

12/11/18

item 8



City Council

Item #8
Resolution of Necessity
Recreation Facilities
(5105 Great America Parkway)

December 11, 2018



City of Santa Clara
The Center of What's Possible

Overview

- Background and context of items similar
- Council is considering the need to proceed with eminent domain action – NOT compensation
- Compensation would be determined through Court

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Background

- CityPlace project was approved in June 2016
- City approvals included: EIR, Zoning (Master Community Plan – MCP), Disposition and Development Agreement (DDA), Development Agreement (DA) and Infrastructure Master Plan
- The 240 acre development site is currently used as a golf course and therefore there are not currently the public improvements needed for the redevelopment of the property

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Public Improvements

- Public infrastructure improvements include:
 - Roads
 - Utilities: Electricity, Water, Storm Drain, Sewer, Gas, etc.
 - Landfill Gas Collection Systems
- Other
 - Public Facilities: Transit Station, parks, etc.

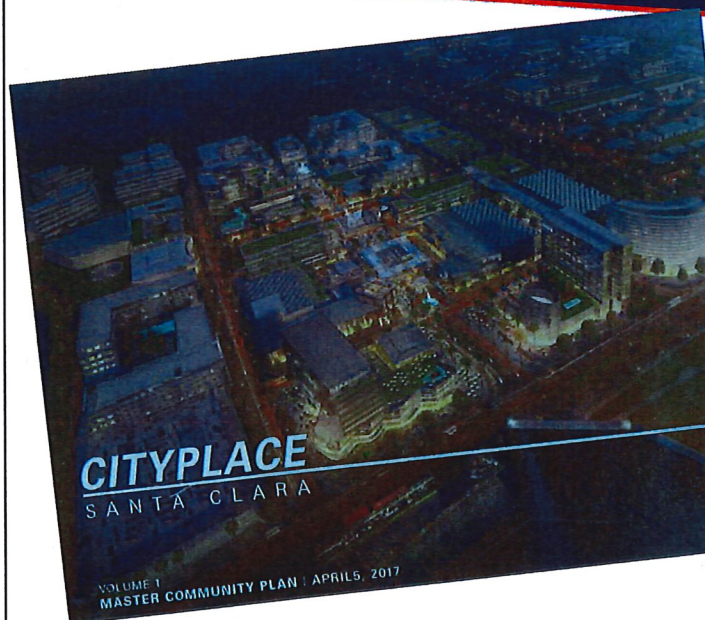
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Circulation Requirements

- Any redevelopment of the property would require the installation of a circulation network (cars, buses, bicycles, and pedestrians) that would allow for access to/from: Great America Parkway; Tasman Drive; Lafayette Street and Great America Train Station
- Installation of utilities are also typically constructed within public rights-of-ways

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EXHIBIT 3-11: PUBLIC AND PRIVATE STREETS*



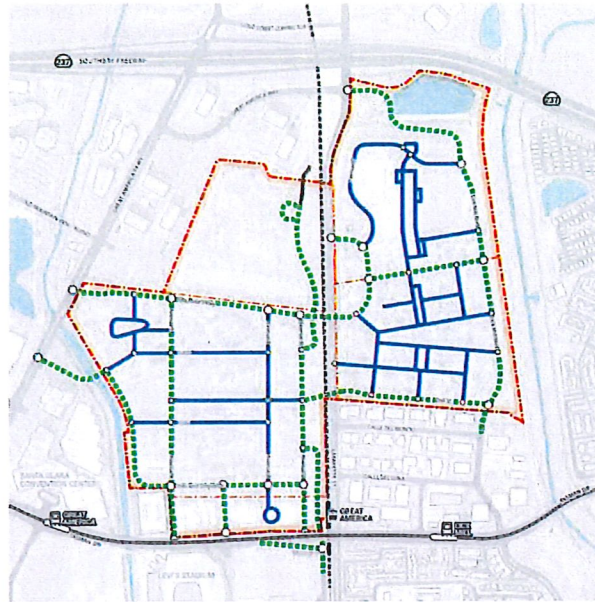
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Street Network

LEGEND

- Streets
 - Public Street (dashed green line)
 - Private Street (solid blue line)
 - Service Road / Emergency Access (dashed red line)
- Transit
 - VTA Light Rail (thick solid blue line)
 - Capital Corridor (dashed blue line)
 - Altamont Commuter Express (dashed blue line)
- Boundaries
 - Site (dashed red line)
 - Parcel (dashed red line)

