3,135,300, deliver a 1033 exchange letter to seller, and execute all other documents necessary to effectuate the transfer to the City.

OUTCOME

Approval of the resolution will authorize the City Manager to negotiate and execute a purchase and sale agreement to acquire the Property known as 1138 Olinder Court, with the purchase price of \$3,135,300. The purchase price, originally \$3,250,000, has been lowered to reflect a deduction for anticipated environmental remediation and mitigation costs. Once acquired by the City, the Property will be a potential site for the new Fire Station 32. Analysis of a potential fire station would commence upon the City's ownership of the Property.

BACKGROUND

On November 6, 2018 the City of San Jose voters passed Measure T—the Disaster Preparedness, Public Safety and Infrastructure Bond which authorized the City to issue up to \$650 million in general obligation bonds to fund public safety, emergency and disaster responses, infrastructure, and roads. On November 27, 2018, the City Council unanimously approved a report titled *General Obligation Bond (Measure T-The Disaster Preparedness, Public Safety and Infrastructure Bond) Item 8.43*, which included a recommendation to construct at least two new fire stations, including Fire Station 32.

According to a report of point-in-time assessment of response time analysis entitled “*2019 Fire Station Placement Priority Order*,” the Fire Department has identified the area near the intersection of McLaughlin Avenue and Story Road as Priority 3 for fire station placement. The five stations surrounding this location (Fire Stations 2, 3, 8, 16, and 26) accounted for 26.6% of responses citywide in 2018 exceeding the travel time goal of four-minutes or less. The addition of a fire station in this area is expected to significantly reduce late responses and reinforce response areas for the surrounding stations. The City recently acquired property for the potential construction of a relocated Fire Station 8 at the corner of Santa Clara and 13th Street. The acquisition of 1138 Olinder Court could synergize with the potential relocation of Fire Station 8 for optimal service area overlap.

The subject Property, identified as Assessor’s Parcel Number (APN) 472-10-108, is located at 1138 Olinder Court on the northeast corner of Olinder Court and Felipe Avenue. The Property has a general plan designation of Combined Industrial/Commercial and is zoned for Industrial Park. The Property consists of a single legal parcel containing approximately 1.10 acres of land area and a 2,700 square foot office building in fair condition. The site is rectangular in shape, level at street grade, and improved with an asphalt paved storage yard area and perimeter fencing. The site is considered a suitable site for potential development of the new Fire Station 32.

ANALYSIS

The Property is not on the market for sale. Due to a low amount of suitable properties available in Fire Station 32’s service area, and the high cost of those properties that are available, staff began approaching off-market properties to identify additional opportunities for acquisition.

The City obtained an appraisal valuing the Property at \$2,810,000 in March 2020. However, based on staff analysis of recent comparable sales showing prices increasing in the industrial marketplace, staff determined that the City’s original offer price of \$3,250,000 is a fair market value. Subsequent to this offer, due diligence identified and characterized environmental contamination on site, which resulted in a discount of \$114,700 to account for remediation and mitigation costs.

Staff conducted an extensive search for suitable property in the Fire Station 32 service area. Many of the properties available in this area were found to be too expensive for Measure T’s allocated budget for Fire Station 32 site acquisition for two reasons. First, many properties in the target area are larger than required and would require overpaying to acquire too much land for the City’s needs. Second, property fronting along Story Road was found to be generally more expensive than property fronting streets that feed into Story, which limited the available pool of properties to target for acquisition in the service area. In addition to high prices, other sites analyzed by staff had ongoing business concerns that would require relocation of small business activities. For these reasons, staff determined that the available properties on the market were not suitable for acquisition and began contacting property owners to discover off-market acquisition opportunities. The 1138 Olinder Property was determined to be well located and of an appropriate size for Fire Station 32, and staff subsequently contacted the owner. While the owner

has agreed in principle to sell the Property to the City, the Property has not been exposed to the market. The owner has signaled that if the City elects to not proceed with the acquisition, they are not interested in pursuing a sale to a different buyer.

