

**OVERSIGHT BOARD OF THE SUCCESSOR AGENCY
TO THE OAKLEY REDEVELOPMENT AGENCY
STAFF REPORT**

Date: May 2, 2017
To: Oversight Board
From: Bryan Montgomery, City Manager 
Subject: **Option Agreement with Roy and Erica Pantle for Agency property located at 3980 Empire Ave (APN 034-010-033)**

Summary and Background

This Successor Agency property has been discussed at previous Oversight Board Meetings and is a part of the Long Range Management Plan as a property designated for sale. As we have discussed, this parcel is very long and narrow and not very developable unless it is assembled with the parcel to the south. That parcel is owned by Roy and Erica Pantle. The Pantle's are actively marketing their parcel and know that the Successor Agency property is critical to provide frontage and access to Laurel Road for whatever development takes place.

The City's Municipal Code provision 2.8.106c., consistent with State Law, allows the direct sale of surplus parcel to the adjacent property owner without advertising for bids. Staff also believes that advertising the parcel for bid could lead to an owner that would "hold hostage" the Pantle's parcel and further delay in sort of vertical development that creates ongoing tax revenue for all the taxing entities. In short, a direct sale to the Pantle's is deemed to be in the best interest of all concerned.

The attached Option Agreement provides a way to better determine a fair value of the Successor Agency parcel. The Agreement calls for a payment of 75% of the per square foot value received by the Roy and Erica Pantle for their parcel to be the purchase price of the Successor Agency property.

Fiscal Impact

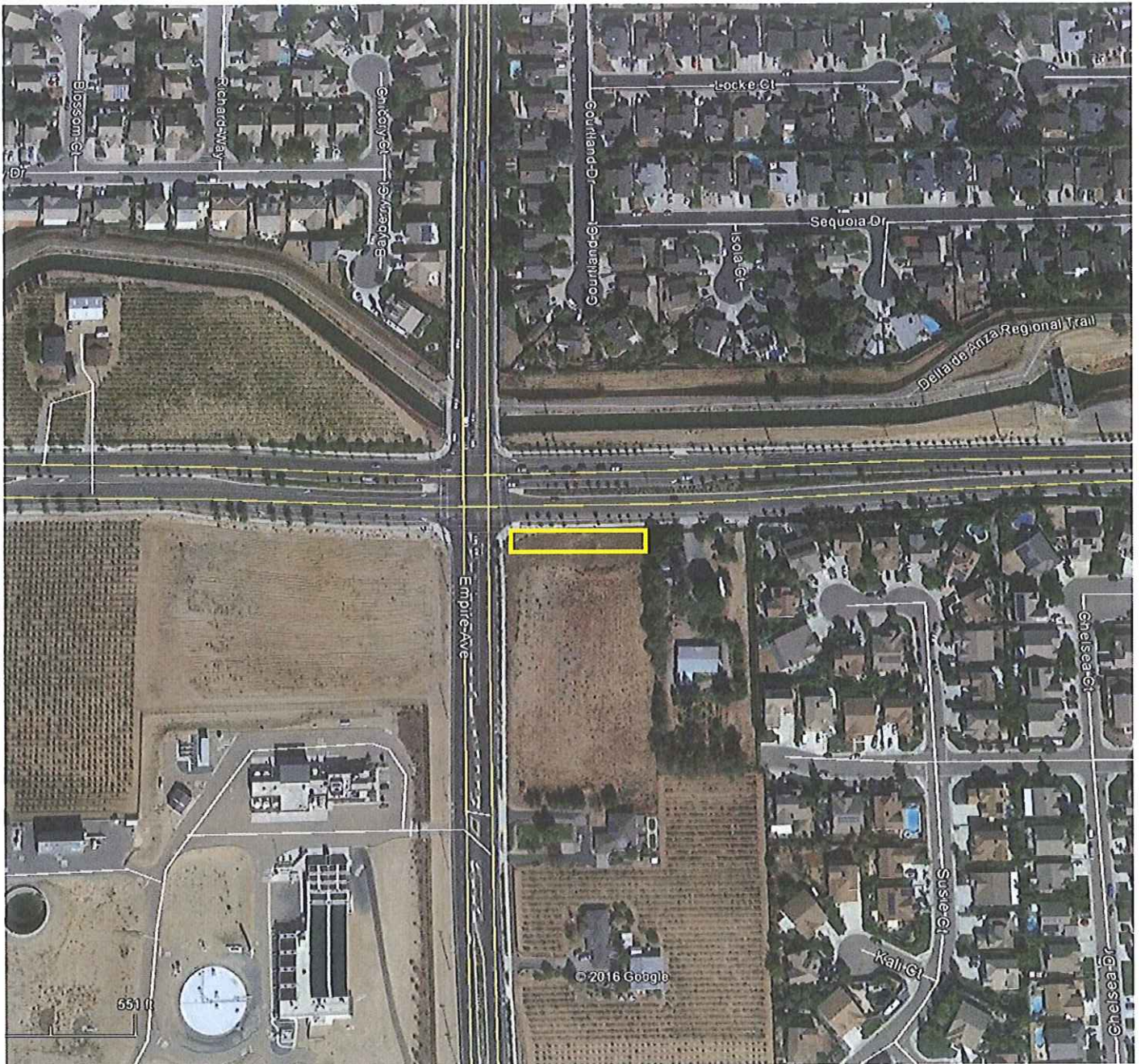
Revenues are unknown, but likely in the \$80,000 - \$90,000 range that would be utilized to fulfill enforceable obligations as set forth in the Long Range Property Management Plan.

