

County of Santa Clara

Office of the Clerk of the Board of Supervisors
County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110-1770
(408) 299-5001 FAX 298-8460 TDD 993-8272



Lynn Regadanz
Interim Clerk of the Board

August 27, 2012

The Honorable Richard J. Loftus, Jr.
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

FILED

SEP 04 2012

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY D. ALDYCKI

RE: Grand Jury Report: How Santa Clara County Decides to Lease Property at Below Fair Market Rates

Dear Judge Loftus:

At the August 21, 2012 meeting of the County of Santa Clara Board of Supervisors (Item No. 18), the Board adopted the response from the County Administration to the Final Grand Jury Report and recommendations relating to How Santa Clara County Decides to Lease Property at Below Fair Market Rates.

As directed by the Board of Supervisors and on behalf of the Board President, our office is forwarding to you the enclosed certified copy of the response to the Final Grand Jury Report. This response constitutes the response of the Board of Supervisors, consistent with provisions of California Penal Section 933(c).

If there are any questions concerning this issue, please contact our office at 299-5001 or by email at lynn.regadanz@cob.sccgov.org.

Very truly yours,

LYNN REGADANZ
Interim Clerk, Board of Supervisors
County of Santa Clara

Enclosures

FACILITIES & FLEET

County of Santa Clara, Facilities and Fleet Department, 2310 North First Street, Ste 200, San Jose California 95131-1011

MEMORANDUM

Date: August 1, 2012

From: Jeffrey D. Draper, Director
Facilities and Fleet Department

To: Gary Graves, Chief Operating Officer.
Office of the County Executive

The foregoing instrument is a correct copy of the original

ATTEST: Lynn Regadanz,
Interim Clerk of the Board

By: D. Christopherson
Deputy Clerk
Date: AUG 21 2012

Subject: Response to the June 19, 2012 Santa Clara County Civil Grand Jury Report relating to Property Leases at Below Fair Market Rates

Grand Jury Recommendation 1 related to requiring that transmittals in which a BFMR property or ground lease is proposed include financial analysis and corresponding service summaries to communicate the full value (or benefit) to the County. As noted in the FAF response to the Internal Controls Custody Audit on August 23, 2011, Item No. 41, FAF agrees with this recommendation.

Grand Jury Recommendation 2 relates to developing and implementing a process that establishes fair market value for County-owned property such as using a certified real estate appraiser. FAF agrees with this recommendation. However, there are situations where staff-created market comparisons or analyses may be the most cost effective way to establish fair market value.

Grand Jury Recommendation 3 proposes that the County centralize responsibility for County-owned real estate. FAF is neutral on this recommendation. There are pros and cons for centralized management of real estate. For example, centralizing the staff would allow more flexibility for prioritizing and managing County-wide workload. Conversely, having the staff in the three departments allows for specialized knowledge of each business. Centrally led policies and common procedures would be another way to assure that its real estate assets are effectively managed. Indeed, Board policy requires the Finance and Government Operations Committee to review proposed leases of County property.

Cc: Sylvia Gallegos, Deputy County Executive
Leslie Crowell, Deputy County Executive
Michael Murdter, Director, Roads and Airports
Robb Courtney, Director, Parks and Recreation Department

Board of Supervisors: Mike Wasserman, George Shirakawa, Dave Cortese, Ken Yeager, Liz Kniss
County Executive: Jeffrey V. Smith

County of Santa Clara

Roads and Airports Department

101 Skyport Drive
San Jose, California 95110-1302
(408) 573-2400



MEMORANDUM

Date: July 9, 2012

To: Gary Graves
Chief Operating Officer

From: *MM* Michael Murdter, Director
Roads & Airports Department

Subject: RESPONSE TO SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

The foregoing instrument is a correct copy of the original

ATTEST: Lynn Regadanz,
Interim Clerk of the Board

By: *D. Christopherson*
Deputy Clerk

Date: AUG 21 2012

In accordance with your July 3, 2012 memorandum, the Roads & Airports Department reviewed the Civil Grand Jury Report entitled "How Santa Clara County Decides to Lease Property at Below Fair Market Rates." None of the below fair market (BFM) leases identified in Appendix C of the report involve the Roads & Airports Department, so we are not in a position to evaluate the findings regarding those leases¹. However, the following input is offered relating to the three recommendations contained in the report:

Recommendation 1 relates to the information that should be included in a staff transmittal to the Board before approval of a BFM lease.

First, we note that existing County policy regarding BFM leases is set forth in Board Policy 5.9.5.2, which clearly gives the Board discretion to approve BFM leases. In instances where a BFM lease is presented to the Board for consideration, it seems reasonable to quantify the difference between the actual fair market value (FMV) and the proposed lease amount, as well as the rationale for the proposed BFM lease rate, in order to assist the Board in making an informed decision. Appropriate language could be added to Board Policy 5.9.5.2 to require this information in staff transmittals.

¹ The Streets and Highways Code generally requires that Road Fund real property assets be leased or sold at Fair Market Value; a similar requirement exists in the Federal Aviation Administration (FAA) regulations for airport property.

Recommendation 2 relates to the process for determining FMV rates.

We agree that a consistent process for determining FMV rates, either by outside professionals or in-house staff possessing the appropriate expertise, should be employed to provide the information recommended in Recommendation 1.

Recommendation 3 proposes that the County centralize responsibility for County-owned real estate.

We note that this recommendation has been suggested internally in the past and rejected. Each Department Head has cognizance over a variety of resources such as labor, equipment, funding and real property assets that he or she utilizes to achieve the department's mission. There is no compelling reason to strip the department head of responsibility for one particular type of resource, which must be deployed in a strategic manner in concert with the other types.

