

APPROVED
MAY 17 2006

REPORT OF GENERAL MANAGER

NO. 06-134

DATE May 17, 2006

BOARD OF RECREATION
and PARK COMMISSIONERS

C.D. 8

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: LITTLE GREEN ACRES PARK – SETTLEMENT OF LAWSUIT CONCERNING
A DEED RESTRICTION

J. Combs	_____	J. Kolb	_____
H. Fujita	_____	F. Mok	_____
S. Huntley	_____	K. Regan	_____
B. Jensen	_____	*M. Shull	_____

for M.S.

Robert H. Jensen (fa)

General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATION:

That the Board:

1. Approve the proposed settlement, subject to the approval of the City Claims Board, of Superior Court Civil Action No. BC 336025 negotiated with Cornerstone Oil Company, as recommended by the City Attorney, concerning the removal of reversion rights in the Corporation Quitclaim Deed of July 9, 1975, that gave the site of Little Green Acres Park to the City;
2. Authorize staff to request the Department of General Services to open an escrow for the purpose of receiving a new Corporation Quitclaim Deed and the City's settlement payment of \$90,000;
3. Authorize the Chief Accounting Employee to transfer appropriation of \$92,094 within Fund 302, Department 88, Account 1010 (salaries general) to Account 3040 (contractual services) as follows, subject to approval of the Mayor:

FROM: Account 1010, Department 88, Salaries General	\$92,094
TO: Account 3040, Department 88, Contractual Services	\$92,094
4. Direct staff to deposit into escrow the sum of \$90,000 payable to the "Law Office of William Beverly, Client Trust Account" with a further sum of \$2,094 in anticipated escrow and title fees payable to Chicago Title; and,

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5. Authorize the Board Secretary to accept the new Corporation Quitclaim Deed to Little Green Acres Park.

SUMMARY:

In 1975, the firm of Atlantic Richfield Company (ARCO), headquartered in Los Angeles, donated to the City a 0.23 acre parcel at the northeast corner of Vermont Avenue and 104th Place (APN 6061-002-900, four lots). The firm had just created a Service Station Conversion Program that was to remediate and turn closed, abandoned sites over to local entities. The donation to the City occurred during the first year of the program, during which ARCO also donated six other properties. Three were in southern California; the others were in Oregon, Pennsylvania and Washington, D. C. The Board of Recreation and Park Commissioners accepted the Vermont Avenue site on August 21, 1975.

Soon afterward, it was decided to develop the site into a youth-oriented, educational garden. Participating in the project were Department maintenance staff, nearby residents and students from the 97th Street Elementary School (later renamed for Charles W. Barrett, a former principal). There was a site-naming contest, and two students suggested "Little Green Acres" after the popular 1960s television show. That name was chosen, and ARCO gave each contest winner a ten-speed bicycle. ARCO also gave over twelve thousand dollars to the Department for costs associated with developing and initially maintaining the garden; the approved expenditures included a fence to guard against vandalism or unsupervised access. ARCO complimented staff on the project's success and participated in the opening ceremony.

On October 14, 2003, the Department received correspondence from Cornerstone Oil Company, based in Westwood, stating that they held title to the reversion rights contained in ARCO's 1975 Corporation Quitclaim Deed. The Deed states that the property was given to the City "so long as conveyed premises will be used for public park and recreational purposes, free of charge to all". The wording reserved to the donor or their successor-in-interest the right to regain legal title and take over ownership of the site if in the future the City failed to meet this use requirement.

In their correspondence, Cornerstone asserted that Little Green Acres appears "vacant and is not used as a park". The firm stated that they had the "right to exercise a Power of Termination and take title to the land." Their claim to be the successor-in-interest to ARCO was based on two documents dated 2003. One is a Corporation Quitclaim Deed conveying from ARCO to Cornerstone the reversion rights to Little Green Acres (as well as to other sites formerly owned by ARCO, presumably as a result of a business transaction). The other document filed by Cornerstone was a "Notice of Intent to Preserve Interest" to these rights.

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With the assistance of the City Attorney, staff sent to Cornerstone a narrative account, with documents from 1975-76 relating to the garden's development and ARCO's approval. Reference was also made to later activity sponsored by the Department in order to indicate that the original use of the site had continued. For example, over the past few years, youths from the South Park Recreation Center CLASS (Clean and Safe Spaces) Teen Program have gardened at Little Green Acres; so have older participants in the Center's child-care program. Before being allowed to garden, the youths take a safety exam. When not in use, the tools and other equipment are secured in an on-site container. At times the produce which, in addition to vegetables, has included melons as well as citrus and other fruit, has been given to needy local families and to patrons of the nearby Mount Carmel Senior Citizen Center.

On July 1, 2005, Cornerstone filed suit against the City in order to implement their reversion rights and obtain ownership of Little Green Acres. Since then the City's interests have been represented by the City Attorney's Real Property and Environment Division. A court-mandated mediation was held on February 9, 2006, at which the Assistant General Manager of Operations East represented the Department. The intent was to determine if a settlement could be reached and a jury trial avoided; otherwise, the City would have to undertake the cost and risk of a trial. Even if the City prevailed in the current litigation and retained Little Green Acres, Cornerstone would continue to own reversion rights and in the future could reassert their claim to Little Green Acres.

The long mediation session ended with a negotiated proposal to settle the suit. The City is to pay Cornerstone \$90,000. In return, the firm will transfer to the City all rights to Little Green Acres by granting a new Corporation Quitclaim Deed; it will give the City unconditional fee title to the site and thereby permanently resolve the issue of ownership.

The financial cost of the settlement seemed reasonable to the City's representatives because of the circumstances. Cornerstone had initially demanded \$700,000, asserting that this value was based on the site's future commercial use. The City Attorney estimated that a more reasonable valuation would be less than half this sum. However, if a jury trial resulted from the current litigation, the City's unreimbursable costs would total at least \$45,000 given the large number of depositions needed from current/retired recreation and maintenance staff. There would need to be many factual presentations to the jury. There was also the possibility of incurring expenses from defending against future lawsuits on the same matter.

Beside financial considerations, the City representatives concluded that a settlement guaranteeing the continuation of the site's historic use is in itself a valued public benefit; the area is very park poor. Moreover, Little Green Acres offers unique benefits; gardening fosters knowledge of trees and plants and also, incidentally, of nutrition, while yielding produce for the community.

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In addition to seeking the Department's approval of the proposed settlement, approval will be sought from the City Claims Board, which consists of the Mayor, Council President and the City Attorney or their designees. This body is authorized by Charter Section 273 (b) to approve litigated cash settlements over \$50,000 but not exceeding \$100,000. Staff determined that the provisions of the California Environmental Quality Act do not apply to the recommended actions.

Staff also evaluated the likelihood of the Department's encountering similar legal jeopardy at other sites. With the exception of the reversion wording in the donation involving the Griffith Trust, the situation at Little Green Acres is so unusual that staff does not anticipate a similar situation with other park property.

The Office of Council District Eight, the Assistant General Manager of Operations East and the Superintendent of the Pacific Region concur with staff's recommendations.

FISCAL IMPACT STATEMENT:

The settlement payment plus anticipated escrow and title fees total \$92,094. Because of the Department's vacant positions, salary savings have accumulated. These savings can be used in the Salaries General account to fund the \$92,094.

Report prepared by Joan Reitzel, Senior Management Analyst in Real Estate and Asset Management.