

Fw: URGENT - REMOVE FROM CONSENT: 2.9 21-2096 Conditional Summary Vacation, Declaration of Surplus, and Sale of a Portion

Rules and Open Government Committee Agendas <rulescommitteeagenda@sanjoseca.gov>

Mon 9/27/2021 8:36 AM

To: Agendadesk <Agendadesk@sanjoseca.gov>

1 attachments (2 MB)

Memorandum city giving more concessions to Tersini 09-28-2021.pdf;

Rules and Open Government Committee Agendas

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From: City Clerk <city.clerk@sanjoseca.gov>

Sent: Monday, September 27, 2021 7:45 AM

To: Rules and Open Government Committee Agendas <rulescommitteeagenda@sanjoseca.gov>

Subject: FW: URGENT - REMOVE FROM CONSENT: 2.9 21-2096 Conditional Summary Vacation, Declaration of Surplus, and Sale of a Portion

From: Bill Souders

Sent: Sunday, September 26, 2021 9:00 PM

To: City Clerk <city.clerk@sanjoseca.gov>; Liccardo, Sam <sam.liccardo@sanjoseca.gov>; Foley, Pam <Pam.Foley@sanjoseca.gov>; Peralez, Raul <Raul.Peralez@sanjoseca.gov>; Jimenez, Sergio <sergio.jimenez@sanjoseca.gov>; Mahan, Matt <Matt.Mahan@sanjoseca.gov>; Carrasco, Magdalena <Magdalena.Carrasco@sanjoseca.gov>; Arenas, Sylvia <sylvia.arenas@sanjoseca.gov>; Jones, Chappie <Chappie.Jones@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; Cohen, David <David.Cohen@sanjoseca.gov>; Esparza, Maya <Maya.Esparza@sanjoseca.gov>; Davis, Dev <dev.davis@sanjoseca.gov>

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Subject: URGENT - REMOVE FROM CONSENT: 2.9 21-2096 Conditional Summary Vacation, Declaration of Surplus, and Sale of a Portion

Importance: High

[External Email]

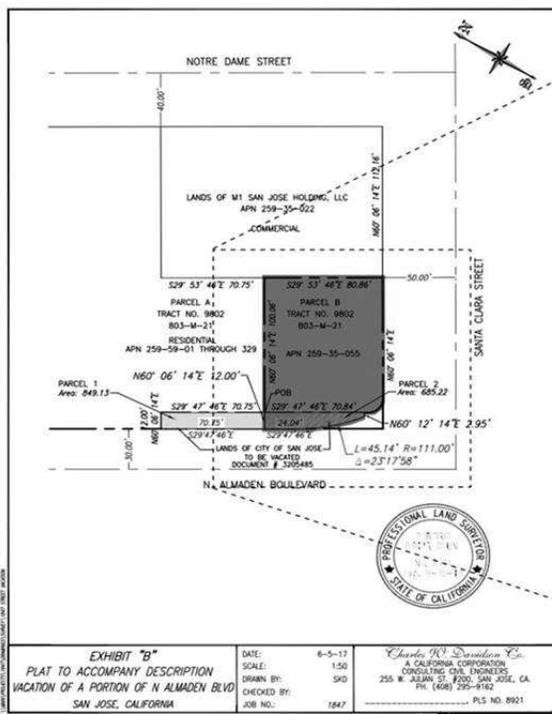
ATTENTION Councilmembers and City Clerk [for submission into the public record]:

I see that there is an item on the CONSENT CALENDAR that directly impacts the Axis condominium. There are open questions that we (Axis Condominium residents) think must be addressed before you approve this sale of city-vacated property to satisfy your January 14, 2020 City Council pre-approval of the Almaden Corner Hotel Project proposed by KT Urban, for the development of a 19-story hotel.