Recommendation

Adopt a resolution approving the Option Agreement.

Attachments

1. Aerial photo of the property
2. Chapter 8 of Municipal Code – Disposal of Real Property
3. Proposed Option Agreement
4. Resolution



**CHAPTER 8
DISPOSAL AND LEASE OF REAL PROPERTY**

Article 1 SALE OF SURPLUS REAL PROPERTY

2.8.102 Applicability.

The procedure set forth in this section shall be applicable to the disposal of real property owned by the City of Oakley and determined to be surplus and excess property no longer necessary for public purposes. The provisions of these rules shall not apply to the abandonment of streets or the vacation of easements owned by the City of Oakley and governed by the statutes of the State of California, nor shall the provisions of these rules apply to the termination, rejection or abandonment of offers of dedication pursuant to Section 66477.2 of the Government Code.

2.8.104 Determination of Surplus Property.

- a. All departments within the City of Oakley shall submit to the City Manager a report showing any real property in the possession, custody or control of such department that is no longer used and is otherwise surplus and excess for the needs of the department. If the City Manager finds that such real property is not required for any other public use, he/she shall so report to the City Council and the City Council may declare it surplus and cause to be prepared a written estimate of its market value.
- b. Prior to disposal of surplus real property by public sale, the City Manager shall provide written notice to public agencies in the manner prescribed by Section 54220 et seq. of the Government Code.
- c. The following procedures apply if the property is not purchased by a public agency pursuant to Section 54222 et seq. of the Government Code.

2.8.106 Manner of Disposal.

- a. The City Manager may dispose of any surplus real property which has an estimated market value of less than \$5,000 without advertising for bids.
- b. If the surplus real property has an estimated market value of \$5,000 or more, the City Manager shall dispose of the property in the manner set forth herein and shall require City Council approval for final agreement of the sale.
- c. If the parcel which is surplus real property is an uneconomic remnant such that it is not buildable by itself under the current zoning, then the City Manager may renegotiate a sale price with the adjoining property owner(s) without advertising for bids.

d. If the parcel which is surplus real property is a buildable parcel under the current zoning, and the combining of the parcel to an adjacent parcel would provide better development from a planning perspective than development of the surplus property by itself, then the City Manager may negotiate a sale with the adjoining property owner(s). If an acceptable price (to the City) is not reached, then the City shall dispose of the property in the manner set forth herein.

2.8.108 City Personnel Prohibited.

No City official, officer or employee shall bid or be financially interested in any bid for surplus real property sold in accordance with these rules.