Investigation by the Environmental Services Department, AEI Consultants, and Cornerstone Earth Group discovered that the Property previously had an underground petroleum tank that had leaked, and naturally occurring asbestos in the base rock. The asbestos was determined to have likely been imported from an off-site quarry. Dust mitigation measures and monitoring would need to be implemented to mitigate potential asbestos exposure during construction and the Property would need to be capped by pavement or clean soil to eliminate exposure to asbestos after construction. While not strictly necessary based on commercial/industrial regulatory screening levels, a vapor barrier would be installed beneath the future fire station as a protective measure to prevent soil vapors from the historic petroleum leak from entering any structure built on the Property. This mitigation measure would be performed under regulatory oversight and approval to protect firefighters living and working in the future fire station. Total remediation and mitigation costs for a potential future fire station project are estimated to be \$194,700. \$114,700 of the total estimated cost is due to regulatory obligations and asbestos management, and an estimated \$80,000 is for the City's planned vapor barrier installation that is not a regulatory requirement but would be recommended as an additional protective measure.

Should the City acquire the Property, the planning, design, and construction of any potential fire station development would be subject to future discretionary action of the Council and CEQA review.

Summary of Key Terms:

- Purchase Price: \$3,135,300, which reflects a \$114,700 discount to account for environmental contamination.
- As-is sale.
- Closing costs to be paid according to Santa Clara County custom.
- City to deliver an I.R.S. §1033 exchange letter to seller at closing stating staff would recommend the Council consider the use of condemnation, should the City not successfully reach agreement with the Property Owner. An IRS §1033 Letter affords the Seller certain tax advantages from the transfer of the Property due to the potential of acquiring the Property via condemnation.
- City's due diligence investigations into environmental and title matters are complete.
- Anticipated close is 30 days after execution of a purchase agreement.

CONCLUSION

Approval of the recommendation will direct staff to complete negotiations and execution of a purchase and sale agreement and associated environmental remediation for the 1.1 acres of land located at 1138 Olinder Court. Staff will be directed to complete environmental mitigation for the asbestos and petroleum vapor discovered on site. At conclusion, the anticipated project will

fulfill a key component of Measure T public safety objectives, which will reduce emergency response times and save lives.

EVALUATION AND FOLLOW-UP

The acquisition of the subject Property is anticipated to be completed within 30 days, upon execution of the agreement. If acquired, staff will begin environmental remediation of the naturally occurring asbestos on site. The Public Works Department will be responsible for the delivery of any new fire station project that might be approved after the appropriate CEQA review.

CLIMATE SMART SAN JOSE

The recommendation in this memo aligns with one or more Climate Smart San José energy, water, or mobility goals.

COORDINATION

This memorandum has been coordinated with the Planning, Building, and Code Enforcement, the Environmental Services Department, the City Attorney's Office, and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

The proposed project aligns with the City's General Plan and the Measure T Bond program.

COST SUMMARY/IMPLICATIONS

The recommendations in this memorandum will approve the purchase of the Property for the possible construction of Fire Station 32. All costs to facilitate the recommended land acquisition would be funded by the Measure T New Fire Station 32 appropriation in the Public Safety and Infrastructure Bond Fund. The 2021-2025 Adopted Capital Improvement Program includes a five-year total budget of approximately \$16.0 million, with approximately \$6.2 million allocated in 2020-2021, in the Public Safety Improvement Capital Program. This funding will provide for the purchase of the subject Property for \$3,135,300.

BUDGET REFERENCE

The table below identifies the fund and appropriation proposed to fund the purchase of Property recommended as part of this memorandum.

