



Memorandum

TO: Honorable Mayor &
City Council

FROM: Toni J. Taber, CMC
City Clerk

SUBJECT: The Public Record
December 22, 2017 - January 4, 2018

DATE: January 5, 2018

ITEMS FILED FOR THE PUBLIC RECORD

Letters from Boards and Commissions

None

Letters from the Public

1. Letter from Bob and Joan Buechel dated December 25, 2017, to the Mayor and City Council, entitled "Verizon Project Small Cell Project 'San Jose 050 - OBJECTIONS.'"
2. Letter from Kathleen Flynn dated January 4, 2018, to the Mayor and City Council, entitled "My Due Process Rights and the Jan. 23rd Council Meeting."
3. Letter from Carl Schroeder dated January 4, 2018, to the Mayor and City Council, entitled "My Due Process Rights and the Jan. 23rd Council Meeting."
4. Letter from Christian Hemingway dated January 4, 2018, to the Mayor and City Council entitled "My Due Process Rights and the Jan. 23rd Council Meeting."
5. Letter from Kathleen Flynn dated December 27, 2018, to Peter Hamilton, entitled "My Due Process Rights and the Jan. 23rd Council Meeting."

Toni J. Taber, CMC
City Clerk

TJT/mc

Bob and Joan Bueche

Campbell, CA 95008

December 25, 2017

Via email (

The CBR Group

Martinez, CA 94553

Re: Verizon Project Small Cell Project "San Jose 050" - OBJECTIONS

Dear Sir/Madam,

Since receiving your July 21, 2017 letter about the referenced project on/above our property at 989 Dry Creek Road, Campbell, CA, we have been making inquiries with the City of San Jose and searching their website and news media for further information about this project.

Amazingly, we find nothing: no public notices, no public hearings, no requests for public comments, no newspaper articles. When we contacted City of San Jose Department of Public Works employees, they indicated that they'd "heard" of the project and would have a responsible employee call us back. Never any call back.

So we are writing you with our objections, and copying City Council staff in hopes that our objections will reach the appropriate set of eyes/ears through the veil of secrecy surrounding this project and how locations for these small cell devices are being selected.

Our objections to locating a small cell device on/above our property include:

1. There are lots of other telephone and light poles around the corner of Dry Creek Road and Bascom Avenue. Why was the one on our property selected? The opposite corner has a boat yard. Why not use a pole next to the commercial location?
2. Our property at _____ used to be a retirement home. It is zoned so that in future it could again be used for that, or for a day care center. A small cell device on this property would pose real or perceived dangers from such close proximity to humans, especially small children, which would impair such uses.
3. The project appallingly side-stepped the public notice, input process. We've had no opportunity to object or make recommendations on more appropriate locations. **We refuse to give you permission to enter our property to install such small cell device.**
4. You and the City of San Jose, by keeping this project sub-rosa and avoiding the normal public hearing and input process, appears to be evading public meeting laws and regulations. And, by this effective veil of secrecy, such evasion appears intentional.

We request that the responsible City of San Jose staff respond to our objections, and order you/Verizon to relocate this small cell device to a different pole further from our property at Campbell, CA.

Bob and Joan Buechel

cc: City of San Jose, Department of Public Works
Attn: Verizon Project Small Cell Project Liaison
200 E. Santa Clara St.
Tower 5th Floor
San Jose, CA 95113

San Jose City Council
c/o Office of the City Clerk
200 E. Santa Clara St.
San Jose, CA 95113

From:

Sent: Thursday, January 4, 2018 4:34 PM

To: The Office of Mayor Sam Liccardo; Reed, Jim; Weerakoon, Ru; Henninger, Ragan; Perez, Raul; Doyle, Richard

Cc: r

Subject: Re:My Due Process Rights and the Jan. 23rd Council Meeting

Dear Honorable Mayor Liccardo, Mr. Reed, And Ru Weerakoon,

I am writing you because my due process rights as the Appellant were and are continuously being violated in favor of the Applicant, City employee, Tony Andary, regarding this proposed car wash/convenience store/gas station project located at 3705 S. Bascom Ave, in San Jose.