2.8.110 Sale Procedures.

The conveyance of surplus real property by the City shall be made to the highest responsible bidder who most closely meets the terms and conditions of the notice inviting bids pursuant to the following procedures:

a. A notice inviting bids shall be published at least once ten (10) days before the opening of the bids in a newspaper of general circulation in the City printed and published within Contra Costa County. The notice inviting bids shall include a legal description of the subject property, a vicinity map showing the general location of the subject property, the time and place of opening bids, and the terms and conditions for bids.

b. Sealed bids, including a bid deposit of ten percent (10%) of the bid price, but not exceeding \$10,000, shall be submitted to the City Clerk. Said bid deposit shall be in the form of cashier's check, certified check or bidder's bond executed by an authorized surety company.

c. At the time and place fixed in the notice to bidders, all sealed proposals which have been received shall be publicly opened, examined and declared by the City Clerk. Of the proposals submitted which conform to all terms and conditions of the sale, the proposal which is the highest shall be referred to the City Council unless a higher oral bid is received or the City Manager rejects all bids, or if the Council determines that a lower bid is more responsive for the reasons specified in subsection (e) of this section.

d. The City Manager may set a minimum acceptable bid amount and may reject any and all bids presented.

e. In cases where the City wishes the surplus property to be developed or used in a manner to support specified economic development, retail, industrial or housing goals and policies, the notice inviting bids shall require bidders to specify end-uses for the property and the City may specify deadlines for the accomplishment of the end-use. Preference shall be given to the bid with the highest monetary purchase

price which most closely accomplishes the end-use goals. As to all cases, the City and the purchaser shall enter into a purchase agreement approved by the City Council.

f. After opening bids, the City Clerk shall call for oral bids from those bidders tendering written proposals. If, upon the call for oral bidding, any responsible person offers to purchase the property, upon the terms and conditions specified and for a price exceeding the highest written proposal by at least five percent, then the responsible oral bid shall be received for presentation to the City Council if it meets the after-use criteria specified in subsection (e) of this section. Final receipt by the City Clerk shall not be made, however, until the oral bid is reduced to writing and signed by the offeror and an additional deposit in the amount of ten percent (10%) over the offeror's original written bid is tendered, though not to exceed an additional \$10,000. This reduction of the bid to writing and submittal of deposit shall be completed within one business day (banking) after determination of the highest bidder has been announced by the City Manager, or the offeror shall forfeit his/her bid deposit.

g. Unless otherwise specified in the notice to bidders, sale of surplus property shall be completed in an escrow of the City's choice. All successful bids shall be incorporated into a sale and purchase agreement to be approved by the City Council.

h. The successful bidder shall close escrow as specified in the purchase agreement.

i. All bidders' deposits shall be retained until escrow closes. If the apparent purchaser fails to complete the transaction and to close escrow, then the City may enter into a purchase agreement with the next lowest monetary bidder who most closely meets the requirements of subsection (e) of this section and retain the original apparent purchaser's deposit.

(Sec. 2, Ordinance No. 02-12, adopted May 8, 2012)

OPTION AGREEMENT FOR PURCHASE OF REAL PROPERTY

Oakley Successor Agency/Roy and Erica Pantle

THIS AGREEMENT is entered into this _____ day of _____, 2017 by and between the Successor Agency to the Oakley Redevelopment Agency, a public body ("AGENCY") and Roy and Erica Pantle ("PANTLES").

Recitals

- A. AGENCY owns a parcel of real property located at the Southeast corner of Empire Avenue and Laurel Road in the City of Oakley ("the AGENCY parcel"), consisting of the following approximate dimensions: 232.69 feet along the frontage of Laurel Road, and 70.66 feet deep, as depicted on the attached plat map, Exhibit "A" and marked by a heavy white line.
- B. The PANTLES own a parcel of real property ("the PANTLE parcel") southerly of the CITY parcel, bearing APN 034-010-033 and being designated as 3980 Empire Avenue, Oakley, California. This parcel contains approximately 16,988 square feet.
- C. The AGENCY's parcel, in and of itself, is too small for any development potential, but fronts on Laurel Road, a busy arterial street, and is at the corner of Empire Avenue, also a busy arterial street.
- D. The PANTLES parcel is large enough to accommodate commercial retail development, but it becomes more desirable and economically viable if it were to have direct access to and frontage on Laurel Road.
- E. Both the AGENCY and the PANTLES desire to encourage development of a commercial retail use or uses in the area of their combined parcels. The AGENCY has an interest in commercial retail development occurring in this area in the near future for the convenience of its citizens and for the encouragement of a sales tax generating use or uses which will help fund vital public services.

WHEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Grant of Option to Purchase.

AGENCY hereby grants to the PANTLES an option to purchase the AGENCY parcel on the terms and conditions set forth in this Agreement.

- (a) The option to purchase commences immediately and, unless earlier terminated, shall continue in effect for two (2) years from the date of this Agreement, at which time this Option shall automatically expire. This period shall be known as "the Option Period".
- (b) The PANTLES may exercise this Option by notifying the AGENCY in writing on or before the expiration date of their intent to exercise this Option. The Notice of Intent shall include the proposed purchase price, as specified in this Agreement, the potential developer of the combined new parcel, and the commercial retail use to which the combined parcel will be put.
- (c) The parties may extend the Option Period for an additional one (1) year only if both parties concur in writing to an extension. Either party requesting an extension shall so notify the other party in writing at least thirty (30) days prior to the expiration date, and the party receiving such request shall respond with concurrence or disapproval prior to the date on which the Option would have automatically terminated.

2. Deposit for Option.

- (a) Within thirty (30) days of the date of this Agreement, the PANTLES shall pay and post with the AGENCY the sum of Two Thousand Five Hundred Dollars (\$2,500.00) as a deposit for the purchase price of the AGENCY parcel and also as compensation to the AGENCY for this Option.
- (b) In the event that a purchase price and sale is consummated among the parties pursuant to this Agreement, then this Deposit shall be credited to the purchase price and the compensation owing to the AGENCY for the purchase shall be reduced by the deposit amount. In the event that a purchase and sale is not consummated among the parties, for whatever reason, then the AGENCY shall retain the entire Deposit amount as its compensation for removing its parcel from the real estate market and for the granting of this Option.

3. Purchase Price for Property.

The parties acknowledge that this Option is contingent upon the PANTLES selling their parcel to a third party for the purpose of commercial development, and that the price to be obtained by the PANTLES for such future sale is unknown at this time. Therefore, the methods of calculating the purchase price of the AGENCY parcel through this Option Agreement are stated herein.

- (a) In the event that the PANTLES receive a *bona fide* offer for their parcel (or a commercially-viable portion of their parcel) for retail development purposes, the PANTLES and the AGENCY shall determine the per-square-foot purchase price of such offer. The purchase price that the PANTLES shall pay for the AGENCY parcel shall then be seventy-five (75%) percent of the per-square-foot sale price of the PANTLE parcel, multiplied by the number of square feet encompassed in the AGENCY parcel.

- (b) The parties shall issue escrow instructions to the title company handling this transaction as to the calculated purchase price to be paid for the AGENCY parcel.
- (c) The AGENCY shall have the right to reject the PANTLES' exercise of this Option if the calculated purchase price for the AGENCY parcel is less than Five (\$5.00) Dollars per square foot, or if the AGENCY disapproves of the proposed commercial retail use or uses that would be developed on the combined parcels. The AGENCY may also reject the PANTLE's exercise of this Option if there is not a verified commitment from the third party purchaser to develop the site with commercial retail buildings within three years of the exercise of this Option. In the event of rejection, the AGENCY shall inform the PANTLES for the reason(s) therefor.
- (d) The PANTLES may assign this Option Agreement to the third party acquiring their parcel so that escrow can proceed in a more efficient manner. However, no such assignment shall affect the AGENCY's rights as stated herein.
- (e) The third party purchaser of both parcels may combine the parcels in any manner authorized by law, including by way of parcel map, merger or certificate of compliance, or other lawful method. However, the AGENCY shall not have any financial obligation to participate in such combination.