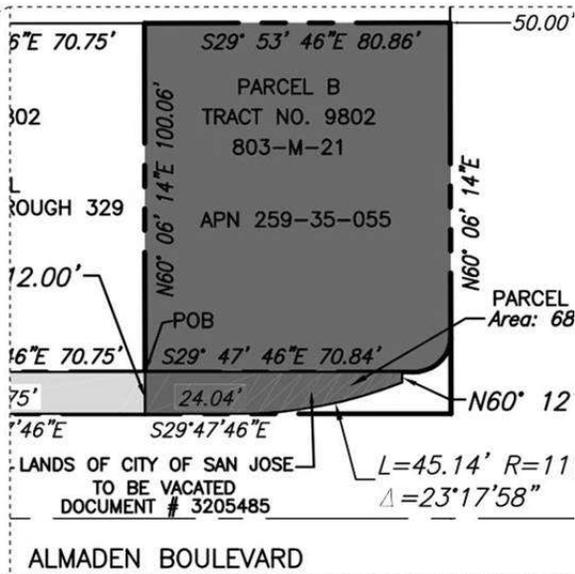
1. In RECOMMENDATIONS (b) (1) & (2), there has been a change from the previously provided document dated 06-05-2017. The property sale to Axis has been reduced from 849 sq ft (12' x 70.75') to 707 sq ft (10' x 70.75') while the sale to Tersini remains essentially the same. The memo shows that the Axis parcel is now only 10' wide while the Hotel parcel remains at 12' wide.

Why? I can only assume that it is to provide Tersini the additional space to move the Project tower away from the De Anza so they can mitigate impacts to historic resources under CEQA, but why change the Axis property? What are the implications to Axis?

Land Vacation



THE SUBJECT PROPERTY INCLUDED IN THIS PROJECT INCLUDES A PARCEL (PARCEL OF LAND OWNED BY THE CITY OF SAN JOSE THAT IS IN PROCESS OF VACATION, / ALMADEN BOULEVARD.



2.) More importantly, the current memo lists the WRONG property owner.

(2) (b) Purchase and Sale Agreement with adjacent property owner **Bit Holdings Sixty-Eight, Inc.** for the sale of approximately 707 square feet of conditionally vacated City-owned "exempt surplus property" on a portion of Almaden Boulevard, between N. Almaden Boulevard and W. Santa Clara Street, in accordance with Cal Gov. §54221(f)(1)(B) and San Jose Municipal Code §4.20.070 in the amount of \$1.

Why isn't Axis Condominium listed as the property owner?

In the event that Bit Holdings actually owns the remaining 2 foot strip, a concern of the Axis Homeowners Association is that an owner of the 2 foot strip might be able to block our driveway access. Please confirm that you will address this confusion prior to any sale of the property.

3. In the BACKGROUND section it states:

The project plans call for **approximately 145 square feet of the Hotel Portion to be restricted for use as a public sidewalk whereby a sidewalk easement would be conveyed by separate instrument.** This allows 529 square feet to be incorporated into the Project. Including the Hotel Portion in the Project entitlements, as approved under H18-038, allows the Project to construct six additional hotel units while constructing three fewer floors in the building, reducing the cost of construction, and increasing revenues.

What are the implications to Axis relative to any sidewalk easements? In fact, what are the "conditions" of this sale overall?

4. In the ANALYSIS section, it states:

The Axis Portion consists of 707 square feet, which is used for the Axis Condominium tower's ingress and egress. It is in the interest of the City to vacate and sell the Axis Portion to limit liability and future maintenance obligations. For this reason, staff recommend selling the Axis Portion for \$1 to the adjacent owner, as allowed under San Jose Municipal Code §4.20.070(B). This proposed transfer of "exempt surplus land" to an adjoining property owner conforms with the SLA's exemption in Cal. Gov. Code §54221(f)(1)(B).

Does Axis now take over these city liabilities and obligations? What are they? How must we now prepare for those?

And then, under TERMS, it states:

Title insurances, escrow fees, recording fees, transfer taxes, Broker fees, and any other fee or cost related to this transaction to be paid by Buyer.