Mayor, you allowed Applicant, Tony Andary to speak for an unlimited time before the Council, on Dec.19, 2017, after telling all of us at the Dec.12, 2017 Council Meeting, that no further public comment was going to be permitted, when this matter was to return to Council on Dec.19, 2017.

I was never informed by your office, or any other office at the City, that Tony Andary was going to be given preferential treatment and was going to be allowed to speak at that meeting without a time limit, nor was I invited to speak at that Appeals Hearing that I paid the City \$500.00 for.

Further, to allow Council Member Khamis, who does NOT represent District 9, to **direct Tony Andary to submit a 4th noise report, on the mitigation of the car wash noise, is not only unjust, but shows a real bias against me.**

Our noise engineer, who worked with the City on the General Plan, has repeatedly proven that Andary cannot mitigate the noise or odors of that car wash, which will operate 14 hours a day, 7 days a week, 25 feet below our bedroom and living room windows!

Allowing a 25 foot set back near residential areas is against the 200-500 foot requirements of the General Plan, and shows that Andary Enterprises, Inc. is being given preferential treatment, and illegal set backs that no other developers asking for a car wash near residential areas are being allowed.

Further, to allow Andary the opportunity to submit a 4th noise report when he has already failed three times now to show he can mitigate the noise, without allowing us to do the same is clear prejudice. Andary and Planning never submit reports to me in a timely manner so that I can refute or rebut their findings. They wait until the Friday before the Council Meeting, which only gives our engineers ONE working day to review and respond.

Also, Andary asking for a last minute deferral under the pretense that he wanted to meet and talk with me, is ridiculous for the following reasons:

He has had plenty of time to reach out to me and hasn't to this day. He used that as a means to lobby Council Member Khamis so that he could have more time to try and refute our noise reports.

I already met with his brother Sam Andary, for several hours in Aug., and he refused to meet me half way on any of the suggestions I made.

I sent you, and the entire Council an email expressing my opposition of the last minute deferral request by Andary, and I gave you all the reasons why.

To ignore that Tony Andary has acted so abusively toward all of us since and including the May 8th community meeting/Planning Commission Meeting Aug. 9th, that I had to have my attorney send him and his associates a Cease and Decease letter, is like a Police Officer ignoring a Restraining Order against an abusive spouse or partner! That is unacceptable on every level!

He has been harassing, and trying to bully us, and his continual need to get up to the podium and lie, and try to besmirch not only us, but my Council member, and Shaunn Mendrin is not only enabling him to abuse us and the process, but is just plain irresponsible of all of you.

I would like you to have Security pull the camera footage, shortly after the Dec.12th Council Meeting, by the bathrooms, on the 1st floor, where you existed and took a photo with Mrs. Singh's son, so that you can see how the Andary family stopped and started yelling at us. One woman tried to lunge at Mrs. Singh, when she was just sitting there minding her own business. This is not acceptable on any level either, so how on earth do you and the rest of the Council think I would feel safe meeting alone with this man, or anyone in his family?

And given this history, exactly what do you think the outcome could possibly be when I have made it very clear that these elementary school children's lives matter more to me than any profit driven project Andary wants to build 167 feet from Farnham School, the driveway of the car wash exiting into the direct path of these children walking too and from the school, and 20 feet from our four-plex driveway?

In closing, I would insist that since you allowed Tony Andary to speak at the Dec.19, 2017 Council Meeting, that you afford me and the public the same opportunity to speak at the evening Jan. 23rd Council Meeting, WITHOUT cutting our time down. I am also asking for a Reasonable Accommodation due to my and other members of the public's health issues.

Sincerely,

Kathleen Flynn

From:
Sent: Thursday, January 4, 2018 4:55 PM
To:
Cc:

Subject: Re:My Due Process Rights and the Jan. 23rd Council Meeting

I agree with everything Kathleen said. We should have the right to speak on the 23rd without our time being cut down from 2 minutes.

Tony Andary is being give special treatment and because he works in Public Works, he is using his knowledge of the City's processes to get around laws that no other developer can. That shouldn't be allowed by you guys.

