



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 05/09/06
AGENDA ITEM 6
WORK SESSION ITEM _____

TO: Redevelopment Agency Board
FROM: Director of Community and Economic Development
SUBJECT: Adoption of Resolution of Necessity to Acquire a Portion of Leasehold Interest by Trans-Freight Express in 199 C Street

It is recommended that the Redevelopment Agency adopt the attached Resolution of Necessity to acquire a portion of the leasehold interest held by Trans-Freight Express and any sub-tenants in a portion of 199 C Street.

BACKGROUND:

The leasehold interest that the Agency seeks to acquire is located in the Downtown Hayward Redevelopment Project area, within the boundaries of the Cannery Area Design Plan. The property was leased to Trans-Freight Express in April 2004, for a term of 39 months, or through July 2007. On May 2, 2006 the Agency Board authorized acquisition of fee title to this property from Citation Homes. The entire property is approximately 20 acres, and is improved with an approximately 193,000 sq. ft. industrial warehouse building; however, the portion that the Agency is acquiring is an approximately 86,934 square foot strip of parking area on the north side of the property, including the northern entrance to the property and the former Hunt-Wesson Cannery guard-house. The right-of-way line is approximately 50 feet north of the Cannery warehouse building, thus allowing room for trucks to maneuver around the building and exit the property to the south.

The Agency obtained an appraisal of the Trans Freight Express Leasehold in February 2006, and made an offer to the company's president, Mr. Jean-Paul Kind, on April 6, 2006, and again on April 21, 2006 to acquire his remaining leasehold interest in the property in the amount of \$22,000. Staff met with Mr. Kind and his representatives on April 21. Mr. Kind has responded to the offer, however, the counter-offer is well out of the range of the appraised value. Therefore, staff recommends that at this time the Agency Board hold a hearing for the owner of the leasehold to consider approving a resolution of necessity to authorize commencement of proceedings to acquire the property by eminent domain.

A two-thirds vote of the Agency Board is required to approve this action, pursuant to the Code of Civil Procedure. While public testimony is not restricted at the hearing, only the following items are required to be considered:

1. the public interest and necessity require the proposed project;
2. the proposed project is planned or located in a manner that will be most compatible with the greatest public good and least private injury;
3. the real property identified on Exhibit is necessary for the proposed project; and
4. the offer required by the Government Code has been made to the owner of record.

Although this action is being recommended at this time, it may be possible to settle this matter outside of court, and staff will continue to work with the leaseholder to attempt to reach such a settlement. In the meantime staff is recommending approval of an appropriation of \$22,000 for the purpose of acquiring the property interest. A notice of the hearing was sent by first class mail to the leasehold owner, and was delivered personally.

Prepared by:


Maret Bartlett, Redevelopment Director

Recommended by:


Sylvia Ehrenthal, Director of Community
and Economic Development

Approved by:


Jesús Armas, City Manager

Exhibits: Exhibit A – Site Map
Resolutions

**DUE TO THE COLOR OF THE
REFERENCED ATTACHMENT, IT
HAS BEEN ATTACHED AS A
SEPARATE LINK**

DRAFT

REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD

RESOLUTION NO. RA _____

Introduced by Agency Member _____

mac
5/3/06

RESOLUTION OF NECESSITY DECLARING A PUBLIC NEED FOR AND AUTHORIZING THE ACQUISITION AND IMMEDIATE POSSESSION BY EMINENT DOMAIN PROCEEDINGS OR OTHERWISE OF A PORTION OF REAL PROPERTY LOCATED AT 199 C STREET IN FURTHERANCE OF THE CANNERY AREA DESIGN PLAN

WHEREAS, the Redevelopment Agency of the City of Hayward is interested in acquiring 86,934 square feet of the property (the "Property") located at 199 C Street (APNs 431-0020-003-04 and 431-0020-001-09), owned by SCS Development Company/Citation Homes (Owner) and leased to Trans-Freight Express, for purposes of expanding Cannery Park and constructing a new roadway and the new Burbank school, as contemplated by the Cannery Area Design Plan; and

WHEREAS, the entire property is approximately 20 acres and is improved with a 193,000 square foot industrial warehouse building, parking lot and outbuildings, and is currently leased to Trans-Freight Express; and

WHEREAS, the Property is within the boundaries of the Downtown Hayward Redevelopment Project and the Cannery Area Design Plan, which calls for a new school to be built on the property to the north of the Citation property and for a road to be installed between the new school and the property to the south; a portion of the Citation property is needed for road right of way, the expansion of Cannery Park and the new Burbank school, and the remainder of the property is planned and zoned for a mix of higher density housing; and

WHEREAS, the City Council of the City of Hayward has previously considered the environmental impacts of the Cannery Area Design Plan, including the proposed school and roadway, in the program Environmental Impact Report certified in 2001; and

