



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein
Matt Cano

SUBJECT: SEE BELOW

DATE: June 6, 2022

Approved

Date

6/9/2022

COUNCIL DISTRICT: 3

**SUBJECT: CONDITIONAL SUMMARY VACATION, DECLARATION OF
SURPLUS, AND SALE OF A PORTION OF BLOCK 64 ALLEYWAY
BETWEEN EAST VIRGINIA STREET AND MARTHA STREET**

RECOMMENDATION

Conduct a public hearing and adopt a resolution to authorize the following:

- a) Approve the report of the Director of Public Works setting forth the facts justifying the conditional summary vacation of an approximately 4,059 square foot portion of the Block 64 alleyway between East Virginia Street and Martha Street (Vacation Property);
- b) Conditionally vacate the Vacation Property, which after the satisfaction of the conditions, will be superseded by relocation;
- c) After satisfaction of the condition, direct the City Clerk to record a certified copy of the resolution of vacation for the Vacation Property with the Office of the Recorder, County of Santa Clara;
- d) Declare the Vacation Property of the City-owned Block 64 alleyway as “exempt-surplus land” to the needs of the City under Cal. Gov. Code §54221(f)(1)(E) as the land is a former street, right of way, or easement and if being sold to an owner of adjacent property as well as Cal. Gov. Code §54221(f)(1)(C) in that the Vacation property is being exchanged by the City for other lands necessary for the City’s use;
- e) Direct the City Manager to negotiate and execute a Purchase and Sale Agreement and Quitclaim Deed, and all other necessary documents to effectuate the transfer to Damico Tire Service Company, Inc.,, a California Corporation, from the City of San José, for the sale of the portion of the surplus City-owned Vacation Property for the consideration of \$65,241.80 by direct negotiation under San José Municipal Code Section 4.20.070 and in

accordance with Council Policy No. 7-13(D)(1) as the transferee is an adjacent property owner and the transaction is for fair market value;

- f) Authorize the City Manager, or her designee, to negotiate and execute all other documents necessary to accept the fee title ownership of an approximately 3,602 square foot portion of the property owned by James L. Damico, known as Assessor's Parcel Number 472-17-034 (Swap Property) and complete the transactions; and
- g) Authorize the City Manager to enter into all other documents necessary to effectuate these transactions.

OUTCOME

Staff has proposed a conditional summary vacation of the Vacation Property, which after satisfaction of the conditions to vacate, the resolution of vacation will be recorded, and the subject property will be abandoned as a public street and no longer constitute part of the Block 64 alleyway between East Virginia Street and Martha Street. The Vacation Property will be declared as "exempt surplus land" to the needs of the City of San José (City) and conveyed to Damico Tire Services Company, Inc. for a purchase price of \$65,241.80. The City will acquire fee title ownership of the Swap Property for use by the public as an alleyway. This property exchange will reroute the public alleyway access to South Second Street and facilitate the development of the project known as 802 South First Street proposed by Maracor Development, Inc. (Developer). The project includes 166 total residential units, of which 33 units will be affordable, and 1,510 square feet of ground-floor retail space, consistent with the General Plan and rezoning approved by the City Council on February 23, 2021, and as proposed by Planned Development permit PD21-011.

BACKGROUND

Vacation Property and Swap Property

The Vacation Property is the approximately 4,059 square foot northern portion of the Block 64 alleyway between East Virginia Street and Martha Street that is owned by the City and operated as a public alley. A location map of the Vacation Property is included in Attachment B. The Swap Property is an approximately 3,602 square foot portion of a 7,144 square foot commercial property owned by James L. Damico, known as Assessor's Parcel Number 472-17-034. A location map of the Swap Property is included in Attachment C.

Proposed Development

In 2017, Damico Tire Service Company, Inc. submitted an application for a Planned Development Rezoning from the CP Commercial Pedestrian and CN Commercial Neighborhood Zoning District to a PD Planned Development Zoning District (PDC17-022). Later, it also applied for a General Plan Text Amendment (GPT18-009) followed by a General Plan

Amendment (GP20-004). The General Plan Amendments and rezoning were approved by City Council on February 23, 2021, and allowed up to 246 residential units and 4,600 square feet of commercial uses. Subsequently, a new application for a Planned Development permit (PD21-011) was submitted by the Developer which includes APNs 472-17-005, -006, -034, -094, and -095. The current proposed project includes 166 total residential units, of which 33 units will be affordable, and 1,510 square feet of ground-floor retail space. In order to accomplish the land use plan as proposed under PD21-011, the City would need to vacate the northern portion of the current alley, which serves as the entrance and exit to East Virginia Street, and convey fee title ownership to the applicant. The applicant would then convey fee title ownership of the Swap Property to the City to encumber with a right-of-way for public use. This right-of-way would serve as the new entrance and exit to South Second Street.