Fund #	Appn #	Appn. Name	Current Total Appn	Amount for Purchase	2020-2021 Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
498	415A	Measure T - New Fire Station 32	\$6,295,000	\$3,135,300	V-484	10/20/20, Ord. 30494

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/
NANCI KLEIN
Director of Economic Development

/s/
MATT CANO
Director of Public Works

/s/
ROBERT SAPIEN, JR.
Fire Chief, Fire Department

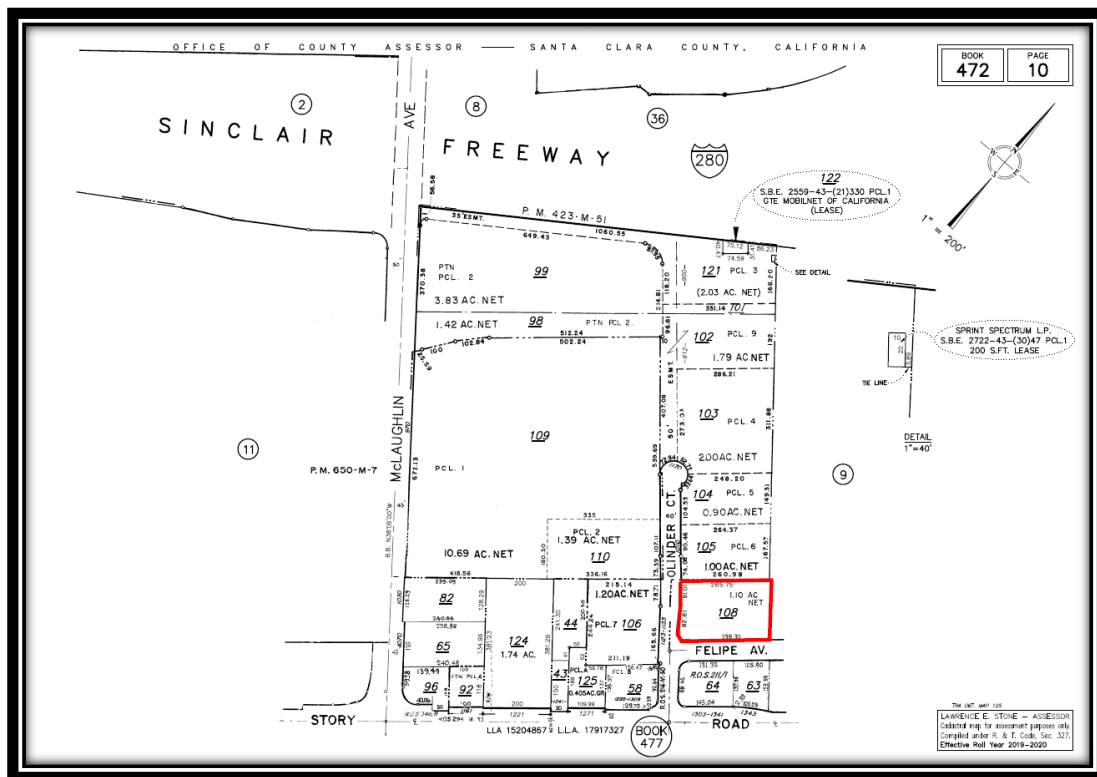
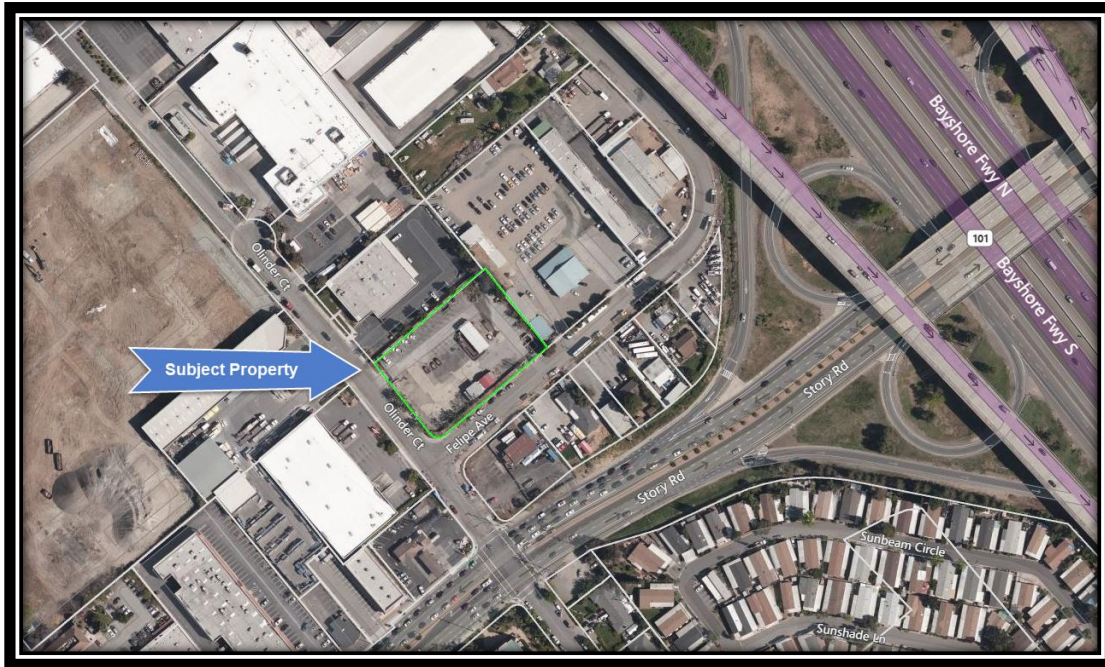
For questions, please contact Nanci Klein, Director of Economic Development, at (408) 535-8184; or Matt Cano, Director of Public Works, at (408) 535-8477