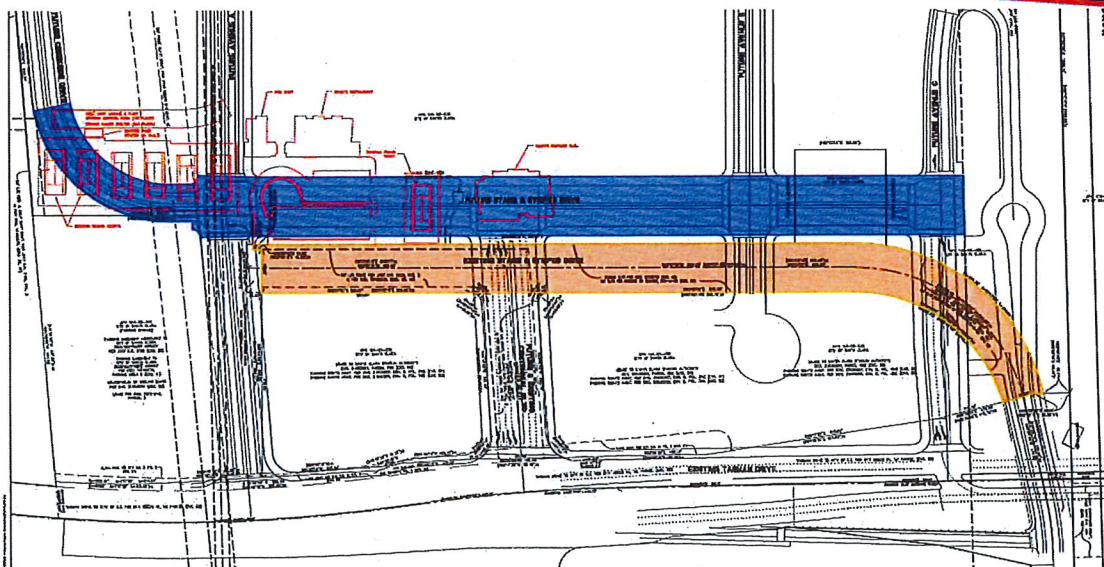
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* Plan is conceptual and subject to change. The reference parcel area (while part of the legal parcel) is a City facility and not part of the development area or PRR calculations. This depiction of the public and private streets indicates some of the access variants as shown in Exhibit 3-12 and reflects the classification of streets at the time of this MCP publication (2016).



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Leasehold at 5105 Great America Pkwy

- May 16, 1985 Lease with SCCC Associates, IA Lodging Santa Clara predecessor (operated as Hyatt Regency)
- Transaction provided for Ground Lease and other rights including use of Great America Ballroom and rights at Santa Clara Golf & Tennis
- Tenant paid for construction of 4 tennis courts
- Tenant has scheduling and billing benefits from SCG&T for the benefit of its hotel patrons

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Acquisition

- City needs to terminate the Recreation Facilities Agreement to allow for the closure of Santa Clara Golf and Tennis and the construction of streets and other public improvements
- Discussions have been ongoing for several years
- Formal offer based on an appraisal was made on September 20, 2018

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Tenant – IA Lodging Santa Clara

- Has right to secure its own appraisal
- Can continue to negotiate

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Findings in the Resolution

- The public interest and necessity require the project
- The project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury
- The property sought to be acquired is necessary for the project.
- An offer under Section 7267.2 of Gov't Code has been made

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Next Steps

- Adoption of Resolution
- File action and deposit funds with the Court
- Request for possession of property
- Court hearing

AND

- City can continue to negotiate a settlement with IA Lodging

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Recommendation

Adopt Resolution of Necessity to Acquire Property Interests at 5105 Great America Parkway as it relates to the use and operation of the Santa Clara Golf and Tennis facility from IA Lodging Santa Clara for a Public Project and Directing the Filing of Eminent Domain Proceedings.

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12-11-18 #8

JOHN MARSHALL COLLINS, P.C.

(A Professional Corporation)

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RECEIVED

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DEC 10 2018

John Marshall Collins, PC
60 S. Market St., Suite 1400
San Jose, CA 95113

City Clerk's Office
City of Santa Clara

Of Counsel to
Hoge, Fenton, Jones & Appel

December 10, 2018

By Hand

Mayor and City Councilmembers
City of Santa Clara

Re: **NOTICE OF INTENTION TO ADOPT RESOLUTION OF
NECESSITY TO ACQUIRE REAL PROPERTY INTEREST FOR
RELOCATION OF STARS & STRIPES DRIVE AND
DEVELOPMENT OF AVENUES A, B AND C**

Date: **Hearing to be held December 11, 2018 at 7:00 P.M.**

Dear Madame Mayor and Councilmembers:

On behalf of IA Lodging Santa Clara, LLC, we protest the above described Resolution of Necessity. IA Lodging is the present owner of the Recreational Facilities Agreement ("RFA") which the City proposes to take pursuant to its proposed Resolution. We object to the proposed Resolution.