Environmental

Elevated levels of lead have been discovered in the shallow soil beneath the Swap Property to be transferred to the City. The Developer has entered into a regulatory oversight agreement with the County of Santa Clara Department of Environmental Health to oversee the Developer's removal of the contaminated soil for off-site disposal. The Environmental Services Department will review the condition of the soil after the Developer completes remediation activities to ensure the removal has been satisfactorily completed with no deed restrictions or future obligations prior to the City's acceptance of the Swap Property.

ANALYSIS

A City commissioned appraisal valued the Vacation Property at \$575,687.97, and the Swap Property at \$510,446.17. Since the Developer will be transferring the fee title of the Swap Property to the City for use as an alleyway and constructing the alley improvements, the value of the Swap Property has been deducted from the value of the Vacation Property. The Developer will then pay the City the balance in value, or \$65,241.80.

There were traces of elevated levels of lead on the Swap Property. Before the Swap Property is transferred to the City, the Developer will complete remediation activities to the satisfaction of the Environmental Services Department. The Developer will then construct the necessary improvements for the alleyway.

There are existing, in-use, public utilities located within the Vacation Property that will require relocation, in part or in whole. The conditional vacation requires the Developer to submit copies of the executed agreements with the affected utility companies that approve the relocation and realignment of utilities to be completed by the Developer, at no cost to the City.

Under §8330(a) of the California Streets and Highway Code, the City may summarily vacate the alley superseded by the relocation of the alley and any in-use public utilities to South Second Street. As part of the conditions of vacation and prior to the issuance of Public Works Clearance of a Building Permit, the Developer is required complete the following:

- Obtain approval of the Planned Development permit (PD21-011)
- Enter into a secured City-Private Developer construction agreement that guarantees the reconstruction and realignment of the alleyway to South Second Street
- Complete remediation activities of the Swap Property to the satisfaction of the Environmental Services Division
- Submit copies of the executed utility agreements to the City for the approved relocation and realignment of any existing, in-use, public utilities to South Second Street

The Vacation Property is eligible to be declared “exempt surplus land” under Cal. Gov. Code §54221(f)(1)(C) as the land is being exchanged by the City for other lands necessary for the City’s use (here, a replacement public easement) as well under subsection §54221(f)(1)(E) as the land was burdened by an existing public easement and is being conveyed to the owner of an adjacent property.

Staff recommends proceeding with the conditional vacation and proposed swap of lands to facilitate the construction of the proposed development. Access through the alleyway out to Martha Street will be retained since the City will receive a constructed alleyway entrance and exit out to South Second Street at no cost. Once the City takes ownership of the Swap Property encumbered with a right-of-way, the City will be responsible for the future maintenance of the alleyway.

Key Terms

Key terms of the proposed authorization to negotiate and execute a Purchase and Sale Agreement for the Vacation Property and Swap Property include:

1. VACATION PROPERTY: Approximately 4,059 square feet of Block 64 alley, more particularly described in Attachment B.
2. SWAP PROPERTY: Approximately 3,602 square feet of a portion of APN: 472-17-034, more particularly described in Attachment C.
3. COMPENSATION: City to receive the Swap Property and \$65,241.80 in consideration for the Vacation Property.
4. DEPOSIT: No deposit.
5. ENVIRONMENTAL: The Developer will deliver to the City the Swap Property with remediation activities completed, and in a condition satisfactory to the Environmental Service Department.

6. **CONDITION OF VACATION:** Developer will be required to 1) obtain approval of the Planned Development permit (PD21-011); 2) enter into a secured City-Private Developer construction agreement that guarantees the reconstruction and realignment of the alleyway; 3) complete the environmental remediation activities on the Swap Property to a condition which meets the satisfaction of the Environmental Service Department; and, 4) submit copies of the executed utility agreements to the City for relocation of the public utilities within the Vacation Property. Upon these conditions being met, the City will vacate the Vacation Property.