And just so you know, Andary refused to let his mechanic fix our cars anymore. Nice guy huh?

Best Regards,

Carl Schroeder

----- Original Message -----

From:
To:

Cc:

Subject: Re:My Due Process Rights and the Jan. 23rd Council Meeting
Date: Fri, 5 Jan 2018 00:34:45 GMT

Dear Honorable Mayor Liccardo, Mr. Reed, And Ru Weerakoon,

I am writing you because my due process rights as the Appellant were and are continuously being violated in favor of the Applicant, City employee, Tony Andary, regarding this proposed car wash/convenience store/gas station project located at 3705 S. Bascom Ave, in San Jose.

Mayor, you allowed Applicant, Tony Andary to speak for an unlimited time before the Council, on Dec.19, 2017, after telling all of us at the Dec.12, 2017 Council Meeting, that no further public comment was going to be permitted, when this matter was to return to Council on Dec.19, 2017.

I was never informed by your office, or any other office at the City, that Tony Andary was going to be given preferential treatment and was going to be allowed to speak at that meeting without a time limit, nor was I invited to speak at that Appeals Hearing that I paid the City \$500.00 for.

Further, to allow Council Member Khamis, who does NOT represent District 9, **to direct Tony Andary to submit a 4th noise report, on the mitigation of the car wash noise, is not only unjust, but shows a real bias against me.**

Our noise engineer, who worked with the City on the General Plan, has repeatedly proven that Andary cannot mitigate the noise or odors of that car wash, which will operate 14 hours a day, 7 days a week, 25 feet below our bedroom and living room windows!

Allowing a 25 foot set back near residential areas is against the 200-500 foot requirements of the General Plan, and shows that Andary Enterprises, Inc. is being given preferential treatment, and illegal set backs that no other developers asking for a car wash near residential areas are being allowed.

Further, to allow Andary the opportunity to submit a 4th noise report when he has already failed three times now to show he can mitigate the noise, without allowing us to do the same is clear prejudice. Andary and Planning never submit reports to me in a timely manner so that I can refute or rebut their findings. They wait until the Friday before the Council Meeting, which only gives our engineers ONE working day to review and respond.

Also, Andary asking for a last minute deferral under the pretense that he wanted to meet and talk with me, is ridiculous for the following reasons:

He has had plenty of time to reach out to me and hasn't to this day. He used that as a means to lobby Council Member Khamis so that he could have more time to try and refute our noise reports.

I already met with his brother Sam Andary, for several hours in Aug., and he refused to meet me half way on any of the suggestions I made.

I sent you, and the entire Council an email expressing my opposition of the last minute deferral request by Andary, and I gave you all the reasons why.

To ignore that Tony Andary has acted so abusively toward all of us since and including the May 8th community meeting/Planning Commission Meeting Aug. 9th, that I had to have my attorney send him and his associates a Cease and Decease letter, is like a Police Officer ignoring a Restraining Order against an abusive spouse or partner! That is unacceptable on every level!

He has been harassing, and trying to bully us, and his continual need to get up to the podium and lie, and try to besmirch not only us, but my Council member, and Shaunn Mendrin is not only enabling him to abuse us and the process, but is just plain irresponsible of all of you.

I would like you to have Security pull the camera footage, shortly after the Dec.12th Council Meeting, by the bathrooms, on the 1st floor, where you existed and took a photo with Mrs. Singh's son, so that you can see how the Andary family stopped and started yelling at us. One woman tried to lunge at Mrs. Singh, when she was just sitting there minding her own business. This is not acceptable on any level either, so how on earth do you and the rest of the Council think I would feel safe meeting alone with this man, or anyone in his family?

And given this history, exactly what do you think the outcome could possibly be when I have made it very clear that these elementary school children's lives matter more to me than any profit driven project Andary wants to build 167 feet from Farnham School, the driveway of the car wash exiting into the direct path of these children walking too and from the school, and 20 feet from our four-plex driveway?

In closing, I would insist that since you allowed Tony Andary to speak at the Dec.19, 2017 Council Meeting, that you afford me and the public the same opportunity to speak at the evening Jan. 23rd Council Meeting, WITHOUT cutting our time down. I am also asking for a Reasonable Accommodation due to my and other members of the public's health issues.