While our cost is only \$1, will we have to cover these undisclosed fees? I would suggest that the developer of both of these projects cover any costs.

5. In the CONCLUSION section it states:

The Axis Condominium tower is no longer owned by the Developer. The Axis Portion is necessary for ingress and egress to the Axis tower, and sale of the Axis Portion preserves access to the tower as intended in the original project design. Sale of this property will fulfill a condition of approval for both the Axis condominium project and the Almaden Corner Hotel Project and limit the City's maintenance and liability obligations. This process has not yet occurred, and accordingly, is a requirement of the Almaden Corner Hotel Project to ensure that the Project does not adversely impact ingress and egress of the Axis property.

The document still does not correct the "adjacent property owner". Why? Is there an issue with recording? And it seems curious that this condition of approval for the Tersini Axis condominium project in only now being resolved 14 years later. How is that possible?

6. And finally, in the PUBLIC OUTREACH & COORDINATION sections, it states:

The public was given the opportunity to comment on the proposed development and site plan with the inclusion of the proposed vacation area as part of the Planning permit review and approval process. No comment...

All concerned utility companies have been contacted in writing and have no objections to the proposed vacation and have not required a reservation of a public service easement as there are no facilities in the Subject Portion.

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

With all of the coordination and outreach (and I am certain that the Planning Department was in close contact with KT Urban), why wasn't Axis contacted directly about this decision? Is it because you contacted Bit Holdings Sixty-Eight, Inc. instead?

We respectfully request that you remove this from consent, and in fact remove this from the council agenda completely, until such time that the real adjacent owners, Axis Condominiums, have time to review and approve the sale.

Thank you for your consideration,



Live as if you were to die tomorrow.
Learn as if you were to live forever.
--Mahatma Gandhi, 10/02/1869 - 01/30/1948

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Fw: Consent Calendar Item 21-2096 on the September 28, 2021 City Council Meeting

City Clerk <city.clerk@sanjoseca.gov>

Mon 9/27/2021 11:41 AM

To: Agendadesk <Agendadesk@sanjoseca.gov>

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From: jeanie verbeckmoes [REDACTED]**Sent:** Monday, September 27, 2021 11:13 AM**To:** Liccardo, Sam <sam.liccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; Ramos, Christina M <christina.m.ramos@sanjoseca.gov>; Brown, Bridget <Bridget.Brown@sanjoseca.gov>; Vegas, Raquel <Raquel.Vegas@sanjoseca.gov>; Smith, Henry <Henry.Smith@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>**Subject:** Consent Calendar Item 21-2096 on the September 28, 2021 City Council Meeting

[External Email]

Dear Mayor Liccardo and Councilmembers,

Please remove from the September 28, 2021 City Council Agenda, Consent Calendar Item 21-2096.

There is an error in the resolution attached to Consent Calendar Item 21-2096 (Resolution). The third page of the Resolution states: "WHEREAS, the Axis Condominium property, owned by Bit Holdings Sixty-Eight, Inc., is located at 38 N. Almaden Blvd. adjacent to the Subject Property; and..." The Axis Condominium property is not owned by Bit Holdings Sixty-Eight, Inc. (Bit Holdings) rather it is owned by Axis Homeowners Association.

Further, the plat map shown on Attachment E of the Resolution outlining the street vacation area of 1381 square feet shows a jog in the street as shown below. There is a 2 foot strip that appears to be shown as part of the street since the street at that location is shown as 32 feet wide. Why is that 2 foot strip not being vacated?

September 27, 2021

Dear Honorable Mayor Liccardo and Council,

We write regarding item 2.9: Conditional summary vacation, declaration of surplus, and sale of a portion of North Almaden Blvd.