CONCLUSION

The City Council's approval of the recommended conditional summary vacation, declaration of the portion of the Vacation Property as "exempt surplus land", and authorization to negotiate and execute a Purchase and Sale Agreement will allow staff to work with the Developer to proceed with the necessary environmental remediation activities on the Swap Property to meet a condition satisfactory to the Environmental Services Department. After the conditions of the vacation have been met, including approval of the Planned Development permit PD21-011, the City will proceed with the sale of the Vacation Property to Damico Tire Services Company, Inc. for \$65,241.80 and accept the conveyance of the Swap Property to the City. The Swap Property will be encumbered with a right-of-way for use by the public as an alleyway.

EVALUATION AND FOLLOW-UP

If City Council adopts the recommended actions, no further action by City Council will be required for the vacation of the Vacation Property. After receiving written confirmation from the Director of Public Works and the Office of the City Attorney that the conditions of the vacation have been satisfied, the City Clerk will record the resolution of the vacation, at which time the vacation will be complete.

After the resolution of vacation is recorded, staff will proceed with the sale of the Vacation Property per the outlined terms of the purchase and sale agreement and the Developer will convey to the City fee title ownership in a portion of the Swap Property.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

All concerned utility companies have been contacted in writing and the Developer is conditioned to submit executed utility agreements to the City that approves the relocation of the affected public utilities within the Vacation Property.

In addition, PDC17-022 / GPT18-009 / GP20-004 was posted on the City's website for the City Council approval on February 23, 2021.

This memorandum will be posted on the City's Council Agenda website for the June 21, 2022, City Council meeting.

COORDINATION

This memorandum has been coordinated with the Department of Planning, Building and Code Enforcement Department, Department of Transportation, Fire Department, Environmental Services, the City's Manager's Budget Office, and the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

The net proceeds from the sale of the Vacation Property, after deducting the value of the Swap Property, total \$65,241.80 and will be deposited in the General Fund upon completion of the transactions described in this memorandum. These proceeds will go towards meeting the revenue estimate that is included in the budget for the sale of real property in the General Fund. Costs associated with soil remediation activities for the Swap Property and the construction of necessary improvements to the alleyway will be assumed by the Developer in full. The City will not incur additional costs to receive the Swap Property and newly constructed alleyway entrance and exit to South Second Street.

HONORABLE MAYOR AND CITY COUNCIL

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The Public Works Department collected cost recovery fees during the fiscal year 2021-2022 of \$8,233 to process the vacation of the Subject Property. These fees were deposited to the Public Works Development Fee Program in the Public Works Development Fee Program Fund.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (new or amended) resulting in no physical changes to the environment.

/s/
NANCI KLEIN
Director of Economic Development and
Cultural Affairs

/s/
MATT CANO
Director, Public Works

For questions, please contact Kevin Ice at Kevin.Ice@sanjoseca.gov or (408) 535-8197 and J Guevara, Deputy Director of Public Works at (408) 535-8123.

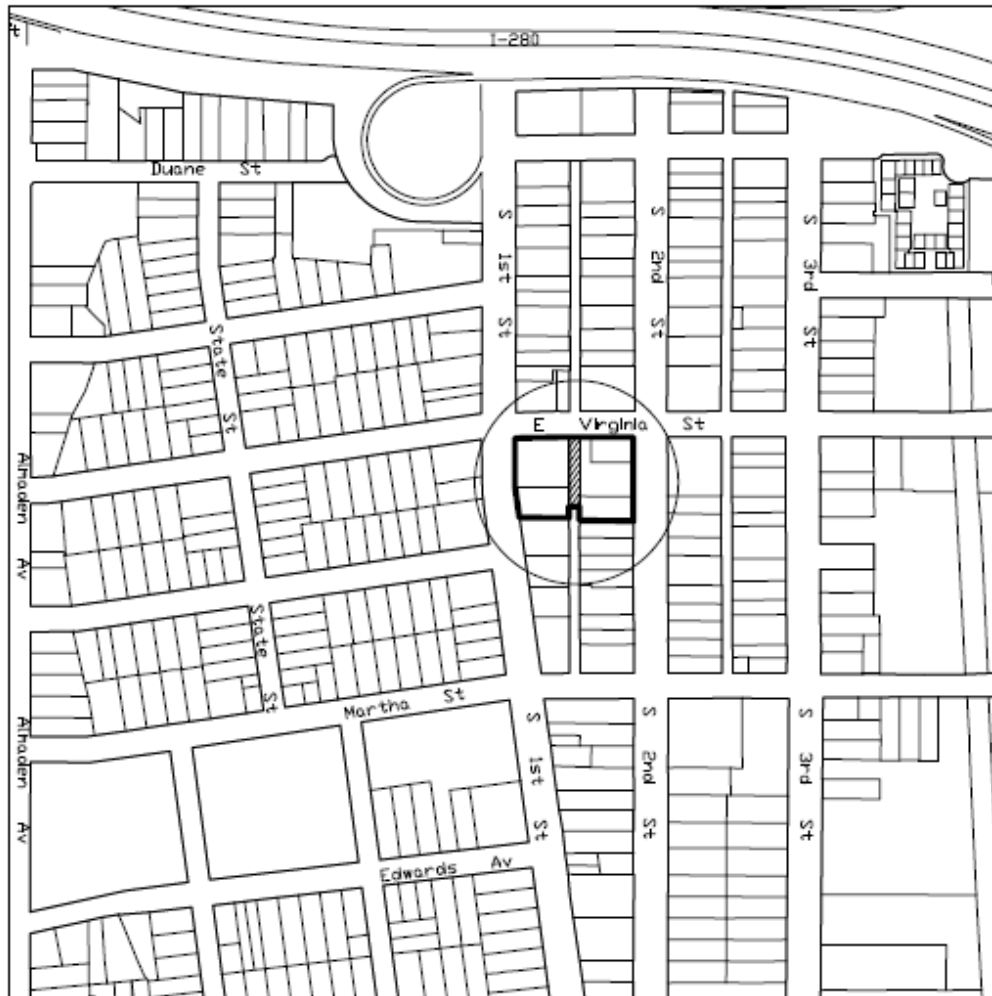
Attachments:

ATTACHMENT A – Location Map
ATTACHMENT B – Plat and Description of Vacation Property
ATTACHMENT C – Plat and Description of Swap Property

ATTACHMENT A

LOCATION MAP

SHOWING A PORTION OF BLOCK 64 ALLEYWAY BETWEEN
EAST VIRGINIA STREET AND MARTHA STREET, TO BE VACATED



AREA TO BE VACATED



PROJECT BOUNDARY



MAP

FILED WITH THE CITY COUNCIL OF THE CITY OF SAN JOSE THIS _____ DAY OF _____, AND APPROVED BY SAID CITY COUNCIL THIS _____ DAY OF _____ BY RESOLUTION NUMBER _____

APPROVED THIS _____ DAY OF _____

[illegible]

ATTACHMENT B



April 1, 2022
HMH 4709.10.803
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EXHIBIT "A" ALLEY VACATION

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of the Alley Way of Block 64 as shown upon that certain Map entitled "Map of that Part of the Reed Addition to the City of San Jose", filed for record on March 18, 1869, in Book C of Miscellaneous Records, page 322, Santa Clara County Records, described as follows:

BEGINNING at the northerly corner of said Alley Way, being on the southeasterly line of East Virginia Street;
Thence along said southeasterly line, South 60°07'30" West, 25.00 feet, to the southwesterly line of said Alley Way;
Thence along said southwesterly line, South 29°52'30" East, 162.36 feet;
Thence North 60°07'30" East, 25.00 feet, to the northeasterly line of said Alley Way;
Thence along said northeasterly line, North 29°52'30" West, 162.36 feet, to the POINT OF BEGINNING.

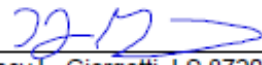
Containing 4,059 square feet, more or less.

As shown on Exhibit "B" attached hereto and made a part hereof.