Sincerely,

Kathleen Flynn

We Say GoodBye To Sally Fields

[iflperfecttouch.com](http://perfecttouch.com)

<http://thirdpartyoffers.juno.com/TGL3142/5a4ec86d55ef8486d79c5st03vuc>

Sponsored Links 

From:

Sent: Thursday, January 4, 2018 7:06 PM

To:

Subject: Re: Re:My Due Process Rights and the Jan. 23rd Council Meeting

Dear Mayor.

I think it was wrong of you to say that all public comment was closed and then you allowed the Applicant to speak. If the Applicant gets to speak, then the Appellant should be given the same opportunity to be heard, without exception, especially since it was an Appeals Hearing that the Appellant paid \$500.00 to the City for the right to appeal this project.

I think it is only fair to allow the Appellant and the public to speak at the Jan. 23rd evening Council Meeting, and since Council Member Khamis, who does not represent our district, directed Tony Andary to bring in a fourth noise report, that you make sure that the Appellant receives that report immediately once it has been submitted to Planning staff, and that the Applicant be directed to submit it with at least a week in advance of the Council meeting, like Planning staff required of the Appellant.

As Chief of Staff for former Council Member Diquisto, I dealt with 8 years worth of land use issues. I also worked for former Council Member Reed on land issues as well, and I have never seen anything like this. I have to say that this process has been not only problematic and plagued with conflict of interest issues, staff not properly vetting and educating you and the Council on this proposed project, staff not turning over reports from the Applicant in a professional and timely manner, our expert reports being ignored, the serious and evident traffic issues we've shown you and the Council near an elementary school being completely dismissed, the unlawful exemptions and set backs that are being afforded to this project Applicant, public information requests going unanswered, no community meeting regarding the General Plan re-zone permit was held, numerous members of the public informing the Council Member and City staff that they did not receive any re-zone Notice from the City at the May 8th community meeting, the Applicant's behavior being so abusive not only to us, but toward the Planning Commissioner's as well, that a "Cease and Desist" letter had to be sent to the Applicant, and that the Appellant's email opposing this last minute deferral request until Jan. 23, 2018, when he refused the Appellant's request for the same deferral so that she could have surgery done was ignored, and

the Applicant's deferral request was approved by 6 of you, shows a complete disregard for the process, and the City's policies on this.

I know for a fact that a 25 foot set back for a car wash near residential areas is illegal and is in violation of the General Plan. I also know that the traffic that will be added to both S. Bascom Ave. and Woodard Road once the Cambrian Plaza Project is completed, should have been included in staff's report, and wasn't. This project is not exempt from CEQA and the odors from the car wash have not even been addressed.

I hope that as our Mayor and an attorney, that you will take all of our concerns seriously enough to stop all of these issues from continuing, and to educate the new Council Members on the misinformation that Council Member Khamis put out there about approving this car wash when the re-zone permit vote was taken in 2013, because that vote was not to approve this car wash, it was a vote that had only to do with a rezoning, not approval of this car wash.

Thank you very much,

Christian Hemingway

From:

Sent: Thursday, January 4, 2018 4:34 PM

To: c

Cc:

Subject: Re:My Due Process Rights and the Jan. 23rd Council Meeting

Dear Honorable Mayor Liccardo, Mr. Reed, And Ru Weerakoon,

I am writing you because my due process rights as the Appellant were and are continuously being violated in favor of the Applicant, City employee, Tony Andary, regarding this proposed car wash/convenience store/gas station project located at 3705 S. Bascom Ave, in San Jose.

Mayor, you allowed Applicant, Tony Andary to speak for an unlimited time before the Council, on Dec.19, 2017, after telling all of us at the Dec.12, 2017 Council Meeting, that no further public comment was going to be permitted, when this matter was to return to Council on Dec.19, 2017.

I was never informed by your office, or any other office at the City, that Tony Andary was going to be given preferential treatment and was going to be allowed to speak at that meeting without a time limit, nor was I invited to speak at that Appeals Hearing that I paid the City \$500.00 for.

