## 

## REVISED STAFF REPORT

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| **Agenda Item:** | 5 | **Name:** | Andrew Kim |
| **Proposed No**.: | 2018-0185 | **Date:** | May 9, 2018 |

**COMMITTEE ACTION**

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| ***Proposed Substitute Ordinance 2018-0185.2 authorizing the executive to convey the surplus property property located at 14524 415th Avenue SE, North Bend, WA to the Mohan Cedar Park Assembly of God Trust for the price of $107,771, passed out of committee on May 9, 2018, with a “Do Pass” recommendation. The Ordinance was amended in committee with Amendment 1 to correct the grantee name on the quitclaim deed and bill of sale documents to conform to the purchase and sale agreement and correctly name the buyer.*** |

**SUBJECT**

Proposed Ordinance 2018-0185 would authorize the sale of surplus property located at 14524 415th Avenue SE, North Bend, WA in Council District 3.

**SUMMARY**

Proposed Ordinance 2018-0185 would approve the sale of a surplus 5.2 acres of land that includes an unpermitted dwelling located in Council District 3. The property was acquired by the Department of Natural Resources and Parks (DNRP) in 2012 as part of a settlement agreement from a lawsuit by the previous property owners. The lawsuit alleged that the county was liable for debris and mudflow that damaged the property from a January 2009 storm that caused a landslide on the property.

The proposed ordinance would authorize the executive to convey the surplus property to the Mohan Cedar Park Assembly of God Trust for the price of $107,771. One of the two trustees of the buyer is the owner of the adjacent property. Proceeds of the surplus sale would contribute to the DNRP – Parks Capital Fund. The purchase and sale agreement also includes disclosures that a landslide event occurred on the property and that a stream and steep slope appears to have been identified on the property.

Council’s legal counsel has reviewed the purchase and sale agreement and has prepared Amendment 1 which would correct the grantee name on the quitclaim deed and bill of sale documents to conform to the purchase and sale agreement and correctly name the buyer.

**BACKGROUND**

On January 7th and 8th, 2009, a “Pineapple Express” storm[[1]](#footnote-1) moved over Western Washington bringing excessive rainfall and warmer temperatures which rapidly melted the snow pack on the mountains. Due to the storm, on January 7, 2009, a landslide occurred in the Rattlesnake Mountain Scenic Area near Fall City. The debris flow travelled roughly one mile to the bottom of the mountain where it deposited mud, water, and debris into Leroy and Laurie Bergstrom’s home on the 14524 415th Avenue SE, North Bend, WA property causing damage. The Rattlesnake Mountain Scenic Area is jointly owned by King County and Washington State Department of Natural Resources. The Bergstroms filed a lawsuit alleging that an abadoned logging road in the scenic area gave way, causing the landslide, and that the county and state should have taken steps to prevent the orphaned road from causing the landslide.[[2]](#footnote-2)

The case was settled in mediation with the county taking ownership of the Bergstrom property for $402,174.[[3]](#footnote-3) It should be noted that the property dwelling that was damaged from the landslide was built without a valid permit. However, executive staff indicated that this was not a factor in the settlement negotiation since the settlement contribution was not attributable to the appraised value of the property.

**ANALYSIS**

According to King County Code Section 4.56.080, any surplus property sales greater than $100,000 requires council approval. Section 4.56.060 authorizes the Facilities Management Division (FMD) to conduct sales of all county surplus properties. All surplus property sales need to abide by the requirements outlined in King County Code Section 4.56. The table below provides the requirements, the reference to King County Code, and the outcome or status of each requirement. The requirements are listed chronologically since each requirement is dependent on the outcome of another requirement (i.e. FMD surplus declaration must happen prior to FMD offer of parcel to other county agencies).