Attachments

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ATTACHMENT A

Aerial and Parcel Map of Property



ATTACHMENT B

Legal Description of Property

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF STORY ROAD 50 FEET IN WIDTH, DISTANT NORTH 50° EAST 811.98 FEET FROM THE POINT OF INTERSECTION THEREOF WITH THE NORTHEASTERLY LINE OF MCLAUGHLIN AVENUE; SAID POINT OF BEGINNING BEING THE MOST EASTERLY CORNER OF THE PARCEL OF LAND CONVEYED BY EMMA L. MCGUIRE, ET AL, TO LOIS D. DILDINE BY DEED DATED JUNE 03, 1949 AND RECORDED JUNE 13, 1949 IN [BOOK 1802 OFFICIAL RECORDS, PAGE 181](#), RECORDS OF SANTA CLARA COUNTY, CALIFORNIA; THENCE FROM SAID POINT OF BEGINNING NORTH 50° EAST ALONG SAID NORTHWESTERLY LINE OF STORY ROAD 290.88 FEET TO THE MOST SOUTHERLY CORNER OF THE 53.87 ACRE PARCEL OF LAND SO CONVEYED BY BERTHA CAUHAPE HARTMAN, ET AL, TO MARIE CAUHAPE, BY DEED DATED NOVEMBER 18, 1921 AND RECORDED JANUARY 21, 1922 IN [BOOK 550 OF DEEDS, PAGE 11](#), RECORDS OF SAID COUNTY; THENCE NORTH 39° WEST ALONG THE SOUTHWESTERLY LINE OF THE SAID 53.87 ACRE PARCEL, 399.30 FEET TO THE MOST EASTERLY CORNER OF THE 10 ACRE PARCEL OF LAND CONVEYED BY JAMES CURRIER, ET UX TO GEORGE W. MCGREW, BY DEED DATED MARCH 07, 1868 AND RECORDED JUNE 28, 1869 IN [BOOK 15 OF DEEDS, PAGE 31](#), RECORDS OF SAID COUNTY; THENCE SOUTH 50° WEST ALONG THE SOUTHEASTERLY LINE OF THE SAID 10 ACRE PARCEL 290.88 FEET TO THE MOST NORTHERLY CORNER OF THE ABOVE REFERRED TO DILDINE PARCEL; THENCE SOUTH 38° 55' EAST ALONG THE NORTHEASTERLY LINE THEREOF 399.30 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 500 ACRE LOT 25 OF THE PUEBLO LANDS OF THE CITY OF SAN JOSE.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF LYING SOUTHEASTERLY OF THE NORTHWESTERLY LINE OF FELIPE AVENUE, AS SAID NORTHWESTERLY LINE WAS ESTABLISHED BY FINAL ORDER OF CONDEMNATION BY THE STATE OF CALIFORNIA, CASE 160091, RECORDED MAY 10, 1965 IN [BOOK 6951, PAGE 89](#), OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL THAT PORTION THEREOF CONVEYED TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE BY DEED RECORDED NOVEMBER 