END OF DESCRIPTION

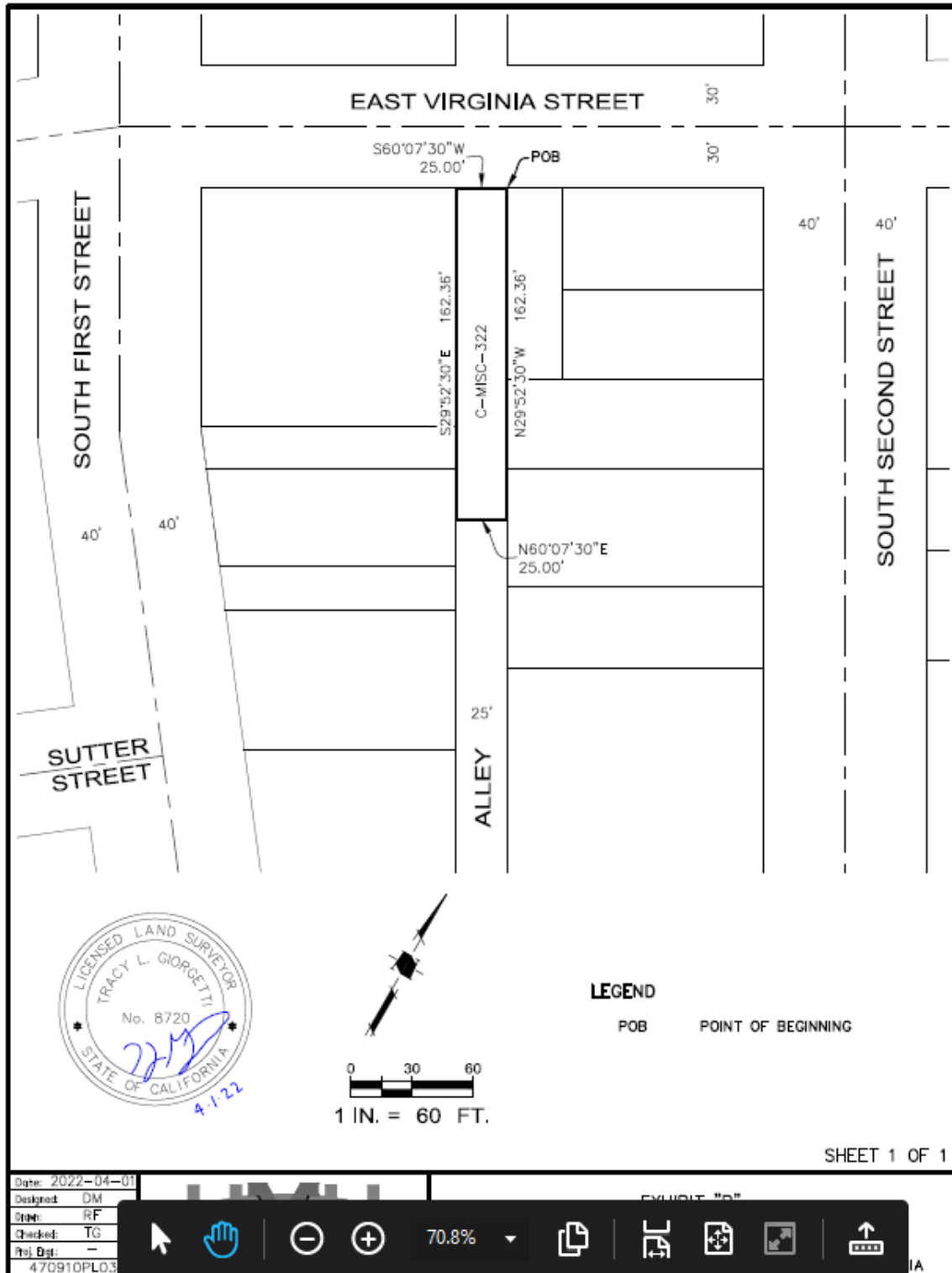
This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

Date: 4-1-22


Tracy L. Giorgetti, LS 8720



ATTACHMENT B (CONT)



SHEET 1 OF 1

ATTACHMENT C



April 5, 2022
HMH 4709.10.803
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EXHIBIT "A" RIGHT OF WAY DEDICATED IN FEE

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of that parcel of land described in the grant deed recorded December 28, 2012, in Document No. 22026652 of Official Records, of Santa Clara County Records, described as follows:

BEGINNING at the easterly corner of said parcel of land, being on the southwesterly line of South Second Street;
Thence along said southwesterly line, North 29°52'30" West, 25.00 feet, to a line parallel with and 25 feet northwesterly of the southeasterly line of said parcel of land;
Thence along said parallel line South 60°07'30" West, 60.06 feet;
Thence along a tangent curve to the right, having a radius of 25.00 feet, through a central angle of 29°26'12" for an arc length of 12.84 feet;
Thence along a reverse curve to the left, having a radius of 58.00 feet, through a central angle of 54°25'00" for an arc length of 55.09 feet, to the southwesterly line of said parcel of land;
Thence along said southwesterly line and the southeasterly line of said parcel of land the following two courses:
1. Thence South 29°52'30" East, 30.29 feet;
2. Thence North 60°07'30" East, 125.34 feet, to the POINT OF BEGINNING.

Containing 3,602 square feet, more or less.

As shown on Exhibit "B" attached hereto and made a part hereof.

END OF DESCRIPTION

This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

Date: 4-5-22


Tracy L. Giorgetti, LS 8720



ATTACHMENT C (CONT)