Further, to allow Council Member Khamis, who does NOT represent District 9, to **direct Tony Andary to submit a 4th noise report, on the mitigation of the car wash noise, is not only unjust, but shows a real bias against me.**

Our noise engineer, who worked with the City on the General Plan, has repeatedly proven that Andary cannot mitigate the noise or odors of that car wash, which will operate 14 hours a day, 7 days a week, 25 feet below our bedroom and living room windows!

Allowing a 25 foot set back near residential areas is against the 200-500 foot requirements of the General Plan, and shows that Andary Enterprises, Inc. is being given preferential treatment, and illegal set backs that no other developers asking for a car wash near residential areas are being allowed.

Further, to allow Andary the opportunity to submit a 4th noise report when he has already failed three times now to show he can mitigate the noise, without allowing us to do the same is clear prejudice. Andary and Planning never submit reports to me in a timely manner so that I can refute or rebut their findings. They wait until the Friday before the Council Meeting, which only gives our engineers ONE working day to review and respond.

Also, Andary asking for a last minute deferral under the pretense that he wanted to meet and talk with me, is ridiculous for the following reasons:

He has had plenty of time to reach out to me and hasn't to this day. He used that as a means to lobby Council Member Khamis so that he could have more time to try and refute our noise reports.

I already met with his brother Sam Andary, for several hours in Aug., and he refused to meet me half way on any of the suggestions I made.

I sent you, and the entire Council an email expressing my opposition of the last minute deferral request by Andary, and I gave you all the reasons why.

To ignore that Tony Andary has acted so abusively toward all of us since and including the May 8th community meeting/Planning Commission Meeting Aug. 9th, that I had to have my attorney send him and his associates a Cease and Decease letter, is like a Police Officer ignoring a Restraining Order against an abusive spouse or partner! That is unacceptable on every level!

He has been harassing, and trying to bully us, and his continual need to get up to the podium and lie, and try to besmirch not only us, but my Council member, and Shaunn Mendrin is not only enabling him to abuse us and the process, but is just plain irresponsible of all of you.

I would like you to have Security pull the camera footage, shortly after the Dec.12th Council Meeting, by the bathrooms, on the 1st floor, where you existed and took a photo with Mrs. Singh's son, so that you can see how the Andary family stopped and started yelling at us. One woman tried to lunge at Mrs. Singh, when she was just sitting there minding her own business. This is not acceptable on any level either, so how on earth do you and the rest of the Council think I would feel safe meeting alone with this man, or anyone in his family?

And given this history, exactly what do you think the outcome could possibly be when I have made it very clear that these elementary school children's lives matter more to me than any profit driven project Andary wants to build 167 feet from Farnham School, the driveway of the car wash exiting into the direct path of these children walking too and from the school, and 20 feet from our four-plex driveway?

In closing, I would insist that since you allowed Tony Andary to speak at the Dec.19, 2017 Council Meeting, that you afford me and the public the same opportunity to speak at the evening Jan. 23rd Council Meeting, WITHOUT cutting our time down. I am also asking for a Reasonable Accommodation due to my and other members of the public's health issues.

Sincerely,

Kathleen Flynn

Duchess Says Goodbye To Royal Family

risingstarnewspaper.com

<http://thirdpartyoffers.juno.com/TGL3142/5a4ec86d59b8d486d79c3st03vuc>

From: bearkats1@juno.com <bearkats1@juno.com>
Sent: Wednesday, December 27, 2017 2:56 PM
To: City Clerk; Taber, Toni
Cc: ben@benlevinsonlaw.com; alfemale1974@hotmail.com
Subject: Fw: My Due Process Rights and the Jan. 23rd Council Meeting

PUBLIC RECORD 5

Happy holidays! Upon your return, could you please post this email I sent Peter Hamilton, Chief of Staff for Council Member Rocha to the City's website under the CP 16-035 Conditional Use Permit Appeals Hearing, and please let me know when I can view the videos for Oct. -Dec.'s 2017 Council Meetings?

Thank you.