WHEREAS, the Agency has approved a Purchase and Exchange Agreement with Citation Homes for acquisition of the underlying fee interest in the Property necessary for the construction of the public improvements and the only remaining interest needed for construction of the public improvements is a portion of Trans-Freight Express's leasehold interest (the "Leasehold Property Interest") in the Property, which is improved only with a parking area and several outbuildings; and

WHEREAS, the Agency obtained an appraisal of the Leasehold Property Interest in February 2006 and made an offer to purchase the Leasehold Property Interest for \$22,000 to Mr. Jean-Paul Kind, the president of Trans-Freight Express in April 2006, who rejected the offer and made a counteroffer that was not within an acceptable range of the value established by the Agency's appraisal; and

WHEREAS, staff is recommending that the Agency Board hold a hearing to consider approving a resolution of necessity to authorize commencement of proceedings to acquire the Leasehold Property Interest by eminent domain; and

WHEREAS, the Redevelopment Agency has complied with the provisions of section 1245.235 of the Code of Civil Procedure of the State of California, including, but not limited to, a public hearing held on May 9, 2006, on the matters referred to in section 1240.230 of said code, prior notice of which was provided to Mr. Jean-Paul Kind, the president of Trans-Freight Express; and

WHEREAS, the Redevelopment Agency is authorized to acquire real property by eminent domain by the Downtown Hayward Redevelopment Plan and the Constitution and statutes of the State of California, including, but not limited to, Health and Safety Code sections 33342 and 33367.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Redevelopment Agency of the City of Hayward that it hereby finds, determines, and declares as follows:

1. That the public interest, convenience, and necessity require the acquisition by the Redevelopment Agency of the Leasehold Property Interest described in Appendix 1, attached to this Resolution, for the development of the proposed roadway, park and school identified in the Cannery Area Design Plan, which furthers the goals and objectives of the Downtown Hayward Redevelopment Plan;
2. That the public interest, convenience, and necessity require that the Leasehold Property Interest be taken by the Redevelopment Agency;
3. That the proposed roadway, park and school improvements are planned and located in the manner which will be most compatible with the greatest public good and the least private injury;
4. That the Redevelopment Agency's staff has made the offer required by section 7267.2 of the Government Code of the State of California to Mr. Jean-Paul Kind, the president of Trans-Freight Express, which owns the Leasehold Property Interest, prior to the public hearing held on May 9, 2006, regarding the adoption of this resolution of necessity.

BE IT FURTHER RESOLVED that the Redevelopment Agency shall acquire the Property for construction of the proposed roadway, park and school improvements; and

BE IT ALSO RESOLVED that the Agency's General Counsel is authorized and directed to take any and all lawful actions which are convenient or necessary to acquire immediate possession of and title to the Property by eminent domain proceedings or otherwise.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2006

ADOPTED BY THE FOLLOWING VOTE:

**AYES: AGENCY MEMBERS:
CHAIR:**

NOES: AGENCY MEMBERS:

ABSTAIN: AGENCY MEMBERS:

ABSENT: AGENCY MEMBERS:

**ATTEST: _____
Secretary of the Redevelopment Agency of the
City of Hayward**

APPROVED AS TO FORM:

General Counsel

DRAFT

REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD

RESOLUTION NO. RA- 06-

Introduced by Agency Member _____

mal
5/4/06

RESOLUTION AMENDING RESOLUTION NO. RA 05-12,
THE BUDGET RESOLUTION FOR THE REDEVELOPMENT
AGENCY OF THE CITY OF HAYWARD FOR FISCAL
YEAR 2005-2006, RELATING TO AN APPROPRIATION OF
FUNDS FOR THE ACQUISITION OF THE LEASE HOLD
OF 199 C STREET BY EMINENT DOMAIN PROCEEDINGS

BE IT RESOLVED by the Redevelopment Agency of the City of Hayward that Resolution No. RA 05-12, the Budget Resolution for the Redevelopment Agency of the City of Hayward for fiscal year 2005-2006, is hereby amended by appropriating \$22,000 from the 2004 Tax Allocation Bond Fund, Fund 454 to account number 454-5099-9536 TAB's Cannery Public Works, ROW acquisition.

HAYWARD, CALIFORNIA _____, 2006

ADOPTED BY THE FOLLOWING VOTE:

AYES: AGENCY MEMBERS:
CHAIR:

NOES: AGENCY MEMBERS:

ABSTAIN: AGENCY MEMBERS:

ABSENT: AGENCY MEMBERS:

ATTEST: _____
Secretary of the Redevelopment Agency
of the City of Hayward

APPROVED AS TO FORM:

General Counsel