14, 1979 IN [BOOK E941 OF OFFICIAL RECORDS, PAGE 179](#), DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND SHOWN AS PARCEL 6 ON THAT CERTAIN PARCEL MAP RECORDED IN [BOOK 423 OF MAPS, PAGES 50 AND 51](#), SANTA CLARA COUNTY RECORDS, BEING ALSO A POINT ON THE NORTHWESTERLY LINE OF SAID PARCEL DESCRIBED IN SAID DEED; THENCE ALONG SAID NORTHWESTERLY LINE, BEING COMMON TO THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID PARCEL 6, SOUTH 50° 04' 42" WEST (S. 50° W. PER DEED) 25.13 FEET TO THE MOST WESTERLY CORNER OF SAID PARCEL DESCRIBED IN SAID DEED; THENCE LEAVING SAID COMMON LINE ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL DESCRIBED IN SAID DEED, SAID LINE BEING COMMON TO A COURSE IN THE GENERAL NORTHEASTERLY BOUNDARY OF SAID PARCEL MAP SOUTH 38° 49' 53" EAST (S. 38° 55' E PER DEED)

201.31 FEET TO A POINT IN THE WESTERLY LINE OF FELIPE AVENUE, AS SAID AVENUE IS SHOWN ON SAID MAP, SAID POINT BEING THE MOST WESTERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL 1 IN THAT CERTAIN FINAL ORDER OF CONDEMNATION RECORDED IN [BOOK 6951 OF OFFICIAL RECORDS, PAGE 89](#), SANTA CLARA COUNTY RECORDS; THENCE LEAVING SAID SOUTHWESTERLY LINE ALONG THE GENERAL NORTHWESTERLY LINE OF SAID PARCEL 1 IN A NORTHEASTERLY DIRECTION ALONG A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 90.00 FEET, CONCAVE TO THE SOUTHEAST, WHOSE RADIUS POINT BEARS SOUTH 75° 48' 06" EAST THROUGH A CENTRAL ANGLE OF 31° 05' 16" AN ARC LENGTH OF 48.83 FEET TO A POINT OF CUSP;

THENCE LEAVING SAID GENERAL NORTHWESTERLY LINE ALONG A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF $97^{\circ} 03' 09''$ AN ARC LENGTH OF 33.88 FEET TO A POINT IN A LINE THAT IS PARALLEL WITH AND 30.00 FEET NORTHEASTERLY, MEASURED AT RIGHT ANGLES FROM THE CENTERLINE OF OLINDER COURT, AS SAID COURT IS SHOWN ON SAID MAP; THENCE ALONG SAID PARALLEL LINE NORTH $37^{\circ} 39' 41''$ WEST 82.81 FEET; THENCE CONCENTRIC WITH SAID CENTERLINE, ALONG A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 3050.00 FEET, THROUGH A CENTRAL ANGLE OF $1^{\circ} 31' 23''$ AN ARC LENGTH OF 81.01 FEET TO THE POINT OF BEGINNING.