Moreover, Road Fund property and Parks property have special statutory standing and constraints associated with their lease or sale. The respective directors of the Roads Dept. and the Parks Dept. are thus best qualified to manage these assets. We would also note that the Board's Finance & Government Operations Committee (FGOC) provides centralized oversight on all proposed leases and sales of County real property before being agendized for Board action.

If standardization of policy and practice relating to real property leases is the goal, there are methods of achieving such standardization without resorting to centralizing responsibility for real property management. Recommendations 1 and 2 are a good start.

Thank you for the opportunity to review the report. Please let me know if you require any additional information from Roads & Airports.

cc: Sylvia Gallegos, Deputy County Executive
Robb Courtney, Director, Parks & Recreation Dept.
Jeff Draper, Director, Facilities & Fleet Dept.

County of Santa Clara

Parks and Recreation Department

298 Garden Hill Drive
Los Gatos, California 95032-7669
(408) 355-2200 FAX 355-2290
Reservations (408) 355-2201
www.parkhere.org

The foregoing instrument is a correct copy of
the original

ATTEST: Lynn Regadanz,
Interim Clerk of the Board

By: D. Christopher
Deputy Clerk

Date: AUG 21 2012



MEMORANDUM

Date: July 26, 2012

To: Gary Graves, Chief Operating Officer
Office of the County Executive

From: Robb Courtney, Director
Parks and Recreation Department 

Subject: Response to Santa Clara County Civil Grand Jury Report

In response to your memorandum of July 3, 2012, Parks and Recreation Department (Parks) staff reviewed the Grand Jury Report, and offer the response below:

The leases reviewed by the report are administered by Facilities and Fleet (FAF), so the Department will not comment on those findings. Parks does have feedback related to the three recommendations of the Grand Jury as those recommendations relate to the Parks' ongoing business activities and to Parks administration of existing Board policies which govern leasing parkland for park purposes. As an overarching concept, it is important to note that parkland is subject to unique legal and policy requirements that are not applicable to other County real property assets. The leasing program for Parks is not only utilized for commercial partners to provide park services; it is utilized for establishing partnerships with public agencies and not-for-profit entities to provide parks and recreation services on County parkland that are not feasible for the County to provide.

Recommendation 1 relates to the need to perform financial analysis if the Board of Supervisors is to lease property for below Fair Market Value (FMV).

- Chapter 5.9 of the Board Policy Manual recognizes that the County may lease property to public agencies and/or community based organizations for services that benefit the public. This chapter also acknowledges that the County may lease property below FMV to provide public services as determined by the Board.
- Chapter 7.6 of the Board Policy Manual (Lease Preparation and Monitoring Policy for County Parks) provides a process through which fair market value should be determined

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County Executive: Jeffrey V. Smith



for parkland that is to be leased. This chapter also recognizes that Parks will consider a balance between public benefit and demand for services to be provided; non-profit organizations may provide unique services (parks and recreation services) that could not otherwise be provided to the public by Parks. In these instances, the level of service, rather than FMV would be the basis for leasing parkland below FMV.

Parks agrees with the Grand Jury recommendation with one caveat related to existing Board policy: the level of financial analysis, as detailed in the current chapter 7.6 of the Board Policy Manual should be addressed within a Board transmittal proposing a new lease of County parkland.

Recommendation 2 relates to developing and implementing a process that establishes fair market value for County-owned property that may include a certified real estate appraiser.

- Chapter 7.6 of the Board Policy Manual (Lease Preparation and Monitoring Policy for County Parks) provides a process through which fair market value should be determined when leasing parkland. The policy clarifies that either a staff-created market comparison of similar facilities or a professional consultant (appraiser) determination may be utilized to establish fair market value of the land as well as the value of public services and/or revenue comparisons. The policy further provides that, if local San Francisco Bay Area comparisons are not available for a market analysis, a statewide comparison may be provided.

Parks agrees with the Grand Jury recommendation with one caveat related to existing Board policy; the process for determining fair market value for County parkland should incorporate the existing policy provisions of Chapter 7.6 of the Board Policy Manual.

Recommendation 3 proposes that the County centralize responsibility for County-owned real estate.

- This recommendation has been proposed internally in the past. The unique statutory requirements, Board policies, General Plan elements, interagency agreements, and numerous park master plans and site plans that govern the use of a countywide system of parks and trails differ from real property considerations for County Roads Fund and General Fund properties. The Parks real estate staff retains familiarity with these governing documents.
- It is necessary to maintain a working relationship with numerous land-owning/managing public agencies and non-profit groups outside the County that collectively manage a countywide system of parks, trails, and open space owned and operated by multiple providers. These external providers and Parks have similar environmental, legal, and land use/management concerns. Parks real estate staff works with these external partners and their real property staff to address mutual concerns for properties that are connected by trails and share common boundaries as well as public users.
- Within Parks and the County, the real estate staff works closely with operations, maintenance, environmental planning, and special programs staff to provide agreements and property research necessary for implementing capital projects, addressing boundary issues, and establishing interagency agreements. Removing the asset of the real estate staff from Parks would reduce the ability of Parks to respond to these internal staff needs

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in a timely manner.

Parks disagrees with recommendation 3 for the reasons outlined above. Implementation of recommendations 1 and 2 and rejection of recommendation 3 will be beneficial to the County's separate departments of Facilities and Fleet, Roads and Airports, and Parks and Recreation. Thank you for the opportunity to review this report.

Cc: Sylvia Gallegos, Deputy County Executive
Jeff Draper, Director, Facilities and Fleet
Michael Murdter, Director, Roads and Airports



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County Executive: Jeffrey V. Smith