As the union that represents workers at most Downtown San Jose hotels (including the Hotel De Anza, which neighbors the Almaden Corner Hotel project site) we are very concerned about Council moving forward with this public land sale under these terms. When Council approved the site development plan for the Almaden Corner project back in January 2020, the project was controversial with the community. Our organization joined with many other concerned groups in filling the Council chamber to share our concerns about this project. Now, you are considering selling City-owned land to make the Almaden Corner Hotel project far more profitable for the developer with an action quietly placed on the consent calendar. We ask you to defer this action for the following reasons:

I. Lack of Community Engagement

The process around this sale has been secretive and opaque. While the overall Almaden Corner Hotel project has been discussed a lot publicly, and subjected to much criticism, discussion of this proposed sale of City-owned land to the Almaden Corner developer seems to have happened entirely in closed session in the Spring of 2021.

Why hasn't the City engaged interested stakeholders around this sale? Why are you trying to move it forward now on the consent calendar without discussing it publicly? Why have we as stakeholders not been given any opportunity in a public meeting to learn about this and share our opinions other than commenting on the consent calendar? We are disappointed with both the developer and the City for not taking the time to engage with the community. This land sale should not go forward without the community getting a chance to properly review and comment on this deal structure, how it benefits the developer, and how the additional rooms this deal allows will impact downtown.

II. The Council should wait to consider this land sale until the project is more definite.

The staff report states: "Staff's typical practice is to bring vacations to Council for approval only after the applicant has entered into a secured construction agreement that guarantees completion of the public improvements that will render the right-of-way unnecessary for public use." But for this project, staff is suggesting that you depart from that typical practice.

You should not do that. Instead, you should follow that typical practice for this project and the proposed public land vacation. Wait until a construction agreement is in place for this project before considering whether to vacate this piece of City property.

Why is this project being treated differently and not subject to the same standard of needing a construction agreement in place? The City is getting no money upfront, so why is it jumping ahead of its own practices to enter into this deal?

III. The City will only get money for the land if the hotel actually opens and is successful, and this hotel's success competes with existing sources of revenue to the CCFD.

This seems to be a great deal for the developer, but we question if it is a great deal for the City. The staff report says that this hotel is likely generate about \$400,000 per year in payments under the CCFD -- from the 4% room revenue assessment under the CCFD to which the hotel developer is binding the hotel in the future. Yes, the fact that some additional money will come to the city each year is good. But that money is pretty much coming from hotel guests on their bills as a tax. It's not really money coming from the developer or owner. The structure of the land sale also means that the City's receiving money for the CCFD district is dependent on the hotel's success. In a terrible year for hotels -- one like 2020, for example -- the City could end up with a fraction of what's projected. Why is the City not getting any guaranteed money upfront?

In addition, even though the projected \$400,000/year payment from the hotel sounds great, in reality it is very unlikely that the net revenue gain to the city and the CCFD fund will be anywhere close to \$400,000/year. That's because some of this hotel's sales (and thus some of the CCFD special tax payment revenue) will likely not be from new business for Downtown San Jose, but simply from business shifted away from other existing hotels. In reality, this could be robbing from Peter to pay Paul, moving money around from different pockets. \$400,000 doesn't look as good as it sounds at first after further review and reflection.

IV. The City is selling this land without exploring community benefits.

If the City takes the time to engage the community on this sale, it could make this a better project by understanding what community benefits various stakeholders would want to see, beyond just contributions to the CCFD. By having the discussion of this sale only behind closed doors thus far, you have closed yourselves off from the ideas of the community around community benefits.

For example, the City could be taking steps to ensure the jobs at this future hotel are quality jobs by establishing certain minimum labor standards. Instead, the City is helping a developer to build a hotel without any discussion of job quality. It would be a shame if this hotel creates poverty level jobs -- especially if the City has aided in the creation of those bad jobs by moving this land sale.

We, along with other community stakeholders, would appreciate a chance to share our vision on this deal and know we have been heard.



In conclusion, public land should not be sold without public input. We ask that the Council defer this item. It is inappropriate to move forward without giving the community ample time to engage with this deal, one that at first glance seems to only benefit the developer and subverts the City's own practices.

On behalf of our members,

Sarah McDermott
Political Director
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