4. Review of the Property.

Throughout the Option Period, the PANTLES shall have the opportunity to conduct investigations of the AGENCY parcel to determine if it is in any way inappropriate for development or for consideration to purchase. If the PANTLES exercise this Option, such action shall be prima facie evidence of their conclusion that there is no impediment, restriction or limitation pertaining to the AGENCY parcel.

5. Title.

- (a) In the event that this Option Agreement is exercised, AGENCY will deliver title to its parcel free, good and marketable, subject only to any exceptions contained in the title report which are acceptable to the PANTLES.
- (b) Because the PANTLES own the much larger and commercially viable of the two parcels, the PANTLES shall pay all escrow, title and recording fees associated with the acquisition of the AGENCY parcel.

6. Notices.

All notices under this Agreement shall be given in writing by one party to the other, deposited in the U.S. Mail or delivered personally to the following addresses:

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To Agency:

To Pantles:

Executive Director

Oakley Successor Agency

3231 Main Street

Oakley, CA 94561

7. Entire Agreement; Interpretation.

This Agreement represents the full and complete understanding of the parties with respect to the properties. PANTLES represent that they have had full opportunity to review this Agreement and to have it reviewed and negotiated by their counsel. Therefore, no interpretation shall be given to this Agreement which would favor or disfavor the drafter.

8. Time of Essence.

Time is of the essence of this Agreement.

WHEREFORE, THE PARTIES CONCUR WITH THE TERMS OF THIS AGREEMENT and execute it as follows:

AGENCY:

PANTLES:

By: _____

By: _____

BRYAN MONTGOMERY, Executive Director

APPROVED AS TO FORM:

By: _____

Agency Legal Counsel

SA RESOLUTION NO. _____

**RESOLUTION OF THE BOARD OF THE SUCCESSOR AGENCY TO
THE OAKLEY REDEVELOPMENT AGENCY APPROVING OPTION
AGREEMENT FOR THE REAL PROPERTY LOCATED AT 3980 EMPIRE
AVENUE, OAKLEY (APN 034-010-033) WITH ROY AND ERICA PANTLE**

WHEREAS, the Successor Agency is the owner of real property, a former Oakley Redevelopment Agency property, located at 3980 Empire Avenue, Oakley, California, commonly known as Contra Costa County Assessor's Parcel Number 034-010-033 ("the Property"); and

WHEREAS, a Long Range Property Management Plan, required for all former Oakley Redevelopment Agency properties, was approved by the State Department of Finance on December 30, 2015 and calls for the sale of the Property; and

WHEREAS, Roy and Erica Pantle (the Pantle's) are owners of a parcel of land immediately adjacent and to the south of the Property; and

WHEREAS, the Property is too small for any significant development potential unless combined with the parcel owned by the Pantle's; and

WHEREAS, the Property does add significant value to the development viability of the parcel owned by the Pantle's; and

WHEREAS, the Oversight Board finds that an option agreement (a true and complete copy of which is attached hereto as Exhibit A) with the Pantle's will facilitate the development of both parcels in the best interests of the Successor Agency and all taxing entities.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Successor Agency to the Oakley Redevelopment Agency hereby approves the option agreement with Roy and Erica Pantle for the purchase of the former Oakley Redevelopment Agency property located at 3968 Empire Avenue, Oakley, California pursuant to the approved Long Range Property Management Plan.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Board of the Successor Agency to the Oakley Redevelopment Agency directs the Executive Director to present the proposed sale to the Oakley Oversight Board for its final consideration. If approved by the Oversight Board, the Executive Director is authorized to execute a purchase and sales agreement on behalf of the Successor Agency.

The foregoing resolution was introduced at a regular meeting of the Board of the Successor Agency to the Oakley Redevelopment Agency held on the 2nd day of May 2017, by Board member _____, who moved its adoption, which motion being duly seconded by Board member _____, was upon voice vote carried and the resolution adopted by the following vote:

AYES:
NOES:
ABSTENTION:
ABSENT:

APPROVED:

Bill Swenson, Chair

ATTEST:

Libby Vreonis, Secretary

Date