We note that the City, or related entities, made findings at the time the RFA was established, that it was in the public interest. Such findings are inconsistent with the currently sought findings.

Public Interest:

Proposed Finding No. 1 states: "The public interest and necessity require the project." Currently, the golf and tennis facilities serve the public need for recreational properties and opportunities. There has been no showing that the destruction of these facilities is justified or balanced by any new developments. Against this, the City apparently plans to sell its land to a private developer for private profit. We submit that there is no true public necessity involved in this project.

Balancing Public Good versus Private Injury:

Proposed Finding No. 2 states: "The project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury."

POST MEETING MATERIAL

In order to meet this standard, the City should simply route the allegedly needed streets around the golf and tennis facilities or re-establish the golf and tennis facilities within the areas not used for streets. There appears no good reason why the golf and tennis facilities must be completely destroyed for the City's purposes. The City's own correspondence confirms that the golf course could continue, although reduced in size. Thus, the proposed taking is not compatible with the principle of least private injury, as it completely destroys the owner's rights under the RFA.

Necessity:

Proposed Finding No. 3 states: "The property sought to be acquired is necessary for the project." For the reasons stated above, it is not necessary to destroy the owner's rights under the RFA for the City to move forward with its project.

Negotiations and Appraisal:

Proposed Finding No. 4 states: "The offer required by Section 7267.2 of the Government Code has been made to the owner(s) of record for the full amount established as the fair market value of the property."

Government Code Sec. 7267.1 states:

- a) The public entity shall make every reasonable effort to acquire expeditiously real property by negotiation.
- (b) Real property shall be appraised before the initiation of negotiations, and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during his or her inspection of the property. . . .

Government Code Sec. 7267.2 states:

(b) The public entity shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation. The written statement and summary shall contain detail sufficient to indicate clearly the basis for the offer, including, but not limited to, all of the following information:

- (1) The date of valuation, highest and best use, and applicable zoning of property.
- (2) The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the determination of value.

(3) If appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated and shall include the calculations and narrative explanation supporting the compensation, including any offsetting benefits.

The City has not followed these requirements, and accordingly, cannot fairly make Finding No. 4. The City has not made good faith efforts to acquire the RFA; rather, after brief initial negotiations in which the owners have made a good faith offer to which the City has not responded, the City is proceeding with its Resolution.

The City has not conducted a good faith appraisal. Code of Civil Procedure Section 1263.320(a) provides that property is to be valued based on "full knowledge of all the uses and purposes for which the property is reasonably adaptable and available." The City appraiser (so far, unidentified as far as the appraisal report we have seen) has not (to our knowledge) visited our property, and certainly, the City appraiser has not reviewed our books and records to determine the extent of use or the likely impact on our Hotel of being deprived of our rights under the RFA. The appraisal is entirely hypothetical and does not satisfy the requirements of Government Code Sections 7267.1 and 7267.2 or CCP Section 1263.320.

The just compensation to which a property owner is entitled is the fair market value of the property being taken and, in instances where that property is part of a larger parcel, the severance damages, if any, to the remainder. The Owner is constitutionally entitled to the full and perfect equivalent of the property taken. See, for instance, **Community Redevelopment Agency v. Force Electronics**, 55 Cal.App. 4th 622, 633 (1997).

Severance damages are measured by comparing the fair market value of the remainder before and after the taking." **City of Carlsbad v. Rudvalis**, 109 Cal. App. 4th 667, 679 (2003). The City Appraisal Summary does not analyze the value of our Hotel property in this way. Further, it does not set forth any "comparable" sales or properties (i.e., recreational easements) from which an analysis of value can be made, as required by Government Code Section 7267.2(b)(2).

A list of not-very-recent hotel sales is provided. No methodology is provided for translating this into the valuation which follows. Indeed, the average price per unit of the other hotels – assuming that they might have been sufficiently comparable to be used, a factor also not discussed – is over \$320,000 per unit, but without discussion, the Appraisal Summary uses a value of \$260,000 – about 81% of the average value per unit.

There follows an attempt at the "income approach" to valuation. In this, the appraiser apparently "estimates" or invents, what he considers our likely income and expenses. Perhaps not surprisingly, it results in the same exact value as done by the

“comparable approach, ” a coincidence which shows the weakness of this approach.