| **Surplus Property Sale Requirements** | | | |
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| **No.** | **Requirement** | **KCC Reference** | **Outcome/Status** |
| 1 | FMD appraisal of parcel | n/a | The property was appraised on April 6, 2017 by Kidder Matthews Valuation Advisory Services, an independent commercial appraisal company, and was assigned a Fair Market Value (FMV) of $105,000. |
| 2 | DNRP surplus declaration | 4.56.070 | DNRP declared the property a surplus to its needs on November 8, 2016. |
| 3 | FMD offer of parcel to other county agencies | 4.56.070 | FMD offered the property to other county agencies on November 21, 2016 and received no responses. |
| 4 | Determine if property is suitable for affordable housing | 4.56.070.C.1 | FMD confirmed that it was not pursuing the property for affordable housing since the property is located outside the Urban Housing Growth area and also due to the fact that the property is deemed unsuitable given several risks to the property including: (1) unpermitted dwelling, (2) future permits may be unobtainable due to critical areas[[4]](#footnote-4) and lot limitations, (3) served by non-working private well, (4) potential future landslides and erosion due to nearby stream and steep slope. The property is zoned RA-10 (Rural Area with one dwelling unit per 10 acres) |
| 5 | Final surplus declaration | 4.56.070 | FMD declared the parcel surplus to county needs on September 22, 2017. |
| 6 | Public notification of surplus | 4.56.090 | As required, the a notice of sale was advertised at least once a week for two consecutive weeks and appeared no more than five days prior to the date of the auction or bid opening.  Since the property underwent two rounds of bids, the notice of sale was advertised in the Seattle Times on August 30, 2017 and September 7, 2017 for a September 12, 2017 bid closing. In addition, the notice of sale was advertised in the Seattle Times on November 3, 2017 and November 9, 2017 for a November 13, 2017 bid closing. |
| 7 | Bid process | 4.56.100 | In September 2017, the county received one bid in the amount of $226,500. A purchase and sale agreement was executed on October 2, 2017. During buyer due diligence, the buyer exercised her right of rescission and terminated the transaction on October 19, 2017.  In November 2017, another round of bid was conducted with a new minimum bid of $105,000. One bid in the amount of $107,771 was received from the buyer and accepted by the county. |
| 8 | Purchase and Sale Agreement | n/a | The Purchase and Sale Agreement (PSA) was executed on December 13, 2017. |
| 9 | Council Approval | 4.56.080 | If the value of surplus property exceeds $100,000, council approval of the sale is required. Therefore, under the terms of the PSA, the sale is contingent on approval by ordinance by the Council by July 11, 2018, which includes an additional 90 day extension. |
| 10 | Disposition of Sale Proceeds | 4.56.130 | If approved by the Council, the sale proceeds would be disbursed first to DES/FMD Real Estate Services (RES) for work associated with the sale of the surplus property, and any remaining funds would be deposited into the proper county fund, as directed by FMD or the council. According to the fiscal note, the proposed ordinance would contribute $15,243 to RES for real estate costs and the remaining $92,528 would be deposited in to the DNRP – Parks Capital Fund. |

**Disclosures to Bidders and Buyer**

There are several potential risks to the property that have been disclosed to the public during the marketing of the property sale and also to the buyer through the purchase and sale agreement. The risks include:

* Current dwelling was built without county permits. Future permits may be unobtainable due to critical areas[[5]](#footnote-5) and lot limitations of the property.
* A garage/shop located in the northwest corner of the property was built by the adjacent property owner and could be subject to an adverse possession claim (boundary dispute). The proposed ordinance would resolve this issue since the adjacent property owner is a trustee of the buyer.
* A landslide occurred on the property on January 2009 and a landslide hazard still exists.
* A stream, steep slope, and power transmission lines have been identified on the property
* The property was previously served by a private well located on the property, however it is unknown if the well is operational or provides adequate water flow.

***Public Comment***

Mr. Siddharth Jha, representing Pier 67 Capital Partners LP, provided public comment at the March 26, 2018 and April 23, 2018 Full Council meeting requesting the council to allow the property to undergo a new bid process and stating his intent to bid at a higher purchase price if a re-bid is conducted. Mr. Jha also provided a similar public comment at the April 25, 2018 Budget and Fiscal Management Committee. Attachment 8 of the staff report provides his written public comment and a “letter of intent” which outlines his interest.

Executive staff stated that Mr. Jha (Pier 67) did not submit a bid during both rounds (October 2017 and November 2017) of the bid process. Executive staff also stated that Mr. Jha did not attend the open houses nor inquire about the property during the public sale effort. Mr. Jha reached out to FMD staff on February 12, 2018, after the purchase and sale agreement was signed between the county and Mohan Cedar Park Assembly of God Trust. Mr. Jha expressed through council staff that he did not submit bids during those rounds because the county advertised the property as a vacant lot rather than a property with a residential dwelling through third-party real estate sites (i.e. Zillow, etc.). Executive staff responded that this was done intentionally given that the dwelling was not legally permitted and future permits may be unobtainable due to critical areas and lot limitations of the property. Executive staff also stated that the pictures provided on the third-party real estate sites clearly indicated that a dwelling exists on the property.

**AMENDMENT**

Council’s legal counsel has reviewed the purchase and sale agreement and has prepared Amendment 1 which would correct the grantee name on the quitclaim deed and bill of sale documents to conform to the purchase and sale agreement and correctly name the buyer.

1. Pineapple Express is a non-technical term for a meteorological phenomenon characterized by a strong and persistent flow of atmospheric moisture and associated with heavy precipitation from the waters adjacent to the Hawaiian Islands and extending to any location along the Pacific coast of North America. [↑](#footnote-ref-1)
2. Report 2012-RPT0189: “2012 Quarterly Report of Closed Claims with and Indemnity Payment of One Hundred Thousand Dollars or More” [↑](#footnote-ref-2)
3. Ibid. [↑](#footnote-ref-3)
4. According to the King County Department of Permitting and Environmental Review, critical areas are lands with natural hazards or lands that support certain unique, fragile or valuable resource areas. [↑](#footnote-ref-4)
5. According to the King County Department of Permitting and Environmental Review, critical areas are lands with natural hazards or lands that support certain unique, fragile or valuable resource areas. [↑](#footnote-ref-5)