Kathleen Flynn

"An individual has not started living until he can rise above the narrow confines of his individualistic concerns to the broader concerns of all humanity." by the beloved Reverend Dr. Martin Luther King, Jr.

----- Forwarded Message -----

From: "bearkats1@juno.com" <bearkats1@juno.com>
To: peter.hamilton@sanjoseca.gov, Donald.Rocha@sanjoseca.gov
Cc: ben@benlevinsonlaw.com, alfemale1974@hotmail.com, Rosalynn.Hughey@sanjoseca.gov, R u.Weerakoon@sanjoseca.gov, upashna.k.singh@gmail.com, urwashi.singh01@gmail.com, teresa.lanz@yahoo.com, Pachyderm426@juno.com, christianhemingway@msn.com, shaunn.mendrin@sanjoseca.gov, Dave.Sykes@sanjoseca.gov, Richard.Doyle@sanjoseca.gov, Kris.Sanchez@nbcuni.com, Victoria.Nguyen@nbcuni.com, Azenith.smith@foxtv.com, jenniferw@metronews.com
Subject: My Due Process Rights and the Jan. 23rd Council Meeting
Date: Wed, 27 Dec 2017 22:38:27 GMT

Hi Peter,

I hope you had a nice holiday. I would like your assistance because I feel like my due process rights are continually being violated, that I am being discriminated against, our public information requests have remained unanswered, complaints of conflict of interest against Tony Andary have been ignored, and that Andary is being given preferential treatment because he is a City employee, and is using his partnerships with business to pressure and lobby the Council.

I'd like to know if myself and others are going to be allowed to speak at the Jan. 23rd Council Meeting. We were all shocked that Andary was allowed to speak at the last Council Meeting, even though we were told that the public comment section was going to be closed at that meeting.

I am very upset that no one notified me that he was going to be allowed to speak, given that I filed the appeal, and this is an appeal's hearing. Further, I don't think it was fair of Council Member Khamis to direct Andary to bring back proof that he can mitigate the noise of the car wash, when I was not offered the opportunity to rebut whatever he submits, and he has already been given multiple opportunities to submit said proof.

Andary waits until the last minute to submit things, and staff does not give me a copy as soon as they get it. They post it on the website the Friday before the Council Meeting, which gives me only 1 working day to refute anything he submits, and that is not fair or professional.

This whole thing has really gotten out of hand. In Nov. I was told that I could not have a deferral based on my medical needs until Jan. because a deferral could only be allowed for a few weeks because of Andary's due process rights, so how come Andary got one for almost 5 weeks?

Further, I made it clear to Shaunn, and in an email to the Mayor and Council that because Andary has behaved so badly towards me and others, that I would not meet with him. Don also made it clear that Andary's request for a deferral to "talk to me" would not be possible.

We both know that Andary used that excuse to get more time to gather more reports saying he can mitigate the noise of the car wash, when our noise engineer's report and testimony said he can't because the doors would remain open too long.

The bottom line is that the City never held a public meeting when the re-zone permit request was submitted in 2013, for the General Plan, and 30 of us told Don, in the May 8th community meeting that we never even received the notice that the City supposedly sent us. that a re-zone request was even submitted.

Also, Council Member Khamis is incorrect when he claimed that the Mayor and Council voted to give Andary a car wash. They only voted to allow a re-zone permit depending upon whether the car wash FIT the site, and we have proven through several expert reports by highly respected engineer's, that it DOES NOT!

Further, given the fact that the City never held the required public meetings on the re-zone permit request in 2013, any vote the Mayor and Council took on this re-zoned permit request is illegal, null and void.

And finally, I do not understand why the noise issue is taking precedence over the horrific traffic and dangers to the Farnham School children, other pedestrians and drivers, the lack of traffic enforcement, and the health and safety issue of the proposed car wash noxious odors.

Please contact me at your earliest convenience so that we can discuss this, and I would also like to make a Reasonable Accommodation Request for Jan. 23rd's Council Meeting.

Thank you,
Kathleen

"An individual has not started living until he can rise above the narrow confines of his individualistic concerns to the broader concerns of all humanity." by the beloved Reverend Dr. Martin Luther King, Jr.