Finally, the Summary states that “it was concluded . . . “ that the “most optimistic” projection loss of rooms was twenty per month (out of a total hotel room count of 505). In other words, without access to our statistics, and without reference to any other hotel offering recreational amenities, the appraiser has simply assumed a number. We note that this equals a less than 4% loss of room rentals based on our loss of rights to tennis and golf course. How the appraiser reached this conclusion is not stated in any way. The Summary goes on to “capitalize” the loss of income at a “Cap Rate” of 8.5%, without documentation or discussion of the rate.

In short, the Appraisal Summary is entirely lacking in any factual basis for the underlying assumptions, of value, of income, of expense, or of lost revenue. An appraisal which is simply a matter of plugging in guesses within guesses, and then multiplying the two, does not satisfy the City’s statutory duties.

The owner has offered discussions based on the following:

1. The City shall pay to Lessee an agreed-upon amount.
2. The City shall record a deed restriction (or similar document) which will place a limitation on the amount of hotel development on what is commonly referred to in development materials as the "Related Site" (Parcels-1, 2, 3 &4) and the "Tasman Lots" (Parcel-5), as follows:
 - a. Parcel-4: No more than one 300-room hotel.
 - b. Parcel-5 (aka Tasman Lots): No more than one 400-room hotel, provided, however, the 300-room hotel on Parcel-4 may not be combined with the 400-room hotel on Parcel-5 to create a large single hotel on either Parcel-4 or Parcel-5.
 - c. Meeting Space: Meeting and conference facilities affiliated with and/or adjacent to Hotel facilities shall not exceed 40,000 net square feet on any Parcel or combination of parcels.
 - d. Parcel-1, 2 & 3: No hotels.
 - e. The limitations on development set forth in (a), (b), ©, and (d) above will expire after ten (10) years from the mutual execution of an agreement and City Approval.
3. Lessee will agree to provide an easement for the benefit of the City, the public and the prospective tenants of the Related Site to provide access north of Lessee's

Mayor and City Councilmembers
December 10, 2018
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Hotel adjacent to the Techmart building to Parcel-4.

4. The City shall enter into an amendment to that certain Ballroom License Agreement dated April 30, 1985, by and between the City and Lessee (both as successors in interest), as amended and assigned (the "Ballroom Agreement"), which shall further modify and amend the Ballroom Agreement to include the existing event space commonly identified as rooms "G" and "H" in the definition of the "Ballroom", thereby affording Lessee's hotel equal priority use of the additional event spaces on the same terms and conditions as the "Ballroom" generally, provided the payment for use of rooms "G" and "H" shall remain as per that certain Use Agreement dated July 10, 2017, by and between the Santa Clara Convention Center and the Hyatt Regency Santa Clara.

5. The City and Lessee shall continue to discuss in good faith Lessee's potential acquisition of the fee simple land pursuant to Lessee's right of first refusal under that certain Hotel Ground Lease dated April 30, 1985, by and between the City and Lessee (both as successors in interest), as amended and assigned.

We note that the deed restrictions in Section 2 above have previously been discussed with and informally agreed by the City and the Related Group.

Until these discussions are pursued to their conclusion, and until the City provides a non-hypothetical, authoritative appraisal, the City cannot meet the requirements of, and therefore cannot make, Finding No. 4.

We suggest that, based on the above, the City needs to complete its discussions with the owners – we are ready to address these matters immediately – and if it needs to proceed, the City is required to obtain a real appraisal and make an offer based thereon.

Thank you for your consideration of this matter. Having submitted our thoughts through this letter, my clients do not intend to appear at the Council meeting on December 11th. We look forward to continuing to work with the City of Santa Clara to achieve a just result for all concerned.

Very truly yours,

John Marshall Collins

John Marshall Collins

JMC:hs

12-11-18

#8

REQUEST TO BE HEARD

RECEIVED

NOV 29 2018

City Clerk's Office
City of Santa Clara

Date: November 27, 2018

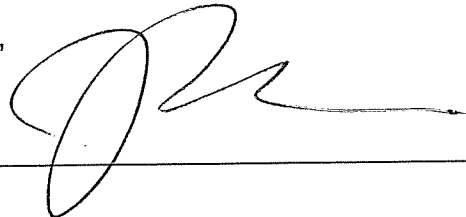
To: Nora Pimentel
Assistant City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Ms. Pimentel:

The undersigned hereby requests the opportunity to be heard on the City of Santa Clara's Notice of Intention to Adopt Resolution of Necessity to Condemn Real Property, set for the agenda of December 11, 2018.

Sincerely,

Signed:



Print Name: John Marshall Collins, attorney for
Xenia Hotels and Resorts

Address: 60 S. Market Street, Suite 1400,
San Jose, CA 95113